FINAL

LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
MONDAY, FEBRUARY 24, 2025 6:30PM

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

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1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:45pm following the arrival of a quorum of Board members. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

Ms. Romano said she was attending remotely because she was out of town. She said no one was in the room with her while attending the meeting.

2. NEW BUSINESS

A. Review Draft Update of Master Plan Chapter 6 (Economic Development)

Mr. Dan Nash (Chair of the Economic Development Committee) and Deputy City Manager David Brooks gave an overview of the changes to the chapter which were included in the agenda packet materials for this meeting.

The group discussed changes that have taken place in Lebanon's economic environment since 2012, when the chapter was written. The Planning Board members suggested the following edits/additions:

- Include GEOKON as a large employer in the City
- Changing age profile of residents in the City should be a consideration
- More focus on Colburn Park in Building Community Section – with particular emphasis on making better use of Soldiers Memorial Building as a museum
- Mention Education Centers

- Add updates on changes to Lebanon Airport that have occurred since 2012
- Mention advances to hiking trails / trail network

[At 6:55pm, Ms. Zook arrived at the meeting.]

- New zones (ex: MC2) should be added
- Add goal to make Alice Peck Day (APD) Medical Center reachable via public transit
- Add discussion/reference to the issue of affordability of living in Lebanon
- Explore the benefits/impacts of Lebanon as a regional center of commercial resources
- Add "IntraCity bus service" to the transportation access section

Mr. Brooks noted that some of these ideas are discussed in other chapters of the Master Plan but said the committee would review the Board's suggestions. The group also discussed how Impact Fees are calculated, as well as whether Lebanon's commercial base eases the tax burden for residents. Mr. Brooks said perhaps the chapter should include a reference to how the burden would be much heavier if Lebanon were not home to as much non-residential real estate. Mr. Nash noted that the law needs to be changed to facilitate large projects (such as the next agenda item (Item 3A) so both the City and the developer do not have to struggle to complete projects.

A MOTION was made by Patrick Kennelly to schedule a Public Hearing to adopt the updated draft of Master Plan Chapter 6 (Economic Development) as presented and discussed at the March 24, 2025 Planning Board Work Session at 6:30pm in City Council Chambers. The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:
Voting For –Ms. Romano, Ms. Zook, Dr. Rutter, Mr. Faunce, Mr. Kennelly, and Ms. Appleton
Voting Against – None

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

3. PUBLIC HEARING ITEMS

A. XYZ Dairy, LLC & Lyme Properties 2, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & 7), zoned CB, IND-L and R-3: Applicant requests a two (2)-year extension of the River Park 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). PB2025-05-EXT – Continued from February 10, 2025

Ms. Romano recused herself from the discussion. Chair Faunce said all remaining Board members will participate in the discussion and any voting on motions.

Chair Faunce read the following introduction:

The Planning Board voted to deny XYZ Dairy's request for a 2-yr extension of the River Park Site Plan on November 12, 2024. XYZ did not exercise its option to appeal this decision, which in most instances settles that matter and precludes further consideration by the Planning Board.

The Superior Court subsequently provided injunctive relief by extending XYZ's phase 1 deadline by eleven months and two days (the amount of time between the loss of the building permit and *the ruling.) The Court disagreed with the expectation that a developer should continue progress on infrastructure work (the completion of which was the singular deliverable for completing phase 1) without a building permit. It also restored the building permit.*

The Board, as advised by Counsel and with new knowledge of the subsequent application doctrine, held a February 11, 2025 "limited public hearing" and by majority vote accepted that the Superior Court's injunctive relief for phase 1 and opinion on the permit was a material change sufficient to warrant a new hearing on the extension request. This, and the flexibility and courtesy of all involved parties, brings us together tonight rather than in the March public hearing session.

Mr. David Clem's February 10, 2025 letter in tonight's application packet lays out a similar timeline and basis for how the Board could arrive at the decision it made in the limited public hearing.

Mr. Clem also, in what seemed to be an alternative justification for the new hearing, offered an opinion on the Board's process in the original extension hearing. While the Board values applicant feedback to improve its effectiveness, some of the comments or claims invite context or correction for the record.

