FINAL

LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANNONNH.GOV/LIVE
MONDAY, OCTOBER 14, 2024 6:30 PM

MEMBERS PRESENT:	Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Kathie Romano, Patrick Kennelly, Karen Zook (City Council Rep), Jeremy Rutter, Eric Stacy
MEMBERS ABSENT:	Brandon Hill, Kellen Appleton
STAFF PRESENT:	Nathan Reichert (Planning & Development Director), Tim Corwin (Deputy Planning Director), Brian Vincent (City Engineer)
OTHERS PRESENT:	Christine Johnston, Esq. (Legal Counsel for the Planning Board)

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1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:32pm. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. NOTICE OF REGIONAL IMPACT

The following applications were received by the Planning and Development Department on or before October 14, 2024:

- **Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2: Request for a site plan review to construct a +/- 2,235 sq ft. two story office building, together with associated site improvements, including relocating a basketball court and 12 new parking spaces. PB2024-41-SPR**

Mr. Corwin said Staff recommends the application does not have the potential for regional impact.

A MOTION was made by Kathie Romano that the application of the Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2 does not have the potential for regional impact. The motion was seconded by Richard Ford Burley.

****The MOTION was approved (7-0).***

Chair Faunce introduced Mr. Eric Stacy as a new member of the Lebanon Planning Board.

Chair Faunce said the agenda for the Public Hearing Items would be in the order of 3A., 3B, 3D, and then 3C., which is out of the order of the agenda for this meeting.

Mr. Corwin stated that Staff recommends that the application is complete enough for the Planning Board to accept jurisdiction and commence review.

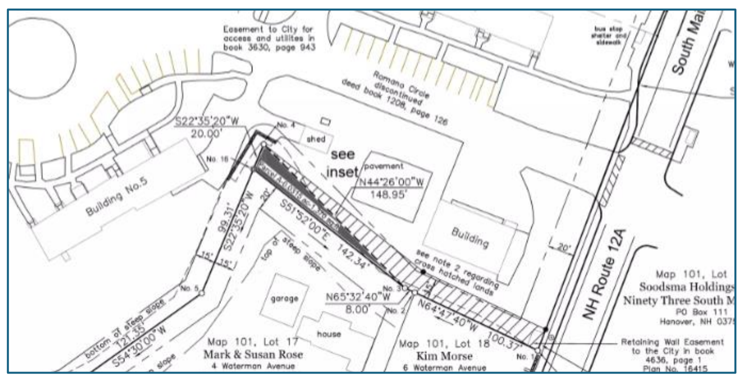
A MOTION was made by Jeremy Rutter that the application of Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2 is complete enough for the Planning Board to accept jurisdiction and commence review. The motion was seconded by Richard Ford Burley.

****The MOTION was approved (7-0).***

3. PUBLIC HEARING ITEMS

A. Mark & Susan Rose, Sr. and Lebanon Housing Authority, Mark & Susan Rose Sr. and Lebanon Housing Authority, 4 Waterman Avenue & 31 Romano Circle (Tax Map 101, Lot 17, and Tax Map 101, Lot 20, zoned R-2: Request for approval of a Boundary Line Adjustment. PB2024-39-BLA

Mr. Corwin said there is one suggested Condition of Approval, which is that the Discontinuance of Romano Circle be finalized before the plat is finalized.



Mr. Tim Rockwood (land surveyor) gave an overview of the project. He said the application is for a boundary line adjustment for a triangular piece of property.

Ms. Dida Alonso (Director of Lebanon Housing Authority) said the piece of property is unbuildable, but it will help LHA achieve another proposed project for a new office building at Romano Circle. She said the proposed boundary line adjustment will allow flexibility with the positioning of the building related to setbacks.

She explained that the City Council had approved that LHA become owner of the entry driveway to Romano Circle, which is a cul-de-sac, but the road will continue to be called Romano Circle. She said all the residents that live there are residents under LHA.

Chair Faunce opened the public comment portion of the hearing.
Chair Faunce closed the public comment portion of the hearing.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the application of Mark & Susan Rose Sr. and Lebanon Housing Authority, for a proposed boundary line adjustment between 4 Waterman Avenue & 31 Romano Circle (Tax Map 101, Lot 17 and Tax Map 101, Lot 20), PB2024-39-BLA, as shown on a plat titled "Minor Lot Line Adjustment – Lebanon Housing Authority – Mark & Susan Rose," prepared by Rockwood Land

Services, LLC, dated September 4, 2024, last revised October 7, 2024, Project No. 1424-1, including any and all supplemental submissions and testimony provided during the public hearing, subject to the conditions as presented in the packet for this meeting with the additional condition that the discontinuance of Romano Circle shall be finalized.

The Motion was seconded by Kathie Romano.

****The MOTION was approved (7-0).***

B. Brickyard One Nominee Trust, 174 Hanover Street (Tax Map 48, Lot 4), 0 Hanover Street (Tax Map 48, Lot 2), 0 Hanover Street (Tax Map 48, Lot 1), and 238 Hanover Street (Tax Map 63, Lot 1), zoned R-1, R-O-1, R-3 & RL-3: Request for Site Plan Review and a Conditional Use Permit pursuant to Sections 308.2, 310.2, 311A.2, and 501.2 of the Zoning Ordinance for a proposed 474-unit multi-family Planned Unit Residential Development (PURD) totaling +/- 731,600 sq. ft. in size, consisting of 11 buildings together with parking, utilities, landscaping, access, and other related site improvements. Applicant also requests a Conditional Use Permit pursuant to Section 308.4 of the Zoning Ordinance to allow an increase in the maximum permitted building height from 45 ft. to 55 ft. PB2024-22-CUPSPR - Continued from September 9, 2024

Mr. Corwin said the applicant has heard the comments made by the Board and by the public in previous meetings and has redesigned the layout of the project. He said the purpose of the discussion at this meeting is for the Board to familiarize itself with the proposed design changes.

Mr. Dave Fenstermacher (VHB), Mr. Rich Whitehouse (VHB), and Mr. Gil Aleixo (Brickyard One Nominee Trust) were present on behalf of the applicant.

