

LITCHFIELD PLANNING BOARD  
August 17, 2010

Minutes Approved 9/7/10

**Members present:**

- Edward Almeida, Chairman
- Jayson Brennen, Clerk (arrived 7:23 p.m.)
- Leon Barry
- Carlos Fuertes
- Frank Byron, Selectmen’s Representative

**Members not present:**

- John Miller, Alternate
- Joel Kapelson, Alternate

**Also present:**

- Steve Wagner, Nashua Regional Planning Commission, Circuit Rider, Sr. Planner
- Lori Dogopoulos, Acting Administrative Assistant

**AGENDA**

- 1. Interview: Barry Bean, Applicant for Planning Board Membership**
- 2. Per NH RSA676:4-a Continuance of Public Hearing to reconsider the revocation of the subdivision plat entitled Rolling Acres III. Applicant Cutler & Page, LLC, Tax 2 Lot 88**
- 3. The Board to discuss the conditional approval of Rolling Acres IV, Tax 2 Lot 88, The applicant is Cutler & Page Road, LLC.**
- 4. Impact Fee Annual Review**

**Any Other Business:**

**Minutes: July 20, 2010 and August 3, 2010**

**Correspondence**

Chairman Almeida called the meeting to order at 7:05 p.m.

**1.Interview - Barry Bean**

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1 Mr. Barry Bean came before the Board to discuss his desire to serve as a member of the  
2 Planning Board. He has not served on any Town boards but he has served as an Assistant  
3 Scout Master for a number of years. He has an Associates Degree in Fire Protection and  
4  
5 Safety. He told the Board that he has the time to spend in attending meetings because he  
6 is retired. He has resided in Litchfield since 1978 and he wants to give back to the  
7 community. He was told that he would be contacted once the Board votes on his  
8 acceptance.  
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10 **2. Continuance of Public Hearing - Rolling Acres III**

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12 Member Leon Barry recused himself being an abutter. Messrs. Vatche Manoukian and  
13 Michael Maggio were present. Also, there were six abutters not including Mr. Barry.  
14 Abutters were notified and notice was placed in the newspaper.  
15

16 Since the last meeting, the \$471.51 payment was made but the restoration bond in the  
17 amount of \$75,000 was not posted. The accounting information had been provided to Mr.  
18 Manoukian for his review. Chairman Almeida read aloud the letter of revocation.  
19

20 Mr. Manoukian's attorney, Andy Prolman, was not present. Mr. Manoukian explained  
21 that he received a phone call from his attorney and he is not able to attend this evening.  
22 Mr. Manoukian: So, I was not prepared to hire another attorney to represent me; so, I was  
23 going to ask if it was okay to continue this until I get another attorney or I will talk to you  
24 and I do not know if I can represent myself. I am not geared up to give you intelligent  
25 answers tonight. If you are not going to grant me that option, which I think I am entitled  
26 to because my attorney just called me this morning, I could not even get my engineer...he  
27 could not come because of a conflict, so, I would like to ask the Board to continue this for  
28 a future meeting or I can do my best.  
29

30 Chairman Almeida: The other members of the Board can comment on this but this is not  
31 normal process in application in that we have to renotify all abutters. Last time we had to  
32 cancel the meeting because we did not proceed in accordance with State laws and our  
33 regulations in posting and notifying abutters.  
34

35 Mr. Manoukian: It is not your fault; it is my attorney's fault...as of yesterday he was  
36 coming. This morning I had a phone call he said I am not going to be going there. I said  
37 okay, fine do not go, let me find somebody else, I couldn't bring him up to date as to  
38 what was going on because this is a very sensitive subject because there are technicalities  
39 here. There is the firm of Financial Resources involved here, there are mortgages on  
40 some land...they are threatening to foreclose, if you revoke this it is going to create  
41 problems for the town and for me. I do not know the legalities, I am not a lawyer, I am  
42 not going to act as a lawyer, I am just going to let you guys know that it is not black and  
43 white...I need representation.  
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45 Chairman: Sure and that is understandable.

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Mr. Manoukian: It is up to the Board to deny my request.

Chairman: Let me ask you this question, was it your intent to post the bond? It has been about three months.

Mr. Manoukian: It is not due; the bond is due only when we start construction. We did not start construction.

Chairman: When do you plan on starting construction?

Mr. Manoukian: Financial Resources they are under Chapter 7, the lender who lent us the money for this project they were forced into Chapter 7, the minute we clear that up, we will start construction and you guys have received emails from a couple of investors.

Chairman: I do not believe I did but maybe Joan did.

Mr. Manoukian: I think the Selectmen, Mr. Byron, somebody did...I have a letter that was addressed to Ed. (Almeida, Chairman)

Mr. Almeida said he did not get that letter. It was given to him this evening. It was reviewed by the members.

Chairman: I can understand the situation. With respect to our regulation, Steve, in posting bonds, if they haven't started construction, go with that a little bit.

Mr. Wagner: I believe we used to have restoration bonds in place and we made a change at the request of Cecile (Selectmen's Administrative Assistant). The regulation itself Section 5.0 Performance and Guarantee bond procedures require bonding in place prior to the start of any construction...

