

FINAL

**LEBANON PLANNING BOARD**  
**Council Chambers, City Hall**  
**Monday, January 14, 2019**  
**6:30 PM**

**MEMBERS PRESENT:** Chair Keith Davio, Karen Zook (Council Representative), Sarah Welsch, Bruce Garland, Gregory Schwarz, Matthew Hall, Kathie Romano, Matthew Cole (Alt.)

**MEMBERS ABSENT:** Joan Monroe, Laurel Stavis and Jim Winny (Alt. Council Representative)

**STAFF PRESENT:** David Brooks (Planning and Zoning Director), Tim Corwin (Zoning Administrator)

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**1. CALL TO ORDER – Chair Davio called the meeting to order at 6:30 PM.**

For the purpose of this meeting, Ms. Stavis will replace Ms. Romano and Mr. Matthew Cole will replace Ms. Monroe.

**2. ELECTION OF OFFICERS (Chair & Vice Chair): The elections took place at the end of the meeting.**

Mr. Brooks asked for nominations for the position of *Chair of the Lebanon Planning Board for 2019*.

*Ms. Welsch nominated Keith Davio. Hearing no further nominations, nominations were closed. The nomination of Mr. Davio was seconded by Mr. Garland.*

*\*Mr. Davio was elected 7-0-1. Abstaining: Mr. Davio*

Mr. Brooks asked for nominations for the position of *Vice Chair of the Lebanon Planning Board for 2019*.

*Ms. Welsch nominated Mr. Garland. Mr. Brooks noted the nomination and called for any other nominations.*

*Mr. Davio nominated Matthew Hall. Hearing no further nominations, nominations were closed.*

*The nomination of Mr. Garland received 5 votes in favor.*

*The nomination of Mr. Hall received 2 votes in favor.*

*\*Mr. Garland was elected Vice Chair.*

**3. APPROVAL OF MINUTES:**

**A. August 21, 2018-CIP**

Amendments:

Page 3, Line 20: change “Bride” to Bridge”; Line 21: change “Miles” to “Mile.

*A MOTION was made by Mr. Garland to approve the August 21, 2018-CIP Minutes as amended. Seconded by Ms. Romano.*

*\*The MOTION passed (8-0).*

**B. November 26, 2018**

*A MOTION was made by Mr. Garland to approve the November 26, 2018 Minutes as written. Seconded by Matthew Hall.*

*\*The MOTION passed (7-0-1). Ms. Welsch abstained because she was not present at this meeting.*

**C. December 10, 2018**

Amendments:

Page 2, Line 26: strike “to”; Page 5, Line 25: strike “December 20, 2018; Page 7, Line 28: change “Three” to “Two”; A couple of other grammatical changes.

***A MOTION was made by Mr. Garland to approve the December 10, 2018 Minutes as amended. Seconded by Ms. Welsch.***

***\*The MOTION passed (8-0).***

**4. NOTICE OF REGIONAL IMPACT**

The following applications were received by the planning department on or before January 14, 2019.

**HEMOCRAFTERS, LLC, 40 HARDY HILL ROAD (TAX MAP 80, LOT 28), ZONED RL-1 & RL-2:** Request for approval of a proposed 3-lot minor subdivision. #PB2019-02-MIN  
The Planning Office recommends that this application does not have the potential for regional impact

The Planning Office recommends that this application does not have the potential for regional impact.

**BASIC HOLDINGS LLC, 5 & 11 OAK RIDGE ROAD, (TAX MAP 4, LOTS 5 & 6, ZONED R-3:** Request for Preliminary Review of a Major Subdivision, Site Plan Review, and a Conditional Use Permit pursuant to Sections 501.1 & 501.2 of the Zoning Ordinance for a proposed Planned Unit Residential Development (PURD) containing 21 residential units together with related site improvements and amenities. # PB2019-03-PMAJ.

The Planning Office recommends that this application is unlikely to have the potential for regional impact.

