



**LEBANON PLANNING BOARD
JUNE 12, 2023 - 6:30 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

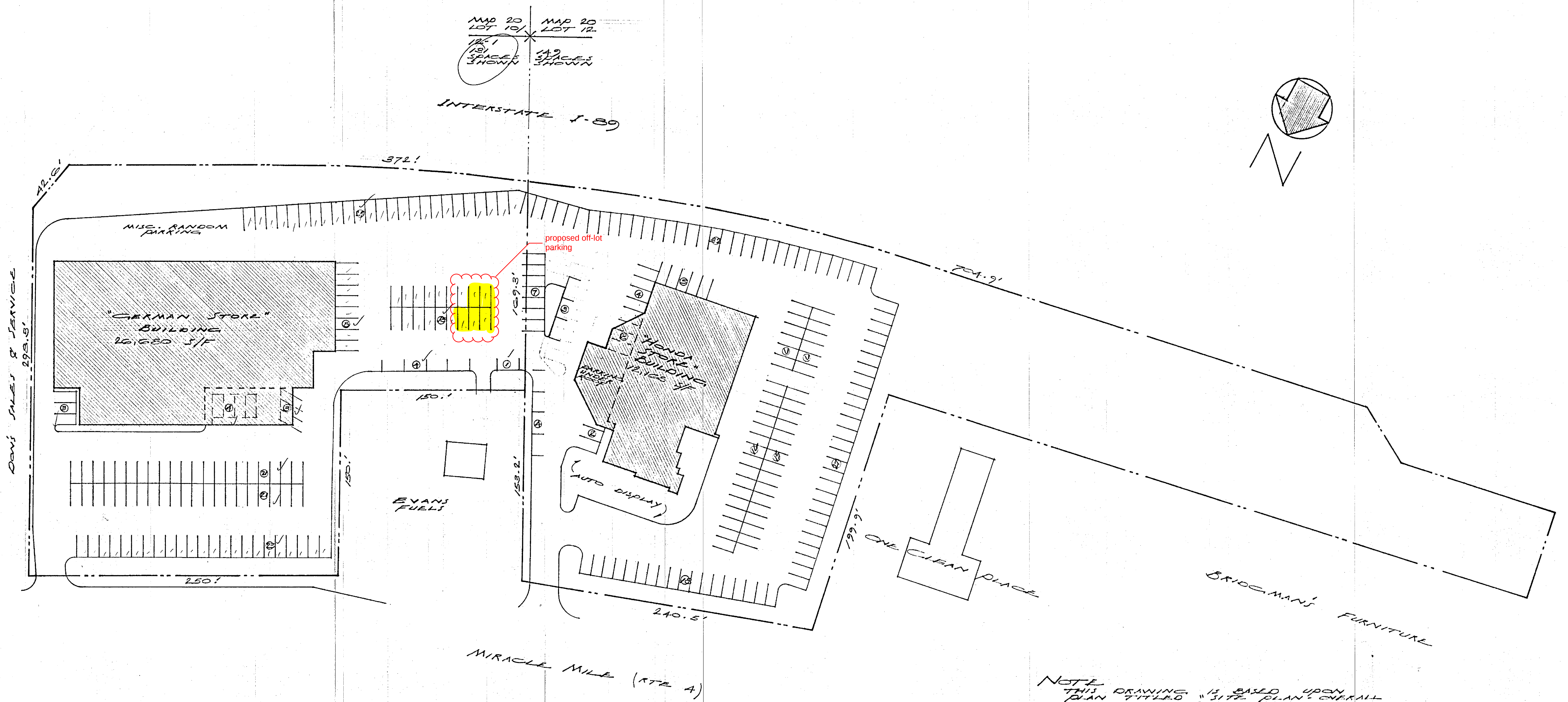
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- 1. Call to Order**
 - 2. Notice of Regional Impact**
 - 3. Public Hearing Items**
 - A. NH Group, LLC (applicant), 369 Miracle Mile LLC & Seacoast Motorcycle Leasing, Inc. (property owners), 369 Miracle Mile (Tax Map 103, Lot 11) & 351 Miracle Mile (Tax Map 103, Lot 9), zoned GC:** The applicant requests a Conditional Use Permit pursuant to Section 607.5.A of the Zoning Ordinance to allow off-lot parking at 351 Miracle Mile to meet the minimum parking requirements of NH Group, LLC's proposed charity gaming center at 369 Miracle Mile (PB2023-04-SPR). **PB2023-18-CUP - Continued from May 8, 2023**
 - B. NH Group, LLC (applicant), 369 Miracle Mile LLC (property owner), 369 Miracle Mile (Tax Map 103, Lot 11), zoned GC:** Request for Site Plan Review to convert the existing building into a +/-18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements. **PB2023-04-SPR - Continued from May 8, 2023**
 - C. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3:** Request to amend the conditions of approval for the River Park development, approved by the Planning Board pursuant to Notices of Action dated September 9, 2019 for PB2018-34-and October 12, 2012 for PB2021-29-EXT. **PB2023-22-SPA**
 - D. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3:** Appeal of administrative decision to require Minor Site Plan Review per Section 3.1.C of the Site Plan Review Regulations for a proposed restaurant use. **PB2023-23-AAD**
 - 4. Other Business**
 - 5. Approval of Minutes**
 - A. May 8, 2023**
 - 6. Adjournment**

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the

Lebanon Planning Board Agenda
June 12, 2023

public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.



• PARKING PLAN •
ONE : 1" = 40'

NOTE
THIS DRAWING IS BASED UPON
PLAN TITLED "SITE PLAN & OVERALL
DEVELOPMENT PLAN" DATED 5/1/87
KATTEL ASSOCIATES, MARCH 5, 1987
REVISED 4.28.87 FOR PROJECT ONE
REALTY ASSOCIATES

PROPERTY OF
JOHN F. HEUER
LEDANON, NEW HAMPSHIRE
FRANK J. DARRETT JR. ARCHITECT
ELY, VERMONT

JUNE 16, 1994



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

June 12, 2023 Meeting

Staff Memorandum – PB2022-04-SPR – *cont'd from 2/13/23, 3/20/23 & 5/8/23*

APPLICATION INFORMATION

Agenda Item: 3.B

Application ID: PB2023-04-SPR

Application Type:

Site Plan Review to convert the existing building into a +/-18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements

Property Location & Tax Map:

369 Miracle Mile (Tax Map 103, Lot 11)

Applicant/Property Owner:

NH Group, LLC/
369 Miracle Mile LLC

Zoning District: General
Commercial (GC)

Property Size:

+/-3.38 (per City Assessor's records)

Overlay Districts:

None

Future Land Use Map:

General Commercial

Staff Attachments:

Memo dated May 4, 2023 from
Duane Egner, Lebanon Fire
Department

LEGAL NOTICE

NH Group, LLC (applicant), 369 Miracle Mile LLC (property owner), 369 Miracle Mile (Tax Map 103, Lot 11), zoned GC: Request for Site Plan Review to convert the existing building into a +/-18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements. PB2023-04-SPR

PLANS AND APPLICATION MATERIALS

New:

- ▶ Letter dated May 16, 2023 from Jeffrey Dirk, PE, of Vanasse & Associates, Inc. (additional response to peer review of applicant's traffic study; 6 pages – *attachments omitted*)
- ▶ Memo dated May 19, 2023 from Jeffrey Santacruce, PE, of Weston & Sampson (response to 5/16/23 Jeffrey Dirk letter; 1 page)
- ▶ Other:
 - Undated letter from Philip Knotts, Merrimack Concert Assoc.
 - Letter dated June 6, 2023 from Katie Parent, YWCA of NH
 - May 8, 2023 e-mail from Susan Almy, resident
- ▶ Plan sheet C2.0 ("Site Layout Plan"), prepared by Engineering Ventures, PC, dated 3/20/23, last revised 5/25/23

Included with agenda packet for the 5/8/23 Planning Board meeting:

- ▶ Letters received in support of the project:
 - Letter dated January 18, 2023 from Randal Miles, VFW Post 808
 - Letter received February 13, 2023 from Roger Gillies, Lebanon Youth Baseball Association
- ▶ Excerpt from March 12, 2007 Planning Board meeting mins (2 pages)
- ▶ Memo dated February 6, 2023, from Jeffrey Dirk, PE, of Vanasse & Associates, Inc. (traffic impact study; 23 pages - *queue analysis and attachments omitted*)
- ▶ Memo dated March 14, 2023 from Jeffrey Santacruce, PE, of Weston & Sampson (traffic impact study peer review; 4 pages)
- ▶ Letter dated April 10, 2023 from Jeffrey Dirk, PE, of Vanasse & Associates, Inc. (response to peer review of applicant's traffic study; 6 pages – *attachments omitted*)
- ▶ Memo dated April 27, 2023 from Jeffrey Santacruce, PE, of Weston & Sampson (response to 4/12/23 Jeffrey Dirk letter; 7 pages)