1. *It is the applicant's responsibility to align the various proceedings he sets in motion. Were it the applicant's wish to have the court decision available as evidence in the original extension request, the applicant could have made arrangements to support that. At its first opportunity, the Board agreed that the court's decision was a materially significant fact and justification for a new extension hearing.*
2. *On the role of Staff: it supports the Board with relevant regulatory or historical context and with conditions that could apply to a decision that the Board may make. These are publicly available in the staff memo. The Board based its original extension decision on the regulatory basis for granting extensions and on the evidence presented by the applicant which it found lacking.*
3. *The Board deliberates and makes decisions in public - as it did in this case. In its October public hearing meeting, the Board deliberated, conducted a straw poll, and assigned Staff and Counsel the task of developing a legally sound motion that could be voted on in the November public hearing, a process I introduced and explained earlier in the meeting in the applicant's presence. The Board met with Counsel prior to that following public hearing meeting to ensure its proper understanding of the motions' legal context. Mr. Clem's less complete description of the events may inadvertently suggest to the public that the Board deliberates and makes application decisions in private, which it does not.*

My comments are simply offered for the record. They, and the document to which they refer, are not material to the new extension request before the Board - which I recommend be our focus for the balance of our time together. Mr. Clem concludes his letter generously by inviting good faith and trust. In that same spirit, I encourage that we all take the opportunity each occasion affords to put our most thoughtful self forward.

Accordingly, and if it represents no unusual or unwelcome imposition on the applicant, I would like to move this hearing forward in the following sequence:

Brief opening statement by the applicant.

1. *Clarification from the applicant on what is asked for in the extension request (start/end for each phase.)*
2. *Testimony from the applicant to support a decision by the Board to extend, answering questions to the Board's satisfaction*
3. *Deliberation by the board to determine via straw poll if there are sufficient votes to deny that might make the remaining steps moot. If not, the board returns to the hearing, delaying the formal vote pending completion of the remaining steps.*
4. *Introduction of the updated Phasing Plan by the applicant to include:*
    1. *improvements per phase*
    2. *deadline to post security per phase*
    3. *deadline for completion of improvements subsequent to security posting*
    4. *date by which a building permit must be obtained to prevent voiding the phase*
5. *Applicant Recommends (for approval by Board) the Plan Set of Record (most recent by default?)*
    1. *Board attests that it has reviewed and accepts the recommended approved plan set*
    2. *The Board may rely on Staff to the above ends.*
6. *Board determines and includes additional conditions of approval*
    1. *Impact Fees*
    2. *Board/Staff/hybrid roles re: compliance.*

Mr. David Clem and Mr. Chet Clem (XYZ Dairy and Lyme Properties) were present on behalf of the applicant. Mr. Chet Clem asked that the passing of Mr. Duff Cummings, abutter to the project and long-time participant in the progress of this project, be acknowledged. Chair Faunce called for a moment of silence.

Mr. David Clem said he did not receive the Staff memo included in the agenda materials for this meeting, but he said he saw it online. Mr. Chet Clem noted that an email with the meeting agenda was sent to them from Staff on Thursday of last week, but neither he nor Mr. David Clem had read it until today.

Mr. David Clem said he submitted the following materials as of Thursday, February 20, for the Board to review prior to this meeting:

- An overview of the Planning Board’s policies
- A slide show of a walking tour of West Lebanon

He said he did not submit a phased schedule because no changes were made to the schedule that was previously provided. Chair Faunce asked if he had a revised phased schedule with updated dates, presuming the Board were to grant the two-year extension being requested. Mr. Chet Clem said all the dates on the previously submitted schedule should be moved forward two years.

The group discussed the Superior Court’s ruling to grant an 11-month and two-day extension for Phase I of the schedule at length. Ms. Appleton asked why the two-year extension was being requested if the judge has already given the project Phase I an eleven-month and two-day extension. Chair Faunce noted it may not be as easy as adding two years to the phase dates previously submitted and that the phases may “collide” in the future if the phasing is not properly scheduled.

Mr. David Clem said the rationale of the two-year period was to allow each previous phase to be absorbed to have the economic reality of advancing architectural, engineering and design documents consistent with the regulations, secure a building permit, and contend with possible delays resulting from seasonal weather conditions. He also said he did not see the logic of planning a second phase if a first phase was not successful.

Chair Faunce suggested a straw poll be taken among the Board members to ascertain whether it would be inclined to grant the two-year extension. Attorney Decker suggested that the public hearing be closed temporarily to conduct the straw poll and then reopened.