***Mr. Matthew Hall MOVED that the Lebanon Planning Board finds the above described applications do not have the potential, or is unlikely to have the potential, for regional impact.***

***The MOTION was seconded by Gregory Schwarz.***

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

**5. COMPLETENESS REVIEW OF NEW APPLICATIONS**

***Mr. Garland Moved that the Planning Board find the following applications are complete enough to accept jurisdiction and commence review:***

**CHALOUX PROPERTIES, LLC AND KLUBIO, LLC, 0 LABOMBARD ROAD, LEBANON (TAX MAP 51, LOT 14) ZONED IND-L**

**XYZ DAIRY, LLC, 167-197 NORTH MAIN STREET (TAX MAP 44, LOTS 3, 7, AND 21-30; AND TAX MAP 58, LOTS 27, 89-99), ZONED R-3, IND-L AND CBD**

**PATCH FOREST, LLC, 0 MERRY LANE (TAX MAP 194, LOT 25), ZONED RL-3**

As noted in the agenda packet staff memo, the applicant was asked to provide a written application for waivers, and they have done so. Copies were provided to the Board. Also, as noted in the staff memo, advise from legal counsel was to consider all property owners within the original subdivision to be abutters for purposes of this public hearing. Staff has only notified the immediate abutters, so their recommendation was that this public hearing be held, hear testimony, ask questions, and as much as

possible complete the hearing, but then leave it open for the January 28, 2019 Planning Board meeting to allow any additional abutters, whom staff will notify this week, an opportunity to participate.

*Seconded by Gregory Schwarz.*

*\*The vote on the MOTION passed (7-0). Mr. Cole recused himself from the Patch Forest, LLC discussion.*

(Note: The following Public Hearing items were taken out of order in the agenda sequence. Item 6C was discussed first; Item 6B remained the same; Item 6A was discussed last. However, all items, for discussion/minutes, remain in their original sequence as listed in the agenda packet.)

**6. PUBLIC HEARINGS**

**A. CHALOUX PROPERTIES, LLC AND KLUBIO, LLC, 0 LABOMBARD ROAD, LEBANON (TAX MAP 51, LOT 14) ZONED IND-L:**

Request for a Site Plan Review to construct a new 26,030 square foot biotech facility with associated parking, utilities, sidewalks, and drainage infrastructure. #PB2019-01-SPR

(NOTE: All information pertaining to this project, including maps, were included in the agenda packet for this meeting.)

Mr. Klaus Lubbe, owner of Bio X Cell (Chaloux Properties, LLC & Klubio, LLC), came before the Board regarding the above and briefly described the property's history and the proposed request.

Mr. Adam Morse, Engineer (Engineering Ventures), reviewed the new Bio X Cell facility Site Plan maps with the board, which included a cover sheet, existing conditions, site legend and notes, erosion control and demolition plan, site grading and drainage, utility plan, truck turning plan, site details, water and sewer details, stormwater details, erosion prevention and sediment control details, and the level one floor plan building elevations. Driveway and lighting placements were also discussed.

Mr. Paul Simmon, Landscape Architect (Park Architecture) described, in detail, the landscaping plan as depicted on map L2.0 of the agenda packet.

Chair Davio opened the public hearing. Hearing no comments from the public, the public hearing was closed.

***Matthew Hall MOVED that the Lebanon Planning waive Section 6.2.E.2 – requiring parking area to be delineated by curbing - for the application of CHALOUX PROPERTIES, LLC & KLUBIO, LLC, #PB2019-01-SPR.***

***The motion was seconded by Mr. Cole.***

***\*The vote on the MOTION was (8-0).***

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**3. MOTION TO APPROVE THE APPLICATION:**

**Date:** January 14, 2019

***Sarah Welsch MOVED that the Lebanon Planning Board APPROVE the application of CHALOUX PROPERTIES, LLC & KLUBIO, LLC for Site Plan Review to construct a new 26,030 sq. ft. biotech facility with associated parking, utilities, sidewalks, and drainage infrastructure on lands at 0 Labombard Road, Tax Map 51, Lot 14, Lebanon, NH, in the IND-L zone, #PB2019-01-SPR, as shown on a set titled "Bio X Cell – New Facility, Pad 3 – Labombard Road" prepared by Engineering Ventures, PC, dated December 24, 2018, EV #18427, including any and all submissions and testimony provided for and during the public hearing, with the following conditions:***

**Conditions to be Satisfied Prior to Application for a Building Permit**

1. *The applicant shall schedule and hold a pre-building permit application meeting with the Planning Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process.*
2. *The applicant shall provide additional information as required by the Department of Public Works for the purpose of calculating water and sewer flows, the amount of any required utility connection fees, and to verify whether the application is subject to Chapter 181 of the City Code (Water and Sewer Main Extensions). Such additional information shall include, but is not limited to, a description of the proposed use, an Industrial Waste Survey, and plumbing plans.*
3. *The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows per Chapter 181.*