- ▶ Memo dated April 12, 2023, from Adam Morse, PE, of Engineering Ventures, PC (stormwater management; 3 pages - *attachments omitted*)
- ▶ 1988 Gerrish Auto Show plan set (3 sheets)
- ▶ Plan set titled, “369 Miracle Mile Restaurant/Charity Gaming Center,” prepared by Engineering Ventures, PC, dated January 23, 2023, revised March 20, 2023, EV Project #22506 (15 sheets)
- ▶ Plan sheet titled, “Fire Turning Plan,” prepared by Engineering Ventures, PC, dated April 10, 2023, EV Project #22506
- ▶ Site renderings prepared by Mara Landscape Design, LLC (2 pages)
- ▶ Plan sheets C2.0 (“Site Layout Plan”), C2.1 (“Grading, Drainage and Utility Plan”), and C3.2 (“Stormwater Details”), prepared by Engineering Ventures, PC, dated 3/20/23, last revised 4/12/23

Included with agenda packet for the 2/13/23 Planning Board meeting:

- ▶ Application form (1 page)
- ▶ Memo dated January 23, 2023, from Adam Morse, PE, of Engineering Ventures, PC (project description; 3 pages)
- ▶ Application for Waivers dated January 23, 2023 (2 pages)
- ▶ Site Plan Review Regulations Technical Checklist (10 pages)
- ▶ Memo dated January 23, 2023, from Adam Morse, PE, of Engineering Ventures, PC (response to staff comments; 10 pages)
- ▶ Landscape renderings prepared by Mara Landscape Design, LLC (4 pages)
- ▶ Architectural plans and renderings prepared by SOSH Architects, dated January 23, 2023, #22015.05.001 (5 sheets)

On file at the Planning and Development Department and available for review upon request:

- ▶ Attachments to memo dated April 12, 2023, from Adam Morse, PE, of Engineering Ventures, PC (stormwater management; 21 pages)
- ▶ Restaurant and Charity Gaming Center - Stormwater Appurtenance Inspection and Maintenance Manual (7 pages)
- ▶ Lighting specifications by LSI Industries Inc (31 pages)
- ▶ Memo dated February 6, 2023, from Jeffrey Dirk, PE, of Vanasse & Associates, Inc. (queue analysis and attachments to traffic impact study; 96 pages)
- ▶ Letter dated April 10, 2023 from Jeffrey Dirk, PE, of Vanasse & Associates, Inc. (attachments to response to peer review of applicant’s traffic study; 50 pages)
- ▶ Letter dated May 16, 2023 from Jeffrey Dirk, PE, of Vanasse & Associates, Inc. (attachments to additional response to peer review of applicant’s traffic study; 50 pages)

COMPLETENESS REVIEW

On February 13, 2023, the Planning Board found that the application is complete enough to accept jurisdiction and to commence review.

APPLICATION OVERVIEW

The applicant proposes to convert the existing building formerly used as a vehicular sales use into a +/- 18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements. As discussed below, the applicant has requested several waivers from the Site Plan Review Regulations. The applicant has also applied for a Conditional Use Permit application pursuant to Section 607.5.A of the Zoning Ordinance to allow off-lot parking at 351 Miracle Mile to meet the minimum parking requirements of Section 607. The Conditional Use Permit is a separate application (PB2023-18-CUP) to be heard contemporaneously with the Site Plan Review application.

STAFF COMMENTS**PLANNING****I. SITE PLAN REVIEW REGULATIONS:****Jurisdiction**

The proposed development constitutes a “major change” to the property (as that term is defined in Article II of the Site Plan Review Regulations) and, therefore, requires Site Plan Review by the Planning Board and demonstration of compliance with the Article V submission requirements and Article VI design requirements.

Waiver Requests

Pursuant to Section 7.1 (“Waiver of Regulations”), the applicant has requested waivers or partial waivers from certain provisions of Article V (“Submission Requirements”) and Article VI (“Design and Construction Requirements”) of the Site Plan Review Regulations, as set forth in the attached Application for Waivers and as listed below (in the order they appear on the Application for Waivers):

- **Section 6.2.B** – *perimeter landscaping requirements*
- **Section 6.2.D** – *landscaping around buildings requirements*
- **Section 6.2.E** – *parking area landscaping requirements*
- **Section 6.5.E.2** – *requiring construction of a sidewalk along the property’s frontage*
 - Note: the waiver is no longer needed with the submission of the revised site layout plan (attached) depicting a sidewalk along the frontage of the property.
- **Section 6.6.G** – *stormwater management design standards for redevelopment*
- **Section 6.6.C.2** – *requiring drainage analysis*
- **Section 5.1.E.8** – *requiring a wetlands delineation*
- **Section 6.7.B.2** – *requiring that the light intensity at adjoining streets or commercial property boundaries shall not exceed 0.5 foot-candles*

Pursuant to Section 7.1 of the Site Plan Review Regulations, the Board may grant a waiver of any part of the Regulations if it finds, by majority vote, that either:

- A. Strict conformity would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulations; or
- B. Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

The applicant's basis for each waiver request is described in the attached Application for Waivers. Note that the granting of a waiver from a design requirement does not relieve an applicant from making the improvements that are depicted on the approved site plan, even if the depicted improvement would have been covered by the waiver had it not been included on the approved site plan.

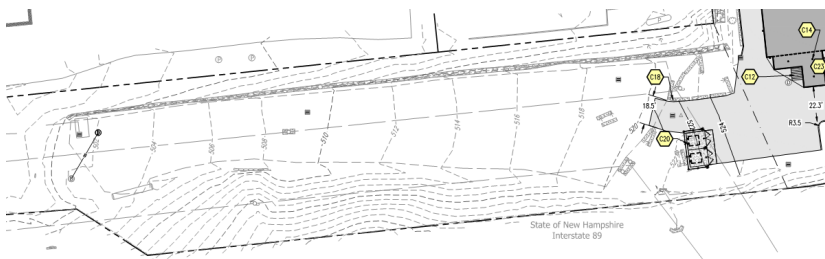
SECTION 5 – SUBMISSION REQUIREMENTS

5.1 (Drawings and Other Submittals): The applicant has provided the attached materials and the materials provided in the February 13, 2023 and May 8, 2023 Planning Board agenda packets pursuant to the submission requirements of Section 5.1 of the Site Plan Review Regulations. For a discussion of the project, please see the memo dated January 23, 2023, from Adam Morse, PE, of Engineering Ventures, PC. For an explanation of the requested waivers, please see the applicant's Application for Waivers.

SECTION 6 – DESIGN AND CONSTRUCTION REQUIREMENTS

6.2 (Landscaping Standards): The applicant has submitted a landscaping plan in accordance with Section 5.1.E.15 of the Site Plan Review Regulations and the landscaping design standards set forth in Section 6.2. As noted above and in the attached Application for Waivers, the applicant requests partial waivers from Section 6.2.B, Section 6.2.D, and Section 6.2.E.

Staff recommends that the Board confirm how the western portion of the property intends to be utilized and whether any reasonable steps can be taken to improve its appearance:



6.3 (Utilities & Fire Protection): The building will be connected to the City's water and sewer systems and will have a sprinkler system. The Fire Department has submitted comments in a memo to the Planning & Development Department dated May 4, 2023.

6.4 (Fees and Assessments in Effect at time of Connection): The proposed change of use from vehicular sales to indoor amusements/restaurant use does not require payment of any impact fees pursuant to Section 213 of the Zoning Ordinance.

6.5 (Coordination of Roads, Parking, Loading, Recreation, and Safety): The applicant commissioned a traffic study for the proposed use, prepared by Jeffrey Dirk, PE, of Vanasse & Associates, Inc., dated February 6, 2023. The traffic study, which was extensively reviewed by a third-party consultant (Jeff Santacruce of Weston & Sampson), includes recommendations on pages 14-16. Staff recommends that the Board include the site-related recommendations (listed under the "Project Access" heading at the bottom of page 14 of the traffic study) as a condition of site plan approval.

The applicant proposes to install a sidewalk along the property's frontage as required by Section 6.5.E.2 of the Site Plan Review Regulations. Staff recommends that the final design of the sidewalk is reviewed and approved by the City Engineer as a condition of site plan approval, and that the sidewalk is designed to allow a future sidewalk connection to the east of the subject property. Staff further recommends that, as a condition of site plan approval, the applicant revise the plan set to identify an ADA-accessible connection from the sidewalk ramp to the building.

6.7 (Lighting): The applicant has submitted a lighting plan in accordance with Section 5.1.E.12 of the Site Plan Review Regulations and the lighting design standards set forth in Section 6.7.B.2.