At 8:16pm, Chair Faunce closed the public hearing.

The Board members discussed whether they felt the two-year extension should be granted. Dr. Rutter noted that the Board members seemed to agree to the extension, but they did not have an updated table of dates for the phasing or a recommended proposal to consider while making the decision. The group discussed whether it could make a decision without updated materials at length.

At 8:22pm, Chair Faunce reopened the public hearing.

Mr. David Clem said the phases with specific dates had been sent to Staff as of September 5, 2024, and said he did not know if it had been shared with the Board members. Mr. Corwin stated all materials provided by the applicant are provided to the Board. He said it is not Staff's application; it is the applicant's application. He said nothing was edited or added to the documentation. Mr. Chet Clem said he found two communications from last year that speak to the dates that need to be changed, and both have been forwarded to Mr. Corwin.

At 8:27pm, Chair Faunce called for a recess. At 8:36pm, the meeting resumed.

Chair Faunce said the Board did receive the updated schedule sent by Mr. Chet Clem. He said the schedule appears to indicate the Phase I infrastructure, for which the completion deadline was originally 12/2025, has a new proposed completion date of 1/2/27. He noted that that timeframe of two years is longer than the 11 months and two days of injunctive relief that was offered by the court. He suggested the Board consider granting a single-year extension of the phasing plan presented the Board with suitable edits to the new completion deadlines to that effect. He suggested the hearing be continued to the next Planning Board meeting to give the applicant time to submit a more fulsome and thoughtful presentation of what the request is and why it is that it should be two years for something that has put the applicant behind by 11 months. Mr. Clem said the request for the two-year extension has been the precedent of the extensions in this case on this site from the beginning.

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Chair Faunce opened the public comment portion of the meeting.

Mr. Robert Moses (Ward 3) said he felt this was a wonderful project and he hoped, after all the lawsuits and acrimony, for a fresh start to the progress on the project. He recommended the Board grant the two-year extension from the date of the court date.

Ms. Joan Townsend (Ward 2) said she did not understand what the hold-up is and said the Board should put the past behind them and grant the two-year extension. She said the applicant is not asking for a tax rebate or a discount. She said the project has been approved and is going to help Lebanon and the Board should approve it. She said it is important for this project to move forward.

Ms. Rachel Townsend (Ward 2) said the City Council gives maximum time to other applicants to complete their projects, and she does not understand why the Planning Board has been arguing over two years. She said there is a very clear indication that taxes are going up in the next three or four years. She said Lebanon needs projects that are completed and taxable and the City cannot keep putting these kinds of roadblocks in the ways of getting things accomplished. She said she does not understand the delay in giving the applicant two years when this is something Lebanon will greatly benefit from.

Mr. Steve Whitman (Ward 2) said Lebanon needs the taxes that will be raised from this project and that West Lebanon needs this project.

Ms. Kathie Romano recommended that, if the Board plans to vote to approve any kind of extension, it should get exact dates of completion for each phase of the project so there is no confusion in the future as to what the end dates are. She said, to be clear, the phases of the project were originally approved 15 years ago. She recommended the Board be given a document that lists the updated phases with specific closing dates. She said it is the responsibility of the Planning Board to protect the city's interest and there have to be documents that state specifically what is being agreed to before you can give someone approval to do something you know nothing about.

Ms. Kathy Shelton Clem said the Planning Board does not deserve everyone’s patience or respect. She said it does not deserve this project. She said they need to get their act together and get staff together and move the project forward or stop the whole thing. She said she doesn’t understand why Lebanon is on the wrong side of this project - Lebanon should be in support of it. She said they keep asking the applicant to submit the same things over and over because the planning committee changes.

Mr. Vincent suggested the phasing be planned with December 2024 as the beginning of the two-year extension with the following phase end dates: Infrastructure: 1/2/27, Phase I: 12/31/28, and Phase II: 12/24/30. He said perhaps the proposed extension discussed on September 5, 2024 would align with the suggestion of extending the time from the court’s decision by about two years.

Dr. Rutter noted for members of the public who were present that the end date of Phase 6 is 2044. He said the point being made that one additional year beyond what was granted by the court is not going to make a huge difference in the progress of this project. He said the phasing schedule that has been submitted is a sketch plan on half a sheet of paper and is not in the typical format for such a complex project. He said no one seems prepared to be able to provide the Board with a more complete schedule. He asked how the Board can be expected to make a decision without complete information.

