

TOWN OF LITCHFIELD

Planning Board

January 5, 2010

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**PLANNING BOARD
January 5, 2010**

Minutes Approved March 16, 2010

Members Present:

- Alison Douglas, Chairman
- Edward Almeida, Vice Chairman
- Marc Ducharme, Clerk
- Leon Barry
- Steve Perry, Selectmen’s Representative
- Carlos Fuertes
- John Miller, Alternate

Members Not Present:

- Jayson Brennen

Also present:

- Joan McKibben, Administrative Assistant
- Steve Wagner, Nashua Regional Planning Commission, Circuit Rider

AGENDA:

1. PUBLIC HEARING PER NH RSA 675:7 and 675:2-4 PROPOSED NEW SECTION 475.00 INCLUSIONARY HOUSING (WORKFORCE HOUSING) AND PROPOSED NEW SECTION 575.00 CONSERVATION OPEN SPACE DEVELOPMENT (COSD)

2. IMPACT FEE STUDY

Any Other Business:

- Minutes of Meeting 12/15/09
- Correspondence

Chairman Douglas called the meeting to order at 7:05 p.m. Alternate John Miller was appointed as a voting member.

Present: Frank Byron, 8 Mallard Court, Attorney Andrew Prolman, 31 Chasebrook Circle, Richard Charbonneau, 401 Charles Bancroft Highway, Dr. Elaine Cutler (Superintendent of Schools) and Kevin Lynch (Code Enforcement Officer).

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1. HEARING - INCLUSIONARY HOUSING (WORKFORCE HOUSING)

Chairman Douglas gave a brief overview: As stated in 475.1.0 the purpose of this Ordinance is to provide a reasonable opportunity for the development of affordable housing within the Town of Litchfield, N.H. It is intended to ensure the continued availability of a diverse supply of home ownership and rental opportunities. This ordinance was established in order to meet the goals related to affordable housing provision set forth in the Litchfield Master Plan, as amended. Additionally, in implementing this Ordinance, Litchfield has considered the region’s affordable housing need as defined in the Housing and Urban Development (HUD) Limits and Allowances data, as amended, and Nashua Regional Planning Commission Housing Needs Assessment, as amended. NH Statute requires communities to provide a reasonable opportunity for affordable Workforce Housing in accordance with RSA 674:58-61.

In order to reduce the cost of construction, workforce housing will be granted reductions in lot size, frontage, building setbacks, building area and adjacent road width. Provision is also made to ensure future affordability of workforce housing. Workforce housing will be permitted in the Residential zone, with multi-family (3-5+ units per building) being limited to north of Leach Brook.

Mr. Wagner: There are a number of different ways the Town could go about complying with the statute but the cleanest way was going with Inclusionary Housing. It all comes down to having to reduce the cost of land to the developers for them to be able to build. The concessions seem reasonable to attaining that goal although all of them may not be desirable by the public. The ordinance may need to be tweaked later.

Mr. Wagner went on to say that what is being proposed is to maintain the rural character along Route 3A, impose a 250 foot buffer, either side of Rte. 3A, north of Leach Brook and 500 foot buffer either side of Rte. 3A south of Leach Brook. The idea as to the five plus units being up at the north end is because there is a potential of tying in with water and sewage associated with the Pettengill Rd. project. The statute requires that 50% or more of the residentially developable land of the Town is to be available for the opportunity to build workforce housing. We started thinking about the fairness for those who do not want workforce housing district and decided to incorporate the whole residential district.

Chairman Douglas opened the meeting to public comment.

Mr. Frank Byron, 8 Mallard Court, spoke as a private citizen, not as a Selectman. “This ordinance would authorize the use of multi-family housing and that you could potentially subdivide a lot and create a condo, or in-law apartment. My question is do we have any

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1 standards or specs for that type of a subdivision, or how do we approve that type of a
2 subdivision for a house?" Mr. Wagner: We do have a three-acre minimum on the lot size.

3 Mr. Byron: If a house is sitting on three acres, can you not subdivide the house

4
5 internally and create a condo? Mr. Wagner: On the north end you could do a multi-
6 family and a duplex would be allowed by turning a single family into a duplex.

