

Leverett Planning Board Minutes

November 13, 2024

- Board members in attendance at Leverett Town Hall: Greg Tuzzoli, Richard Nathhorst, Tim Shores.
 - Board members in attendance on Zoom: Swan Keyes, Molly Daniell.
 - Members of the public in attendance at Leverett Town Hall: Jacob Park, Carol Heim, Candace Jernigan, Judith Inglese.
 - Meeting called to order at 7:18 PM; Delayed due to outage of leverett.ma.us website and email preventing 2-factor-authentication access to Zoom account.
 - Minutes taken by Tim Shores.
1. Review and approval of October meeting minutes. No further discussion. Greg moved to approve, Richard seconded. 4 in favor, Tim abstained due to absence in October.
 2. Comprehensive Plan update.
 - a. Molly reviewed the Board cover letter to the plan after having finalizing feedback from other Board members.
 - b. Discussion of next steps:
 - i. Greg will format the cover letter on Town letterhead and append to the Comp Plan document.
 - ii. Greg or Tim will upload the document to the Town website and post a notification on Leverett Connects.
 - iii. Tim will work with Collective Copy in Amherst on printing copies to be stored at Town Hall and the Leverett Library, and will print flyers with a QR code to website location of plan.
 - iv. No specific next steps for the Board — such as a vote to approve it as the Town’s formal plan — other than an openness to modify it based on public feedback.
 3. Judith Inglese presented a request to the board.
 - a. She was here to follow up on a request made several months earlier to subdivide her property, creating a flag lot where she could live in a small house. At that earlier meeting, the Planning Board determined that the modifications to her properties made in 1999 by Richie Roberts had established a covenant with the Town prohibiting further subdivision or modification until expiration of the covenant in 2029.
 - b. Judith consulted with Attorney Nick Tripp. Attorney Tripp reviewed the covenants and town code and found a clause that gives Richie Roberts the right to

modify and waive covenants if approved by the Planning Board. Judith asked if the Planning Board would confirm that we would approve.

- c. Richard explained that the Planning Board is not able to proactively approve. The first step is for Judith to work with attorney and landowners to produce a plan to modify and waive covenants. Once she has that plan and all parties agree to it, only then can the Planning Board consider it at a public meeting.
4. Kittredge Estate update.
- a. Greg confirmed that Jacob Park had resigned after verifying with the State Ethics Commission that his proximity to the Kittredge Estate property means he has a conflict of interest (see November 11 email below, Appendix A).
 - b. Greg explained that the Select Board had received new information from Kittredge Estate development manager Joshua Wallack, including:
 - i. Mr. Wallack's resume.
 - ii. A new map showing 48 units in Leverett and 300+ units in Amherst.
 - iii. The information sent by Mr. Wallack does not include everything that the Select Board requested. Notably, Greg pointed out that it doesn't include any information about how the existing buildings will be repurposed.
 - c. After forwarding this information to Greg, Town Administrator Margie McGinnis asked Greg by email if this meant the Planning Board would be organizing a public listening session to get public feedback on the Kittredge Estate plan. The timing and responsibility for this event was specified by the MOU between the Select Board and Planning Board to specify roles and responsibilities in the event that the Town received a Local Initiative Program application ... however, after the October meeting the Planning Board did not send the latest draft of the MOU to the Select Board. Tim requested that we finalize it and send it ASAP, Molly supported prioritizing this.
 - d. Tim moved to strike Planning Board responsibility for designing a LIP application process from the MOU draft, and to add to the Select Board scope the task of working with special town counsel Attorney Costa to design a LIP application process. Richard seconded. Discussion:
 - i. Jacob Park commented to remind everyone that Carol Heim had identified three towns with a preapplication process that allows a Select Board to disqualify an application; also commented that it makes sense for the Select Board to work with Attorney Costa on the application process, otherwise why engage with the special town counsel in the first place; also commented that the Kittredge Estate's reply with a 48 unit plan suggests that they are considering an unfriendly 40B instead of a LIP application; also commented that there will be public discussion of the latest Kittredge Estate information at the Select Board meeting held after Special Town Meeting.