6.8 (Off-Site Improvements): The applicant does not propose any off-site improvements other than the construction of a sidewalk along the property's frontage and across a portion of the adjacent property's frontage at 377 Miracle Mile (Auto Zone).

6.9 (Premature and Scattered Development): This section provides that the Planning Board "may disapprove a site plan application that proposes development that is scattered or premature, so as to involve danger or injury to health, safety, or prosperity of the community. For purposes of this section, a development shall be considered scattered or premature if it will cause, or poses an undue risk of causing, a substantial or appreciable adverse impact upon any of the factors or parameters set forth in the General or Specific Purposes of Site Plan Review, as outlined in Sections 1.4 and 1.5 of these Regulations." Staff does not recommend a finding that the proposed development is scattered and premature as such a finding would appear to be without basis.

6.10 (Additional Regulations for the Lebanon Downtown District): *Not applicable.*

II. ZONING ORDINANCE:

Use: The proposed casino/charity gaming use is considered an "indoor amusements" use (as defined in Appendix A of the Zoning Ordinance) which is a permitted use in the GC District. See Section 305.2 of the Zoning Ordinance. The proposed restaurant use is allowed both as a permitted use in the GC District and as an accessory use to the principal indoor amusements use.

Parking: See staff memo prepared for the applicant's Conditional Use Permit application, PB2023-18-CUP.

CITY ASSESSOR

No comment at this time.

BUILDING INSPECTOR

No comment at this time.

ENGINEERING/PUBLIC WORKS

The City Engineer asks that the applicant update the stormwater plan(s) to include all symbol descriptions. Otherwise, the applicant has adequately addressed the questions and concerns of the City Engineer.

FIRE DEPARTMENT

The Fire Department's comments are set forth in the attached memo to the Planning & Development Department dated May 4, 2023. To address the Fire Department's comments relative to the fire sprinkler connection and the tree along the access road, staff recommends two conditions of approval (see proposed conditions of approval 10.a and 21 below).

POLICE DEPARTMENT

No comment at this time.

STAFF RECOMMENDATIONS

If the Planning Board moves to approve this request, then based on the information reviewed by City staff, the Planning and Development Department recommends that the Planning Board approve the application with the conditions noted below:

General Conditions

1. It shall be the applicant's responsibility to be familiar with and aware of these conditions of approval, and it shall be the applicant's responsibility to satisfy these conditions of approval and to satisfy them within the relevant timeframes outlined below.
2. A building permit must be applied for *and issued* within two (2) years of the date of this approval (4.10.A), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 4.10.B.
3. "Active and substantial development," as defined in Section 8.4.A.1 of the Site Plan Review Regulations, shall be achieved within two (2) years of the date of this approval (8.4.A.2), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 8.4.A.3. If active and substantial development is not achieved within two (2) years of the date of the Planning Board's approval, the development shall be subject to any changes in the City's land use regulations.
4. "Substantial completion," as defined in Section 8.4.B.1 of the Site Plan Review Regulations, shall be achieved within five (5) years of the date of this approval. If substantial completion is not achieved within five (5) years of the date of the Planning Board's approval, the development shall be subject to any changes in the City's land use regulations.
5. All required landscape plantings shall meet the minimum size requirements for such plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.
6. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.

7. The property owner is responsible for the maintenance and operation of the stormwater management system in accord with the O&M plan, and such responsibility shall run with the land. (Section 6.6.H.2.b of the Site Plan Review Regulations).
8. The ramp constructed located within the Miracle Mile right-of-way providing pedestrian access from the sidewalk to the site shall be maintained by the applicant.

Conditions to be Satisfied Prior to Application for a Building Permit and Prior to the Start of Any Construction Activities

9. Finalize the design of the sidewalk and ramp to the satisfaction of the City Engineer. The sidewalk shall be designed to allow a future sidewalk connection to the east of the subject property.
10. The applicant shall make the following revisions to the plan set to the satisfaction of the Planning and Development Department, City Engineer, and the Fire Department:
 - a) Depict the automatic fire sprinkler system fire department connection in a location that is readily visible and accessible.
 - b) Update the stormwater plan(s) to include all symbol descriptions.
 - c) Identify an ADA-accessible connection from the sidewalk ramp to the building.
 - d) Provide construction details for the sidewalk and ramp.
 - e) Incorporate all site-related recommendations of the traffic study.
 - f) Amend the cover sheet to provide description of plan revisions (5.1.E.4.d).
11. The applicant shall provide a letter or certification from the engineer or record or other qualified design professional confirming that the approved plan set meets the accessibility standards of the State of New Hampshire Building Code.
12. The applicant shall schedule and hold a pre-building permit application meeting with the Planning and Development Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process and to review applicable code requirements.
13. The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the City Code.
14. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations.
15. Edge-of-disturbance fencing shall be installed and maintained before and during any site work, to be verified by the City Engineer or City's third-party inspector on site.

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

16. Prior to the start of any construction activities on the property for which construction inspection is required pursuant to this decision or any applicable ordinance or code, the City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to (a) on-site work related to sewer, water, temporary sedimentation and erosion control, and drainage improvements, and (b) all off-site work within the City's right-of-way (including but not limited to water, sewer, driveways, drainage, sidewalk), in accordance

with Chapters 136 and 182 of the City Code and Section 8.2 of the Site Plan Review Regulations. The applicant shall provide funding for inspection services in a form and amount acceptable to the City and shall sign a Water & Sewer Extension and Infrastructure Inspection Agreement in accordance with Chapters 136 and 182 of the City Code.

17. The development 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 October 13, 2021. 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.
18. 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, and construction or installation of any new driveway(s) shall also require a Driveway Permit from the Department of Public Works.
19. All water and sewer fees shall be paid as set forth in City Code Chapter 68.
20. Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required State approvals.

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

21. The trees at and along the access drive shall be pruned to the satisfaction of the Fire Department to help ensure safe and efficient access of emergency vehicles.
22. The impact fee calculated pursuant to Condition of Approval #17 shall be paid.
23. 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.
24. All improvements depicted on the plan shall be completed, and shall be constructed as depicted on the approved plan, including any modifications to the plan as may be approved by the Planning Board in accordance with the Site Plan Review Regulations.

Attachments

cc: Stefan Huba, NH Group LLC (stefanhuba@p2e.com)
Jonathan Gengras, 369 Miracle Mile LLC (jonathan@gengras.net)
Adam Morse, PE, Engineering Ventures PC (adamm@engineeringventures.com)
File



Lebanon Planning Board
51 N. Park Street, 5th Floor
Lebanon, NH 03766

RE: Lebanon Poker Room

Dear Planning Board Members:

The Merrimack Concert Association (MCA) is a 501(c)(3) charitable organization in good standing with the NH AG's office and has been providing services to southern NH for 34 years.

The MCA's mission is to: (1) provide amateur and professional musicians with an artistic, recreational, and educational experience through rehearsal and performance of a wide variety of instrumental and vocal music, and (2) provide the residents of southern NH with quality, yet inexpensive, musical entertainment.

The MCA concerts also provide opportunities for guest performances by local amateur and professional musicians, including for example, local school bands and choruses, bell choirs and barbershop quartets. In addition, the MCA currently awards two annual scholarships (one for leadership and one for creativity) to graduating high school seniors and/or college students for continuing education.

The funds received from charitable gaming at the Lebanon Poker Room have allowed the MCA to continue to improve and expand the scholarship program and services provided to residents of southern NH and, accordingly, the MCA strongly urges your approval of the new gaming facility proposed by the Lebanon Poker Room.

Please feel free to contact me if you have any questions.

Sincerely,

Philip J. Knotts
MCA President 2022 – 2023 Season
P.O. Box 461
Merrimack, NH 03054

SITE NOTES

- C1 WOOD GUIDE RAIL
- C2 REPAIR AND ADJUST HEIGHT/LENGTH OF MASONRY WALL AS REQUIRED TO ACHIEVE GRADES
- C5 GRANITE CURBING (TYP.)
- C6 5' WIDE CONCRETE SIDEWALK OR AS NOTED (TYP.)
- C7 ASPHALT PARKING AND DRIVE ACCESS
- C8 ADA PARKING SPACES
- C12 STAIRS
- C13 BIKE PARKING
- C14 LIGHT FIXTURE (TYP.)
- C15 RAISE CURBING AS REQUIRED TO MATCH NEW GRADES
- C16 REDI-ROCK WALL WITH PEDESTRIAN RAILING
- C17 PARKING LOT LEASE AGREEMENT FOR THE BENEFIT OF LOT 103-11 FROM LOT 103-9
- C18 NO ACCESS SIGNAGE, EMERGENCY AND UTILITY/MAINTENANCE PERSONNEL ONLY
- C19 SNOW STORAGE
- C20 DUMPSTER ENCLOSURE
- C21 DIRECTION OF TRAVEL (TYP.)
- C22 VISION TRIANGLE (TYP.)
- C23 LOADING DOCK
- C24 TRUCK TURNAROUND AND LOADING AREA
- C25 WALL MOUNTED VEHICLE CHARGERS (TYP.)
- C26 12" WIDE WHITE ALKYD ENAMEL PAINTED STOP BAR, 6" WIDE YELLOW ALKYD ENAMEL CENTERLINE AND STOP SIGN
- C27 ASPHALT SIDEWALK
- C28 REINFORCED CONCRETE LANDING, RAMP AND DETECTABLE WARNING PAD.
- C29 PIN DOWN CURB (TYP.)
- C30 CUT AND REPLACE PAVEMENT FOR NEW CURBING, MATCH EXISTING PAVEMENT SECTION.