7
8 Mr. Byron: My question was do you have standards for that type of subdivision such as
9 requirements for water, fire protection, etc.? Mr. Ducharme: I think it would be the same
10 as a new home at this point. Mr. Wagner: The ordinance states that the dwelling has to be
11 85% of the market rate unit and an accessory dwelling unit would not be allowed. We are
12 talking single-family homes. Mr. Perry: A condo situation could happen...an older home
13 could be wiped out and you could get three townhouses put up. One building, three
14 separate units. Could a condo happen? Yes, but they would have to comply with the
15 standards as if new, as if it was being constructed from the ground up. Mr. Byron: So,
16 that is contained in this ordinance and that would be covered? Mr. Perry: Yes. That is the
17 way I interpreted it.

18
19 Mr. Byron referred to the Table that provides an incentive for wells and septic but
20 questioned whether it covers fire protection for units on a well. Mr. Wagner: It is the
21 same as what everything else is allowed in Town under the current zoning regulation.

22
23 Mr. Lynch added that under the site plan regulation this is a subdivision and as such has
24 to meet NFPA in which fire protection would be part of the requirement for subdivision
25 approval which answers to the State. They would need DES approval on the septic, deal
26 with required loads for water, etc. and all of these are taken into consideration.

27
28 Mr. Byron: So, if somebody is going to subdivide an old house or parcel, they have to
29 come to the Planning Board to do that if they want to build a condo? Mrs. Douglas:
30 Correct. They would have to be north of Leach Brook to build a building with 3 or
31 greater units.

32
33 Talk ensued. Mr. Byron then referred to Section 475.7.1 regarding liens. He asked about
34 the Consumer Price Index in that it is not specified which one would be used, and for
35 how long it is going to be used. He then questioned who would hold the lien, who would
36 calculate the lien and where does the information get turned over to. If the Selectmen
37 have to take a lien on a house, it has to be filed with the Registry of Deeds, is that the
38 expectation and how is it going to work? Mr. Wagner: We specifically took out the
39 language that required the Town to take a lien. It would be a third party entity. I would
40 imagine it would be some private company, nonprofit trust agency is what the ordinance
41 says and they would handle the continued affordability document, etc. and all the legal
42 documents would be approved by Town Counsel before they are enacted. I think the
43 Consumer Price Index is assumed to be what everyone knows to be the Consumer Price

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1 Index. I think that would come down to interpretation by Town Counsel and the entity
2 that is going to manage the continued affordability. Basically, the language that I used
3 was taken from the model.
4

5
6 475.8.2 Compliance - Mr. Byron: You mention that most of the documentation had to go
7 to the planning board in terms of compliance but you state *no certificate of occupancy*
8 *shall be issued for an affordable housing unit without written confirmation of the income*
9 *and confirmation of the rent or price of the affordable housing unit as documented...* are
10 copies supposed to go to the building office...because the Certificate of Occupancy is
11 issued by the building department so how would the building department know the CO is
12 to be issued?
13

14 Mr. Wagner: I would guess after Town Counsel reviews the documents, there would be a
15 condition of final approval. Mr. Ducharme: It would be on the developer to supply
16 something in writing to the Building Department to get the Certificate of Occupancy.
17

18 Section 475.8.3 and .4 - Mr. Byron: You use the phrase *coordinating local and state or*
19 *federal housing authority or other nonprofit housing trust or agency or their designee*
20 that is for monitoring as well as an annual report, I am concerned it is so vague...it does
21 not specify who the controlling agency would be.
22

23 Mr. Ducharme referred to Section 475.7.0: It is up to the original developer to develop
24 the plans that you are talking about, to complete them and for Town Counsel and
25 Planning Board agree as to deed restrictions, covenants or contractual agreements...but,
26 no, we do not have it all written in stone but we did state that the developer would have to
27 supply that.
28

29 Mr. Byron: So, the developer picks their own regulating authority? Mr. Ducharme: And
30 Town Counsel and the Planning Board would approve it.
31

32 Mr. Wagner: I do not know if this limits us to have one authority and it is possible there
33 could be checks and balances maybe NH Finance would handle part of it and another
34 entity could oversee it.
35

36 Dr. Elaine Cutler, Superintendent of Schools, One Highlander Court, asked how the
37 ordinance would impact the school system if there were a number of multi units built
38 which could generate more children into the school system. The school would like to plan
39 ahead for the impact. She then asked if there is a limit on the units to be built. It was said
40 that there is somewhat of a limit in that it would have to meet the septic setbacks, water
41 requirements, fire protection, etc. but apartment buildings could be constructed. Dr.
42 Cutler asked as to the time frame to expect the potential impact. Mr. Kevin Lynch replied
43 about twenty-four months.