**Conditions to be Satisfied Prior to the Issuance of a Building Permit**

4. *The applicant shall continue working with the Department of Public Works to revise the drainage plans to the satisfaction of the City Engineer. Such revisions shall include, but not be limited to, addressing the comments outlined in the attached "Staff Review Comment Sheet" dated 1/3/19.*
5. *The fire protection systems shall connect to the municipal fire alarm system, and the plans shall be revised to depict the conduit, to the satisfaction of the Fire Department.*
6. *The applicant shall revise the lighting plans to demonstrate compliance with §6.7.3.a of the Site Plan Review Regulations, to the satisfaction of the Planning Department.*
7. *The applicant shall provide two complete sets of revised plans to the Planning Department depicting the changes required in Conditions #4, #5, and #6 above, to the satisfaction of the Planning Department and the Department of Public Works.*
8. *The City shall retain the services of an independent third-party inspector, for which the applicants shall be responsible for all inspection fees related to the construction of on-site drainage improvements, sewer lines, and water lines, and all work in the City's right-of-way (water, sewer, road, drainage), in accordance with Chapter 181 of the City Code and §8.3 of the Site Plan Review Regulations. The applicant shall provide funding for inspection services in a form acceptable to the City.*
9. *The applicant shall obtain a Driveway Permit from the Department of Public Works for the installation of a new driveway prior to any work in the right-of-way.*
10. *The applicant shall obtain an Excavation Permit from the Department of Public Works for any site work in the public right-of-way prior to any work in the right-of-way.*
11. *The construction of a building shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on August 13, 2018. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for five years from the date of approval; however, any building*

*permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.*

*12. All water and sewer fees shall be paid.*

**Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy**

*13. All proposed drainage work shall be constructed pursuant to the City's standards. Third-party engineer inspection reports and as-built drawings provided by the applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate System), including tie sheets, shall be reviewed and approved by the City Engineer prior to acceptance of any utility improvements by the City.*

*14. The impact fee calculated pursuant to Condition of Approval #11 shall be due and payable at the time of issuance of a Certificate of Occupancy.*

*15. All improvements depicted on the plan shall be completed and shall be constructed as depicted on the plan.*

**General Conditions**

*16. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.*

*The MOTION was seconded by Bruce Garland.*

*\*The vote on the MOTION was unanimous in favor (8-0).*

**B. XYZ DAIRY, LLC, 167-197 NORTH MAIN STREET (TAX MAP 44, LOTS 3, 7, AND 21-30; AND TAX MAP 58, LOTS 27, 89-99), ZONED R-3, IND-L AND CBD:**

Request for amendments to the Site Plan approval for the River Park mixed-use development to change the sequence of the project phasing and to increase the number of proposed residential dwelling units from 80 to 125. #PB2018-34-SPA

Mr. David Clem, owner of XYZ Dairy, LLC, came before the Board representing the above requested amendments for the proposed River Park Development in Lebanon. (A detailed description of his approved original phasing plan and proposed phasing plan changes, along with all pertinent and detailed documents, were included in the agenda packet.) He gave a detailed PowerPoint presentation, which illustrated the proposed resequencing of the phases of this project. He particularly highlighted temporary parking and the acceleration of the multifamily development, noting XYZ Dairy is not proposing any changes in the completion of the Lyman St. garage, traffic mitigation payments, or the NHDOT requirements. The Board was informed about the new sewer line, which has been completed, and the proposed sewer line adjustment. XYZ Dairy, LLC is opposed to paying more funds in mitigation to accelerate the requirements from traffic monitoring and signalization that already exists.

Mr. Corwin summarized the applicant's requests to:

- Change the sequence of the project phasing, recognizing that the number of phases is going from seven (7) to eight (8).
- Increase the number of residential dwelling unit from 80 to 125, recognizing that the square footage is not proposed to change.
- Adjust the location of the post sewer line from Craft Ave. across lot 2, as illustrated at the bottom of page 2 in the staff memo.

There was a waiver request for the parking lot improvement requirements to accommodate the temporary parking proposed for lot 3. A specific motion would be needed specific to that waiver request apart from the applicable design requirements as set forth in Article VI of the Site Plan Review Regulations, including Section 6.2 (Landscaping Standards) and 6.5 (Coordination of Roads, Parking, Loading, Recreation, and Safety), and Section 6.6 (Stormwater Management). A draft Conditions of Approval, reflecting what was discussed in the Staff Memo, was handed out to Board members.

