FINAL

LEBANON PLANNING BOARD
Work Session
Monday, November 22, 2021, 6:30 PM
City Council Chambers, City Hall
or Remote Via Webex
LebanonNH.gov/Live

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice-Chair), Karen Zook (Council Representative), Gregorio Amaro, Kim Chewning, Joan Monroe, Kathie Romano, Laurel Stavis

MEMBERS ABSENT: Jeremy Rutter, Michael Smith (Alternate)

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner)

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1. Call to Order

Chair Garland called the meeting to order at 6:30 PM.

2. Public Hearings

A. **Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3**: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171-unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1). PB2021-02-EXT *The public hearing for this application closed on March 8, 2021. The Board denied the extension request and the applicant appealed. Pursuant to an Interim Order of the Housing Appeals Board, the public hearing was reopened on November 8, 2021, for the Planning Board's reconsideration of the extension request.* - ***Continued from November 8, 2021.***

Attorney John Bisson and Engineer John Rokeh of Rokeh Consulting appeared in support of the application. Attorney John Cronin joined the meeting remotely.

Mr. Rokeh addressed a number of the Board members' concerns expressed at the November 8, 2021, meeting. In late 2019 and early 2020, Brady Sullivan was considering how to mobilize to get people to the Lebanon site. There were no site disturbance issues, but many other open Brady Sullivan sites in New Hampshire and other states did have significant issues. Mr. Rokeh stated that Brady Sullivan was doing all it could to make sure approvals stayed in place. The Alteration in Terrain was in place, and all permits and the wildlife report were also obtained. In his view, the existing plan could still be approved and could even handle more density with the zoning remaining the same. Other contractors were not available for site work, and Brady Sullivan could not begin obtaining quotes. Busby Construction was contacted to see if they were available now, and they have worked on lining up contractors. All arrangements depend upon the extension to finalize plans. Brady Sullivan has been working out a potential schedule of milestones with the Planning Department and would begin work immediately with approval of the extension. The sewer pump station would work more efficiently if more units were online.

Mr. Cronin discussed the proposed benchmarks set for the project.

Mr. Brooks described the scope of the rehearing set by the Housing Appeals Board. If the Board decides Brady Sullivan has not established "good cause," it can still decide against the extension. All information from the rehearing process will go back to the Housing Appeals Board. If the Housing Appeals Board believes the applicant has demonstrated good cause, it can overrule the Planning Board with no further input from the City. As an alternative, establishing specific benchmarks the applicant must meet could avoid being overruled by the Appeals Board. Staff has considered some possible benchmarks and reviewed them internally and with the applicant.

There was an issue with Mr. Cronin's microphone, and he communicated his remarks in writing to Mr. Rokeh, who shared them with the Board. Mr. Cronin stated that incurring the $8 million cost of infrastructure without any income is a very difficult situation. The first portion of Phase Two would be the entrance to the first main intersection of townhomes, with some potentially coming online in 2022.

Mr. Brooks stated that the extension could be broken into specific phased segments once more information is gathered from the applicant.

With a waiver of Section 14.4.A, the applicant can build as they go and sell as they go, but it would still be one approval.

Ms. Monroe commented that the phasing of Phase Two is difficult to understand.

Ms. Romano inquired if it would be possible to give a one-year extension with specific, measurable progress.

Mr. Hall stated that it is important to poll the Board members to see if they believe the applicant has satisfied the "good cause" measure.

Ms. Stavis noted that Mr. Cronin had proposed a one-year extension at the November 8 meeting, but now it is back to two years.

Mr. Bisson stressed the importance of having enough time to complete the work. Ms. Stavis inquired about the length of the active work with Busby. Mr. Rokeh outlined a draft schedule, stating that all plans would be finalized by the end of January 2022. All permits would be in place by February of 2022, with a third party to supervise the inspection schedule established by March 2022. Site work would commence by 4/15/2022. A construction report would be filed by 11/1/2022.