- ii. Swan reminded that in a previous discussion the Planning Board considered acting as a community liaison to find out what people would like to see become of the Kittredge Estate properties, and wondered if this was too idealistic a role. Tim replied that it is not idealistic, but more work than the Planning Board has capacity to take on, and the purpose of the MOU is to define our responsibilities clearly and transparently in a situation where the Planning Board has no official role or responsibilities — a LIP is up to the Select Board, and an unfriendly 40B is up to the State and then the Zoning Board of Appeals.
 - iii. Vote: 5 in favor, motion passes unanimously.
 - iv. Action steps: Tim will make changes to the MOU draft, communicate with Kimberly VanWagner, and send to Margie McGinnis and Select Board chair Tom Hankinson. (See November 14 email and finalized MOU below, Appendix B.)
- 5. Leverett resident Candace Jernigan and her family members presented a Hemenway Road subdivision plan for review and approval. Greg, Richard, and Tim reviewed the plans, communicating the plan outcomes by photo and verbal description to Molly and Swan via Zoom. The outcome is that one lot will be subdivided into two lots (Lot A and Lot B on the plan), with a small section of a third lot (Lot D) subdivided and combined with Lot B to create sufficient frontage. Each new lot in the plan has at least 200' of frontage along Hemenway Road. No other factors prevent approval. Greg moved to approve, Tim seconded, vote: 5 in favor, motion passes unanimously. Greg, Tim, and Richard signed the mylar plan, and Candace will follow up with the Town Clerk with a \$50 payment to the Town of Leverett.
- 6. Zoning hearing preparation.
 - a. Greg explained that the notice of public hearing has to identify all of the regulations that could be subject to public hearing and Board deliberation at the hearing.
 - i. During the hearing, we may end up deliberating over less than what we identify in the notice, but we are not permitted to deliberate over more than what is identified in the notice.
 - ii. For example, if a member of the public stands up and says, “What about zoning bylaw section ABCD?” and we did not identify section ABCD in our notice of public hearing, then we must table that reference, and if we decide we need to include it in a public hearing, issue a new public notice.
 - iii. Greg provided an example draft notice to give other Board members an example of what is needed, using the kennel definition bylaw change as an example.
 - b. Discussion of kennel definition.

- i. This came up in 2023 after the Town Clerk notified the Planning Board that she was not in a position to alert people to a zoning bylaw process when they applied for dog licenses or kennel licenses. She uses state law for these licensing processes, and she isn't taking a census of dogs.
 - ii. Tim explained that current zoning bylaw regulates personal dog ownership:
 - 1. If a household has four or more dogs, then the zoning bylaw considers them to have what meets the definition of a "kennel".
 - 2. Zoning bylaw p. 2-3, Section 2200. Use Regulations show that:
 - a. Kennels are an excluded or prohibited use in districts RV, RR, RO.
 - b. Kennels may be granted special permit in districts GB, CO.
 - 3. This means that in most of Leverett, it is not possible to have four or more dogs and remain in compliance with zoning.
 - iii. Proposed: Change the zoning bylaw definition of kennel to:
 - 1. **Kennel** shall be defined as a land use resulting from the keeping of three (3) or more dogs of three (3) months of age or older on a single premises for any commercial purpose.
 - iv. If members of the Leverett public question this change, we can explain that it is possible and preferable to use the Town code to regulate dog ownership, with explicit authority granted to the Select Board and Animal Control Officer. Using zoning to regulate non-commercial dog ownership means that the FRCOG Building Inspector would need to get involved with enforcement of dog issues, which isn't an effective or appropriate use of that authority. Concerned members of the public can propose articles to Town Meeting to update how dog ownership is enforced in the Town code.
- c. Discussion of MA model floodplain bylaw based on new FEMA floodplain maps.
- i. Richard has been monitoring this situation for nearly 3 years, has produced large printed plots of the new FEMA maps, and is writing the notice of public hearing. The model floodplain bylaw establishes a single volunteer role acting as Town monitor of applications for alterations to land within new floodplain boundaries. Richard will also meet with Conservation Commission about the changes.
 - ii. He proposes that the MA model floodplain bylaw is well-crafted and will write the notice to propose two changes:
 - 1. Accept the MA model floodplain bylaw as is;
 - 2. Identify all other sections of current Town zoning that must be modified or removed to remain internally consistent.\
 - iii. Timeline: He will present final draft of notice of public hearing at December meeting, and given the complexity of the change would like to

keep the public hearing open for Planning Board meetings throughout January and February.

