



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
July 10, 2013

The Regular meeting of the Lebanon Borough Planning Board/Board of Adjustment was called to order by Chairman Alexander Saharic. at 7:00 P.M.

The meeting was convened in compliance with the Open Public Meetings Act of 1975. Three local newspapers were notified and a notice is posted at Borough Hall.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all.

ROLL CALL:

Members Present: Chairman Alexander Saharic, William Skene, Councilman Sam Berger,
Ron Lapczynski, Joseph Hauck and Henry Hopkins
Absent: Dr. Christopher Uchrin, David Abeles, .
Mayor Reino, James Newman, and William Wilson
Also present: Clerk Karen Romano

MINUTE APPROVAL:

Mr. Skene moved, and Mr. Hopkins seconded, a motion to approve the Minutes of April 2013.

The motion passed with the following roll call vote:

Ayes: Saharic, Hauck, Skene, Berger, Lapczynski, and Hopkins
Nays: None
Absent: Uchrin, Wilson, Abeles, Reino and Newman
Abstain:

EXPENDITURES:

Mr. Hauck moved, and Mr. Skene seconded, a motion to approve the expenditures of July 2013.

Jul-13					
7/17/2013	Ferriero Engineering	\$ 562.50	53391	Jun-13	Kaplan
		\$			
	Ferriero Engineering	355.00	52890	Apr-13	cutshaw
	Ferriero	\$			
	Engingeering	70.00	53187	May-13	cutshaw
		\$			
	Ferriero Engineering	<u>70.00</u>	53580	Jun-13	cutshaw
		\$			
	Ferriero Engineering	1,057.50			

The motion passed with the following roll call vote:

Ayes: Saharic, Hauck, Skene, Berger, Lapcynski, and Hopkins

Nays: None

Absent: Uchrin, Wilson, Abeles, Reino and Newman

Abstain:

DISCUSSION:

The following letter of concerns by Paul Ferriero regarding the Highlands Checklist Ordinance was discussed at length by the board. The discussion will continue at the next meeting with Attorney Bill Shurts and Engineer Bob Brightly.



Paul W. Ferriero, PE, PP, CME, LEED AP
Robert C. Brightly, PE, PP, CME
John E. Hansen, PE, PP, CME, LEED

Steven B. Bolio, PE, CME
Mark S. Denisiuk, PE, LEED AP
Dennis W. O'Neal, PE, PP, CME
C. Richard
Quamme, PE,
CME Glenn A.
Robinson, PLS

June 5, 2013

Mr. Lex Saharic, Chairman
Lebanon Borough Planning Board
6 High Street
Lebanon, New Jersey 08833

Re: Highlands
Checklist
Ordinance Our
Project No.
13LB200

Dear Mr. Saharic:

At the meeting held with the representatives of the Highlands Council, they suggested that the Borough could adopt the "Highlands Checklist Ordinance" as an interim measure before the full local Highlands Land Use Ordinance is adopted. Based on that suggestion, a review has been completed of the proposed checklist ordinance.

Generally speaking, it is my opinion that there are three major issues that need to be evaluated. The first is that the term "checklist" is a misnomer. The ordinance is not a checklist in the normal sense of applications associated with the MLUL. The ordinance establishes the Highlands Council as a "gatekeeper" for applications to the Board. It redirects most applications to the Highlands Council before they are considered locally.

The second major issue with the ordinance is that it essentially adopts the entire Highlands Regional Master Plan as a land use ordinance. This is problematic for applicants since there are no standards against which applications are reviewed. Instead, the applicant is required to make their proposal consistent with the HRMP (as determined by the Highlands Council) in order to be reviewed by the Borough. As with any master plan, the HRMP is drafted in both general and specific terms. Virtually any application could be inconsistent with some of the terms, goals or

objectives due to the general nature of much of the language. The problem is that it is impossible to determine how tightly aligned to every word of the HRMP an application must be to be deemed “consistent” by the Highlands Council. There are also not any standards for relief if there is a minor inconsistency.

Finally, it is not clear how the Highlands Council will manage the review of applications. Will they have application forms, escrows, review time frames, etc? Will there be public hearings with presentations by the applicants and interested parties? Will municipal input be considered

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Re: Highlands Checklist Ordinance
Our Project No. 13LB200

in the review by the Highlands Council? In the event an application is deemed “inconsistent” by the Highlands Council and the applicant cannot modify the plans to be consistent as determined by the Council, what are the options for the applicant? Is there a procedure for appeal?

The detailed comments below are provided for your consideration and they are keyed to the draft ordinance. It is recommended that the ordinance be at hand while reviewing the comments in order to see the context.