Chair Garland brought up the issue of the upgrade of the pump station. Mr. Rokeh stated that there must be additional flow into the pump station to make it work properly, which would require more units. Chair Garland suggested crafting a condition to ensure that Brady Sullivan would upgrade the pump station and assist the owners in Phase One. Mr. Rokeh stated that the pump station is designed for 174 units, but currently there are only 56 using it. Mr. Cronin stated that the Housing Board would extend the timeframe for the rehearing if progress were being made toward an agreement. Ms. Chewning inquired if there is a way to make the pump station work with the current number of units. Mr. Rokeh stated that it is an enormous pump station that would have to be divided somehow. He added that there is no easy way to accomplish that. In 2011, the pump station was being pumped as a septic system rather than a pump station when Brady Sullivan took over the project and dealt with the pump station.

Chair Garland invited public comment. There was none.

Chair Garland stated that the notion of phases would make the project more manageable and assist the current owners of Phase One. Mr. Hall explained that he voted against the extension last spring because the project was not explained in such detail. The Housing Appeals Board has provided a structure for reconsideration in terms of "good cause." The new testimony makes it difficult to decide against good cause. In his opinion, an extension is probably an appropriate action given the impact of the pandemic and other testimony.

Ms. Romano spoke in favor of a phased presentation for the project and going forward. Timelines and benchmarks would be important and continuing the discussion in December would be possible.
Mr. Amaro expressed his view that breaking down the project into segments would be best with a proposal from the applicant with specific details.
Ms. Monroe noted that in 2018 the applicant was seeking road contractors, and the contractor from Phase One is unknown. Mr. Brooks stated that the original owners were the contractors for Phase One and Brady Sullivan took over around 2011 and moved quickly to complete the units in Phase One by 2014. Mr. Rokeh noted that Phase One was done by 2016.

Ms. Monroe observed that the staffing and supply have turned a corner well enough to allow for progress to occur by granting an extension, but phasing would be very difficult to predict and accomplish.
Ms. Stavis expressed that the challenges Brady Sullivan is facing are like what other contractors are facing in terms of labor and material shortages. She would be in favor of having another conversation to review a plan of what to expect to be completed. Ms. Chewning noted that finding a road contractor seemed to center on only Busby. Mr. Rokeh stated that there were other contractors being considered.

Mr. Bisson inquired if there was good cause to ask for an extension. Good faith would be a matter for the future. Chair Garland noted that the Board still has questions.

Ms. Zook stated that moving toward a phased project would be a good outcome. Chair Garland summarized that most of the Board was in favor of considering the extension upon an agreement on a phased project with specific commitments on progress. Ms. Stavis suggested that the hesitancy is over the many factors involved, and the Phase One homeowners' association is in a difficult situation with the contractor owning half of the existing homes, thus making a well-informed decision important.

Ms. Zook inquired what the logistics would look like moving forward. Mr. Brooks stated that the project could move forward with a phasing plan, which the Board could approve. Ms. Romano inquired if a phased project would reduce the carrying cost of the bond. Mr. Brooks stated that performance security would be held only for the active phase.

Chair Garland inquired if December 13, 2021, would allow enough time for creating a phasing plan. Mr. Rokeh confirmed that it would be possible. Mr. Brooks stated that Planning Staff may need to re-notice this hearing as a separate hearing, but they will explore the best way to accomplish it, and it would be done as quickly as possible. Ms. Monroe commented on the proposed plan with a gap from April to November without any updates and suggested additional checkpoints would be necessary.

Ms. Chewning noted that the question of "good cause" has been ignored with the discussion of a phased plan. Chair Garland stated that the previous discussion of Rock Ridge and "good cause" showed that the Board did a poor job of determining it with Rock Ridge. Ms. Romano observed that a path forward would be acceptable to the Housing Appeals Board. Mr. Brooks stated that the only way to grant an extension implies a finding of "good cause". That is the standard set forth in the Board's regulations. The Housing Appeals Board will review all the information from the applicant and the meeting minutes to determine if good cause was demonstrated. There should be a finding of "good cause" by the Planning Board with an explanation of the determination and the reasons identified. Ms. Stavis stated that in State Law there is no definition of "good cause". Mr. Brooks stated that it was defined by the Housing Appeals Board as to what can and cannot be considered to determine "good cause."