- d. Discussion of ground-mounted solar installation requirements.
 - i. Richard is also preparing this final draft for December. The 2020 Town Meeting approved the new solar bylaw which was based on the MA model bylaw. The Planning Board at that time included a 9' to 10' height restriction for ground-mounted solar installation, to avoid obstructing viewsheds. With a special permit from the ZBA a ground-mounted solar installation can be taller, but the total height is still restrictive compared to installations reported by The Solar Store in Greenfield. This height regulation has been cumbersome.
 - ii. Following discussion from previous Planning Board meetings in 2022 and 2023, Richard proposes to strike the height limit completely. Molly asked how tall these installations can be. Previous research has shown that residential solar installations that move with the sun can be as tall as 25' to 30', and there does not seem to be a need to regulate the height if the market and industry are not offering excessively tall installations to residences.
- e. Discussion of ADU changes in compliance with the new State law.
 - i. Molly reviewed her process of reaching out to all Planning Board members individually for information and feedback, and reviewed zoning best practices on ADUs in Massachusetts and the New England region. She identified the following parameters of how to design the zoning change:
 - 1. Keep it straightforward and simple.
 - 2. MA already offers some guidance on dimensional regulations for us to follow.
 - 3. Communicate and coordinate with other Town stakeholders, in particular the Board of Health and Fire Department.
 - 4. There is general alignment that we need to eliminate zoning section "2400. Accessory Apartments", and replace it with new language.
 - 5. She identified a set of strategic options:
 - a. How should we define when a site plan review is required?
 - b. Dimensional requirements: Should we recommend changes in the event that an ADU is built, or keep it as is?
 - c. She will discuss with Board of Health to learn their thoughts on whether and how to determine when an ADU should require additional septic regulations.
- f. Summary:

- i. Greg will post public notice for kennel hearing to begin (and probably conclude) at December meeting.
 - ii. Richard will finalize notice draft for floodplain and ground-mounted solar bylaws for review at December meeting.
 - iii. Molly will create a hearing notice for review in December that identifies zoning bylaw sections that will need to be discussed.
 - iv. Greg will talk to Lisa or Margie to verify timeline requirements for final zoning proposals ahead of Annual Town Meeting. Carol Heim informed the Board that the expected date for ATM will be May 3, 2025.
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Appendix A

From: Jacob Park

Date: Mon, Nov 11, 2024 at 10:33 AM

Subject: resigning from planning board

To: Tim Shores, Molly Daniell, Kimberly VanWagner, Swan Keyes, Richard Nathhorst, Greg Tuzzolo

Hi everyone,

I've now been able to discuss my situation with the MA State Ethics Commission.

Unfortunately, even though I'm not an abutter or within 300 feet of the Kittredge property the fact that I'm "nearby" still, in their view, creates a presumptive conflict of interest. Furthermore, even though the Planning Board doesn't have decision making authority over a 40B this presumptive conflict of interest would pertain to even Planning Board discussions in an advisory capacity. Finally, in their view, I would need to recuse myself not only from voting on any matters related to the Kittredge estate but also from participating in any discussions about it.

Given all those restrictions I've decided, regretfully, to resign my position on the Planning Board (and have already informed Greg). The Kittredge matter is too important to the future of the town for me to completely remove myself from any discussion about it and I think I'll be able to play a more useful role as a private citizen able to talk about it. I still care deeply about the other matters before the Planning Board of course and will endeavor to contribute to those as a member of the public.

Thanks for your support and apologies for any inconvenience this causes. You will still see me at most or all of the Planning Board meetings and I look forward to continuing to engage with you on the issues.

Best,
Jacob

Appendix B

From: Tim Shores

Date: Thu, Nov 14, 2024 at 5:23 PM

Subject: MOU - Local Initiative Program (Friendly 40B)

To: Town Administrator <townadministrator@leverett.ma.us>, Tom Hankinson

Cc: Greg Tuzzolo

Hello Margie & Tom,

Last night, the Planning Board voted in favor of the attached final draft of the memorandum of understanding between the Select and Planning Boards when a LIP application (AKA Friendly 40B) is submitted to the Select Board.

I'm sorry about the delay in getting our draft back to the Select Board due to both our monthly meeting frequency and attention drawn to other Planning Board matters.

The next step is for the Select Board to decide whether to agree to the MOU.

We learned from Greg that you've received more information from Kittredge Estate representatives, although you haven't received the equivalent of a LIP application. As discussed by the Planning Board last night, our understanding is that the Town hasn't established a LIP application process. If that's correct, this seems like an obstacle to receiving a LIP application. We included the task of creating a LIP application process in the MOU's Select Board scope.

When Greg, Swan and I met with Attorney Costa in September, Attorney Costa explained that he can help the Select Board create a LIP application. Carol Heim and Jacob Park have also done research on LIP application processes established elsewhere in the state, and they would be a good resource for this.

(Note that Jacob Park has resigned from the Planning Board because his proximity to the Kittredge Estate means he has a COI if participating on that matter as a Town employee.)