Stamp			
No.	Description	Date	
1	BOUTLER AND VORTECH BRASS 4/12/2023		
2	ADDED SIDEWALK ALONG FRONTAGE 5/25/2023		



35 New England Business Center Drive
Suite 140
Andover, MA 01810

Ref: 9612

May 16, 2023

Mr. Matthew Hall, Chair
Lebanon Planning Board
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Response to 2nd Peer Review
Proposed Restaurant/Charity Gaming Center – 369 Miracle Mile (NH Route 4)
Lebanon, New Hampshire

Dear Chair Hall and Members of the Planning Board:

Vanasse & Associates, Inc. (VAI) is providing responses to the comments that were raised in the April 27, 2023 *Peer Review, City of Lebanon Planning Board* memorandum prepared by Weston & Sampson (W&S) concerning their review of the February 6, 2023 *Traffic Impact Study* (the “February 2023 TIS”) and the subsequent April 10, 2023 *Response to Peer Review* letter (the “April 2023 Response Letter”) that were prepared by VAI in support of the proposed Restaurant/Charity Gaming Center to be located at 369 Miracle Mile (NH Route 4) in Lebanon, New Hampshire (hereafter referred to as the “Project”). Listed below are the comments that were identified by W&S in the subject memorandum followed by our response on behalf of the Project proponent.

Comment a: *No further comment.*

Response: No response required.

Comment b: *Comments noted below as required.*

Response: No response required.

Comment c: *No further comment.*

Response: No response required.

Comment d: *A review of the NH Website and Driveway Permit Manual does not constitute a “consultation” with NHDOT as described in the February 2023 TIS. It is anticipated that this facility will have a greater attendee draw from points south along Interstate 89 including those within Lebanon and from other towns and from Interstate 89 north from Vermont, therefore the Applicant should provide a marketing analysis or similar study to demonstrate the expected draw rates from the community and surrounding region. Based on the results of the data provided in this study, the City shall determine if a conversation with NHDOT is warranted to the potential impacts at the Interstate on/off ramps.*

Response: A Visitation Projection memorandum prepared by RubinBrown dated May 5, 2023, is attached and provides context to the expected location and volume of visitors from the surrounding region. The visitation projections for the Project presented in the RubinBrown assessment are shown below and indicate that approximately 80 percent of patrons of the facility are located within a 30 minute drive time of the facility, with over 50 percent located within a 20 minute drive time.

Drive Time	Zone Population	Total Visits	% of Total	Annual Visits Per Resident
0-10	14,574	39,350	21%	2.7
11-20	28,488	60,679	32%	2.1
21-30	35,617	52,891	28%	1.5
31-40	52,743	19,146	10%	0.4
41-50	49,857	8,750	5%	0.2
51-60	118,975	8,923	5%	0.1
0-60 Zone	300,254	189,739		0.6

The assessment considers visitations within a 30 minute drive time to be comprised of “local visits”. The assessment notes that Vermont does allow charitable gaming and that visitations by patrons outside of a 30 minute drive time of the Project site will comprise 20 percent of visitations, with those outside of a 40 minute drive time expected to comprise 10 percent of visitations. Accordingly, the RubinBrown assessment indicates that the Project will not result in a greater attendee draw from points north or south along Interstate 89 (I-89) over current conditions.

Comment e: *No further comment.*

Response: No response required.

Comment f: *The Applicant should provide further data to justify, based on their experience operating the existing Charity Gaming Center at 45 Hanover Street, the anticipated peak hours of operation for review by the City. This may include data such as average nightly transaction volumes, occupancy data, door counts or other similar data that can provide facility utilization rates over a given time span.*

Response: The Visitation Projection memorandum prepared by RubinBrown referenced in Comment d provides additional context to the peak operating hours of charitable gaming operations. As identified therein, charitable gaming operations experience peak visitation between 6:00 and 8:00 PM on Fridays and between 4:00 and 8:00 PM on Saturdays.

Comment g: *No further comment.*

Response: No response required.

Comment h: *No further comment.*

Response: No response required.



Comment i: *Collecting data from other local sources that are similar in nature for comparison is recommended by ITE rather than using a single source of data. It was also noted that the Applicant did not provide any data from the existing facility they currently operate at 45 Hanover Street in Lebanon that would be relocating to this site. Therefore, the Applicant should provide additional trip information as originally requested for review to confirm that the anticipated traffic volumes represented in the TIS are acceptable.*

Response: As requested, peak period patron counts were performed at the existing charitable gaming facility located at 45 Hanover Street in Lebanon whose operations will be relocated to the Project site. These observations were performed on Friday, May 5, 2023, and on Saturday, May 6, 2023, from 3:00 to 8:00 PM, and are summarized below.

**Lebanon Poker Room
Customer Head Count**

Hour	Friday	Saturday
3:00	20	22
4:00	22	23
5:00	25	25
6:00	33	27
7:00	45	36
8:00	48	23

Peak visitation was identified to occur at 8:00 PM on Friday with 48 patrons entering the facility and at 7:00 PM on Saturday with 36 patrons entering the facility. The trip projections that form the basis of the February 2023 TIS indicated that 40 entering vehicle trips would be generated during the Friday evening peak-hour and that 28 entering vehicle trips would be generated during the Saturday evening peak-hour, which correlates to the patron observations that were performed at the existing charitable gaming facility in Lebanon with consideration of carpooling (patrons arriving together in a single vehicle). It is reasonable to assume a similar correlation for exiting patrons/trips absent formal observations at the existing facility.

Comment j: *It is unclear why the Applicant Response indicates to see Comment I since it does not relate to hours of operation. However as noted under WSE Response f above, the Applicant should provide additional data to corroborate the proposed peak hours of operation.*

Response: See response to Comment f.

Comment k: *See WSE Response d above.*

Response: See response to Comment d.



Comment 1: *Data will be reviewed when provided.*

Response: Motor vehicle crash information for the study area intersections was provided by the Lebanon Police Department for the most recent five-year period (2019 through 2023, inclusive) in order to examine motor vehicle crash trends occurring within the study area. The data is summarized in Table 1.

Table 1
MOTOR VEHICLE CRASH DATA SUMMARY^a

	Miracle Mile/ Mechanic St./ Poverty Ln./ Timken Aerospace	Miracle Mile/ Project Site Driveway/ Exxon Mobil Driveway
Traffic Control Type: ^b	S	U
<i>Year:</i>		
2019	2	0
2020	1	0
2021	4	0
2022	1	0
<u>2023</u>	<u>1</u>	<u>0</u>
Total	9	0
Average	1.80	0.00
<i>Day of Week:</i>		
Monday through Friday	7	0
Saturday	1	0
<u>Sunday</u>	<u>1</u>	<u>0</u>
Total	9	0
<i>Severity:</i>		
Property Damage Only	9	0
<u>Personal Injury</u>	<u>0</u>	<u>0</u>
Total	9	0

^aSource: Lebanon Police Department, 2019 through 2023.

^bTraffic Control Type: U = unsignalized; S = signalized.

Based on the information provided, no (0) motor vehicle crashes were reported to have occurred at the Miracle Mile/Project site driveway/Exxon Mobil driveway intersection over the five-year review period. The Miracle Mile/Mechanic Street/Poverty Lane/Timken Aerospace driveway intersection was found to have experienced nine (9) reported motor vehicle crashes over the five-year review period, or an average of 1.8 motor vehicle crashes per year, the majority of which occurred on a weekday and none (0) of the reported crashes resulted in a personal injury. This level of crash activity (approximately 2 crashes per year) in the context of the volume of traffic that is processed by the intersection (>1,000 vehicles per hour based on measured volumes of between 1,050 and 1,250 vehicles per hour during the Friday and Saturday evening peak hours) does not indicate an inherent safety deficiency. The detailed crash information is attached.



