FINAL

LEBANON CITY COUNCIL
SPECIAL SESSION MINUTES
Wednesday, December 14, 2023, 7:00 p.m.
Council Chambers
Remote Via Microsoft Teams: LebanonNH.gov/Live

MEMBERS PRESENT:	Mayor Tim McNamara, Assistant Mayor Clifton Below, Erling Heistad, Karen Liot Hill, Christian Simon, George Sykes, Douglas Whittlesey, Devin Wilkie
MEMBERS ABSENT:	Karen Zook
STAFF PRESENT:	City Manager Shaun Mulholland, Deputy City Manager David Brooks

---

1. **CALL TO ORDER:** Mayor McNamara called the meeting to order at 7:00 p.m.
   - City Manager Shaun Mulholland announced the meeting criteria for the public.

2. **SPECIAL MEETING:**
   A. Review and Acceptance of Payment in Lieu of Taxes (PILOT) Agreement and Contributions Agreement for Interfacility Transport System between Alice Peck Day Memorial Hospital and City of Lebanon and Authorization for City Manager to execute PILOT and Contributions Agreements.

Included in the agenda packet**:** ***Note: All supportive documents can be found on pages 2-6, Council agenda packet.***

1. Excerpt of City Council minutes from August 6, 1997 relative to Voluntary Payment in Lieu of Taxes Agreements

City Manager Shaun Mulholland reviewed the background and reasons for the Payment in Lieu of Taxes (PILOT) between the City of Lebanon and Alice Peck Day Memorial Hospital.

BACKGROUND
In 1997, the City Council adopted a resolution authorizing the City Manager to carry out the intent of NH RSA 72:23-n concerning voluntary Payment in Lieu of Taxes (PILOT) agreements, including negotiating and accepting voluntary PILOT agreements on behalf of the City from otherwise fully or partially tax-exempt properties in the City.

The City Administration and Alice Peck Day Memorial Hospital (APDMH) officials are negotiating a proposed Payment in Lieu of Taxes agreement with the City. In addition, the City and APDMH have negotiated a separate proposed Contributions Agreement for an Interfacility Transport system to be conducted by the Lebanon Fire Department.

ACTION:
Councilor Liot Hill MOVED, that the Lebanon City Council hereby ratifies and reaffirms the authority of the City Manager under the Council resolution of August 6, 1997 to negotiate agreements for payments in lieu of taxes and, further, to approve a PILOT agreement with Alice Peck Day Memorial Hospital for portions of its property at Tax Map and Lot 90-59, that commences as of April 1, 2023 and

expires at the conclusion of the 2043 tax year on March 31, 2044; and also hereby authorizes the City Manager to execute all documents and take any action necessary to enter into said PILOT Agreement." Said vote to approve the Pilot is contingent upon the following:

1. ***That the City Board of Assessors grant Alice Peck Day Memorial Hospital a Charitable exemption application for 2023, and***
2. ***Allice Peck Day Memorial Hospital pays all outstanding taxes owed on its properties by December 31, 2023, and***
3. ***Alice Peck Day Memorial Hospital makes the initial 2023 PILOT Agreement of $299,000.00 by December 31, 2023, and***
4. ***An agreement is reached and executed by the City and Alice Peck Day Memorial Hospital on a Contributions Agreement regarding the Lebanon Fire Department and to offer the City Manager with input from the Fire Chief to negotiate and execute said Contributions Agreement.***

Seconded by Councilor Heistad..

****The Vote on the Motion was approved by members present (8-0).***

B. Community Revitalization Tax Relief Application - Request by LWM Residential LLC, for tax relief under the provisions of the Community Revitalization Tax Relief Incentive Program (NH RSA 79-E) as adopted by the City Council on February 17, 2016.

Included in the agenda packet: ***Note: All supportive documents can be found on pages 7-30 , Council agenda packet.***

1. Declaration for Outdoor Recreational Activity, prepared for LWM Residential, LLC, received on December 6, 2023.
2. City Council Agenda Packet from November 15, 2023, which includes:
   a. October 18, 2023 letter from LWM Residential LLC
   b. Application for Community Revitalization Tax Relief Incentive Program (RSA 79-E) from LWM Residential LLC for the Lebanon Woolen Mill
   c. September 12, 2023 letter from 106 Associates to the Lebanon Heritage Commission, RE: Historic Status and Opinion on Secretary's Standards, Lebanon Woolen Mill Complex, 1 Foundry Street

BACKGROUND

On November 15, 2023, the City Council held a public hearing for the purpose of receiving public input and taking action on a request by LWM Residential LLC, for tax relief under the provisions of the Community Revitalization Tax Relief Incentive Program (NH RSA 79-E) as adopted by the City Council on February 17, 2016. After the public hearing, the City Council has up to 45 days to render a decision granting or denying the requested tax relief and, if so granting, establishing the tax relief period. [RSA 79-E:4, III].