Talk ensued. The Board reviewed the April 4, 2006 minutes. It was noted that the \$75,000 bond was stated as a condition of the approval.

Mr. Manoukian said the construction had not started and that they would have to do a preconstruction approval and that the contractor would meet with the Town then the bond would be issued. "We did not do anything, yet. The economy is not good".

Mr. Brennen arrived at 7:23 p.m. Chairman Almeida brought him up to date as to what had transpired earlier. Mr. Brennen was on the Planning Board at the time the project was approved by the Planning Board.

Chairman: In the April 4, 2006 minutes, it says the land clearing activities were commenced. So, you disagree with that statement?

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Mr. Manoukian: Yes. We cut a few trees - yes, but we did not start construction.

Chairman: But you started cutting trees down?

Mr. Manoukian: Well, cutting trees is not construction.

Chairman: Well, the purpose of a restoration bond, my understanding is, it is to basically restore land to as close to its original state.

Mr. Manoukian: During construction when we install the underground drainage, install the septic, when we install everything, that is what restoration is for. But when you cut trees, it does not mean you are starting construction.

Mr. Brennen: If I remember correctly, in this case, we did a site walk, this is over 4 years ago so it is a little bit foggy but I remember us discussing and I think including a restoration bond, monies that related to fixing up tree clearing. If they took down trees and nothing ever happened with the property, there would be some monies in that bond to help restore that. I remember that vaguely - just need to check through the minutes.

Chairman: My understanding is a restoration bond can be used for what you said but also can be used in case the project just stops, or fails, or just stops completely.

Mr. Manoukian: The project did not start.

Chairman: You started cutting down trees.

Mr. Manoukian: We did some tree clearing then we were supposed to come...cutting the trees has nothing to do with the guy that was going to install the infrastructure. We were supposed to come and do the preconstruction meeting with a contractor and then we stopped. We never came to that meeting, preconstruction and discuss what was going to be done next. That is my understanding; that is why I am saying I need legal representation. I take it, I am not granted that?

Chairman: Surely you can. You do not have to answer the questions.

Mr. Manoukian: The Board is not going to grant me the continuation for legal representation?

Chairman: We can consider that. I do not want to discuss it at this point. The applicant is requesting continuation on this item until...how long would you need?

Mr. Manoukian: Thirty days for my engineer to come here. I talked to my engineer this morning when I saw him, he couldn't show up. He said clearing the trees is not...I did

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1 not clear the site, we cleared maybe a few hundred feet just to get in and to see what it  
2 would look like to construct the road. There is more clearing to be done and also he said  
3 the bond is going to be posted when that heavy equipment moves in and start doing

4  
5 construction...it is a restoration bond. I do not do construction. I am a developer...  
6 I sent a letter to the Town with my check explaining the bond is not due and I never got a  
7 response from the Town that the bond is due.

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9 Mr. Manoukian presented a letter dated June 17, 2010, to the Board that he had sent.

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11 Chairman: We have a request to continue this item.

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13 Mr. Wagner pointed out that if the Board does consider a continuance that there is a cost  
14 to renotify abutters.

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16 Mr. Byron: It is not the Planning Board's requirement to provide or to require an  
17 applicant necessarily have an attorney. It is the applicant's decision to have an attorney; it  
18 has nothing to do with the Planning Board. Restoration bonds are used to restore the  
19 property to its prior condition and it is not part of the construction; it is not part of getting  
20 an occupancy permit; it is not part of putting up a building. With all due respect to Mr.  
21 Manoukian's comments, the fact that he does not have an attorney is his responsibility  
22 not the Board's and the fact that he does not have a restoration bond filed is really a result  
23 of him not filing the bond and it has nothing to do with the Board. It is a condition that he  
24 has not met on this conditional approval.

25  
26 Chairman: I would agree. So, of the two conditions, one has been met, the \$471.51 has  
27 been paid. At this point, the revocation we made a motion it is pretty much a done deal  
28 up until this point. We are still at this hearing so we can look to change the revocation  
29 maybe rescind this condition if we think it is inappropriate; or we can uphold the  
30 revocation.

31  
32 Mr. Manoukian: I disagree with the Selectman about the condition of approval. This  
33 project has been approved and recorded and 4 years later you guys want to revoke that  
34 approval, or three years later. How come this was not done two years ago? Or a year ago?  
35 What triggered this?

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37 Chairman: I do not know per se. I have not been on the Board for 4 years.

38  
39 Mr. Manoukian: I would like to know. It was recorded, fees paid and there was in the  
40 account more than \$5,000 or \$6,000 that we moved it to Phase IV.

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42 Mr. Byron: Mr. Manoukian, with all respect, you didn't pay your fees until just recently  
43 number one. Number two you still have not posted the appropriate bond that is a  
44 condition of approval.

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1 Mr. Manoukian: Mr. Byron, I disagree with you.

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3 Mr. Byron: That is why we are having this hearing; it is your right to disagree but at the  
4 end of the night, this Board will vote one way or the other.