Thank you,
Tim

Memorandum of Understanding (MOU)

Between

Select Board, Planning Board, Town Administrator

Town of Leverett

[Date]

1. Purpose

This MOU establishes a framework for collaboration between Leverett's Select Board and Planning Board, with support from the Town Administrator, in response to a Local Initiative Program query that may lead to an application ("LIP", also known as a "friendly 40B"). This MOU aims to promote transparency, coordination, and compliance while addressing community needs. The provisions of this MOU will go into effect immediately upon the signature of all parties.

2. Background

The Town of Leverett ("the Town") has received a request to consider negotiating an LIP in support of a proposed development of several parcels spanning 40 acres in Leverett, with primary access on Juggler Meadow Road and secondary access on Amherst Road, and the abutting 20 acres in Amherst, owned by Michael Kittredge, Pocomo Road Nominee Trust, and Winter Harbor Nominee Trust ("the Property Owner").

The Town has not received a formal proposal or LIP application. The vision for development as communicated by the Property Owner to date would not comply with the Town's existing zoning bylaw. Therefore, the Property Owner has expressed an interest in negotiating a LIP, which the Select Board may execute on behalf of the Town.

The Town has not yet defined a formal LIP application process nor has the Town defined a formal process for response to an "unfriendly 40B" application. In this scenario, a developer would bypass working with the Select Board and would apply to the Town's Zoning Board of Appeals for a comprehensive permit.

3. Roles and Responsibilities

Town Administrator

- Serve as the primary liaison between Town boards and committees, sharing information and updates relevant to the LIP application and other chapter 40B processes.
- Maintain a central repository for documents and information relevant to the LIP application and other chapter 40B processes.
- Oversee adherence to regulations and timelines as recommended by attorney and joint committee.

Select Board

- Work with Town counsel to define a formal LIP application process for the Town.
- Serve as the primary liaison between the property owner and the Town.
- Serve as the primary liaison with Town counsel.
- Approve, deny, or negotiate any formal LIP application.
- Communicate decisions to Town boards, committees, and the public.

Planning Board

- Review any formal LIP application and provide the Select Board with a written, non-binding advisory that addresses: 1) Potential impacts of LIP application non-compliance with principal and accessory uses, lot dimensions, and other general regulations specified in the zoning bylaw and subdivision regulations; 2) Alignment between the LIP application and the Town comprehensive plan, if the comprehensive plan has been approved by the Planning Board; and, 3) Alignment between the LIP application and other Town plans and reports that are relevant as determined by the Planning Board.
- Hold one or more public hearings after the Select Board receives a LIP application.
- For each hearing, write a brief report summarizing the key findings for the Select Board.

4. Collaborative Process

If the Select Board decides to form an ad-hoc committee in preparation for or response to an LIP application:

- The Select Board will invite each of the following to appoint one of its members to that ad-hoc committee: Planning Board, Board of Health, Conservation Commission, Affordable Housing Trust, Finance Committee, and Zoning Board of Appeals.

- At its discretion and in compliance with the code of the Town of Leverett, the Select Board may appoint others, or invite appointments from other boards and committees.
- One member of the Select Board will chair the ad-hoc committee and ensure compliance with Open Meeting Law and the code of the Town of Leverett.

If the Select Board declines to form an ad-hoc committee, actions relevant to the LIP application and other chapter 40B processes will take place at regularly scheduled Select Board meetings.

5. Review of MOU

This MOU will be reviewed annually or as needed, with modifications made by mutual agreement between the Select Board, Planning Board, and Town Administrator.

6. Signatures

By signing, all parties agree to the terms of this MOU.

- [Select Board Chair Name]
- [Planning Board Chair Name]
- [Town Administrator Name]
- Date: [Insert Date]

Appendix C

Town of Leverett

Hearing Notice - Proposed Bylaw Changes

A public hearing will be held in person and remotely on **Wednesday, December 11, 2024 at 7:00 pm during the Planning Board meeting** to discuss proposed changes to the “Zoning By-Laws”: Public access is available by using the link for the selectboard meeting posted on leverett.ma.us.

Changes proposed are:

Article VI: Definitions

From:

Kennel shall mean one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting, or other purposes, and including any shop where dogs are on sale, and also including every pack or collection of more than three (3) dogs, three months old or older, owned or kept by a person on a single premises regardless of the purposes for which they are maintained or kept.

To:

Kennel shall be defined as a land use resulting from the keeping of three (3) or more dogs of three (3) months of age or older on a single premises, whether maintained for breeding, boarding, sale, training, hunting, or other purposes.

A copy of the complete Zoning By-Laws is on file at the Town Clerk's office or at leverett.ma.us.