At the conclusion of the public hearing and the subsequent discussion, the City Council requested that the City Manager and LWM Residential continue to negotiate the details of public access to the property as offered by the applicant and also address the future ownership and/or conservation of the "island parcel", Tax Map 106, Lot 33. The Council then delayed making a decision on the tax relief request until a special meeting scheduled for December 14th.

On December 6th, the City Manager received the attached draft Declaration for Outdoor Recreational Activity from LWM Residential, which outlines the provisions of public access to portions of the property as well as the rights retained by the property owner.

Mr. Jon Livadas of LWM Residential, LLC and his legal counsel Dennis Robinson, Esq. were in attendance on December 14th to continue the discussions about public access and the island parcel, as well as the overall 79-E tax relief request.

City Manager Mulholland stated a decision on this needs to be made on this tonight one way or the other. The Council has the applications time limits and we are at the end of that time limit space.

Mr. Jon Livadas acknowledged that they understand what they are asking for, and what they qualify for, is a very significant length and amount of abatement. They also know it is discretionary. We feel that our project really qualifies for everything that the 79-E Program offers. We have gone out of our way to develop something that Lebanon has not seen at any point yet and would like to think they are setting a new standard in terms of building quality, not just for the Foundry, but for all the residents of Lebanon.

Attorney Dennis Robinson (Counsel for LMW Residential, LLC) prepared the Declaration for the Outdoor Recreational Activity ***(pages 10-13, Council agenda packet)***. The gist of the document is to make the Plaza, which is part of the development, as well as the River Walk area accessible to the public for sightseeing, biking and hiking. He understands that from the discussion at the last meeting that there was a desire for the public to be able to use this space in some way, and the Covenant essentially says that the owner of the property will not prevent the use of recreational uses for as long as the Tax Abatement is in effect. So, for whatever period the tax abatement is granted, this Covenant would essentially keep the Plaza and River Walk areas open so the public can enjoy those portions of the property.

City Manager Mulholland asked Attorney Robinson to talk about the issue they discussed because the Statute requires twice the period of time in the Covenants of the exemption (i.e., if they are granted 5, 10, 15 years, it is actually twice that period of time that the Covenant should be in effect). Attorney Robinson thought the impact would be that however long this Covenant would run, it would run coterminous with the 79-E Covenant (the normal tax abatement period).

Deputy City Manager David Brooks noted that while he believes up to two times is discretionary, in every instance the Council has granted 79-E relief, it has imposed the requirement that the Covenant be in effect for twice the number of years of the duration of the tax relief itself. It is discretionary and the Council has exercised that discretion in each instance. It is included in paragraph 1 of the "Now Therefore Clause" ***(page 18, Council agenda packet)***, noting that the boxes are blank to be filled in.

In response to Assistant Mayor Below's question regarding the legal descriptions of the property in the Declaration for Outdoor Recreational Activity, Attorney Robinson noted this will be figured out during the discussion of the actual legal document and based off the Site Plan.

City Manager Mulholland noted this would be the (legal) description of the path of the planned River Walk, which is in front of the Planning Board. The agreement has to have a map that shows those areas which the public is going to be able to have access to. Mr. Livadas pointed out to the Council where public access would be granted on the screenshot of his Site Plan.

Councilor Liot Hill wanted clarification on the Declaration, noting that what they (LWM Residential LLC) are proposing is equal to the number of years of the tax abatement. We have the discretion to make it up to twice as long as the abatement. Mr. Livadas responded by saying they would like it to mirror the length of that tax abatement. In response to Council Liot Hill's other question, Mr. Livadas stated that realistically, there will probably be another owner when the tax abatement ends and to burden the property up to 20-30 years is something they would not like to have as it would have an impact on the potential sale of the property in the future.

In response to Mayor McNamara's question regarding affordability, Mr. Livadas noted they have not had a discussion yet about the encumbrance and length of the affordability item. His question was since affordability was 4 years, so is it up to 2x's that?