Overview of comments/concerns
Mr. Fenstermacher gave an overview of the concerns and comments that have been made, as well as some information from the Route 120 Corridor Study that he said impacted the changes that have been proposed. He noted the following feedback about the project:
- Provide more housing in a cohesive, sustainable way.
- Need for better, safer pedestrian connections
- Rezone existing light industrial to residential, highlighting the need for residential higher bedroom counts in the multifamily developments
- Incorporate climate resiliency measures and new development
- Preserve the historic features of the former Brickyard site
- Incorporate community use and retail and commercial
- Preserve and expand existing quality of life values such as green space
- New development should be a combination of mixed-use as an adaptive reuse

Overview of proposed redesign
He said the proposed redesign includes the following:
- Mixture of studio, one-bedroom, and townhome options

- Focused massing to the south side of the site toward I-89
- Replaced half of the larger multifamily buildings with smaller-scale townhouses
- Pond west bank enhancements
- Reduced total disturbance areas and total impervious areas (reduced building heights)
- Reduced amount of parking
- Reduced water & sewer demands by proposing fewer bedrooms
- Greatly reduced required earthwork and blasting needed for construction
- Increased area of green/community spaces to provide recreation opportunities

He shared the revised site layout, which includes five buildings and parking with 541 spaces. He confirmed that the current design includes all rental properties, but he said there may be consideration for ownership in the future.

He said they are working with the City to develop defined crosswalks and additional sidewalks on Hanover Street. He said they also met with Advance Transit to discuss the nearby pedestrian bridge and potential new bus stops that may be needed for the area.

He said they plan to present their technical review, which would include a fiscal impact analysis, engineered sites plans, a traffic report, stormwater management plans, and wetlands review at a November Planning Board meeting.

Mr. Fenstermacher said there will be a barrier between the backyards for the townhome units and the pond. He noted the additional gathering spaces make it feel less crowded. He also confirmed EV chargers would be located in the parking lots. He said handicapped parking spaces could be shaded or located under the buildings. Mr. Kennelly asked if the height variances were for two of the buildings and Mr. Fenstermacher confirmed they were for Buildings 4 and 5. He said Buildings 1, 2, and 3 are under 45 feet high.

Mr. Aleixo confirmed the townhomes will be 3-bedroom homes and the rest would be one-bedroom and studio units. Mr. Corwin confirmed that one parking space is required for studio units and 1.5 spaces are required for one- or more bedroom units per the zoning ordinance. Mr. Stacy asked who the proposed tenants would be, and Mr. Aleixo said professionals who work at the hospital and Dartmouth College. He confirmed that the expansion of the number of one-bedroom units matches the demographics of the area.
Chair Faunce said several other City boards and committees have provided either questions or comments about this project and will attend a future Planning Board meeting to discuss them.

Mr. Rutter said there are many depressions on the ground and other elements that may be remnants of buildings or other structures in SV1 and SV3 areas. He asked whether an archeologist will survey the site and provide a report of what is there, including impervious surfaces on the site.

He said petroleum was used on that site so it would be good to know what is under the ground as well because it is a brownfield site.

Ms. Romano asked about plans to extend a sidewalk on the property side of Hanover Street from the northern entrance down to the entrance into the parking lot of the school. Mr. Fenstermacher said that another survey will be done for the north side of Hanover Street to determine the wetlands in that area.

Mr. Ford Burley asked if red bricks could be used in the construction of the buildings, given that it is located at a former brickyard. He noted that Buildings 3 and 4 do not have the same access to the greenspace as other buildings on the site and asked if benches could be added to encourage congregation. He suggested an additional park/playground could be added near the townhouses.

Mr. Rutter asked if consideration has been given to changing the nature of the pedestrian bridge over I-89 (from pedestrian to vehicle). Mr. Fenstermacher said the plans for the project will not interfere with historical plans for the future redesign of the bridge. The group discussed past and current plans related to the pedestrian bridge, and the importance of it to the connectivity of the new residential project and downtown Lebanon (for recreation and emergency vehicle accessibility).

Mr. Fenstermacher said the northern entrance of the site will include parking spaces that can be used by trail walkers/hikers who want to access the trails behind the proposed buildings and to the network of trails near and around Boston Lot.

Mr. Rutter noted that none of the plans include the quarries at the very top of the site and underneath where the townhouses would be located. He said the quarries deserve some kind of mention in the project.

Public comment portion
Chair Faunce opened the public comment portion of the public hearing.

Ms. Nicole Ford Burley (City Historian, Chair of the Lebanon Heritage Commission) said the Heritage Commission had submitted questions about this project a few months ago and received a response from the applicant. She said the Commission’s recommendations based on those responses are included in the agenda packet for this meeting. She said the Commission has requested the following:

1. Historical survey and Archeological survey
   - Study of the Brickyard
   - Study of the Chandler cabins (northeast side of site)
   - Study of the quarries (earliest ones date from the first half of 19th century)

2. Preserve / rehabilitate the beehive kilns (not just allowed to stand)
3. Provide public access to the kilns
4. Make the site accessible to the public and add interpretive signage
5. Enact recommendations that come from preservation professionals

Ms. Mary Davis (Ward 2) said she lives in Renihan Meadows condominium development, which is part of the Densmore Brickyard. She said she and other residents have had flooding problems for years until a basement dewatering system was installed in 2004 at a cost of $250,000. She said the cost for clean up and repairs after flooding events cost the condo board about $40,000 per year. She said the ground in the Brickyard does not absorb water. Chair Faunce noted that the Conservation Commission is looking at the hydrological properties of the soils that will be disturbed for the project.

Mr. Tony Palazzo (Ward 3) said there ae no retention basins for stormwater runoff and said there may be real problems if the pond becomes polluted. He said it would probably stay that way for a very long time.

Mr. Bill Lamb (Ward 3) read the objectives of a PURD and said he's concerned that this project does not fulfill the objectives of a PURD. He said he did not believe the Planning Board has the legal right to approve this project as a PURD.