5

6 Mr. Manoukian: Absolutely, and it is your right to do whatever you want to do but as a  
7 developer myself, it is my right to come this Board and raise my questions. My  
8 understanding is this approval was granted and recorded, why did the Board record that  
9 approval if there was a condition? Please answer that.

10

11 Mr. Byron: You have to go back four years ago. All I can tell you is the conditions were  
12 not met.

13

14 Mr. Manoukian: Well, I disagree with you, sir. Mr. Chairman, why did the Board record  
15 that approval without meeting all the conditions?

16

17 Chairman: That is a good question. Typically, I was not here; typically if there are  
18 conditions to site plan those have to be met before the plan is recorded?

19

20 Mr. Wagner: Usually, plans are not signed until conditions are met.

21

22 Chairman: So, somebody signed the Mylar at some point.

23

24 Mr. Wagner explained that he was not involved with the revocation notice with Attorney  
25 Steve Buckley...but it was a condition of approval as noted in the revocation letter. It is  
26 not certain as to whether the condition could even be rescinded at this point.

27

28 Mr. Wagner: You have already approved the revocation of the subdivision. This hearing  
29 was at the request of Mr. Manoukian to plea his case and asks the Board to reconsider.

30

31 Mr. Manoukian went on to talk about processing subdivision approvals in other  
32 communities and how Mylars are not signed until all conditions are met. "I fulfilled my  
33 obligation to the town. Mr. Byron has his opinion and I have my own opinion. I am in  
34 front of the Board today not in front of Mr. Byron".

35

36 Chairman: That is true.

37

38 Mr. Manoukian: I am looking for this Board to reverse the decision you guys made about  
39 revoking my subdivision which I complied with the Town requirement. The \$400 that  
40 was not paid, it is my fault, it is shame on me; not because I did not pay it because I did  
41 not object to Lou Caron's invoices. My account had over \$5,000 or \$6,000 in it. There  
42 was excess money but Lou Caron creates invoices...am I the only person here who  
43 complains about Lou Caron or are there other people? I heard there are other people that  
44 have complained about his invoices. We moved money from Phase III to Phase IV and  
45 Lou Caron sent extra invoices after everything was said and done then we owed more

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1 money after the recording of the plans. At the time of the recording, there was ample  
2 money in the account and all the conditions, as far as I am concerned, have been met. If  
3 you guys want to revoke it, it is fine. You go ahead and revoke it but I have rights, too.

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6 Chairman: Absolutely.

7  
8 Mr. Manoukian: I am still asking this Board to avoid all legal channels, all the confusion  
9 and all expenses just to restore my rights. I did not force this Board to record the plans. I  
10 met all the conditions and please do that.

11  
12 Chairman: I never had any complaints about Mr. Caron. Typically, when he goes out, he  
13 goes out to a site it is at the request of the Board, he does not go out there because he  
14 wants to.

15  
16 Mr. Manoukian; Mr. Caron's invoices are more than the design of the site, then Mr.  
17 Maynard's invoices. How is that possible? I do not know.

18  
19 Talk ensued. Mr. Wagner referred to the intent to revoke that states that subdivision  
20 approval is subject to the express condition including logging until the performance  
21 bond is in place. The fact that it says including logging...

22  
23 Mr. Manoukian: What is the gain of the Town?

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25 Chairman: I do not think we have any gain. We are just trying to enforce the laws, we  
26 have regulations we are here to enforce these regulations. That is all we are trying to  
27 do.

28  
29 Mr. Manoukian: But there are a lot of people that are going to get hurt. People that  
30 financed the seven lots; there is \$700,000 mortgages on these lots...they are going to  
31 foreclose on a piece of land that they have with the description of the lot...and you are  
32 going to take that away from them. They are in hot soup to start with because of Financial  
33 Resources who financed these people. Now, you are going to create problems for the  
34 Town. I mean what is the gain here? There is no gain for anybody. We are negotiating  
35 with these people that have mortgages to pay them a few cents on the dollar to buy the  
36 mortgages back. It is going to cost us \$400,000 for the road. There are only seven lots.  
37 It is going to cost us impact fees and current use taxes; that is another \$10,000... it is  
38 going to cost us construction of the houses and then we should be able to sell the house in  
39 the \$300,000. So, the numbers they do not work to start with...so, now is the time for the  
40 town to work together but if you revoke this, you are going to hurt me, you are going to  
41 hurt the guys who own the mortgages and what is the Town gaining - nothing.

42  
43 Chairman: So, you are saying if we revoke this, all the mortgages...  
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1 Mr. Manoukian: \$735,000 - people that invested money with Financial Resources, yes.  
2 You are going to wipe them out. They will have a lot in the middle of nowhere in  
3 Litchfield with the bounds there but there is no approval.

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5 Chairman: You start all over again.

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7 Mr. Manoukian: Who is going to start all over again? Me? I am not going to start over.

8  
9 Chairman: That is what would happen basically.

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11 Mr. Manoukian: Why should I start all over again, for what? The economy is dead. I  
12 spent a lot of money...it is a mess; it is a big mess. Then we talk about the people who  
13 are living in the neighborhood. I agreed to put their driveways for them by September or  
14 October but if you revoke it, I am not doing that.