Councilor Whittlesey spoke about the 79-E exemption and questioned if this exemption continues or does it sunset with their sale. City Manager Mulholland said it runs with the property. Councilor Whittlesey then noted that the cost they will probably put on the property will most likely be far less than is put on the abatement and further explained his reasons. Mr. Livadas noted he was speaking about the buyers who might buy the property when there is no abatement, noting they would be absorbing an encumbrance with no value, in terms of that abatement.

Councilor Heistad spoke about the Conservation easement (for the island) and questioned if this was off the table. Mr. Livadas stated it is not off the table at all.

Councilor Wilkie noted he brought himself up to the 1st 11 years and then up to 15 years, but it was done with the understanding of what they have seen in previous covenants that show twice the years of the tax relief period. This has been our precedent through all the other 79-E projects and questioned if this was part of the conversation in the past. Mr. Livadas noted he did not think 2 X's the length was ever brought up in a discussion regarding how long these covenants would last. We have just been discussing years.

Councilor Liot Hill noted that the Council just assumed it would 2X's the length (of the tax abatement) because this is what was done with all the past approved 79-E Projects.

Further discussions ensued between the Council and Mr. Livadas regarding 2X's the length of the tax abatement, which also included the affordability aspect.

Councilor Liot Hill suggested a compromise and explained her reasons why the Motion could contain the following two options:

1. 11-years with the affordability (continue for 22 years).
2. Up to 15 years, including affordability with conditions that would then run for 30 years.

Councilor Wilkie was not in favor of Councilor Liot Hill's two option proposal and explained his reasons.

Mayor McNamara read into the record an email from Ms. Sarah Riley sent to City Manager Mulholland. While Ms. Riley is Chair of the Conservation Committee, her email did not represent official comments from this Committee. This was her personal testimony supporting permanent protective measures, such as a Conservation Easement for the island as a condition of granting the requested tax relief and went on to explain her reasons why this should be done.

Councilor Liot Hill expressed her support for this project and explained in detail her reasons why the 5 public benefits below are important, noting that affordability is its own separate category.

1. Enhancement of the economic vitality of Downtown Lebanon

2. Enhancement and improvement of a structure that is historically important
3. Promotion of the preservation and reuse of existing building stock
4. Promotion of the development of municipal centers, providing for efficiency, safety, and a greater sense of community consistent with RSA 9-B
5. Increasing residential housing in municipal centers.

For the record, Councilor Liot Hill supports approving this project, at least for 11-years.

Councilor Whittlesey concurred with Councilor Liot Hill regarding her 11 year component and could support 12 years. His only caveat is that because it is discretionary, he was hesitant on the Conservation Easement (for the island) because he felt this should be handled through the Planning Board as those components are part of a Site Plan Review. He also felt that more affordable housing should be part of the criteria and further explained his reasons.

While Mayor McNamara supports this project moving forward, he reminded the Council that the relief is for the entire project, but there are buildings here that are not historic structures. We are not just granting relief for the historic structures; it is for the entire project. With regard to the housing units, 10% (19 units) are going to be affordable, but we are granting tax relief on the full 100% (183 units). This project has an important impact on Downtown Lebanon. He was uncertain if this project warrants everything being asked for, particularly when it is small portions of the project that are meeting the requirements and further explained his reasons. In this case we are actually asking the taxpayer to be a multi-million dollar investor in a project that we do not "have" open books on, and we do not know how this impacts the "economics of the" project". We are going into this blind and that is the reason why he was very concerned about granting the type of (79-E) tax relief being talked about.

Councilor Heistad concurred with Mayor McNamara but noted the City has an asset just sitting there that will go either up or down (maintenance wise). Buildings do not get stronger by being left and sees this project as a need to do something with. He stated his reasons for what the cost (to the City) might be if nothing is done with this parcel in the future.

Assistant Mayor Below noted there is another provision that needs to be discussed, which is "the project should be completed on or before by____?_____." In response to Assistant Mayor Below's question regarding how long it might take to complete the project, Mr. Livadas explained their goal is to start this summer (Phasing Schedule has been completed). Realistically these things take between 24-36 months. In essence, with all the work that needs to be done it could take 4-8 years with phasing. Assistant Mayor Below noted that putting 4 years out there for completion is fine, and he thought the affordability component (10% of units) is an important part of the project, so he would support the full 15 year grant, but felt that the affordability component needs to go a lot longer than the 15 years. For the amount of property taxes being invested, we need a longer term commitment for affordability and explained his reasons. He was in favor of moving ahead and if it doesn't work out, Mr. Livadas can always come back to the Council.