Ms. Jeanette Hutchins (Ward 1) said she read the project statement of the Upper Valley chapter of the GSOP (Granite State Organizing Project) at a September Planning Board meeting. She said one focus of the GSOP is on affordable and workforce housing. She said the ideal tenants for the units were said to be professionals from the hospital and college. She said not all people that work at the college and hospital are professionals. She asked that ancillary staff (maintenance, housekeeping) be included as ideal tenants. She also said she would encourage the use of red brick in the buildings on the site.

Dr. David Kroner (Ward 2) said he lives across the pond from the site. He thanked all the Lebanon residents for their input on this project and Mr. Corwin for always responding promptly to his emails and requests. He said he's lived near the pond for 39 years and has always had a problem with flooding due to beaver dams. He said beavers are dangerous and carry disease.

He said he did have to call the current owners of the property recently because the level of the pond was rising and said within 48 hours, they had the pond draining. He said he believes they have been listening to the concerns of the public and commended them on that. He said the area does need more affordable housing. He also asked if they would consider the nearby houses' basements and plaster that will fracture during any blasting that might go on at the site.

Ms. Romano said when the Kimball Street water lines were redone this summer, the City offered to inspect the structural integrity of the homes in the area before the blasting so any damage could be documented.

Ms. Jenny Lamb (Ward 3) asked if the project was not a PURD and was under the standard zoning, how many units would be allowed. Mr. Fenstermacher said he could calculate that and provide the information. She also asked if the pedestrian bridge were to be redesigned, would taxpayers pay for the project or would that be part of the Brickyard residential project.

Chair Faunce said if there were interest amongst the City to redesign the bridge, it might make sense to explore whether there are co-funding opportunities to do so. Ms. Lamb said perhaps rather than build a bridge and invite traffic to increase, it would be preferable to limit development and utilize the traffic access and egress that's available now.

Ms. Alice Dansby (Ward 2) said it doesn't make sense to allow 600+ more cars into an area that is already a traffic problem. She asked what the plan is for Evans Drive regarding additional stop lights that would have to be added. She asked if anyone has estimated what the costs of the traffic alone will be. Chair Faunce said the traffic study will be included in the technical review at the next meeting (second Tuesday of November).

Ms. Chris Hadari said other proposals are increasing parking because of residents' demand but this project is decreasing parking. She said the City is trying to be more walkable and bring eco-friendly things for Lebanon. She said making the bridge accessible to cars is not going to achieve these goals – it is just going to allow more cars in the area. She said the recent perceived trends that people will walk or bike or use public transportation are changing. She said we need to focus on what the vision and plan are for the people of Lebanon who live here now, not on the people who aren't here yet. She said it's important to have housing for the people who are working and want to live here, but the interests of the current taxpayers are also important.

Ms. Romano commented it seems that Lebanon or Hartford seem to be expected to provide affordable housing and asked why Hanover can't provide some of that housing. Lebanon certainly wants to do its part, but it shouldn't be the sole provider of affordable housing in this area.

Mr. John Weatherly (Ward 3) said the City has been struggling with large-scale residential development projects for the last 10 years and many have been told the City doesn't have stormwater capacity. He asked why the City now has the capacity for this project. He also noted that residents of this development who need more than 1.5 parking spaces will park on the street and over the bridge (if is accessible to vehicles), which he said is dangerous for school kids who are walking to school. Ms. Romano said the capacity issues were not with stormwater but with sanitary sewer and the connector pipe (that delivered sewage to the plant) has been enlarged.

Mr. Ford Burley noted that the newly created Housing Task Force is working on solutions for the Upper Valley and encouraged residents to follow its progress.

Ms. Hutchins noted that she did not mean to imply Lebanon was responsible for providing all workforce housing. She said she just wanted to encourage the owner of this project to include accommodations for pricing that will allow for workforce housing.

Ms. Kate Weatherly (Ward 3) said she's concerned about the entrances/exists of the project site and the traffic that comes off Route 89 onto Route 120 at the same time the children go to school. She said she lived in an area that experienced a lot of effects from blasting from the Prospect Street project. Mr. Ford Burley said the traffic will be discussed at the next meeting during the technical review, but the traffic study is included in the Planning Board agenda for the August 8, 2024 meeting (accessible via the City's website). Mr. Fenstermacher said one of the intents of the redesign of this project was to minimize blasting or to eliminate it if possible.

Ms. Dansby said Vital Communities housing studies stated the City needed to add 534 new rental units by 2030 in order to have healthy, responsible development and do its share of meeting housing needs for the Upper Valley. She said this proposal seeks to add as many as it was said by the data in the studies that we needed to add in 20 years. She said, according to the mission statement of the City of Lebanon, the Board is obligated to say no to any exceptions requested by this development because rental units have been overbuilt in the City. Chair Faunce said the dates of the Housing Task Force meetings are provided on the City's website and encouraged her to review the activities of that committee.

Chair Faunce closed the public comment portion of the public hearing.

A MOTION was made by Andrew Faunce to continue the public hearing to the November 12, 2024 Planning Board meeting at 6:30pm in City Council Chambers in City Hall. The Motion was seconded by Jeremy Rutter.

****The MOTION was approved (6-0).***

At 8:14pm, Chair Faunce called for a brief recess.
At 8:25pm, the meeting resumed.

D. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & Tax Map 44, Lot 7), zoned CBD, IND-L and R-3: Applicant requests a 2-year extension of the River Park Subdivision approval (PB2011-01-FMAJ) and Site Plan approval (PB2010-25-SPR), as most recently amended on September 9, 2019 (PB2018-34-SPA) and extended on October 12, 2021 (PB2021-29-EXT). PB2024-34-EXT

Kathy Romano recused herself. The Chair noted that new member Eric Stacy would continue to sit with the Board but will not engage in any decisions to be made.

The Chair reminded the Board and the public that the Board had continued the public hearing and had not yet entered into deliberation. As the staff memo for this evening provided clarification on topics shared in the previous hearing, the Board would begin by offering both staff and the applicant opportunity for further comment.