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16 Chairman: My understanding is any of those folks nothing really changes with respect to  
17 easements or any of those conditions that exists now.

18  
19 Mr. Manoukian: But if you revoke it, there is no subdivision. It is gone, right?

20  
21 Chairman: We revoked the plan but anything that is existing, any house that has been  
22 sold; any building that exists now, those will stay.

23  
24 Mr. Manoukian: The last time I was here I met with the abutters and they were  
25 complaining about driveways, dirt driveways. I volunteered; I spoke with some paving  
26 companies to put driveways for them. I couldn't do it earlier because of hot weather; so,  
27 we are waiting for the cool weather to do that. I was going to put one-lane driveways for  
28 them to help them out...and to work with the Board but if you guys are not going to  
29 cooperate, I can't help. I am requesting you can waive that condition, the economy is  
30 getting better, work with these guys that have mortgages let's put the roads in and at that  
31 time we would put the bond. Michael Maggio is with me he is going to be building the  
32 houses, he can put the bond.

33  
34 Mr. Michael Maggio spoke to say that he has been a developer for 32 years...has built  
35 over 850 houses in NH and over 250 in Massachusetts. He said that Mr. Manoukian is  
36 asking for 30 days to get legal representation because his attorney could not make it at the  
37 last minute and, in his opinion, 30 days is not asking anybody to give up money, just  
38 asking for a little bit of time.

39  
40 Chairman: My only response to that it has been about three months. We have gone  
41 around in circles; you have not moved forward in any way and we started back in April  
42 and here we are in August.

43  
44 Mr. Maggio: We have an unforeseen situation here.

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1 Mr. Fuertes: That is what was said at the last meeting.

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3 Chairman: This is not a normal site approval continuation. If we do continue this, we  
4 have to go back and notify abutters...that the Town has to pay and we already paid that  
5 twice.

6

7 Mr. Maggio: That is cheap money compared to the complexities that could come over  
8 this thing...

9

10 Mr. Tyler Matthews, 38 Page Road: First, please do not use me as a negotiating chip and  
11 a hostage for the Planning Board. Second, we did speak in June and you indicated there  
12 was a concern that you saw a concern with the way the roads are between the houses. I  
13 never once heard that it was going to get paved, so, hearing that something was going to  
14 get done in September or October is the first I heard anything about it and if that is in fact  
15 true, I want absolutely something in writing because it has been five years now. I want it  
16 from a lawyer because this is a merry-go-round that has not stopped. A question I have  
17 from the site walk in 2006 when you are talking about clearing of trees, the road was in a  
18 terrible condition - what was Weatherstone then? Why was nothing ever brought up  
19 about the condition of that? When would something get done with that? I have huge  
20 problems with the developer, the Planning Board, not this one...but to accept a plan that  
21 has a road with driveway access on developed homes and no idea when something is  
22 going to get developed, is unconsciable and now this is going to be five plus years...it is  
23 enough and, yes, he asked for thirty days because the lawyer could not show up in June.  
24 So, I appreciate your comment but we are hearing the same thing again. Lastly, if  
25 anything happens in the winter, I am responsible for clearing the snow, three young  
26 children...what happens and I made this point 3 or 4 years ago - what happens if I am not  
27 home and there is 3 feet of snow that can't get cleared and an emergency vehicle cannot  
28 get in there, who am I coming after?

29

30 Mr. Maggio pointed to the Board. Mr. Matthews: I do not need you to point. It is enough,  
31 absolutely enough.

32

33 Mr. Brennen: He is right...I have seen you in here three or four times. We have heard  
34 that the road was going to be paved...it has never happened. Personally, I did not vote to  
35 approve...but it was approved, the Board cannot force construction of a subdivision. So,  
36 our hands are kind of tied.

37

38 Mr. Manoukian: Well, I appreciate your comment but it is not my responsibility to install  
39 the driveways. I am the developer. You guys are mixing between builders and  
40 developers. Please let's make that clear. The builder promised the homeowner, he did not  
41 deliver. I am the developer, I didn't build the houses. The last time I met them I was here  
42 was in June so I did not come here two or three times. I do not know whom you were  
43 referring to.

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45 Mr. Matthews: Attorney Prolman was here.

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Talk ensued. Mr. Matthews: Due to the poor planning, could the Town step up and utilize impact fees since this is growth of the Town, if this is going to get revoked?

Chairman: I am not sure we can use impact fees.

Mr. Brennen: We wouldn't own the land.

Mr. Matthews: To correct what was done poorly, could something be done?

Chairman: That is kind of why we have performance bonds. Do you intend to post that bond?

Mr. Manoukian: No, sir. When I start construction of the road, I will post the bond per approval of the plan. The bond is not due as far as I am concerned and I have not done anything wrong, that was not a condition of approval. It was a condition of construction and we have not started construction yet. If you want me to post a bond for the trees that were cut - it has been seasoned for four years, nothing happened to restore that road. There is no road, there is just trees cut. So, if there was any damages done tell me what the damages are and I will post for the bond for restoration. That was the intent of the bond.

Mr. Byron: The vote of the Planning Board was very clear that the restoration bond I believe was for \$74,000.