1. Look carefully at all of the introductory “whereas” clauses to ensure the municipality agrees with all of them.
2. Page 2, 2nd “whereas” – The process is called a “checklist” ordinance. It really is not a “checklist” or much of an ordinance. It is a delegation of review authority to the Highlands Council.
3. Page 2, 2nd “whereas” – The last line of this section essentially adopts the entire Highlands Master Plan as the regulatory ordinance in the municipality. This is a significant concern from both the regulatory aspects (master plans are not ordinances and do not have standards) and the policy aspects (does the municipality, in fact, adopt and endorse everything in the HRMP as applicable to the locality). From the regulatory end, how is it possible to review an application for consistency with a master plan that does not have standards?
4. Page 2, 7th “whereas” – This states that the Governing Body will move through the conformance process in “sequential order”. While this is technically required, it is very important that early on the municipal land use ordinance be reviewed. It should not be too late before the provisions of this ordinance are examined. There is a long list of impractical aspects of the ordinance than should be resolved before adoption of the leading steps of the process.
5. Page 2, 8th “whereas” – The statement seems to imply that everything in the HRMP is needed to protect the lands of the municipality – “without the full suite of Highlands Regional Master Plan protections”. This is, again, making the equivalency between a master plan and an ordinance.
6. Page 3, 1st “whereas” – The language seems to create a sense of urgency that may not really be there. “immediate level of protection... is required”.
7. Page 3, “whereas” 2 through 4 – The equivalency is made between a checklist submission requirement and a master plan and an ordinance. This is not the way it works. It also reiterates the perceived urgency of immediate action.
8. Page 3, Section 1 – Ordinance applies to “any application for development” that does a number of things. All these need to be explored to determine what they mean. For example, what exactly do “ultimate disturbance of one acre” and “cumulative impervious surface of one-quarter acre or more”. Neither of these speaks in terms of increases. Is it the intent that if a site already has more than 1/4 acre of impervious that it must go through the process? How far back does “ultimate disturbance” go? Disturbed from what state or condition?
9. Section 1.E – A review needs to be conducted of Major and Minor Potential Contaminant Sources as well as the regulated radius to determine what this means. Above ground, unregulated fuel tanks, for example, are minor PCS’s. This means a standby generator with a belly tank is a minor PCS and cannot be installed within 200’ of a well – and

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- therefore cannot power that well in an emergency.
10. Section 2.A – Consistency Determinations – This language effectively adopts a 500 page master plan as a zoning ordinance. How can a master plan be a standard? What does “consistency” mean? 100% consistency? No deviations? Are deviations variances? Can the HC approve these?
 11. Section 2.B – What are the implications/consequences if an applicant’s engineer certifies the plan has been revised to be consistent and it is determined at a later date not to be consistent?
 12. Section 2.C.2 – Waivers – As in 11, what are the consequences if the certification is not correct? How rigorous does the certification of compliance need to be? How exactly can you certify all the policies and objectives in Chapter 4? This chapter is 74 pages long.
 13. Section 2.D – It says all municipal waivers/determinations are subject to “call-up”, but in the same sentence the local approval is supposed have language “requiring same”. Does this mean the local approval is to require call-up or is it supposed to state that it is subject to call-up? Does “subject to call-up” mean that it WILL be called up in all cases? How does the process for HC notification work? It says the municipality must send the determination within 5 calendar days, however is this 5 days from the “determination” or the memorialization of any resolution of the determination? How is the notice to the HC to be provided? Is it sent within 5 days or to be received within 5 days?
 14. Section 3.A.2 – Are these intended to be solely ADA improvements? A canopy over a ramp is not required by the ADA so if it is proposed is it not excluded from review?
 15. Section 3.A.3 – The Ag exclusion is only for Ag/Hort as defined by the Highlands (food and fiber only). This means there is no exclusion for equestrian activities.
 16. Section 3.A.3 – What if the local ordinance does not require a site plan application for Ag uses? Is it still an application for development?
 17. Section 4 – Ag/Hort definition is food and fiber only.
 18. Section 4 – Ultimate disturbance – Any site that is currently more than 1 acre of disturbance is regulated – regardless of when it was disturbed. Does the language really mean that conservation easements are required on everything beyond the disturbance area?
 19. Section 4 – Impervious surface – Need clarity of definition. It talks in terms of “structure” which means also subsurface improvements.
 20. Section 4 – Impervious surface, cumulative – Based on this definition, since it is cumulative since day one, any site that already has more than 1/4 acre of impervious is regulated.
 21. Section 4 – Structure – This is the common and “established” definition, but it seems to be very broad. It includes things underground – i.e. utility lines. Is there an argument that a buried storm drain line has 15” of impervious surface because it is a buried concrete pipe?
 22. Section 6 – What are the impacts of repealing all ordinances or parts thereof that are not consistent with this ordinance? I would have the HC review the ordinance and advise us what they think is inconsistent so we agree on what is repealed. Does that also mean we need to revise the rest of the ordinances.
 23. Appendices A and B – Need to understand all the major and minor PCS’s.
 24. Appendix B, 12 – Is an agri-tourism site (Alstead Farm for example) a minor PCS

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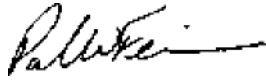
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because it has the petting zoo type operation? Is this “livestock”? How about an equestrian operation that has more than 8 horses? It does not fall in to the ag/hort

definition.