Mr. Corwin recapped the staff memo by first noting it firstly offered staff's recommendation for how to oversee the fulfillment on the conditions of approval should the extension be granted. Second, on the prior testimony about the storm water pipe that runs across Route 10 and onto the property and the role it may have been suggested to play in the delay of the River Park development. The pipe has been shown on the River Park plan since the beginning and the approved plans show how the pipe is to be rerouted. If the Board finds any of the testimony related to the pipe to be relevant to its decision and to the extent that it wasn't clear: the pipe is not new and the developer has been aware of that pipe since the very beginning. Mr. Corwin also noted from a recent discussion with the city engineer that the engineer had met with the developer in May when it was revealed that an earlier proposed temporary bypass would be abandoned and that the applicant would proceed with the plan in the approved plan set. Mr. Corwin was not sure, then, why the matter was raised in the September 9 hearing.

Responding to a request for clarification from the Chair, Mr. Corwin noted that in the September 9th hearing the stormwater pipe was raised by the applicant suggesting the possibility that the existence of the pipe was a reason for delay. But the pipe is on the original planset, as was the way to reroute it. And, the applicant met with the city engineer in May and advised that they were no longer pursuing a different route and that they were planning to build phase one per the approved plan set. It's not clear why this issue was raised and the applicant can clarify the intention for raising it.

Mr. Corwin also noted that the staff memo clarified the building permit status. The building permit is now expired. That decision was upheld by the State Building Code Board of Appeals. From the staff's perspective, this is not an issue.

The Chair invited comments from the developer representatives Mr. Chet Clem and Mr. David Clem. Mr. Chet Clem commented on three points raised by the staff memo. First, he was unaware of the staff memo and said he wasn't aware that new information was presented to the Board. On the storm water pipe, he offered to provide all previous documented communications to the city: the characterization of the temporary bypass line versus the previously approved line versus alternatives in discussion between XYZ and the city in 2022 and 2023 trying to value engineer a more affordable solution to the city's stormwater pipe on XYZ's property with no easement, representing a $600,000 expense that serves no benefit to the project. He noted that the temporary bypass line which was approved by the state of NH for the purposes of temporary bypass to allow the project to proceed is still in consideration and is the jurisdiction of the state. He said Mr. Corwin was referencing alternative designs for an alternative stormwater solution that were abandoned by XYZ in the interest of proceeding due to a tenant they were trying to secure. And due to time sensitivity we looked at those options and felt the lift of getting through that process wasn't worth the squeeze given the need to meet the time sensitivity of a tenant. We were aware of the pipe from the get go. It's never been our insinuation that we weren't. That why we called it out and in the comprehensive memo to the City Manager well in advance of mobilization. We did not have elevations. We do not have material. But we knew the pipe was there, which is why we did the exploratory excavation in November 2022.

On the BCRB, Mr. David Clem objected to Mr. Corwin's classification of that decision claiming that the state appeal board did uphold the definition of work and that work must be physical and onsite, which is in contrast to the building inspector's own decision, and the matter was remanded back to the BCRA, to the city's code Board of Appeals. Mr. Clem held that the matter is ongoing. Responding to a question about jurisdiction from the Chair, Mr. Corwin expressed that the matter is over. The applicant is suing the city to reinstate the building permit. They did not appeal the State Building Code Board of Appeals decision and they have not communicated to the city on this matter other than to file a lawsuit so the building permit is expired and that went unappealed. They have sued the city and if their lawsuit is successful they're asking the court to reinstate the building permit.

The Chair then invited further questions from the Board, noting that he had reviewed the prior testimony at length in preparation and that after any remaining questions were asked and answered and after the public comment period, the Board would go into deliberation.

Vice Chair Ford Burley noted that one of the three issues in the extension application concerned the excavation permit for Route 10 filed with NH-DOT.

He asked for a review of the timeline beginning with August 20 - when XYZ became aware of the intent of the state to repave Route 10 and you wanted to coordinate with them - through to the present. Mr. Chet Clem noted this covered in a packet submitted to the Board at the last hearing. The Chair noted that the packet shows a gap between XYZ's correspondence with DOT in September 2020 until June of 2024 when your construction manager was in touch with NH-DOT, which is not explained. Mr. Clem explained that they had presumed the matter was resolved and that they were not aware that the state would require a third traffic study. The Vice Chair noted that in 2020 Chris Turgeon (NH-DOT) had contacted XYZ to "highly recommend that you contact us immediately to get the information process started so as to not delay construction." There was an exchange in which the applicant did not hear back from DOT. The Vice Chair questioned why the applicant hadn't followed up after his last email and suggested that if he were to have contacted the state and not received a prompt reply he would have assumed the email had gotten lost. He asked why the applicant had not filed for the excavation permit until July of 2024, three years later. Mr. Clem responded that in 2020 everything was stopped due to Covid, they had suspended construction on the building which was to start before the infrastructure with the building to take 16 months and the infrastructure 3 months to complete they had a year headstart to proceed on the building.

What informed the 2020 communication was hearing from the City the scope of paving plans and reaching out to coordinate for efficiency. XYZ had already had a long back and forth, including a 5-year period to get the initial approval.

To the Vice Chair's point on who had responsibility to follow up with whom, Mr. Clem noted having supplied substantial information to DOT to substantiate their position that they were in good standing and received no response.

As to the 2024 date for filing for the excavation permit, we began construction on the building in November of 2022 but were stalled until July 2023 and sought to recommence in August 2023. In the course of rebidding the project and in making the business decision on how to proceed we decided to build the infrastructure up front. It wasn't our desire and we sought amendments to avoid it, but we felt assured we could get it done. The building permit was revoked on February 1st (2024) and we spent months appealing to the City's BCBA which reached a decision in May. We felt then we had a greenlight to proceed and hadn't anticipated that the City would appeal to the state. And that's why we filed that [permit] then [2024] As to the communication with Mr. Turgeon "we provided information as we had numerous times before that we felt was the answer to the question posed."