Chairman: \$75,000.

Mr. Manoukian: I am not doubting that...I am saying my understanding and your understanding, we defer on that.

Mr. Byron: It is recorded in the minutes of the meeting of the Planning Board that it was a condition that was set through the vote of the Planning Board.

Mr. Manoukian: You are telling me upon the recording of the plan, the bond was due?

Mr. Byron: I am telling you that you were required to post a \$75,000 bond when you start the excavation, start the work on that property.

Mr. Manoukian: I agree with you; I have not started excavation.

Mr. Byron: You started excavation in terms of the roads; you started excavation in terms of clearing and logging.

Mr. Manoukian: You are wrong, sir. I have not started anything. That land is here; it is on Page Road...there is no excavation equipment there, sir.

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Mr. Manoukian asked if anyone from the Board had walked the property.

Chairman Almeida said that he had.

Mr. Manoukian: Was there excavation done? Chairman: Some.

Mr. Manoukian: I disagree with you, too, Mr. Chairman. There was no excavation done. I have 100 acres back there. I have the right to log that piece of land. It does not mean that I started construction. That is my right to create revenue for the State of NH and for myself. I have not put any kind of equipment for any purpose of excavation. I will bring expert witnesses to do that, if you want me to. If you choose to revoke this plan, it is your choice but when I start construction of this road I will post the \$75,000, yes. I have no objection to do that.

Talk ensued as to the driveways. Mr. Bill Heinstrom, 50 Page Road, said at the last meeting Mr. Manoukian had said he did not want to do a base coat until the infrastructure was in place. He does not recall any discussion about paving.

Mr. Byron: I am just asking a question in response to a comment earlier by Mr. Manoukian that he said he would put in a driveway. I am asking you to confirm that is what you stated.

Mr. Manoukian: That is what I said. Yes. If we can restore the condition of this approval tonight, I am willing to work with the Town and the abutters. I brought my construction guys, they measured the driveways and I am willing to do that. If the weather was permitting, I was going to do that earlier prior to this meeting but because of the heat we were going to put in only one inch of base as a driveway because later on we would have to take back and reprocess and it is very costly; so, we were going to do that when it cools off.

Mr. Byron: One inch of base...what do you mean, hot top?

Mr. Manoukian: Hot top. I measured this gentlemen's house...it serves two houses. We were going to go all the way to his garage.

Mr. Byron: So, you would go from Page Road to the garage.

Mr. Manoukian: Right and on Phase IV, it was a much shorter distance. It was from Page Road to the garage. Yes.

Mr. Heinstrom: Are you talking between 48 and 50?

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1 Mr. Manoukian: I do not know the numbers. There were two houses back there, we  
2 measured...we did all that and I gave the abutters my card with my cell phone number.

3  
4 Mr. Byron: And you are going to do this when?

5  
6 Mr. Manoukian: Whenever the weather permits...we cannot cool it off, it is too hot. I do  
7  
8 not want them to drive over it and ruin it. If they ruin it, they have to live with it. In  
9 September or October when the weather breaks, yes, we will do that.

10  
11 Mr. Heinstrom: Is that something we could get in writing that you would commit to doing  
12 that?

13  
14 Mr. Manoukian: Yes, sir. I will do that.

15  
16 Mr. Byron: And that is for both...38/ 36 and 48/50.

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18 Mr. Manoukian: It is one driveway that serves two lots.

19  
20 Mr. Byron: What I am saying...there are two spurs that have to go in to serve 4 homes  
21 and you are willing to do both of those?

22  
23 Mr. Manoukian: Yes. His driveway is Phase III and this gentleman is Phase IV. If you  
24 guys work with me to restoring the previous conditions on Phase III and IV, I will do  
25 that. If you are going to revoke this approval and Phase IV, I will not do that.

26  
27 Mr. Barry suggested getting something in writing saying what he is going to do. Mr.  
28 Byron said it does not relate to the conditions of revocation.

29  
30 Talk ensued as to paving the driveways. Chairman: We have a condition of approval,  
31 which the condition implies that the bond be in place prior to the land clearing; so, before  
32 you can clear the land, do you have to have the plan registered?

33  
34 Mr. Wagner: Usually prior to the Planning Board signing the Mylar.

35  
36 Mr. Manoukian: Mr. Wagner is very accurate but let's say that somebody messed up  
37 nobody cleared the lots or the trees or did anything before they asked for a credit from the  
38 Town. The Town issued this permit with a zero due on it, why did they do that? They did  
39 not ask for the \$75,000 restoration bond then.

40  
41 Chairman: Probably because they assumed it was in place before we signed the plan.

42  
43 Mr. Manoukian: I spoke to Joan McKibben - it was due when the construction begins.  
44 I wish she were here.

45

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1 Mr. Wagner: If the Town made a mistake in recording the plan, it does not release the  
2 developer from their obligations. Whatever was in the agreement, conditions of approval  
3 would still be the conditions of approval. If the building inspector made a mistake in  
4 issuing the permit and if the Board made a mistake by signing the plan and recording  
5 them, does not relieve anybody else from their obligations. Attorney Buckley worked  
6 through all this, drafted letters, notices, etc.