Comment m: *While we agree that the sight distance plan provided meets the minimum requirements per AASHTO guidelines, the placement of the proposed “Stop” bar appears to conflict with traffic making a right turn into the existing gas station. In other words, it appears that traffic entering the gas station may be required to cross the stop bar in order to enter the site, especially when there is a vehicle waiting to exit the gas station driveway. This movement could result in an increased crash potential at this location. Therefore, it is recommended that the proposed stop bar be pulled back and better delineation between the two driveways provided to reduce the chance of this conflict.*

Response: The STOP-line is located approximately 5-feet back from the curb or gutter line along Miracle Mile with curbing installed along both sides of the driveway that extends to the curb or gutter line along Miracle Mile. In addition, a utility pole along the east side of the driveway. These features serve to preclude the ability of a vehicle to cross the proposed STOP-line when making a right-turn movement from Miracle Mile to enter the driveway of the adjacent property.

Comment n: *There is concern with the accuracy of the existing traffic signal timings because there is no physical evidence (cameras, loops, radar units, or pull boxes) that would indicate that this location is operating as a fully actuated traffic signal as noted in the TIS. In addition, the diagrams provided do not appear to provide more a max for phase 2 so it is unclear how the overall cycle length was determined. Either provide additional data justifying the use of the existing signal timings in the TIS or coordinate with the City to gain access to the traffic signal cabinet to obtain the existing traffic signal timings and verify that the traffic signal is fully actuated. Based on the results of this information it may be necessary to update the analysis with the TIS.*

Response: The City of Lebanon Department of Public Works provided photographs of the display screen showing the details of the traffic signal timing that is programmed into the traffic signal controller at the Miracle Mile/Mechanic Street/Poverty Lane/Timken Aerospace driveway intersection, copies of which are attached. This information has confirmed that the traffic signal is operating in “free” mode within a 60-second cycle length. The timing plan includes a maximum “green” setting of 20 seconds with a minimum “green” of 8 seconds for the Miracle Mile/Mechanic Street approaches and 5 seconds for the Poverty Lane/Timken Aerospace driveway approaches. In addition, the timing plan also includes 4 seconds of passage time indicating that vehicle detection is provided. The traffic operations analysis was updated to reflect a 60-second cycle length for an actuated controller under “free” operation, and is summarized in Table 5R2.

As can be seen in Table 5R2 and consistent with the findings that were presented in the April 2023 Response Letter, no changes in level of service are predicted to occur for any movement over 2024 and 2034 No-Build conditions with the addition of Project-related traffic, with all movements predicted to continue to operate at LOS B or better. Vehicle queues at the intersection are predicted to increase by up to one (1) vehicle with the addition of Project related traffic.



Mr. Matthew Hall, Chair
Lebanon Planning Board
May 16, 2023
Page 6 of 6

Comment o: *No further comment at this time, however, should trip generation rates or trip distribution pattern change as a result of other comments above, then updated data should be provided for review.*

Response: The supplemental patron observations performed at the existing charitable gaming facility that will relocate to the Project site and the market study prepared by RubinBrown have affirmed the trip-generation calculations and trip distribution for the Project (see responses to Comments d, f and i).

Comment p: *The Applicant should provide a concept plan and cost estimate to the city for review to justify that the requested sidewalk connection is not feasible as noted above.*

Response: A concept plan and cost estimate will be provided by others under separate cover.

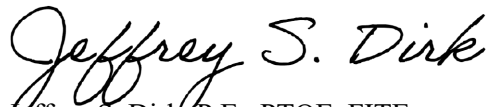
Comment q: *The updated site plan was not provided for review, however, please see Comment m above with regards to the proposed stop bar location shown on the sight distance plan that was provided.*

Response: An updated Site Plan will be provided by others under separate cover. In addition, see response to Comment m pertaining to the STOP-line location.

We trust that this information is responsive to the comments that were identified in the subject memorandum prepared by W&S. If you should have any questions or would like to discuss our responses in more detail, please feel free to contact me.

Sincerely,

VANASSE & ASSOCIATES, INC.



Jeffrey S. Dirk, P.E., PTOE, FITE
Managing Partner

Professional Engineer in CT, MA, ME, NH, RI, and VA

JSD/dcl

Attachments

Peer Review City of Lebanon Planning Board

Project Name: Proposed Restaurant/Charity Gaming Center

Location: 369 Miracle Mile (NH Route 4)
Lebanon, NH

Applicant: New Hampshire Group, LLC
c/o Mr. Stefan Huba
887B Central Avenue
Dover, NH

Transportation Engineer: Vanasse & Associates, Inc
35 New England Business Center Drive
Suite 140
Andover, MA 01810-1066

Documents Reviewed: Response to Comments Letter dated April 10, 2023

Review Completed: May 19, 2023

Reviewed By: Jeffrey Santacruce, PE, PTOE

Weston & Sampson has performed a peer review of the submitted Comment Response Letter dated May 16, 2023 for the proposed development, "Proposed Restaurant/Charity Gaming Center" located at 369 Miracle Mile in Lebanon, NH. This review has been provided at the request of the City of Lebanon for consideration by the City of Lebanon Planning Board of the submitted application.

We have reviewed the most recent comment response letter provide by the Applicant and find that the Applicant has provided acceptable responses to all of our outstanding comments with the exception of Comment P related to the submission of a concept plan and cost estimate for a potential sidewalk connection between the existing bus stop and the proposed site. The Applicant noted that this information will be submitted to the city under separate cover. It is our understanding that the city will utilize this information to make a decision related to the recommended sidewalk and that no further action is required by Weston & Sampson at this time.



LEBANON FIRE DEPARTMENT

12 South Park Street
Lebanon, NH 03766

Phone: 603-448-8810
FAX: 603-448-8811
James Wheatley,
Fire Chief

May 4, 2023

To: Tim Corwin, Senior Planner and Zoning Administrator
Lebanon Planning Board Members

From: Duane Egner, Fire Inspector

Re: 369 Miracle Mile Project Planning Board Application Review

Tim,

The Lebanon Fire Department has reviewed the following Lebanon Planning Board applications to determine compliance with the various applicable fire codes adopted by the State of New Hampshire and City of Lebanon. Below are the results of the review.

- The shared access as shown with 351 Miracle Mile is needed for emergency vehicle turning movements. It is not desirable for the Lebanon Fire Department to have to back up fire apparatus in a parking area full of cars but there does not appear to be sufficient space on the site in which to drive completely around the building with a fire engine. Any emergency response to this facility may ultimately result in fire apparatus leaving through the site at 351 Miracle Mile. It would be helpful if a turning movement plan were generated to show that a standard Ford F550 ambulance is able to successfully navigate the parking lot.
- It appears that the portion of the building being demolished contains the automatic fire sprinkler system fire department connection. This will need to be relocated prior to the demolition of the proposed portion of the building. For the fire department connection to be readily visible and accessible in an emergency, no shrubbery or other landscape should be planted in front of this connection.
- If the existing tree in the island along the access road has branches that are less than the height of a ladder truck above the finished grade, the limbs should be pruned in order to prevent damage to the truck passing underneath attempting to access the building. With this building being located in the fire hydrant district in the response area of the West Lebanon fire station, the ladder truck will routinely respond to any fire alarm activation at the facility as the first due fire apparatus.

Please let me know if there are any questions.

Sincerely,

Duane E. Egner



Digitally signed by Duane E. Egner
DN: C=US,
E=Duane.Egner@lebanonnh.gov,
O=Lebanon Fire Department,
OU=Fire Inspector, CN=Duane E.
Egner
Location: 12 South Park St.,
Lebanon, NH 03766
Reason: I am the author of this
document
Contact Info: 603-448-8810
Date: 2023.05.05 16:07:25-04'00'

From: noreply@civicplus.com
To: [webmaster](#); [Beth Beraldi](#); [City of Lebanon-Planning](#)
Subject: [EXTERNAL] Online Form Submission #7216 for Boards and Committees Contact Form
Date: Monday, May 8, 2023 3:56:39 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Boards and Committees Contact Form

Please complete this form to contact a City of Lebanon board or committee. Your submission will be received by a city staff member who will forward your communication to members of the board or committee you choose below. Please be aware that your submission will become part of the public record.

Visit our [Boards and Committees page](#) to find rosters, agendas, meeting details, and more. Please [contact the City Manager's office](#) if you have questions about this form.

(Section Break)

Your First Name	Susan
Your Last Name	Almy
Contact Email Address	susan.almy@comcast.net
Contact Phone Number	6034484769

(Section Break)

Which board or committee do you wish to contact?	Planning Board
--	----------------

Please enter your comments:	The traffic around the Gerrish Honda new casino is going to be intolerable. I just spent 15 minutes before the lunch hour waiting in line to be able to get from in front of LISTEN to my exit to Poverty Lane. When I left an hour earlier, the lines were already long, but a considerate soul had opened a gap that allowed me to go right and onto I-89 west to get to the landfill.
-----------------------------	--

Almost no-one - has it been 3 years? - dares to use the narrow middle lane to make a turn across traffic. (I do - but I've been honked at when I do several times, and honk reflexively at some others when they turn into it too fast). Even with less congestion from the casino, there will be constant back-ups. I can't get through to Roberts Auto on the phone, and suspect they've

closed for the day.