In response to Mayor McNamara's question regarding when the abatement would start, Deputy City Manager Brooks recited the statute that says: "The governing body may grant such tax relief assessment for a period of up to 5 years, beginning with the completion of the substantial rehabilitation." We have not had a project like this with multiple phases, so this might be something the Council will want to factor in.

Further discussions took place between City Council and Mr. Livadas regarding the planned phasing/substantial completion of this project and what qualifies as a completed structure.

Councilor Simon noted the island is in the middle of a river and believed that with a Conservation Easement or no Conservation Easement, the island would remain undevelopable. He was more concerned about the potential contamination that exists on the site now rather than something to do with the island. Containing the contamination that is onsite (known/unknown) is a much more pressing issue. Taking care of these contaminants will also protect more wildlife in the future. He felt the island should be off the discussion for tonight. Mayor McNamara and Councilor Sykes concurred.

The Council continued to discuss the length of the term for tax abatement; the affordability aspects of this project; using $1M/year as an example, the difference between 11 years with the affordable aspect vs. 15 years without affordability would equal a difference (in tax abatements) of +/- $4M; how many units of affordable housing could the City build with that $4M; if the City is going to build affordable housing, the City will still have to make that investment; reasons why the City needs more affordable housing and how that could potentially be done; how saving +/-$4M from this project will not necessarily be going into housing; how the City needs places that people can live in affordably (i.e., small houses, cluster housing, etc.)

In response to Councilor Liot Hill's question, Mr. Livadas noted that when they originally came before the Council they were asking for 11 years (of tax abatement). He then asked what it would take to get the extra 4 years to make it 15 years of tax abatement and he was asked to come back with an offer. He wanted to bring us back to where we started, and now wanted to request 11 years (of tax abatement) and explained his reasons.

Assistant Mayor Below spoke of his concerns about changing the application request from 15 years, as presented in Council agenda packet, to 11 years. The application in the packet is for the full 15 years with the affordability provision.

The Council discussed the potential (legal) aspects of changing what is in the packet and whether or not it would be possible for the applicant (Mr. Jon Livadas/ LWM Residential, LLC) to return to his original proposal of 11 years (tax abatement) and how the Motion could be adjusted to accommodate changes the Council may choose to make.

<u>ACTION</u>:

***Councilor Whittlesey MOVED,* that:**

BE IT HEREBY RESOLVED by the Lebanon City Council, after a duly noticed public hearing, that:

WHEREAS, the City Council has determined that the application of LWM Residential, LLC (hereinafter the "Applicant") for property assessment tax relief under the City's 79-E Program is complete enough to commence consideration, and

WHEREAS, the City Council has determined that the Applicant's properties, 1 Foundry Street, Tax Map 91, Lot 263, and 25 Mechanic Street, Tax Map 91, Lot 267 (hereinafter the "Property"), is situated in

the Downtown Lebanon 79-E District as adopted by the City and, therefore, meets the 79-E Program requirement as a Qualifying Structure, and

WHEREAS, the City Council has determined that the Applicant's project to renovate the existing mill structure, construct two new buildings, demolish blighted buildings, remediate a brownfields site, and complete other site improvements as approved by the Lebanon Planning Board (hereinafter the "Project") exceeds the lesser of 15% of the current pre-rehabilitation assessed valuation or $75,000 and, therefore, meets the 79-E Program requirement as a Substantial Rehabilitation, and

WHEREAS, the City Council has determined that the Applicant's proposed Project will generate one or more Public Benefits to the City, including:

1. ***Enhancement of the economic vitality of Downtown Lebanon, and***
2. ***Enhancement and improvement of a structure that is historically important, and***
3. ***Promotion of the preservation and reuse of existing building stock, and***
4. ***Promotion of the development of municipal centers, providing for efficiency, safety, and a greater sense of community consistent with RSA 9-B, and***
5. ***Increasing residential housing in municipal centers.***

NOW THEREFORE, pursuant to the provisions of the Community Revitalization Tax Relief Incentive (NH RSA 79-E) Program, as adopted by the City, the City Council hereby grants to the Applicant _11_years of property assessment tax relief for the Property to commence upon completion of Project, with the following conditions:

1. The Applicant shall grant to the City of Lebanon a Declaration of Covenant to be recorded in the Grafton County Registry of Deeds ensuring that the Project shall be maintained and used in a manner that furthers the Public Benefit(s) set forth above for which this property tax relief is granted. The term of the Declaration of Covenant shall be effective for _11 _years, which is twice the duration of the approved tax relief period as permitted under RSA 79-E:8, II.