7  
8 Chairman: If we uphold the revocation things stay the way they are or we rescind it? I do  
9 not think we can rescind with conditions.

10  
11 It was pointed out that RSA676:4a III states if the Board files suite of the revocation it  
12 still has to sit 30 days before it is recorded.

13  
14 Chairman: You have 30 days from the decision of a Board.

15  
16 Mr. Manoukian: This was back in April, right?

17  
18 Chairman: Yes, but you can request a hearing which is what you have done and upon that  
19 hearing, we make a decision and it is from that point, it is 30 days.

20  
21 Mr. Manoukian: You revoke the plan, I have 30 days.

22  
23 Chairman: Yes, 30 days before we send a letter to the Registry.

24  
25 Mr. Manoukian: So, what do I have to do, come back with \$75,000?

26  
27 Chairman: You can do that or appeal to the court.

28  
29 Mr. Manoukian: So, what is the Board going to do?

30  
31 Mr. Brennen said that it would not be bad to hear Attorney Prolman, Joan McKibben and  
32 Steve Perry here. It was pointed out that if this is continued according to Town Counsel  
33 the Board would have to repost and renote. To this, Mr. Manoukian said that if this is  
34 continued that he would pay for the notices.

35  
36 Mr. Byron **MOTIONED** the Planning Board will continue whereas the applicant has  
37 satisfied the condition of paying the amount of \$471.51 to the Town for the amount due  
38 in engineering fees and whereas the applicant has failed to file a \$75,000 restoration bond  
39 from Cutler & Page LLC therefore the Litchfield Planning Board will file a Notice of  
40 Revocation unless the remaining condition is met, on October 20, 2010. Mr. Fuertes  
41 seconded.

42  
43 Mr. Byron: So, that gives you sufficient time to post the bond; that gives you sufficient  
44 time to get the driveways put in and does not create the filing of the revocation in  
45 October with the exception if you fail to file that \$75,000 restoration bond. Mr. Byron

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said there is a meeting of the Board on October 19, 2010. Recap: He has failed to file the bond. Unless the condition of the \$75,000 bond is met the Planning Board will file the Notice of Revocation with Hillsborough County on October 20, 2010. The driveways are not a condition of approval but if Mr. Manoukian is a man of his word he will get that done by October, he has sufficient time to do it.

Mr. Manoukian: If the Board restores everything - that was my statement prior to that.  
Vote: Motion carried 3-1-0.

Mr. Matthews: Does that leave us in limbo until October at this point?

Chairman: It leaves you in the same state you are now.

**3. Consider Rolling Acres IV, Tax Map 2 Lot 88**

Messrs. Vatche Manoukian and Michael Maggio, and seven abutters were present. Cutler & Page LLC owes the Town \$7,444.22 which has not been paid. The plan has not been recorded.

Mr. Manoukian: I will pay upon restoring the condition of the revocation...

Mr. Wagner: Rolling Acres IV would not be a revocation because it was never recorded. It would be just withdrawing the approval.

Chairman: Do you need any amount of time to come up with this money?

Mr. Manoukian: The minute you tell me you are not going to withdraw that approval, I will write a check.

Mr. Manoukian pointed out there is no legal opinion; it is a very sensitive issue. Talk ensued. Phase IV has not been recorded so the Board would have to rescind the approval. The Board never received the final plans to sign. The plan was approved with conditions.

Mr. Manoukian: The major condition was we would have to design a comprehensive drainage study and that would cost about \$40,000.

Mr. Brennen: I remember Andy Prolman here because of the brook that runs through there, it was flooding peoples' back yards.

Mr. Manoukian: And we were going to construct the flood control basin.

Mr. Brennen: And Before that was done we asked them to complete a study of the entire drainage basin and it ended up going way out into Londonderry...Now didn't we get a

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1 consultant on board to do a flood study? I think it was part of the highway department  
2 when they were doing the Cranberry Lane culvert design.

3  
4 Mr. Wagner: I think it was the design for the storm water for IV...

5  
6 Mr. Brennen: We took out a lot.

7  
8 Mr. Wagner: I believe the design was to not add any off site storm water drainage and  
9 no new development could be done without a study being done, I believe.

10  
11 Mr. Brennen: I think you are right, zero impact. We had to take out a lot at the end.

12  
13  
14 Mr. Manoukian: And we are still willing to do that.

15  
16 Talk ensued. It was said that there is no escrow money. Mr. Manoukian: There was an  
17 escrow. There were excessive bills then we moved the escrow from Phase III to Phase  
18 IV. We moved \$5,000 or \$6,000 from Phase III...

19  
20 Chairman: So, at this point, you just do not want to replenish the escrow?

21  
22 Mr. Manoukian: I am willing to work with the Board...you guys tell me everything is  
23 going to stay the same in Phase III and IV, we will do it. I have not done anything wrong  
24 here but I am being punished for it. It is not fair.

25  
26 Mr. Wagner: Phase III and IV are two totally separate issues. Whatever the reasons for  
27 not paying the \$7,444.42, there has been ample time to take action against the Town,  
28 against the engineering firm...