The Vice Chair asked about the applicant's efforts to promote a TIF district. Mr. Clem recalled that this interest was introduced as part of an unsuccessful public/private partnership proposal during the original permitting process. On his coming back on board the project in 2019, having experienced a TIF while working in Quincy, MA, the partnership and TIF were raised again when the city had invited consideration of River Park for relocating the fire station. XYZ's investments to date created a shovel ready solution. Those negotiations didn't go anywhere. The interest was

raised again while Mr. Clem chaired the West Lebanon Revitalization Advisory Committee [WLRAC] as Lebanon was considering TIFs for downtown Lebanon and the Airport. While the committee was unanimous in its support, the City Manager wasn't initially supportive. XYZ found itself competing with the City on an RFP for a client seeking to locate in Lebanon, raising the attention of the state BEA and ultimately kindling the interest of the City. Negotiations across 2021 and 2022 weren't successful. The Vice Chair asked if the applicant felt these negotiations contributed to delays in completing the infrastructure work. Mr. Clem replied that they did not, but that the then open issue of the TIF prompted the City Manager to endorse the previous extension request of the Board. Given the City's terms, XYZ determined ongoing efforts to develop a TIF would be unsuccessful and the decision was made to proceed on their own.
The Chair invited questions from the other Board members. There were none. The Chair opened the public comment period.

Ms. Kathie Romano, Ward 1, speaking as a member of the public requested that the Board consider two issues: fairness in treating applicants coming before you and precedent. She noted that the project approved in 2010 still does not yet have a single building built. Given a number of extensions they currently have until 2040 to complete the project. She asked if it takes 16 years for the first building how long will it take for completing the others?

On the concern for precedent, she noted the Board has for good cause approved other project requests for extension in the Covid period. And in her time on the Board she could recall a few other applicants getting a second extension but no recollection of any other applicant requesting or getting a third extension. She cited River Park having received multiple extensions and suggested this would be the sixth - all without a single building.

She was concerned that approving multiple extensions will encourage other developers to have this same expectation. She also expressed concerns for changes to the phasing [more phases] or specifics [higher number of residential units, fewer parking space per residential unit, etc.] She expressed concern for a scenario where the expected use of a parking garage to offset a reduced number of on lot parking for the residential unit and where the garage construction followed the apartment construction, and where there were delays in completion or discontinuation of the project ahead of the garage construction that residents would be inconvenienced and the City burdened by the need for parking.

She shared her understanding that the current project is subject to land use regulations in place in 2010 and that it has five years to achieve substantial development of phase one in order to remain subject to those regulations rather than to the current regulations expected of new projects. If the Board grants the request and places no new conditions subjecting the project to current regulation and the project achieves completion of phase one it will result in a project that is a generation behind on its regulations relative to those newly approved.

The Board has three choices. Approve the request to facilitate completion in the next two years what the applicant has been unable to achieve in the past 14 years. Approve the request with conditions - such as: financial security and other things to protect the City from risks resulting from delays or incompletion. Or say "enough is enough" [deny the request]. Ms. Romano shared appreciation for how difficult the decision is and encouraged the Board to make a wise one.

No one else spoke and the Chair closed the public comment period.

The Chair offered the applicant an opportunity to respond or otherwise comment on the thoughts shared by the public.

Mr. Chet Clem perceived no question directed to him but offered that it has been their desire to build the project long ago and that the timeline of events shows why we are where we are today. The insinuation that we're just kicking the can down the road and that this is just another extension does not stand up in an analysis of what has transpired. I don't want to give that any further credence so my last comment to the Board is that "in response to issues outside of our control and delays beyond our control we filed a request for extension 98 days ago. On top of all the other delays that have been incurred this year and last year, our ongoing efforts to develop River Park for a prospective tenant who has been patiently watching and waiting and wondering 'what's going on here?' have been put on hold while we wait for this extension and the building permit matter to be adjudicated. And so I request and hope the Board can reach a decision this evening so that those efforts can proceed."

The Chair closed the public hearing and opened the deliberation.

Vice Chair Ford Burley opened by offering a framework for the discussion. The question in front of us to be focused on is: "Of the phase one improvements that are not yet complete - the reasons whether they are complete or not is outside of the control of the applicant." Mr. Kennelly further added the phrasing that there needs to be "good cause" to grant the extension.

Vice Chair Ford Burley gave a more fulsome presentation of his earlier framework:
"In determining whether to grant any requested extensions the board shall consider the totality of the circumstances including the extent and complexity of the conditions precedent and whether the need for more time is attributable to circumstances beyond the control of the applicant rather than to the applicant's neglect or failure to proceed with reasonable promptness."

The Vice Chair recapped the required improvements for completing Phase 1.

- Temporary parking on lots 2 and 3.
- Roadway sufficient to access lot 3.
- Southerly development entrance intersection.
- Extension of Crafts Ave. (complete)
- Installation of water and sewer lines necessary to support lot 1. (complete) Installation of other utilities.

Mr. Kennelly began by recapping the reasons he recalled being offered by the applicant: loss of the building permit, issues with NH-DOT, possibly the stormwater pipe - though he did not personally feel the pipe was significant. He noted that the NH-DOT requirement was not a full traffic study and just an updated memo which he perceived to be less of an imposition on the applicant. He commented that his first response from NH-DOT would have been to be immediately responsive: "OK, let's do it." While the applicant may have thought it was not necessary or felt its need was arbitrary, to Mr. Kennelly it seemed like a reasonable request to get and provide updated numbers and his instinct would have been to immediately get to it. On its late discovery in June, it may have been possible for the applicant to respond to it.

Vice Chair Ford Burley reminded the Board that the need was communicated in 2020.
Mr Kennelly acknowledged this and returned to his earlier scenario, where upon the late discovery it would have been possible to make an effort to satisfy the need by contacting a handful of service providers for the service, or for feedback on the time required to offer the service, to demonstrate a good faith effort to toward fulfilling that need.

He noted the applicant’s testimony suggested more of a focus on the building permit during this period. However, a developer of a project of this scale needs to be able to focus on multiple important things.