Chair Faunce asked the Board members informally if they would approve an extension, and said it appears to be a consensus that the two-year extension should be granted. He suggested the public hearing for the formal vote be extended to the March 17, 2025 meeting. He suggested that an updated phasing plan and a final plan set be contingent upon that hearing.

The group discussed at length what documents it would need to make a decision to grant the extension. They agreed they need an updated phasing plan and a final plan set.

Mr. Corwin said there are five different plan sets referenced in the draft security agreement that the applicant's legal counsel provided to Planning Department Staff in June 2024. He said there should be one plan set. He said Staff does not have knowledge that there are five plan sets. He said the approved plan sets are identified in the 2018 Notice of Action but are not what's identified in the proposed security agreement. He said if the plans identified specifically in the 2018 Notice of Action have been changed or updated, those changes have not been reviewed by the Planning Board and will need to be approved. He said the plans need to conform to the September 9th 2019 approval. He said if the applicant wishes to amend the plans, they can bring that to the Planning Board and do so.

A MOTION was made by Jeremy Rutter to extend the meeting to 9:40pm. The MOTION was seconded by Andrew Faunce.

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

Chair Faunce closed the public comment portion of the meeting.

Chair Faunce clarified that the applicant should submit the following materials one week prior to the March 17, 2025 Planning Board meeting:

- An updated phasing plan (that presumes the two-year extension will be granted)
- An approved plan set (if different than the plan referenced in the September 19, 2019 Notice of Action

Attorney Decker stated the Planning Board has articulated the additional information required to entertain a final motion to grant the two-year extension. He said the Board is going to continue the public hearing until March 17, 2025 with the expectation that the applicant will appear at that public hearing with the additional information that has been requested. He stated that will enable the Board to undertake a motion.

Mr. Reichert suggested the requested information be submitted prior to the meeting so the Board members have a chance to review it before the meeting. Chair Faunce asked the applicant if the materials could be submitted one week prior to the March 17, 2025 meeting. Mr. Clem said he was not going to answer that question until he understood and saw in writing what the motion is for this meeting.

Mr. Clem said the site plan hasn't changed and has been recorded and signed. He said the security agreement references construction documents for the Phase I infrastructure that occurs in the City's and the State's right of way, which he said have been presented to the various departments and signed off by their consultants. He said he could provide a statement from their engineers who stamp those drawings as to when they provided that information to appropriate

Staff and the Planning Board.

A MOTION was made by Jeremy Rutter to extend the meeting to 10:00pm. The MOTION was seconded by Andrew Faunce.

Roll Call Vote:
Voting For –Ms. Romano, Ms. Zook, Dr. Rutter, Mr. Faunce, Mr. Kennelly, and Ms. Appleton
Voting Against – None

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

Mr. David Clem said he would not be available on March 17, 2025 for the meeting.

Attorney Decker said, for the record, the Staff memo included in the agenda materials itemizes the following application deficiencies:

- As to #3, in the staff memorandum "Application Deficiency: The Board generally expressed and requested that the applicant provide the information set forth in Part 3C of the staff memorandum:
  The applicant shall submit with the application of proposed phasing. The phasing schedule shall include the following information for each Phase I, II, III, and IV. That was one item that the Board was concerned about receiving in three weeks and being able to have as part of the record before granting the two-year extension.

- As to Item in Staff memo "Clarification of Approved Plan Set:" The applicant stated that the only plan set that the applicant insists is the correct and legal one is the one that has been approved by the Notices of Action and the extensions based on that representation

- With respect to whether the Board or Staff is going to make determinations about compliance, that is not something that requires the applicant's input. Therefore, if a decision were not to be made tonight on the application, there would be time to discuss that further at a future meeting.

A MOTION was made by Andrew Faunce to extend the Public Hearing of XYZ Dairy, LLC & Lyme Properties 2, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & 7), zoned CB, IND-L and R-3: Applicant requests a two (2)-year extension of the River Park Site Plan approval (PB2010-25-SPR) to the March 17, 2025 Planning Board meeting at 6:30pm in City Council Chambers. The MOTION was seconded by Patrick Kennelly.

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

Ms. Romano rejoined the meeting.