The Board was informed that the new phasing needs to be correctly lined up with the original Conditions of Approval from 2011, including when the phases will begin, which is information that staff does not have at this time from the applicant. Mr. Clem told the Board what his interpretation for phasing was and when projects would begin.

Mr. Brooks said that staff does not object to the concept of these amendments, but the difficulty is in the complicated nature of the original decisions for the General Conditions-Precedent to the issuance of a building permit for each phase, specifically noting 14-6, 14-8, 15-4, 15-5, 16-4 and 16-5, which deals with the Traffic Impact and Site Access Study. These need to be adjusted to accommodate the change in phasing. Specifically related to 16-4, which requires the applicant to pay the City \$274,554 (at the time calculated at 22% and further described on page 7 of the Site Plan Review in the agenda packet), planning staff felt that the dollar amount should be recalculated at a percentage rate (22%) instead of the above specified dollar amount. The Board was informed about the prior dates and extension approvals in each phase of the project and planning staff has asked the applicant to help them understand the blank dates or when each phase will happen.

The Board discussed and asked Mr. Clem questions, with Mr. Clem responding to all, regarding whether the residential units would be condos or rental; widening Route 10 for right and left turn lanes that would have an impact on the construction of a City sidewalk; type, definition and nature of temporary parking (pavement/gravel), and construction of the parking garage timeline. A lengthy discussion took place regarding the definition/concept of temporary parking, with Mr. Clem expressing his openness to work with the Planning Department to develop reasonable condition/standards for temporary parking as a solution but did not want to spend money to design something that was not discussed on prior approvals. A lengthy discussion and explanation of the NHDOT Traffic Study and the Holden Traffic Study also took place.

Mr. Clem stated his opposition to the draft Conditions of Approval #PB2018-34-SPA, Agenda item 6B that was presented to the Board at this meeting, along with changing the dollar amount to a fixed 22%, as specified in 16-4 of the Site Plan Review.

Chair Davio proposed a Motion from the Board to continue the XYZ, LLC's proposed amendments to February 11, 2019, 6:30 pm, Council Chambers, to give the Board time to look at the new draft conditions to see if they agree they should be aligned to the proposed phase changes. Mr. Clem again expressed his proposal for temporary parking to the Board.

Advance Transit parking was also discussed.

Chair Davio said that what is needed for the February 11, 2019 meeting is:

- The Application for Waivers completed with a timeline table.
- The exception list from Mr. Clem regarding what he is refuting.
- Draft of what temporary parking would look like.

**Chair Davio Moved that this public hearing be continued to the February 11, 2019, 6:30 pm, in the Council Chambers.**

Mr. Garland felt Mr. Clem deserved an answer from the Board regarding temporary parking and suggested a Straw Poll be taken.

**Mr. Garland requested a Straw Poll be taken to show support for Mr. Clem's amendments to allow temporary parking.**

**The Straw Poll vote was 7-0.**

Chair Davio restated his previous motion:

**Chair Davio Moved that this application be continued to the February 11, 2019 under Public Hearings at 6:30 pm, City Council Chambers.**

**Seconded by Mr. Garland.**

**\*The vote on the Motion was 8-0.**

**C. PATCH FOREST, LLC, 0 MERRY LANE (TAX MAP 194, LOT 25), ZONED RL-3**

The property is a vacant lot identified as a "Recreation Area" on the plat for the Ben Wood Development, a Major Subdivision approved by the Planning Board on April 24, 1984. The applicant requests an amendment to the approval and plat for the Ben Wood Development to allow 0 Merry Lane to be used for agriculture and the storage of agricultural equipment.

#PB2018-38-FMAJ

**Matthew Cole recused himself from this discussion.**

Mr. Brad Atwood (Hughes Atwood & Mullaly PLLC), came before the Board representing Matthew, Barbara, Joshua and Cody Patch, on behalf of Patch Forest LLC, who have been recently logging the land to improve their sugaring business. He presented the history of the approved K & J Associates subdivision plans and revisions (1984-1985), and the "so-called open space "Recreation Area," as presented in his detailed letter to the Planning Board (dated December 21, 2018), which was included in the agenda packet. An Approved Planning Board Subdivision map (dated September 24, 1987) and other legal documents were also provided to the Board and included in the agenda packet.