29  
30 Mr. Manoukian: Are you going to extend this until October 20<sup>th</sup>? Whatever you did for  
31 Phase III, can you do the same for this one?

32  
33 Chairman: I think anything is possible.

34  
35 Talk ensued. Chairman opened the meeting to public comment.

36  
37 Tim Wilson, 52 Page Road: The only concern that I see with Rolling Acres IV is kind of  
38 the same issues we were talking about for Rolling Acres III with people are not happy  
39 with the current conditions. So, even though Rolling Acres III and IV are separate issues,  
40 they are connected and they are connected physically by a road. So, if Rolling Acres IV is  
41 not currently accepted, or approved, there is still room for other clauses and other things  
42 to be put in place, is that correct?

43  
44 Chairman: The site plan has been approved. What we would do at this point is to rescind  
45 the approval.

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Talk went on as to the site plan approval process. According to the regulations, plans that are not filed within 30 days upon approval and signed by the Board shall become null and void. In addition, the signed plans shall be recorded at Hillsborough County Registry of Deeds within 60 days of the vote to approve the plan. The filing can be extended by the vote of the Board.

Chairman Almeida noted it was two years ago that the plan was approved so he is not sure the Board has to do anything.

Mr. Fuertes: Steve, do we have to declare it null and void or is it automatically null and void?

It was suggested getting a legal opinion. At this point, there is no subdivision - it has not been recorded as such. There is a list of conditions that have not been met and Mr. Manoukian is aware of the conditions.

Mr. Brennen: Do you agree with the conditions? Mr. Manoukian: Yes. I agree with the conditions. Mr. Brennen: Do you agree they have not been met? Mr. Manoukian: Yes.

Mr. Wagner: Just for one clarification, I am looking at the letter here May 5, 2010, and it says on May 6, 2008 the Litchfield Planning Board conditionally approved a four lot subdivision. So, the regulation that I quoted was adopted on August 1, 2006 so, it was in force at the time (refers to the 30 day clause).

Mr. Brennen read aloud Section 850.1.1 Post Approval procedures: *Upon a vote of the majority of the Planning Board to approve a subdivision plan the application shall be deemed to have final approval and the subdivision plan shall be signed by the chairperson of the board and shall be filed with the Planning Board's Secretary and Code Enforcement Officer. Any plan not so filed within 30 days of the date upon which such plan is approved and signed by the Board shall become null and void. In addition the signed plan shall be recorded in the Hillsborough County Registry of Deeds within 60 days of the vote to approve the plan. Plans are not valid until recorded at the Registry of Deeds. The Planning Board by vote may extend the filing period for good cause.*

The Board agreed to schedule a meeting with Town Counsel on September 7, 2010, at 6:30 p.m. in nonpublic session to discuss the ordinance as to whether or not the subdivision Phase IV is null and void. Mr. Manoukian said that he could not make the September 7<sup>th</sup> meeting.

Chairman opened the meeting to public comment. An abutter asked about open space development that was previously mentioned. Mr. Brennen explained the intent of an open space development.

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1 Chairman Almeida **MOTIONED** to continue the discussion for conditional approval for  
2 Rolling Acres IV, Tax Map 2 Lot 88 to September 21, 2010 at 7:00 p.m. at Litchfield  
3 Town Hall. Mr. Brennen seconded. The Board to determine if the subdivision is null and  
4 void per the regulation and if it is null and void, is there any action that has to be taken.  
5 Reference 850.1.1 and 320.09. Mr. Byron: This should provide you, Mr. Manoukian,  
6 sufficient time to pay the outstanding balance of \$7,444.42. Mr. Manoukian: I will pay if  
7 the Town is telling me it is still going to go forward. If the Town is going to say no, I am  
8 not paying it. Mr. Byron: I think if you pay that, then there is no reason...Mr.  
9 Manoukian: No, if it is null and void per statute, it is gone. Vote: 4-0-0.

10  
11 Mr. Manoukian: I have a question on Phase III. I was granted until October 20<sup>th</sup> and at  
12 that time I am to post the bond. If I do not post the bond, what happens?

13  
14  
15 Chairman: I send a letter to the Registry.

16  
17 Mr. Manoukian: I have 30 days after that?

18  
19 Mr. Byron: At that point, it is revoked...the motion was made that we will file revocation  
20 on the 20<sup>th</sup> unless you post the bond on or before that date.

21  
22 Mr. Manoukian: I heard that I should bring representation about the bond. That was not  
23 part of the motion?

24  
25 Mr. Byron: That was not part of the motion.

26  
27 Mr. Manoukian was advised to consult with his attorney as to his rights.

28  
29 At 9:05 p.m. Messrs. Maggio and Manoukian, and the abutters left the meeting. Member  
30 Leon Barry returned to the Board.

31  
32 **4. REVIEW OF ANNUAL IMPACT FEE SCHEDULE**

33  
34 The Board reviewed the impact fee information provided by Mr. Wagner. The consultant,  
35 Mr. Bruce Mayberry, had done the calculations for police and fire of which Mr. Wagner  
36 recommended using those calculations. The police impact fee is set and the fire has two  
37 options and he recommends Option 2 (on the handout). Mr. Mayberry's calculations  
38 included nonresidential use. The Town only charges a road impact fee.