Vice Chair Ford Burley commented on the Building permit that was invalidated on February 1, 2024. The applicant had the option to simply reapply to sustain progress. The City had offered to apply the prior permit fee to any expenses associated with that. Mr. Kennelly noted there might be minor updates required to meet current code. Chair Faunce reminded the Board of the applicant’s prior testimony that they are engineering to current code and that any new effort on reapplying would seem minimal.

Vice Chair Ford Burley recalled from testimony from the September hearing the applicant citing a $4m cost for the required infrastructure improvements that they did not want to pay into without some guarantee of a building being on the other end of it.

Chair Faunce recalled additional testimony on this topic: that it was only in early 2024 that they decided they would commence work on the outstanding infrastructure, but that later in the testimony expressed reluctance to put $4m into the ground because infrastructure doesn’t pay rent. Chair Faunce noted that those are two different ideas occupying the same space that are not reconcilable.

The Chair continued noting the applicant’s response to the [9/9/24] question about what the applicant prioritized for early attention upon obtaining the extension into 2025. Actions cited included: efforts made by Mr. Chet Clem as chair of the WLRAC to encourage bringing the Advance Transit hub to River Park, support for necessary improvements to provide public access to the riverfront parcel transferred to the Friends of River Park in 2020, sending a memo and otherwise soliciting city officials to support an unsuccessful public private partnership, a successful proposal to shift ongoing maintenance responsibilities for River Park Drive, an unsuccessful effort to share in the cost of relocating the stormwater pipe. In total, these responses appear to suggest that early efforts were directed toward cost shifting or sharing for both initial development and ongoing upkeep. The responses suggested that the more pressing issue was about ‘how can I pay for this?’ and not ‘how do I get these things done as quickly as possible in order to satisfy my obligations for the level of development required to vest the project?’ which strikes me as an incredibly important milestone and a highly beneficial status to achieve where, regrettably, that did not seem to be the focus at that time.

The Chair shared his impression that things are where there are now because upon the previous extension efforts were not made more crisply at that time to focus on the doing rather than on the financing. This, in accumulation with later expressed testimony on the concerns about timing the infrastructure work relative to and proximate to progress on a building or having a relationship with a tenant all read as the applicant trying to make the project work in a financial space - which is not clearly in the Board's purview to consider as an excuse for an extension.

Vice Chair Ford Burley asked to express a question to Legal Counsel about the vetting of the motion supporting the Board's decision. The Chair fielded the question by advising that when appropriate the Board will identify by straw poll its intentions and then task staff with assistance from Council to develop a motion that conveys those intentions in a legally sustainable manner. The Board will continue the deliberation to its next public hearing session to support this process. The Chair invited the Board to return its focus to the deliberation and to share their perspectives (where they're at) and to engage in a vigorous exchange ahead of going around the room for the straw poll.

Vice Chair Ford Burley led off by acknowledging that some of the required work was completed. Yet each item has to be done. The sticking point is the southerly entrance.

The Chair felt the applicants found themselves in some struggle and difficulty and that between the apparent, and entirely explainable, near term and ongoing focus on managing costs relative to the revenues coming in.

The Chair found the communication with NH-DOT to be unsatisfactory, noting that he would not go from 2020 to 2024 on the assumption that everything was good, that that's what the paper trail and testimony indicate had happened, and that he hadn't heard anything tonight to help him think otherwise.

The Chair did not think the applicant has met the test that the issues faced were entirely outside of their control. They had opportunities as to where their attention was initially placed. They may have felt constrained by their finances, but that does not change the criteria. And there's a wide gap in their closure on one of the items they identified as beyond their control.

Vice Chair Ford Burley expressed agreement with the Chair's observations and conclusions. That the testimony did not clear the bar for being beyond control of the applicant.

Mr. Kennelly expressed: "yeah… I think we've got to consider the reasons put in front of us, that have been offered. We can conjecture all we want about other reasons, but these are what we've been offered."

Chair Faunce invited alternative perspectives on the testimony or additional background informing their perspective.

Mr. Rutter expressed an understanding of the basis for the decision. He recalled from the public comment that our options are to approve, deny, or find some kind of middle road. He invited comments on what middle of the road options the board may consider. He asked for comment on why the board, given the size and scope of the project, wouldn't want to grant an extension with consequences or conditions - such as that this is the last extension. Vice Chair Ford Burley advised that per counsel, we cannot categorically limit extensions.

The Chair suggested a hypothetical scenario as a response to Mr. Rutter's request. If the Chair was in the minority polling against the extension he would offer as condition of its approval the suggestion to impose some structure for more frequent and productive communications between the applicant and the staff. This would keep both parties in alignment and more likely to be in agreement as to the condition of the project, effectively ensuring a common understanding before going another year or two years and finding ourselves back here. The Chair again clarified that this was not his position and the idea was offered as an example of a response to Mr. Rutter's question.

Mr. Rutter asked if the Chair's suggestion was practical. The Chair suggested it was easier to imagine than to implement. Legal Counsel suggested it could be written as a condition of approval. Mr. Kennelly wasn't sure it would help though he thought it was the fundamental solution going way back.
The Chair clarified that his suggestion was offered to "model" a method for exploring one another's positions. He invited more of that.

Councilor Zook observed that the relationship could be unequally enforceable. <Legal Counsel appeared to corroborate that perspective.> The Chair returned the Board's attention to offering their perspectives and basis for them.

Vice Chair Ford Burley made a motion to extend the meeting by 20 minutes to conclude at 9:50pm. Mr. Rutter seconded. The vote was unanimous to approve the extension (5-0).

The Chair then continued, suggesting to the Board the possibility that he had led the group into an unproductive exercise. <Councilor Zook offered a comment but her microphone was off and it was inaudible/unusable from the Teams transcript or the recording.>

New Board member Mr. Stacy made a gesture taken by the Chair as a request to speak and the Chair confirmed that Mr. Stacy could not contribute information to the deliberation.

The Chair asked Mr. Rutter if he had something further to say, which he declined.