It is obvious to me this casino is expecting to draw clientele from all of the Upper Valley, VT included. They're making it big, for our region. The open casinos already open have demonstrated that the new "historic horse-racing machines" draw people from a wide area. The traffic will be unbearable for our small businesses, LISTEN, Price Chopper and the movies, people trying to enter Lebanon at Exit 19 or travel through on Route 4 - and all of Poverty Lane and its offshoots will need to drive a very long route to get around the back to Slayton Hill to get out.

An ordinary traffic study will not suffice. You need a traffic study of a casino.

Do you need to attach
a file?

No

Email not displaying correctly? [View it in your browser.](#)

June 6, 2023

City of Lebanon Planning Board
City Hall
51 N Park Street
Lebanon, NH 03766

To whom it may concern:



YWCA New Hampshire

72 Concord Street
Manchester, NH, 03101

P 603.625.5785

F 603.627.8900

ywcanh.org

I am pleased to write this Letter of Support of the Lebanon Poker Room. As a charity partner of the Lebanon Poker Room, we would greatly benefit from this expansion as it would increase their donation levels to local charitable organizations, resulting in a larger impact to organizations like ours and the work we are doing in the community and statewide.

YWCA New Hampshire is dedicated to eliminating racism, empowering women, and promoting peace, justice, freedom and dignity for all. YWCA New Hampshire offers programming that supports our mission including crisis services to survivors of domestic and sexual violence, services to new American populations, wellness and education programs, services to the LGBTQ+ community, and racial equity work. YWCA NH has been creating change in our community for 100 years, founded in 1920. YWCA NH is a state-wide organization with services mostly concentrated in Northern Hillsborough County.

Our largest program, REACH Crisis Services, is a program of YWCA NH and one of 12 member programs of the New Hampshire Coalition Against Domestic and Sexual Violence. This program provides free and confidential services to survivors of domestic violence, sexual violence, and stalking. These services include a 24/7 crisis line; web chat and text line support; walk-in services; accompaniments to hospitals, courts, police departments, and child advocacy centers; housing programs including emergency shelter, housing first support, and transitional housing; and education and prevention programming.

Accessing sources of unrestricted funding dollars is critical to our overall operation and our ability to continue these types of services to the community. The Lebanon Poker Room is one of these opportunities, and the expansion of the facility would only increase this impact for our organization and others in the Granite State.

Please accept this letter in support of the expansion and please do not hesitate to reach out with any further questions.

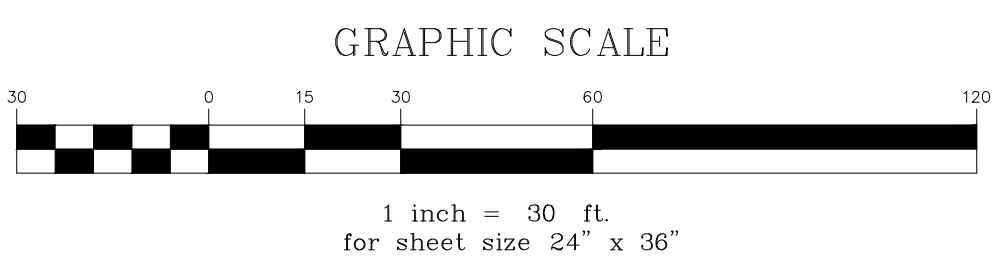
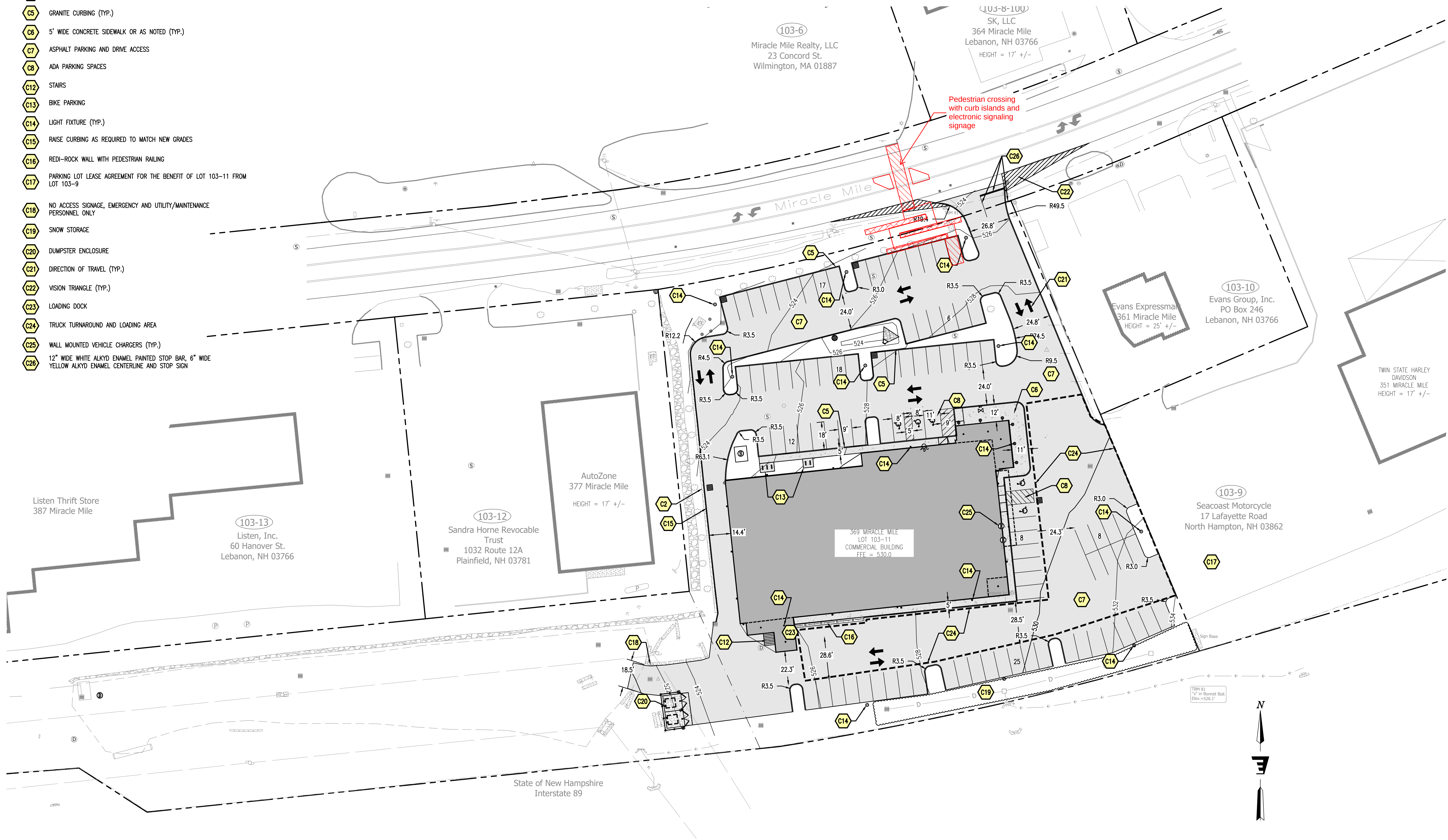
Sincerely,

A handwritten signature in black ink that reads "Katie Parent".

Katie Parent
Director of Programs and Community Outreach
YWCA New Hampshire
72 Concord Street
Manchester, NH 03101

SITE NOTES

- C1 WOOD GUIDE RAIL
- C2 REPAIR AND ADJUST HEIGHT/LENGTH OF MASONRY WALL AS REQUIRED TO ACHIEVE GRADES
- C5 GRANITE CURBING (TYP.)
- C6 5' WIDE CONCRETE SIDEWALK OR AS NOTED (TYP.)
- C7 ASPHALT PARKING AND DRIVE ACCESS
- C8 ADA PARKING SPACES
- C12 STAIRS
- C13 BIKE PARKING
- C14 LIGHT FIXTURE (TYP.)
- C15 RAISE CURBING AS REQUIRED TO MATCH NEW GRADES
- C16 RED-ROCK WALL WITH PEDESTRIAN RAILING
- C17 PARKING LOT LEASE AGREEMENT FOR THE BENEFIT OF LOT 103-11 FROM LOT 103-9
- C18 NO ACCESS SIGNAGE, EMERGENCY AND UTILITY/MAINTENANCE PERSONNEL ONLY
- C19 SNOW STORAGE
- C20 DUMPSTER ENCLOSURE
- C21 DIRECTION OF TRAVEL (TYP.)
- C22 VISION TRIANGLE (TYP.)
- C23 LOADING DOCK
- C24 TRUCK TURNAROUND AND LOADING AREA
- C25 WALL MOUNTED VEHICLE CHARGERS (TYP.)
- C26 12" WIDE WHITE ALKYD ENAMEL PAINTED STOP BAR, 6" WIDE YELLOW ALKYD ENAMEL CENTERLINE AND STOP SIGN



