

**Litchfield Planning Board
April 7, 2009**

Minutes approved 4/21/09

Members present:

Alison Douglas, Chairman
Edward Almeida, Vice Chairman
Jayson Brennen
Leon Barry
Steve Perry, Selectmen's Secretary
Carlos Fuertes

Members not present:

Marc Ducharme, Clerk

Also present:

Joan McKibben, Administrative Assistant
Steve Wagner, Nashua Regional Planning Commission, Circuit Rider

AGENDA

1. Application acceptance for a plan amendment Map 4 Lot 10 Blossom Court

2. Application acceptance for a plan amendment Map 2 Lot 86 Heritage Park

3. Any Other Business

Correspondence

Approval of Minutes 3/24/09

Chairman Douglas called the meeting to order at 7:08 p.m.

1. Blossom Court (Arbor Circle)

Attorney Charles Cleary (Representing Lion Development Corporation), Attorney Gronin (Representing Butler Bank) and residents of Blossom Court were present. Town Counsel Steve Buckley was also present.

Application acceptance for a plan amendment Map 4 Lot 20 Blossom Court. Lion Development Corp. requests the clarification, modification or waiver of Note #28 on the approved site plan that states the "Community Center is to be built when 50 percent of the units are completed". If the aforementioned application is accepted, notice is hereby

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2 extended to application approval consideration and/or continuation to a date certain as
3 required.

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5 Mrs. McKibben said that the fees have been paid but there seems to be a discrepancy
6 with abutter notification where the professional people on the plan who stamped the plan
7 were not notified as well as Butler Bank was not notified.

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9 Att. Gronin: Butler Bank will waive notification, present.

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11 Mr. Wagner: I do not think we can under the statute.

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13 Chairman Douglas: It is my opinion because all parties have not been notified that the we
14 cannot move forward until they have all been notified and we cannot waive Butler
15 notification due to the statute 676:4.

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17 Att. Cleary: Can I get some clarification on specifically Butler's position as an abutter,
18 and why a waiver is not permitted by the agent for Butler.

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20 Att. Buckley: I think Butler is an owner; it does not appear to be a consent in the
21 paperwork indicating Butler's consenting to this plan amendment and a waiver in
22 appearance is not sufficient. You have to show you have notice to interested parties and
23 that is not sufficient but more importantly the statute is very clear about notice to
24 professionals whose stamps appear on the plan and those clearly were not notified. Those
25 are parties that cannot waive anything because they are not present.

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27 Att. Gronin: I have no comment in terms of the professionals. In terms of Butler, I would
28 just like to know the basis on which the original alliance of an owner per se. If it is the
29 mortgage interest, I understand that, if it is something else, I would like to know.

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31 Att. Buckley: Well, the foreclosure was continued and I cannot see that there was a
32 subsequent action taken to foreclose on the other parcels which were not conveyed to
33 Lion. There appears the interest I am drawing from that they must have bid it at some
34 point and bought the balance of the project.

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36 Att. Gronin: That is not correct.

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38 Att. Buckley: Well, the interest I am drawing from the record title. That is what I am
39 drawing; that is the conclusion...that is what I found in the record title and that is
40 sufficient as far as I am concerned to suggest they are a party that has to give consent to
41 the process that is going on but, more importantly, again you do not have notice to the
42 involved professionals.

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44 Att. Gronin: Note my objection with respect to Butler.

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Mrs. Douglas: Duly noted. Therefore, until all the proper parties are notified, we are going to have to table this until that requirement of that statute is met.

Att. Cleary: This is a request for clarification in addition to a potential modification of a note on the plan, post approval, post construction by a unit owner. I am not sure the requirement of notifying the original professionals is applicable when we are asking the Board to clarify a note it placed on a recorded plan.

Att. Buckley: The Board has conceptualized this as a request to modify the terms and conditions of approval of the plan. That condition in particular affects all the unit owners and certainly it affects Lion. I do not think the Board would be at all properly proceeding if it did not treat this as a plan amendment and, therefore, treat it as a full plan acceptance under the Litchfield subdivision regulations. So, it cannot just be the Planning Board issuing a statement as to what something means without deeming it to be what it really is a request to modify the original approval which requires a full application acceptance process under the Board's regulation.

Mrs. Douglas: When would you like to come back?

Mrs. McKibben said they need the application to be submitted 15 days prior to the meeting which would bring it to April 20th as the cut off date to meet the requirement for the meeting on May 5th.

Att. Cleary: My intention is to submit written waivers to the Board from whatever parties you deemed not notified.

Mrs. Douglas: I do not think we can accept that at this time.

Att. Buckley: I think what the Board is asking for is to comply with the statute which indicate notices to be sent. I do not understand the reason why you would want to have waivers submitted.

Att. Cleary: Well, one reason is the professionals on that plan have no interest in the topic before this Board; it does not modify anything to do with the plan itself.

Att. Buckley: That might be true but the bottom line is if the Board is proceeding as they should to treat this as in a request to amend the approval, it requires the Board to treat this as an application in the first instance as plan acceptance to take jurisdiction over the whole project and amend the approval. So, that requires compliance with the notice provision of the statute, requires notice to the professionals whose stamps are on the plan. So, waivers are an interesting topic but the easy solution is whenever you have a question of notice, just send the notice.