2. The Applicant shall obtain and maintain property and casualty insurance, as well as flood insurance, if appropriate, for the term of the Declaration of Covenant set forth above to ensure proper restoration or replacement of the Project and Property. Such insurance shall, effective as of the date on which the Project is completed, name the City of Lebanon as an additional insured by endorsement and the City shall be provided with certificates of insurance annually. Further, the applicant shall agree to have the City made a Loss Payee of the proceeds of any property or casualty insurance coverage, subject to the rights of any current or future mortgagee of the Property and any structures thereon, for the purpose of ensuring proper and timely restoration or demolition of the Property, including any damaged structures thereon. The Applicant shall agree to commence any restoration or demolition of such structures within one year following the date of any occurrence or incident for which an insurance claim is or could be made; otherwise, the Applicant shall be subject to the termination provisions set forth in RSA 79-E:9, I.

3. The Applicant shall obtain a Building Permit for the Project and commence construction no later than one year from the date of this Resolution, unless otherwise extended by the City Council in writing. The Project, as approved, shall be completed on or before March 31, 2028 writing unless otherwise extend by the City Council in writing.

Seconded by Councilor Liot Hill.

Councilor Liot Hill spoke to her motion and gave her reasons why this motion is the best way to get this project off the ground and set in place something that is going to benefitting this City for the next century.

Councilor Sykes, while he felt this project is a good thing, his concern was that some of the very important aspects of our Strategic Plan was being overlooked by this motion. A small piece of this intended public benefit should have been done through our usual practice (i.e., 22 years and not 11 years). He hoped that a second motion would achieve all the intended purposes.

***Councilor Sykes MOVED to amend the Motion stating the Council will go back to past practice, which is at least the 22 years*.**
Seconded by Councilor Heistad.

Assistant Mayor Below noted

1. There is no reference to public access in the Motion, so this is not part of the criteria at this time.
2. Without the affordable housing units, it does not really matter whether the Covenants are in place or not because the Covenant is only that the historic building will have been rehabilitated. He was uncertain what the public benefit is beyond the public access and explained his reasons.

Councilor Sykes withdrew his amended Motion.

Councilor Whittlesey modified his Motion to read as follows:

WHEREAS, the City Council has determined that the Applicant's proposed Project will generate one or more Public Benefits to the City to include (including 1, 2, 3, 4, 5 as already read) by adding # 6 (reflected below):

1. ***Enhancement of the economic vitality of Downtown Lebanon, and***
2. ***Enhancement and improvement of a structure that is historically important, and***
3. ***Promotion of the preservation and reuse of existing building stock, and***
4. ***Promotion of the development of municipal centers, providing for efficiency, safety, and a greater sense of community consistent with RSA 9-B, and***
5. ***Increasing residential housing in municipal centers.***
6. ***The proposed language from the applicant for public access; referred to as the Declaration of Outdoor Recreational Activity. Section 6 makes this contingent upon the execution of the attached Declaration of Outdoor Recreational Activity.***

Councilor Whittlesey FURTHER MOVED that the Applicant shall grant to the City of Lebanon a Declaration of Covenant to be recorded in the Grafton County Registry of Deeds ensuring that the Project shall be maintained and used in a manner that furthers the Public Benefit(s) set forth above for which this property tax relief is granted. The term of the Declaration of Covenant shall be effective for (22) years, which is twice the duration of the approved tax relief period as permitted under RSA 79-E:8, II.

Councilor Liot Hill, who seconded the original MOTION, agreed to these changes.

Mayor McNamara noted that all the items in 1-6 will run for 22 years and the tax relief is for 11 years.

****The Vote on the revised MOTION was approved (5-3). Voting against were Mayor McNamara and Councilors Sykes & Wilkie.***

3. ADJOURNMENT:

Councilor Simon MOVED for adjournment.
Seconded by Councilor Heistad

****The Vote on the MOTION was unanimously approved (8-0)***

The meeting was adjourned at 8:36 PM.

Respectfully submitted,
Dona E. Gibson
Recording Secretary