Chair Garland polled the Board regarding the determination of "good cause". The Board was divided among needing more information, wanting to move forward, and citing the pandemic as good cause.

Mr. Brooks commented on "good cause," and suggested the attorneys could meet to determine if there is a way to move forward that doesn't involve a "good cause" determination by the Board. Ms. Monroe suggested a statement that regardless of good cause, the Board is in favor of finding a way of moving forward with a phased plan. Mr. Hall stressed the need for a decision on whether there is good cause for an extension.
Mr. Bisson stated that the Housing Appeals Board would not interfere if the Planning Board approved an extension. If the extension is not approved, the case goes back to the Housing Appeals Board. If the project goes forward, the Housing Appeals Board has nothing more to say.

Chair Garland suggested continuing the discussion of changing from a single project to a phased project on December 13 and then deciding on the extension. Mr. Corwin added that depending on the outcome of a straw vote on moving forward, staff would work with the applicant and discuss with legal counsel to draft a formal motion with certain conditions for consideration at the December meeting. Mr. Brooks noted that there was no information to prepare a motion for tonight's meeting.

The Board members discussed various aspects and methods of moving forward.

Chair Garland conducted a poll of the members regarding whether there was good cause to move forward with the application process for Brady Sullivan.

In favor of moving forward – 6
Against moving forward – 2

A MOTION by Laurel Stavis to continue the rehearing of Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3 to December 13, 2021, at 6:30PM.
The motion was seconded by Joan Monroe.

****The MOTION was approved (8-0).***

3. Committee Reports

A. City Council Subcommittees:

--Class VI Roads Advisory Committee (J. Monroe) – The committee is taking a break until February.
--Lebanon Energy Advisory Committee (J. Monroe) – The committee did not meet this month but will meet in December.

B. Planning Board Subcommittees:

--Planning Board Capital Improvement Program (B. Garland/L. Stavis/M. Hall/K. Chewning)
--Planning Board Development Regulations Update (M. Hall/K. Romano/J. Rutter/ J. Monroe)

A MOTION by Matthew Hall to extend the meeting to 10:00 PM.
The motion was seconded by Joan Monroe.

****The MOTION was approved (7-1). Matthew Hall voted against.***

C. **Other Subcommittees:**

--City Council Representative (D. Whittlesey/K. Zook)
--Heritage Commission (J. Rutter)
--Pedestrian & Bicyclist Advisory Committee (G. Amaro)
--Upper Valley Lake Sunapee Regional Planning Commission (B. Garland)
--UV SubCommittee of the Connecticut River Joint Commissions (B. Garland)
--Upper Valley Transportation Management Association (VACANT)
--Mascoma River Local Advisory Committee (K. Romano)
--Steering Committee for the Implementation of the Master Plan (B. Garland/K. Chewning /VACANT/J. Monroe)
--West Lebanon Revitalization Advisory Committee (L. Stavis)
--Planning & Development Department – Task Status (D. Brooks/ M. Goodwin/T. Corwin/R. Owens)

Chair Garland commented on issues raised by Sarah Riley regarding the park next to the bridge to WRJ. Mr. Brooks stated that too much vegetation clearing occurred inadvertently, and a mitigation plan is being prepared by the City for submission to NHDES. Ms. Chewning, who lives near the bridge, noted that there is trash and poison ivy and appreciated the work that was done. She stated there was nothing to cause an environmental issue. Mr. Brooks commented on the State's shoreland regulations and described the grid system used for evaluating the vegetation, trees, and ground cover. There is a need to maintain certain coverage and replant areas that don't meet the coverage level, but there is no obligation to replant the same species.