Chair Faunce noted that the remaining agenda items would not be addressed because time was running short. Mr. Reichert asked the Board to consider **Study Item 5A** because a resident, who is greatly impacted by the item, has been waiting to discuss it and the Planning Department Staff need the Board's decision for documents due by 11am tomorrow. He also said **Study Item 5B** should be discussed because it impacts the project for which applicant XYZ Dairy is requesting the two-year extension discussed earlier at this meeting.

A MOTION was made by Andrew Faunce to extend the meeting to 10:15pm. The MOTION was seconded by Kellen Appleton.

Roll Call Vote:
Voting For –Ms. Romano, Ms. Zook, Dr. Rutter, Mr. Faunce, Mr. Kennelly, and Ms. Appleton
Voting Against – None

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

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5. STUDY ITEMS

A. Review & Comment on Proposed Zoning Map Amendment: Rezone 24 Labombard Rd (Tax Map 51, Lot 12) from IND-L/RL-3 to GC-1/RL-3

Mr. Reichert explained that, during the Route 120 Study, a surrounding area had been rezoned from INDL to GC-1 to broaden development opportunities. He said resident Margaret Hatch's property, located at 24 Labombard Rd, had been determined erroneously to be fully on Conservation easement and had therefore not been included in the rezoned area. He said three acres of that property are developable, so the request for the two-year extensionthe resident is asking that the rezoned GC-1 area be extended to include her property so that she can sell the developable portion.

A MOTION was made by Andrew Faunce that the Lebanon Planning Board recommend that the Lebanon City Council, in accordance with the City of Lebanon Zoning Ordinance, Article 10, Section 1000.3, approves the proposed Zoning Map Amendments as described in the January 9, 2025 letter from Margaret Hatch to the Planning Board. The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:
Voting For –Ms. Romano, Dr. Rutter, Mr. Faunce, Mr. Kennelly, and Ms. Appleton
Voting Against – None

****The MOTION was approved (5-0, with Ms. Zook abstaining from the vote)***

B. Review & Comment on Proposed Zoning Ordinance Amendment: Adding Research Laboratory to CB District Table of Uses (Section 306.2)

Mr. Reichert said Mayor Tim MacNamara has requested (on behalf of XYZ Dairy) that the term "Research Laboratory" be added to the Table of Uses for the CBD zoning district. He said it was discovered during testimony in Superior Court, as XYZ Dairy described the nature of the building that they are proposing to build, that the use code that they had chosen to put into their zoning request was deficient for them to be able to build the building they planned to build. He said Mayor MacNamara has asked Staff to offer a Use Code change and a definition of Research Laboratory. He said this new definition can be added to the Use Codes of not only CBD zoning district but also several other districts.

He said XYZ Dairy has not attended any public hearings concerning this subject matter, which he said was put forth because Staff identified a potential problem with XYZ's project and took action to solve it.

The group discussed whether to make "Research Laboratory" a permitted use or make it a Conditional Use. Mr. Reichert defined *medical research facility* as "a medically related research laboratory, which may, as a subsidiary function engage in manufacture of products within the following standard industrial classifications: biological products, medicinal chemicals, pharmaceutical preparations, optical instruments and lenses, and surgical and medical instruments." He said, currently, the only district in which a medical research facility is permitted is an MC1 district, which is at Dartmouth Medical Center. Ms. Romano noted perhaps, because this is a such a new definition that the Planning Board has not had before, keeping it as a Conditional Use, not knowing what that might involve, is probably a good idea.

A MOTION was made by Andrew Faunce that the Lebanon Planning Board recommend that the Lebanon City Council approve the addition of "Research Laboratory" as a Conditional Use for GB, LD, GC, and GC-1 Zone Districts as presented in the February 24, 2025 Planning Board meeting agenda materials. The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:
Voting For –Ms. Romano, Dr. Rutter, Mr. Faunce, Mr. Kennelly, and Ms. Appleton
Voting Against – None

****The MOTION was approved (5-0, with Ms. Zook abstaining from the vote)***

7. ADJOURNMENT

A MOTION was made by Kellen Appleton to adjourn the meeting at 10:14pm. The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:
Voting For – Ms. Romano, Ms. Zook, Dr. Rutter, Mr. Faunce, Mr. Kennelly, and Ms. Appleton
Voting Against – None

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

The meeting was adjourned at 10:14pm.

Respectfully submitted,
Paula Roux
Recording Secretary