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It was pointed out that this is a mandate effective January 2010 and technically it is in effect until approved or rejected by the Town. Mr. Lynch, 312 Charles Bancroft, said in talking with the assessor, the assessed values are dropping and so he questions whether or not the Town meets the affordability of \$264,000 median housing. If the market sales are dropping, would the market tell us we are in compliance?

Mr. Perry: No, because what happens if we can't get this to pass, five family units can go anywhere in Town...if we do not pass something, we have no right to stop it.

Mr. Wagner indicated that the State has never defined "fair share" in relation to the statute and that it would probably take a court test to see if the Town meets the "fair share" legal term.

Attorney Andrew Prolman, 31 Chase Brook Circle: You need to support the ordinance with a finding that we would not otherwise meet inclusionary housing criteria; that the housing stock does not meet that \$264,000 and without that, this whole thing is vulnerable if you do not have a finding. In the first section of Purpose it just says you guys considered NRPC, HUD data but you need to make a determination that you do not meet the requirements for the \$264,000 threshold. Mr. Perry had a comment if this does not pass, you have no control. That is not entirely true. I remember the statute, if a developer wants to do affordable housing and there is no ordinance, you rely on the statute. The statute had a lot of criteria for a developer to meet...they have to show there isn't the housing stock required under the statute and show we are not doing our fair share...This is an unfunded mandate by the State but there is some protection built into the statute but before you get to that, I suggest you need a finding that you do not comply with the statute. The second comment, what is missing from the ordinance is a waiver of the impact fees...

Mr. Prolman further stated that the Town must be certain that the area north of Leach Brook actually has lots that supports five plus units otherwise this would be a sham. He was told that there are lots to support it.

Section 475.3.3 - In the Appeals process according to the ordinance the only appeal is to go to court and this could take up to 9 to 12 months and cost \$20,000 to \$30,000. Mr. Prolman suggested leaving the statute to control the appeals indicating appeals would go before the Zoning Board of Adjustment and then it would come back to the Board. He indicated that the court process could challenge the whole ordinance.

Regarding the Table Affordable Housing Incentives, Mr. Prolman said that 15% to 20% reduction of the lot standards incentive is not enough to do what you want to do as compared to the open space ordinance (to be discussed later). Mr. Ducharme: These are

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1 two separate ordinances and this does not have a provision if there is conservation land
2 that goes along with it; so, this does increase density in Town. Mr. Prolman: That is true
3 but not nearly enough to create an incentive to build.
4

5
6 Talk continued. Mr. Perry said that the Board decided not to waive the impact fees
7 because it could be crushing considering the state of the fire and police departments and
8 the Board felt that it could probably satisfy the criteria of the \$264,000 without doing
9 anything.

10
11 Chairman Douglas Closed Public comment session on Inclusionary Housing. The Board
12 is in receipt of comments by Maynard & Paquette and they basically state in their letter
13 that the ordinance is not workable.
14

15 Chairman Douglas **MOTIONED** to adopt Section 475.00 Inclusionary Housing
16 (Workforce Housing) to comply with NH RSA 674:58-61 that requires NH
17 municipalities to provide a reasonable and realistic opportunity for the development of
18 affordable workforce housing and place the adoption of zoning ordinance Amendment #1
19 as proposed on the March 2010 ballot. Mr. Perry seconded. Motion carried 7-0-0.
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2. HEARING - OPEN SPACE CONSERVATION

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23 Chairman Douglas presented a brief overview: As stated in 575.1.0 the Conservation
24 Open Space Development (COSD) is authorized and enacted in accordance with RSA
25 674:21. The COSD ordinance is intended to enhance and protect the health, safety,
26 convenience and general welfare of the residents of Litchfield while encouraging
27 flexibility in the design and development of land, promote environmentally sound
28 planning, conserve open space, retain and protect important natural and cultural features,
29 provide for efficient use of land and community services and preserve the traditional rural
30 character of Litchfield to advance the goals stated in the Master Plan.
31

32 Mr. Marc Ducharme stated that this ordinance would not change or increase the number
33 of buildable units that can come into Town.
34

35 At 8:10 p.m. Chairman Douglas opened the Hearing to public comment.
36

37 Att. Andrew Prolman, 31 Chase Brook Circle, Mr. Prolman congratulates the Board for
38 bringing this ordinance to the voters.