FOR PRICING ONLY
NOT FOR CONSTRUCTION
4/13/2023

Stamp	
Date	
Description	BOUTLER AND VORTECH BRASS 4/12/2023
No.	1
ENGINEERING VENTURES PC	
208 Flynn Avenue, Suite 2A, Burlington, VT 05401 • 802-863-6225 85 Mechanic Street, Suite E2-3, Lebanon, NH 03766 • 603-442-9333 414 Union Street, Schenectady, NY 12305 • 518-530-3614 www.engineeringventures.com	
Stefan Huba New Hampshire Group, LLC 887B Central Ave. Dover, NH 03820	
Site Layout Plan	369 Miracle Mile Restaurant/Charity Gaming Center Lebanon, Grafton County, New Hampshire
EV Project #	22506
Drawn By:	AM
Checked By:	KW
Scale:	1" = 30'
Date:	3/1/2023
C2.0	



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

June 12, 2023 Meeting

Staff Memorandum – PB2023-22-SPA

APPLICATION INFORMATION

Agenda Item: 3.C

Application ID#:
PB2023-22-SPA

Application Type:
Plan Amendment

Property Location:
North Main Street,
West Lebanon

Property Owner/Applicant:
XYZ Dairy, LLC

Property Size:
+/-38.18 Ac. (combined tract)

Zoning District(s):

- Central Business District (CBD)
- Light Industrial (IND-L)
- Residential Three (R-3)

Overlay District:

- Wetlands Conservation District
- Flood Plain District

Staff Attachments:

- River Park Subdivision Plat, recorded on January 2, 2018 (sheet 2 of 5)
- Notice of Restriction, recorded on January 2, 2018 (2 pages)
- Notice of Action for PB2021-19-EXT dated October 21, 2021 (2 pages)

LEGAL NOTICE

XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3: Request to amend the conditions of approval for the River Park development, approved by the Planning Board pursuant to Notices of Action dated September 9, 2019 for PB2018-34-and October 12, 2012 for PB2023-22-SPA

APPLICATION MATERIALS

- ▶ Application form (1 page)
- ▶ Letter from Chet Clem, Lyme Properties, dated May 8, 2023 (request for amendments; 3 pages)
- ▶ Letter from Chet Clem, Lyme Properties, dated June 5, 2023 (request for amendments; 8 pages)
- ▶ Redline of September 9, 2019 Planning Board motion approving amendments to River Park approval (applicant's proposed changes; 17 pages).

COMPLETENESS REVIEW

This application has been reviewed in accordance with the Lebanon Subdivision Regulations. The Planning and Development Department recommends that the Board find that the application is complete enough to accept jurisdiction and to commence review.

BACKGROUND

On October 24, 2011, the Planning Board granted approval for a seven (7) phase development known as River Park. As approved, the development would consist of eight (8) non-residential or multi-family residential buildings totaling 839,145 square feet plus two parking garages for 1,393 vehicles on 7 parcels within the CBD and IND-L zoning districts. (PB2010-25-SPR).

The applicant was granted an extension to the approved site plan on September 9, 2013, and on June 8, 2015, the applicant was granted a site plan amendment for the layout of Lot 1, which included changes to the building footprint, parking layout, vehicular circulation, loading location of the building, landscaping, lighting, and the drainage and engineering of the site. (PB2015-10-SPA). On November 9, 2015, the applicant was granted additional time within which to obtain Building Permits for each approved development phase.

The River Park Subdivision plat, originally approved on October 11, 2011 (PB2011-01-FMAJ) was filed on December 27, 2017, and recorded on January 2, 2018 in the Grafton County Registry of Deeds, together with a Notice of Restriction. Copies of the recorded Subdivision plat and Notice of Restriction are attached for reference.

On September 9, 2019, the Planning Board approved an amendment to the site plan to, among other things, change the sequencing of the project phasing and increase the number of residential dwelling units from 80 to 125 in Building #8 (PB2018-34-SPA) ("2019 Notice of Action"). The 2019 Notice of Action was written to supersede and replace all prior Notices of Action relating to the River Park site plan approval. On October 12, 2021, the Planning Board approved a request to extend the phasing deadlines (PB2021-19-EXT). A copy of the October 12, 2021 Notice of Action is attached for reference ("2021 Notice of Action").

APPLICATION OVERVIEW

The applicant now requests that the Planning Board:

- A. Deem the entire River Park development "vested".
- B. Remove the Notice of Restriction which prohibits ownership of the individual River Park lots to be sold or transferred without either completing the required improvements or posting financial security for the completion of the required improvements.

See attached letters dated May 8, 2023, and June 5, 2023, from Chet Clem of Lyme Properties for further detail. Also attached is a redline of the 2019 Notice of Action incorporating the changes to the Board's approval that the applicant is requesting in furtherance of their requests. Note that, helpfully, the applicant's redline incorporates the changes to the 2019 Notice of Action set forth in the 2021 Notice of Action.

Based on staff's review of the proposed changes shown in the applicant's redline, the applicant also apparently requests changes to the improvements associated with each phase of the development (above and beyond the applicant's proposal to retroactively incorporate the Craft Avenue residential subdivision into the River Park development). These additional changes to the phasing are highlighted on pages 5 and 6 of the applicant's redline and arguably are not covered by the legal notice prepared for the application.

Additional proposed changes to the 2019 Notice of Action that do not appear related to the applicant's requests identified above include a proposed change to condition of approval #11 on page 9 of the redline and condition of approval #27 on page 17.

STATUORY REQUIREMENTS, SUBDIVISION REGULATIONS & NOTICE OF ACTION

A. Vesting: Statutory vesting is explained in the 2022 NH Office of Planning and Development Planning Board Handbook as follows:

The provisions of RSA 674:39 protect approved and recorded subdivision and site plans from subsequent changes in planning board regulations and zoning ordinances. They also protect municipalities from having development that is based on outdated regulations and ordinances, or from development work that has dragged on for years in a less-than-half completed state.

In the first instance, every approved and recorded subdivision or site plan is exempt from all subsequent changes in subdivision and site plan regulations and zoning ordinances for a period of five years after the date of approval (except those regulations and ordinances that expressly protect public health, such as water quality and sewage treatment), provided that:

- Active and substantial development has begun in accordance with the approved plat within 24 months after the date of approval;
- Development remains in full compliance with public health regulations;
- The subdivision plat or site plan conforms to the planning board's regulations in effect at the time of approval.

Planning Boards should define and identify what improvements and features as well as percentage of completion of features that constitutes "Active and Substantial Completion of Improvements" in their subdivision and site plan regulations.

Once the project's improvements have been substantially completed in compliance with the approved subdivision plat or site plan, unless otherwise stipulated by the planning board, the project is permanently protected from subsequent ordinance or regulation changes, except for impact fees. If the board fails to specify and define by regulation what is "active and substantial" for a particular project, the project automatically gets the five years of protection.

"Active and Substantial Development" is defined in Section 14.1.B.1 of the Subdivision Regulations as follows:

- a. For purposes of these Regulations, unless modified by the Board at the time of approval of a specific application, the completion of all of the following shall imply "Active and Substantial Development or Building" when inspected and approved by the Reviewing Engineer:
 - i) Construction of and/or installation of basic infrastructure to support the development (including all of the following: one or more subdivision roadways, access ways, etc. to a minimum gravel base; and water and wastewater lines and other utilities placed in underground conduit ready for connection to proposed buildings/structures) in accordance with the approved plans; and,
 - ii) Construction and completion of drainage improvements to service the development (including all of the following: detention/retention basins, treatment swales, pipes, underdrains, catch basins, etc.) in accordance with the approved plans; and,
 - iii) Placement and maintenance of all erosion control measures on the site as specified on the approved plans.

Movement of earth, excavation, or logging of a site without completion of items i, ii, and iii, above, shall not be considered "Active and Substantial Development or Building." Plans approved in phases shall be subject to this definition for the phase currently being developed.

- b. Unless otherwise specified by the Board, Active and Substantial Development or Building shall be achieved within two (2) years from the date of the recording of the plat.

“Substantial Completion” is defined in Section 14.1.B.2 of the Subdivision Regulations as follows:

- a. For purposes of these Regulations, unless modified by the Board at the time of approval of a specific application, Substantial Completion shall be deemed to have occurred when all on-site and off-site improvements specified in the subdivision approval have been constructed or installed by the Applicant and inspected and approved by the Reviewing Engineer, except for those improvements which are explicitly deferred by vote of the Board.

In the event that the City calls a performance security for such improvements and the funds are paid to the City, Substantial Completion of the improvements in the subdivision shall be deemed to have occurred.