The issue before the Board is the 3.9 acres and for the reasons cited in Attorney Atwood's letter to the Board on December 21, 2018. Patch Forest LLC respectfully requested that the Planning Board amend K & J associates' approved subdivision for Benwood Development on Meriden Road (Route 120) in Lebanon to eliminate the condition that an open space area be provided for recreation purposes. Patch Forest LLC also requested that the Board specifically eliminate the condition restricting the use of its 3.9-acre property located at Merry Lane (Parcel ID 194-25) to open space and/or recreation as well as unrestricted use of this parcel, subject only to the Lebanon Zoning Ordinances Table of Uses for the Rural Lands (RL-3) zoning district.

In another letter from Attorney Atwood, dated January 14, 2019, Patch Forest, LLC was seeking a waiver from Section 509 (Open Space and Recreation Area") of the Subdivision Regulations adopted October 19, 1981 (i.e., those in effect when the Planning Board originally approved the Ben Wood Development Subdivision), as well as from Section 12.2 "Open Space and Recreation Area") of the current Subdivision Regulations. This letter and application, in their entirety, were included in the agenda packet.

Of note: On page 4 of the Staff Memorandum (agenda packet) the applicants provided two options, listed below, along with the City's legal counsel advice and staff recommendation:

- A. Eliminate the open space requirement, which would require a waiver from Section 509 (Open Space and Recreation Area) of the Subdivision Regulations adopted October 19, 1981, and 12.2

(Open Space and Recreation Area) of the current Subdivision Regulations. Preferred by applicants.

- B. Would require a waiver from Section 514 (Development of Open Space) of the Subdivision Regulations adopted October 19, 1981, and Section 12.2.B.2 (Undeveloped Open Space) of the current Subdivision Regulations.

Staff did not dispute the assertion of ownership in Merry Lane but have not verified this issue. The determination that this property is landlocked was not something staff has looked into. In terms of options A & B, the staff would need to look into these a further, noting another option C, which would be to deny the application. Staff was inclined to agree with option "A" so the property would just become a 3.9-acre lot in the RL-3 district and subject to the general restrictions that apply to lots in a RL-3 district and become subject to any other private restrictions contained in the deed. The City's legal counsel advised the staff that in granting a waiver for either option "A" or "B", an evaluation under the current waiver standard set forth in 7.1.5 of the Subdivision Regulations would need to take place.

Attorney Atwood informed the Board that he did not include a copy of the Deed for Merry Lane, but he would provide it to Planning Board.

A discussion took place regarding an abutting property owner's complaint and Mr. Brooks described the documents that staff found on record and stated this plat looked like it was supposed to be a recreation area.

A discussion took place on the location of the red ConEx box was located on the property, noise emitted from the box and if the Deeds were checked on all the 13 lots to see if there was a common interest in the property recorded. Attorney Atwood said he did check the Deeds and there was no common interest recorded, but there were protective covenants, but nothing was recorded in these covenants regarding a common interest in this recreation area. "The only reference you will see is just on the survey where it just says, "Recreation Area."

**Chair Davio opened the public hearing.**

Erick and Marjie Bish, abutting landowners to Patch Forest LLC, came before the Board opposing the 3.9-acre recreation area that Patch Forest LLC proposes to use for agriculture (Maple Sugaring) and storage of agricultural equipment. They presented their detailed arguments against the Patch Forest LLC's proposal and presented 8 Exhibits of their home and surrounding area, which were handed out to Board members.

A lengthy discussion took place about the recreational area, a proposed Deed to the City, which never happened, protective covenants, (sugar) sapping production/lay of the land, and taxation of the property as a building lot vs. a recreational area.

Due to Staff's request to inform more abutters, Chair Davio asked if there were further comments from the public.

***Chair Davio MOVED that this (Public Hearing) meeting be continued to January 28, 2019 at 6:30 PM, City Council Chambers.***

***Seconded by Matthew Hall.***

***\*The vote on the Motion passed (7-0-1) Matthew Cole was recused.***

**Matthew Cole returned as a regular member of the Board.**

**7. OTHER BUSINESS**

Mr. Brooks sent copies of the proposed revisions of the Rules of Procedure to the Board, stating these will be discussed at the January 28, 2019 Planning Board Work Session meeting.



**8. OPEN DISCUSSION: None**

**9. ADJOURNMENT**

*Matthew Hall MOVED to adjourn the meeting at 9:30 pm.*

*Seconded by Karen Zook.*

*\*The MOTION passed (8-0).*

**The meeting was adjourned at 9:30 pm.**

Respectfully submitted,

Dona E. Gibson

Recording Secretary