Please let me know if you have any questions or if you want to meet to discuss this in greater detail.

Very truly yours,



Paul W. Ferriero, PE, PP, CME
Borough Engineer

cc: Borough Council
Planning Board Joe
Novak, Esq. Carl
Hints, PP/AICP
Robert Brightly, PE

OPEN PUBLIC SESSION

Chairman Saharic opened the floor for public questions. There being no questions the floor was closed.

ZONING MAP UPDATE:

The following email from Planner Carl Hintz was discussed and the questions regarding the proposed zoning map were answered and submitted to Planner Carl Hintz and Engineer Bob Brightly. All answers by Engineer Bob Brightly in bold Italic. All answers by the Planning Board in Bold.

From: Carl E. Hintz [<mailto:chintz@cchnj.com>]
Sent: Wednesday, July 10, 2013 12:42 PM
To: Karen Romano
Cc: Kendra Lelie; Elizabeth K. McManus; Joe Novak; Robert Brightly
Subject: RE: Zoning Map

Karen, I have reviewed in light of the current land use mapping and 2012 aerial photograph, and current filed and adopted zoning map. I have a number of questions, concerns and issues:

1. Starting at the northern edge of town, three lots to the east of Presidential Condos are proposed in the same zone as Presidential. Are they owned by Pizzo and Pizzo, and are they deed restricted or can they be developed with more units? Or are the properties owned by New York Life or some other entity. If part of the Presidential development approval, and restricted from any future development I am okay with it but then the lot lines should be removed. **Old Lot 3 lot lines should and will be removed, merged with Lot 1, owned by Presidential Place. The arrow shaped lot, Lot 4, is owned by NY Life. East corner Lot 4 belongs to NY Life –ROM 100,000**
2. The two properties on the north side of Main Street, just east of Clark Road that are proposed to be in the R-1-15P zone should have the entire lot included otherwise if they apply they may end up as a Board of Adjustment review. **Article 3.03 Zone Boundaries, discusses the location of the zone boundary lines, 200 and 250 feet from roadway centerlines. This is the same as the existing zone map, which does not include lot lines. Perhaps the original intent was to limit the size of non-residential uses along Main Street to a certain strip.** And why bother include the two properties to the further east since they appear to be fully developed with uses in the COM-ROM-100,000 zone? **The Board would like to leave this as is.**
3. The properties on the south side of Main Street to the east of Lynwood Drive, while already in the R-1-15P zone, should have their entire lot shown in the zone rather than split between two zones. **Same comment as above regarding the zone boundary descriptions. The Board referred to Bob.**
4. The lot just to the west of Lynwood is not shown in that same zone as the other properties facing Main Street. Should it? **No change to existing zone map here. I believe the corner lot is residential with driveway access to Lynwood, part of that subdivision. The Board would like to leave this as is.**
5. The lots at the west end of Main Street in that same zone are also split between two zones. In some cases, it may be better planning and zoning to include the entire lot in the R-1-15P designation zone district. **Same comment as above regarding the zone boundary descriptions. The Zoning Map is using old lot lines is there a problem with doing so.**

6. The four lots to the south of Edgerton Drive are apparently in recreational use. I assume they were part of the approval for units just to the north? **There are 3 owners on this strip of land, the church, the Commons and Kulman. Should we change the zoning? We don't believe anything can be built here because of the 300foot buffer. Can we make this an environmentally sensitive area? How will retables' be impacted?**
7. The proposed COM-ROM-100,000 by Railroad Avenue will include a large parcel to the northeast. Is that property developed with uses permitted in that proposed zone? What are the implications for affordable housing? **Bob can you redraw the line? The Board is not concerned about affordable housing in this area.**
8. Does the Re-Examination Report adopted by the Planning Board last year refer to these various proposed changes? **Yes the changes are in the Re-Examination Report please see attached.**

Please call me or contact me if there are any questions. If I am needed at the meeting, I think I can be there. Best, Carl

Carl E. Hintz, PP, AICP, ASLA

Partner
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Thank you.

Please consider the environment before printing this email.

Chairman Saharic requested a motion to accept the Zoning Map with the insert of New York Life in Navy blue. **Councilman Berger moved, and Mr. Skene seconded, a motion to approve the proposed Zoning Map.**

The motion passed with the following roll call vote:

Ayes: Saharic, Hauck, Skene, Berger, Lapczynski, and Hopkins

Nays: None

Absent: Uchrin, Wilson, Abeles, Reino and Newman

Abstain:

MISCELLANEOUS:

ADJOURN

Councilman Berger moved, Mr. Hauck seconded a motion to adjourn, there being no further business to come before the Board. The motion was passed by unanimous vote. The meeting was adjourned at 8:35p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