39  
40 The Board needs to look at the Elementary and Campbell High school impact fee  
41 collection. The school's capacity has not increased. Also, the bond for Campbell High is  
42 paid or just about paid. Talk ensued as to the CIP (Capital Improvement Plan) and capital  
43 projects. With the Mayberry study, the Board was hoping to reinvent the impact fees  
44 based on the CIP that was agreed to and that the projects listed in the CIP were valid. Mr.  
45 Byron said that the Board needs to generate how much money goes to each project and

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1 that every year the Board should restate the calculation to reflect how these things get  
2 funded.

3  
4 Mr. Brennen said the Board hired Mr. Mayberry to unravel the Dave Gilmore impact fee  
5 study (2000) but Mayberry's calculation came back geared toward police and fire and not  
6 the whole schedule.

7  
8 Mr. Byron: The Board should be reviewing the CIP every year and dropping projects off  
9 or adding projects that are appropriate and recalculating the impact fees assessed against  
10 those projects so we can understand how much money should be charged. The question is  
11 what is an approved project capable of utilizing impact fees. The 2005 CIP there was a  
12 request for a town truck but there has been CIP's done since then so the question is that  
13 still a valid item. The plan should start from the last CIP, lead off that list and make a  
14

15  
16 new current list. How do you address the previous CIP's, and going forward in the new  
17 CIP, should state that all other CIP's are null and void.

18  
19 It was further stated that the Board needs to review the overall impact fee schedule from  
20 Bruce Mayberry and look at the other CIP's and the projects listed and then go back to  
21 Gilmore's memo and that should detail the times that the impact fees were designed for  
22 and really they should not be for anything else without the fees being updated like  
23 Mayberry said. Mr. Byron: If you are going to meet with Buckley, the whole Board  
24 should also be there...when the Planning Board issues a new CIP and the Selectmen  
25 accepts it, all other CIP's are no longer good but that is not what Buckley is saying. That  
26 past CIP's could still be valid but if we are doing that, how are we distributing the money  
27 we are collecting today to those projects? So, we need to redo the impact fee calculation  
28 to show how we are going to distribute the collected money for the various projects that  
29 were last done in 2000. So, Buckley was asking for a methodology section...Jason Hoch  
30 is willing to help out; he has written impact fee ordinances, etc. Do we collect impact fees  
31 for something we are going to build in 8 years when they are only good for 6 six years?  
32

33 Mr. Barry suggested building piecemeal - a little at a time such as putting in a foundation,  
34 capping it, etc. Mr. Byron said that according to Attorney Buckley, the use of impact  
35 fees should be tied to the CIP item/project.

36  
37 It was suggested, sending a letter to the Selectmen stating as required to in August that  
38 the Board is still reviewing the impact fee schedule but it will take longer than  
39 anticipated. Talk ensued as to adding a new category to collect fees for the incinerator.  
40 This would need to go through the process. In order to get impact fees collected for the  
41 landfill a study needs to be done.

42  
43 Mr. Brennen: We were hoping with the Mayberry's calculations we were going to get  
44 some impact fee calculation that we could input all of the CIP projects broken down by  
45 department and out would come this table and have some sort of check and balance.

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It was suggested meeting with Mr. Mayberry and the Town Administrator to discuss changing the calculation methodology in obtaining their expertise. There are different methods that could be applied in calculating fees such as by percentage, or by the number of bedrooms, or by square footage which it the way Litchfield calculates impact fees. Mr. Wagner said he would draft a letter to the Selectmen stating that the Board met in August and is still working on the fee schedule.

**Town Counsel** - It was agreed to meet at 6:30 p.m. on September 7, 2010, in nonpublic session with Steve Buckley. Chairman Almeida will contact Attorney Buckley and get his interpretation in writing of the ordinance regarding Cuter & Page LLC. Also, Town Administrator Jason Hoch will be asked to attend the Planning Board meeting on September 7, 2010, to discuss impact fees.

**ANY OTHER BUSINESS**

**Minutes** - Mr. Barry **MOTIONED** to accept minutes of July 20, 2010 minutes as prepared. Mr. Almeida seconded. Motion carried 5-0-0.

**Applicant:** The Board discussed the appointment of Barry Bean to the Planning Board. There is no open position for alternate. Talk ensued as to members not attending meetings. Mr. Barry **MOTIONED** to accept Barry R. Bean, 70 Nesenkeag Drive, Litchfield to become a full member of the Planning Board replacing Alison Douglas (term to expire March, 2012). Mr. Fuertes seconded. Motion carried 5-0-0.

There being no further business, Mr. Barry **MOTIONED** to adjourn the meeting. Mr. Almeida seconded. The meeting adjourned at 10:48 p.m.

\_\_\_\_\_  
Edward Almeida, Chairman

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Jayson Brennen, Clerk

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Leon Barry

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Frank Byron, Selectman

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Carlos Fuertes

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Lorraine Dogopoulos  
Recording Secretary