4. Other Business

A. Review of Zoning Amendments

Mr. Corwin opened the discussion of the draft zoning amendments, which the Board began reviewing in September. The Board members received clarification on several items. There was discussion of the amendment regarding rezoning the West Lebanon Central Business District to match the Lebanon Downtown District (LDD). Ms. Stavis shared the comments of the West Lebanon Revitalization Advisory Committee and noted that no bank today will give a loan to an eating business without a drive thru. She observed that times have changed, and people expect drive-thru services and having things delivered to them in their cars. She questions if adopting the LDD zoning would put brakes on future development in West Lebanon by imposing the downtown district limitations. Mr. Brooks shared comments in an email from architect Dan Winny regarding urban design and planning issues, and his comments will be shared with both the advisory committee and Planning Board. Mr. Winny stated that drive thru's don't make a downtown better, they take up space and are not necessarily useful for creating an enticing pedestrian environment. Things can be delivered to people in cars without a drive thru. The Board making a motion would be helpful, stating support with certain exceptions.

Ms. Romano commented on the 3 Seminary Hill property and the need for a motion to change the zoning back to R-2 if the City was not going to use the property for the Recreation Department offices.

A MOTION by Joan Monroe to change the zoning of #3 Seminary Hill and #5 South Main in West Lebanon from CBD to R-2.
The motion was seconded by Kathie Romano.

***The MOTION was approved (6-1-1). Mr. Hall voted against, and Karen Zook abstained.**

Mr. Amaro noted that the public should be engaged in the drive thru discussion. Ms. Zook inquired if it could be on the ballot in March. Mr. Brooks said the Council has that authority. Ms. Romano suggested that since people haven't had a chance to hear about it, the Board should keep the zoning as it is now until the public can discuss it. Ms. Stavis observed that the LDD was intended for the older part of Lebanon and the park, but West Lebanon is different. There is a need for public input and discussion of the issue of drive thru's. Mr. Hall suggested the two downtown areas could have the same zoning and rules, noting that the regulations would change over time. From a policy standpoint, treating them by the same rules would provide consistency, and the City Council should debate this issue.
Chair Garland commented that the zoning amendments are fine except having the LDD applied to West Lebanon.

A MOTION by Joan Monroe to extend the meeting to 10:10PM.
The motion was seconded by Kathie Romano.

***The MOTION was approved (7-1). Matthew Hall voted against.**

A MOTION by Joan Monroe that the Planning Board supports the proposed Zoning Amendments dated 11/2021 except the amendment to Section 306 to replace the West Lebanon Central Business District designation with the Lebanon Downtown District designation for zoning.
The motion was seconded by Kathie Romano.

***The MOTION was approved (6-1-1). Matthew Hall voted against, and Karen Zook abstained.**

B. UVLSRPC Nomination - Dan Nash

A MOTION by Joan Monroe to approve the nomination of Dan Nash to the UVLSRPC.
The motion was seconded by Matthew Hall.

***The MOTION was approved (7-0-1). Karen Zook abstained.**

C. Review of 2022 Meeting Calendar

Mr. Brooks explained that the schedule is the same as the current year.

A MOTION by Kathie Romano that the Planning Board adopt the 2022 Planning Board Meeting Calendar.
The motion was seconded by Laurel Stavis.

***The MOTION was approved (8-0).**

D. UVLSRPC Draft Regional Corridor Transportation Plan

Mr. Brooks reported that the draft corridor plans have been completed and requested that Planning Board members take only one or two to focus on. The draft is very detailed, and there are eight corridors. All comments are due to the RPC by December 6, 2021.

Mr. Brooks gave an update on the issues at Exit 18 in the Little Heater Road neighborhood. The property owner has responded to the Notices of Violation and Planning Staff is reviewing the responses.

5. Approval of Minutes

A. October 25, 2021

Page 6, line 6, to read, "A successful Celebration Block Party was held…"
Page 7, Line 15 to read, "behind the Volvo dealership in the Little Heater Road neighborhood…"

A MOTION by Laurel Stavis to approve the Planning Board Minutes of October 25, 2021, as amended. The motion was seconded by Kim Chewning.

****The MOTION was approved (8-0).***

Ms. Monroe expressed concern over the damage being done to a local business by the pigeons that lost their home with the demolition of the Westboro buildings.

6. Adjournment

A MOTION by Matthew Hall to adjourn the meeting.
The motion was seconded by Joan Monroe.

****The MOTION was approved (8-0).***

The meeting was adjourned at 10:04 PM**.**

Respectfully Submitted,

Holly Howes
Recording Secretary