39 He referred to the last page G *Adequate permanent public access to open space shall be*
40 *provided and the location(s) require Planning Board approval.* "There is nothing wrong
41 unless the ownership of the open space is held under B.3. It is either the Town owns the
42 property so it is public land or the homeowners own it and it is not open to the public.

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1 This was discussed. Mr. Richard Charbonneau asked why would the Town want to own
2 the property, take on that liability and lose the tax base.

3
4 Mr. Miller: There is a desire to try to make it be as contiguous as possible so you can try
5 to get a trail that goes from one end of town to the other depending on how you lay out
6 the parcels and the relation is to each other.

7
8 It was pointed out that the roads would be public roads.

9
10 Mr. Richard Charbonneau: There are no incentives to builders. If you are going to cluster
11 things together, build less roads, roads are expensive so you are going to build less roads
12 so you can have more open space you are going to have 90 foot frontage; you still need
13 enough acreage to do it. What are you going to have 90-foot frontage and 600-foot long
14 subdivisions? How are you going to do it?

15
16 Mr. Perry replied that the lots would be ½ acre lots and that is all that is needed.

17
18 Mr. Charbonneau: You have to be able to support a septic.

19
20 Talk ensued as to ownership of the open space. Mr. Byron: If you are going to make it an
21 Association, then why should the Town pay to plow their roads...if the Town is going to
22 own the open space, my concern with that it decreases the tax base. We have a lot of
23 farmland and if it does go to subdivision or to be used to subdivide to create
24 developments on that, the Town could end up taking a lot of properties out of its tax
25 roster and the effect on the community in terms of taxpayers would be huge.

26
27 Chairman Douglas Closed public comment session.

28
29 Mr. Perry thanked Marc Ducharme for spearheading the ordinance; he did a good job.
30 There is no time to make changes to bring to public hearing. Mrs. Douglas **MOTIONED**
31 to adopt Section 575.00. Conservation Open Space Development requiring developments
32 20 acres or larger to utilize an open space development design to help preserve open
33 space, to protect wildlife corridors and natural resources and place the adoption of zoning
34 ordinance Amendment #2 as proposed on the 2010 Town ballot. Mr. Barry seconded.
35 Motion carried 5-1-1.

36
37 **Deliberative Session** - The Town Deliberative Session is January 30, 2010, at 1:00 p.m.
38 at Campbell High School. Mr. Marc Ducharme will speak on the above zoning
39 amendments. It was noted the meeting will be at 2:00 p.m.

40 41 3. IMPACT FEE STUDY 42

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1 Mr. Bruce Mayberry, a consultant hired by the Board, has been working on the impact
2 fee study to determine if the Town is in compliance. Members to review his document
3 consisting of 24 pages and email recommended changes to the Chairman by January 15,
4 2010. Once Mr. Mayberry has all the information he needs, the Board will meet with
5 him. Chairman Douglas will contact Mr. Mayberry to set up a date.

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9 **ANY OTHER BUSINESS**

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11 **Annual Report** - The Planning Board's report has been sent to the Selectmen for
12 submittal into the 2009 Annual Report.

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14 **Minutes** - Mrs. Douglas **MOTIONED** to approve the December 15, 2009, minutes as
15 amended. Mr. Miller seconded. Motion carried 6-0-1.

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18 There being no further business, Chairman Douglas **MOTIONED** to adjourn the
19 meeting. Mr. Barry seconded. Motion carried 6-1-0. The meeting adjourned at 9:18 p.m.

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Alison Douglas, Chairman

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Edward Almeida, Vice Chairman

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Marc Ducharme, Clerk

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Leon Barry

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Steve Perry, Selectman

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Carlos Fuertes

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John Miller, Alternate

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1 Recording Secretary