The Chair then asked the entire Board if there was any further comment ahead of conducting the straw poll. All Board members passed on this opportunity for further comment.

The Chair opened the straw poll and offered his inclination that the request for extension does not meet the standard. I've offered my rationale. I would be a likely no vote when we arrive at that decision.

Vice Chair Ford Burley concurred with the Chair's stance.
Mr. Rutter would vote to extend.
Councilor Zook said that she would not extend.

Mr. Kennelly was a no vote.

The Chair reflected back to the Board his understanding that there are four no responses [indicating no extension] and one yes response [favoring extension.]

The Chair made a motion to direct Staff and Counsel prepare a draft motion for the Board's review and decision one month's hence [11/12/24]. The Vice Chair seconded and the vote was unanimous (5-0)

The Chair extended the deliberation to the 11/12/24 meeting.

Ahead of moving to the next agenda item, the Chair reflected back what he understood to be the applicant's conditional interest in pursuing the administrative appeal based on the Board's decision on the extension request. He invited the applicant to confirm an interest in proceeding with the Board's consideration of the appeal of the administrative decision.

Mr. David Clem responded. The Board is correct in recognizing the tension between the department staff and XYZ Dairy. He noted that they have endeavored for the past 15 years to fulfill a project that had overwhelming support from the voters and our abutters and neighbors. We do not think that support has diminished. We have had to deal with issues beyond our control with respect to information shared by city staff to the state without our ability to have our engineers see it even though they stamped the original construction drawings. We have had a building permit challenged. In 40 years of doing this work I have not been able to build 4 million square feet by being difficult. I've been able to build some difficult projects because I am persistent. This project has had over 84 public hearings. I have built 4 million square feet that you can go and look it in 40 public hearings. I don't understand why the staff has not been willing to help XYZ Dairy in fulfilling the conditions laid out by a prior planning board, but this body, that we have endeavored diligently to pursue. We have spent a considerable amount of money in accomplishing that. It is not that we have not accomplished anything, I would add that we have facilitated 6+ acres of open space along the river that based on your decision tonight there is any way to get to it. We listened to our neighbors on Crafts Avenue who wanted modest single-family homes and we've managed to accomplish four of those and we hope the other two will commence. But those individuals who purchased those lots expecting to be in walking distance to a mixed-use environment now, no doubt, will have some doubt - and I think that is unfortunate. We have made significant improvements to the infrastructure in West Lebanon including paying for increased sizes of piping to accommodate further development in West Lebanon. I do take exception, considerable exception to the notion that we don't have the economic capacity which is why we're dodging and not fulfilling the conditions. That information or opinion is not based on fact. I'm not prepared to release personal financial statements in a public forum, but I assure you there are more liquid assets in the ownership of XYZ Dairy now than have been expended over the past 15 years to lead us to this point. So it is a bit insulting that someone would conclude that the reason we didn't pursue a certain course of action was because we didn't have the economic capacity to do it. That's damaging and untrue. We've endeavored to meet the needs of three tenants now. Two of whom we lost because of Covid and they moved on and one that we are still close to making a deal with who wants to stay here. The intellectual property for this tenant originated in Lebanon and they want to remain here. But if there isn't suitable life science space developed by someone who knows how to do it, they will join the long list of companies that have been founded here and moved elsewhere. So I do not understand why this Board takes the position that we haven't endeavored to fulfill the requirements. The issue of the NH-DOT came as a complete shock to us. We thought we had put it to bed because the person who originally reached out to us and asked for additional traffic studies wasn't aware of the traffic studies that we had already done and paid for, and the program hasn't changed. In fact, the assumptions mandated by those traffic studies have not been realized.

The Chair interjected that the question put to the applicant was whether we have business remaining in item 4C to do this evening and not a revisitation of what this Board could have or should have or would have done leading to the straw poll that it has just conducted. Expressing appreciation for the perspective offered, the Chair suggested to the applicant that it was not on the subject.

Mr. Chet Clem confirmed XYZ's interest in proceeding with the appeal of the administrative decision.

Chair Faunce said Item 3C would be discussed next, if the applicant feels it would be helpful, given that it is impacted by the previous discussion of Item 3D.

C. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot 7), zoned CB, IND-L and R-3: Appeal of administrative decision made on September 10, 2024, that conditions 1, 2, 4, 5, 7 and 14-4 of the River Park development Site Plan approval as set forth in the Notice of Action dated September 9, 2019, for PB2018-34-SPA, have not yet been satisfied and, consequently, that construction of Phase 1 may not commence. PB2024-40-AAD

Mr. David Clem said the Board has been correct and acknowledging that there is considerable tension between Staff In the planning and building Department and XYZ Dairy. He said they have endeavored to fulfil a project and deal with issues beyond their control in terms of what information is submitted by the City to the state without them seeing it or without our engineers being able to see it even though they stamped original construction drawings. He said this project has had over 84 public hearings and he does not understand why the Staff has not been willing to help. He said they have endeavored diligently to pursue accomplishing work. He said they have facilitated 6+ acres of open space on the river, built four single-family homes on Crafts Ave., made significant improvements to the infrastructure for West Lebanon. He said he takes exception to the notion that they don't have the economic capacity to complete the project and that that is the reason they're dodging and not fulfilling the conditions. He said that information or that opinion is not based on fact.

He said he does not understand why this Board takes the position that they have an endeavor to fulfill the requirements. He said the issue with NHDOT came as a complete shock to them – he said the person who originally asked for additional traffic studies wasn't aware of the traffic studies that they had already done and paid for, and the program hasn't changed, and the assumptions mandated by those traffic studies have not been realized.

Chair Faunce asked the applicant if it would be helpful to discuss Agenda Item 3C and Mr. Chet Clem said yes it would.

A MOTION was made by Richard Ford Burley to extend the meeting to 10:00pm. The Motion was seconded by Jeremy Rutter.