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Att. Gronin: The problem with that, I agree with you, but it probably is a waste of time...when you have everybody here.

Att. Buckley: Be that as it may, any board would be ill advised to proceed when someone says I'll get a waiver for you; that is just not sufficient.

Mr. Wagner: The statute clearly says shall be notified by certified mail. We had a situation in another case where an applicant came in and said I am here, I am notified, please continue but we couldn't do it.

Att. Cleary: Did that actually go up to court, that one?

Mr. Wagner: It didn't go to court, no, they waited for proper notice.

Mrs. Douglas: I am going to limit public discussion because we really can't move forward any further with this at this time.

Mr. Bob Perham, 41 Arbor Court, President of the Condo Association, asked if they will be notified again by registered mail.

Mrs. Douglas: Yes, the Association.

Mrs. Douglas **ENTERTAINED A MOTION** to table this until May 5th. Mr. Almeida **MOVED** to table the matter of Blossom Court Map 4 Lot 10 Blossom Court until May 5th. Mr. Barry seconded. Motion carried 6-0-0.

2. Heritage Court (Candleridge Circle)

Attorney Charles Cleary (Lion Development), Attorney Gronin (Butler Bank) and residents of Heritage Park were present. Attorney Steve Buckley representing the Town was present.

Application acceptance for a plan amendment Map 2 Lot 86 Heritage Park Lion Development Corporation requests the clarification, modification or waiver of Note #28 on the approved site plan that states "Community Center is to be built when 50 percent of the units are completed". If the aforementioned application is accepted, notice is hereby extended to application approval consideration and/or continuation to a date certain as required.

Mrs. McKibben said the fees have been paid but again the professionals have not been notified as well as Butler Bank.

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1 Attorney Charles Cleary Lion Development said same arguments.

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5 Mrs. Douglas: The Board is not able to move forward at this time until all parties have
6 been properly noticed. This will be tabled until May 5th as well.

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8 All were in agreement.

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10 Mr. Barry **MOTIONED** for the application acceptance for the plan amendment
11 Map 2 Lot 86 Heritage Park Lion Development Corporation to be tabled until the May 5th
12 meeting. Mr. Perry seconded. Motion carried 6-0-0. Attorney Buckley will attend the
13 May 5th meeting.

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15 With this, they left the meeting. Attorney Buckley remained for a short time.

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17 Then Mr. Kevin Lynch, Code Enforcement Officer, entered the meeting and told the
18 Board that he will provide a list of items to be completed on both projects for the next
19 meeting. He talked about allowing him to conduct site inspections rather than paying an
20 engineer; that it is part of his job as Code Enforcement Officer.

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22 The Board then talked about the Selectmen wanting to put the finish coat on Arbor Circle
23 with the bond money pulled by the Town. It was pointed out that normally the final coat
24 is placed once all the houses have been built so as to not damage the paving.

25

26 **ANY OTHER BUSINESS**

27

28 **Appointments** - Selectman Perry said that Carlos Fuertes was appointed as a full
29 member by the Selectmen and the appointment papers should be ready. He needs to be
30 sworn in. Also, Mr. Brennen and Mrs. Douglas were reappointed.

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32 **2009 Default Budget** - Mrs. Douglas reported she presented the 2009 default budget with
33 the changes to the Selectmen and it was approved last week. She handed out copies. The
34 budget approved is \$63,371 which included a 13% cut from the default budget. The
35 impact fee study money was encumbered in the 2008 budget. Mr. Perry has not been able
36 to contact the person who will be doing the study.

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38 **Minutes** - Mr. Barry **MOTIONED** to accept the minutes (March 24, 2009) as amended.
39 Mr. Fuertes seconded. Motion carried 6-0-0.

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41 **Home Occupation Renewal** - Mr. Brennen **MOTIONED** that we approve the home
42 occupation renewal permit for Gregory Jeffrey Land Surveying. Mr. Almeida seconded.
43 Motion carried 6-0-0.

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Conservation Subdivision - Attorney Andy Prolman will meet with the Board along with the Conservation Commission on April 21, 2009, to discuss conservation subdivisions.

CTAP - Mr. Wagner said the Economic Development Committee met with the Selectmen and gave a presentation of the web site. The Selectmen did approve the web site. The survey will be going out to the businesses and on May 14th at 6:30 p.m. here at Town Hall Andre Garron will be speaking on a project in Londonderry adjacent to the

airport. Londonderry wants to develop the property into a business park. He will present a power point presentation.

Vernal Pool - Mr. Barry asked about discussing a vernal pool with Andy Prolman when he meets with the Board on April 21st. The vernal pool is located on a piece of property off Page Road of which Attorney Prolman’s client owns.

There being no further business, Mrs. Douglas **MOTIONED** to adjourn the meeting. Mr. Barry seconded. Motion carried 6-0-0. The meeting adjourned at 8:33 p.m.

Alison Douglas, Chairman

Edward Almeida, Vice- Chairman

Jayson Brennen

Leon Barry

Steve Perry, Selectmen’s Rep

Carlos Fuertes

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5 Lorraine Dogopoulos

6 Recording Secretary