****The MOTION was approved (5-0).***

Mr. Corwin stated that Staff recommends that the application is complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION was made by Richard Ford Burley that the application of XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot 7), zoned CB, IND-L and R-3: Appeal of administrative decision made on September 10, 2024, that conditions 1, 2, 4, 5, 7 and 14-4 of the River Park development Site Plan approval as set forth in the Notice of Action dated September 9, 2019, for PB2018-34-SPA, have not yet been satisfied and, consequently, that construction of Phase 1 may not commence. PB2024-40-AAD is complete enough for the Planning Board to accept jurisdiction and commence review. The motion was seconded by Jeremy Rutter.

****The MOTION was approved (5-0).***

Mr. Corwin said per the September 9, 2019 Notice of Action, which he said technically was a site plan amendment but remains a controlling decision for the River Park development, any disagreement about the Conditions of Approval are appealable to the Planning Board. He said he had heard from the City Engineer that the applicant was intending to begin construction on Phase I infrastructure work as of July 1, 2024. He said typically, when a developer is beginning construction, they'll coordinate with Staff to ensure that all Planning Board conditions have been satisfied. He said since he had not heard from the applicant, he reached out to the applicant and provided the conditions of both the site plan approval and subdivision approval that he needed assistance with in verifying compliance. He said that was not a determination that the conditions haven't been met, but it was simply an appeal to the applicant to verify these conditions had been met. He said this is a request that is routinely made to developers. He said typically there is a response as a status update and communication back and forth to work out where the process stands.

He said he received no response from the applicant, but it was his understanding that the applicant was to begin construction on July 1st. He said he did receive a draft performance bond and security agreement from the applicant's Legal Counsel on or about June 25, 2024. He said that was a condition tied to the subdivision approval and Staff provided comments to those and sent those back on or about July 25.

He said he did not receive a response, but that was the only communication that Planning Staff specifically has had with the applicant relative to fulfilling conditions of approval. He said at the September 9th public hearing, the applicant seemed to suggest that they had satisfied the site plan conditions of approval necessary to proceed with construction of Phase I. He said he made it clear that, having heard no response to the to the routine questions that staff had asked earlier in the summer, the conditions had not been satisfied if no information was provided to substantiate compliance. He said now, a very routine request for an extraordinarily complex project has turned into an appeal, which is very unusual.

Conditions and actions by applicant to meet them
Mr. Ford Burley asked the following questions regarding the Conditions:
Condition 1 – The applicant shall submit final designs, including construction drawings of all infrastructure features associated with each phase, including proposed on- and off-site roadway and parking areas, sidewalk, water and sewer utilities, and storm drainage systems to the City Engineer for approval, which shall not be unreasonably withheld.

Mr. Ford Burley said the applicant said they had submitted updated drawings to the DPW and NHDOT on June 7, 2024. City Engineer Brian Vincent said, in June, they did receive an excavation permit application that included two plan sets: one was for off-site construction of Route 10 and the other one was for site development on the project property itself. He said both were focused on roadway and infrastructure construction.

Mr. Corwin said it was not conveyed that it was the applicant's intent to satisfy Condition 1 by submitting the plan set as part of their excavation permit application. He said Staff can now review the plan set for conformance and compliance with Condition 1.

Mr. Chet Clem said Condition 1 makes clear that the materials need to be submitted to the City Engineer for approval, so it's not relevant to the Planning Department. He said the June 7 submittal was the fourth time these plans have been submitted to the City. Mr. Ford Burley noted the Planning Department is responsible for ensuring the Planning Board's Conditions of Approval have been met so it needs to know the plans have been submitted. Mr. Clem said the timing of the request overlapped with the process of completing the performance bond security agreement, which became their focus. He said it seemed the requirement had been met because the plans had been submitted three times previously and to the City Engineer in June. Mr. Corwin said it is not clear why the applicant couldn't clarify that point as a matter of courtesy. He said a simple explanation would have avoided the Board and all parties spending time on this.

Mr. Ford Burley said the discussion may have to be continued to another meeting because time is running out for this meeting. Mr. Clem said they have a tenant for whom they have everything lined up to continue to build for, so building is imminent. He said the only thing keeping the building from being built are the issues that they have been dealing with all year. Mr. David Clem said they hope the issues will be resolved in an evidencia hearing in Superior Court on Thursday.

Mr. Chet Clem asked if there are any conditions that Staff believes have not been met. Mr. Corwin said the purpose of this hearing is for the Board to make a determination as to whether the applicant has complied with the conditions. He said the applicant will not respond to Planning Staff, so they are here now for the Board to make its determination.

A MOTION by Richard Ford Burley that discussion of the application of XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot 7), zoned CB, IND-L and R-3: Appeal of administrative decision made on September 10, 2024, that conditions 1, 2, 4, 5, 7

and 14-4 of the River Park development Site Plan approval as set forth in the Notice of Action dated September 9, 2019, for PB2018-34-SPA, have not yet been satisfied and, consequently, that construction of Phase 1 may not commence. PB2024-40-AAD be continued until the next Planning Board meeting.

The motion was seconded by Patrick Kennelly.

****The MOTION was approved (5-0).***

Ms. Romano and Mr. Stacy rejoined the meeting as participating members of the Board.

1. **OTHER BUSINESS**
   None

2. **APPROVAL OF MINUTES**
   September 09, 2024, September 16, 2024, September 23, 2024, September 30, 2024

Mr. Ford Burley said there was not enough time remaining to review and approve the minutes from the September meetings.

A MOTION was made by Richard Ford Burley that the approval of minutes for the September 09, 2024, September 16, 2024, September 23, 2024, and September 30, 2024 Planning Board meetings be considered at the next Planning Board Work Session meeting. The motion was seconded by Andrew Faunce.

****The MOTION was approved (7-0).***

Mr. Corwin provided edits to the minutes to the Board members for review and consideration prior to the next Work Session meeting.

3. **ADJOURNMENT**

A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:57pm. The motion was seconded by Andrew Faunce.

****The MOTION was approved (7-0).***

The meeting was adjourned at 9:57pm.

Respectfully submitted,
Paula Roux
Recording Secretary