- b. Unless the subdivision has been approved for completion in phases in accordance with Section 7.13 of these Regulations, or as otherwise specified by the Board, Substantial Completion shall be achieved within five (5) years from the date of the recording of the plat.

For phased developments, Section 7.13.C provides that, “[t]he phasing schedule may also specify threshold levels of work and time lines which must be completed, in order for the project, as a whole, or particular phase(s) of the project, to be considered “vested” pursuant to RSA 674:39, and the New Hampshire common law of vested rights.”

Pursuant to its authority per RSA 674:39, III, and per Sections 7.13.C, 14.1.B.1.b, and 14.1.B.2.b of the Subdivision Regulations, the Planning Board determined that the River Park development would vest upon completion of the Phase 1 site improvements as identified in the “New Phasing” schedule of the 2019 Notice of Action. Condition of approval #29 of the 2019 Notice of Action provides as follows:

This approval is a final, conditional site plan approval for a “phased development” under Section 4.9 of the Site Plan Review Regulations and is a final decision of the Planning Board for purposes of RSA 677:15, I. As set forth in Section 4.10(C) of those Regulations, the deadlines for the construction of improvements within each phase shall be as stated in the approved phasing plan, rather than the 1-year period under Section 4.10(A). It is the intent and effect of this approval, subject to the satisfactory completion of the financial security requirements set forth in Condition #5 of the Final Major Subdivision approval (#PB2011-01-FMAJ) for the development, that upon completion of the Phase 1 infrastructure improvements within 5 years of the final subdivision approval, as set forth in Condition #14-2 above, the subdivision as a whole, including all phases, shall vest as provided in RSA 674:39, II, and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect this phased development, provided that the applicant and its successors-in-interest continue to comply with all conditions of this approval and of the Planning Board’s approval of Final Major Subdivision application #PB2011-01-FMAJ, including the time limits set forth in the phasing plan, unless such a

limit is extended for good cause by the Planning Board, acting upon an application submitted prior to the expiration of such limit.

Section 14.1.C ("Default of the Applicant") provides that if the applicant fails to complete Active and Substantial Development or Building or fails to achieve Substantial Completion within the specified period(s) required per Section 14.1.B, the City shall have the following remedies:

1. The Board, upon Notice to the Applicant, abutters, holders of conservation, preservation, or agricultural preservation restrictions, and any lot owners in the approved subdivision, shall revoke the approval of the subdivision in accordance with provisions of RSA 676:4-a to prevent the sale of any further lots. A certified copy of the Board's action shall be recorded in the Grafton County Registry of Deeds under the name of the Applicant as Grantor. The Applicant or the Applicant's successors or assigns, may request the withdrawal of the revocation by submitting a new application for subdivision review and satisfying the Board that all required improvements shall be constructed and installed without cost or expense to the City.
2. The City shall have the right to use the security given by the Applicant to pay for the expense of constructing and installing required improvements plus an administration fee of up to ten percent (10%). If the security is inadequate, the Applicant shall pay any cost in excess of the amount available from the security furnished by the Applicant. The City shall make written demand upon the Applicant for payment. The City shall be entitled to reasonable attorneys' fees and costs for the collection of any unpaid amounts due from the Applicant to the City.

B. Transfer of Lots: State statute prohibits the transfer or sale of any land before a plat of the subdivision has been approved by the planning board and recorded. NH RSA 676:16. The recording of subdivision plats is prohibited without the endorsement of the Planning Board (typically memorialized by the signature of the Planning Board chair on the plat). NH RSA 674:37. "The plat should not be signed by the planning board chair until such time as the improvements are completed or the security for those improvements is in the possession of the municipality." 15 P. Loughlin New Hampshire Practice: Land Use Planning and Zoning, Ch. 32, Placing Conditions on Approval, § 32.12 (Lexis Nexis Matthew Bender).

"Planning boards have the authority and must, in fact, provide that in lieu of completion of certain installations prior to final approval, a performance bond or suitable security may be posted. The installation of certain improvements is a condition of approval and the posting of the security will be considered to be a condition precedent which must be completed before the final approval is granted." Id.

"The subdivision regulations of the planning board must provide that in lieu of completion of improvements prior to final approval of the plat, the planning board will accept a performance bond, irrevocable letter of credit, or other type or types of security as will be specified by the subdivision regulations." Id., Ch. 29, Security for Improvements § 29.17 *citing* RSA 674:36, III(a). "A subdivision plat which has been approved by the planning board and recorded in the Registry of Deeds may be revoked, subject to certain procedural safeguards, if the original subdivider or his or her successor in interest has failed to provide for the continuation of adequate security as required by RSA 674:36, III(b) and RSA 674:24, III(d), until such time as the work which was the subject of the security has been completed." Id. *citing* RSA 676:4-a, I(e).

Consistent with state statute, Sections 7.11, 7.12 and 7.13 of the Subdivision Regulations provide in relevant part as follows:

7.11 Recording of Final Plat

When the required improvements have been completed in accordance with the Notice of Action, or upon acceptance of security for the construction and installation of such required improvements (see Section 14), the Applicant shall present the Final Plat for signature by the Chairperson of the Planning Board and recording in the Grafton County Registry of Deeds.

7.12 Time to Record Plat and Extensions

- A. No sale or transfer of any lots, plats, sites, or other divisions of land within the subdivision may be entered into until the approved subdivision Plat has been recorded in the Grafton County Registry of Deeds.
- B. The Board's approval of a Final Plat shall be considered void unless all conditions precedent have been met, and the Plat has been recorded in the Registry of Deeds, within two (2) years from the date of the Notice of Action;

[...]
- E. For applications subject to both Site Plan and Subdivision review, expiration of Board approvals shall occur as set forth in these Subdivision Regulations. For approved phased developments, the deadlines for each phase, as stated in the approved phasing schedule, shall be substituted for the two-year limitation period set forth above.

7.13 Phased Development

The Board may require, or an Applicant may request permission for, construction of the proposed subdivision in phases. If the Board requires or permits phased development, the review and approval procedure shall be as follows:

[...]

- C. The Applicant shall submit with the application a proposed phasing schedule, which, if approved by the Board, shall be included as part of any approval. The phasing schedule shall include the following information for each phase:
 - 1. A specification of all improvements, on-site or off-site, to be installed as part of that phase;
 - 2. A deadline for the posting of any required security for that phase;
 - 3. A deadline for the completion of such improvements subsequent to the posting of such security, and;

4. A date by which the Final Plat for that phase must be recorded to prevent the approval for that phase from being considered void pursuant to Section 7.12 of these Regulations.

The phasing schedule may also specify threshold levels of work and time lines which must be completed, in order for the project, as a whole, or particular phase(s) of the project, to be considered “vested” pursuant to RSA 674:39, and the New Hampshire common law of vested rights.

The approval for a particular phase shall not be considered “final” under RSA 676:4, I(i), nor shall any plan of that phase be recorded in the Grafton County Registry of Deeds, until the security for the improvements which are part of that phase has been properly posted with the City or until such required improvements have been completed, inspected, and approved by the City.

Section 7.13 (“Phased Development”) contemplates the recording of the final plat for each phase of the development as the improvements for each phase are either completed or secured. What is now Section 7.13 was enacted in 2013 *after* the approval of the River Park development on October 11, 2011 (PB2011-01-FMAJ). In the spirit of what Section 7.13 would eventually require for other phased developments, condition #5 of the 2011 River Park subdivision approval provides that:

Prior to the signing and recording of the mylar, the applicant shall enter into a Performance Security Agreement pursuant to Section 14.6 of the Subdivision Regulations, for all required improvements intended to serve the entire subdivision, both on- and off-site, including, but not limited to: roadways and sidewalks, sewer and water utilities within the development and the sewer main within Crafts Avenue, storm drainage systems for the development roadways, erosion control, and landscaping and street lights located within the proposed rights-of-way in an amount considered adequate by the Department of Public Works, and in a form satisfactory to the City Attorney. The Performance Security Agreement shall be secured by a surety bond, a letter of credit, or an escrow account for the full anticipated cost of such improvements.

Ultimately, instead of requiring security for the entire development as required by condition of approval #5, the plat for the River Park phased development was recorded in 2018 with a Notice of Restriction providing as follows:

This Notice of Restriction is given in accordance with Section 1 of the Performance Bond/Security Agreement between the City of Lebanon and the Subdivider (a copy of which is attached hereto as Exhibit A), pursuant to which, and subject to the exceptions set forth therein, no individual lots, sites or units within the above-described premises may be sold or transferred until such time as adequate performance security has been posted for the infrastructure required therefor as required by the Notice of Action of the Lebanon Planning Board dated October 24, 2011, as may be duly modified, and until a full or partial release of the above restrictions, executed by the City Manager, has accordingly been recorded in the Grafton County Registry of Deeds.

Although the River Park Subdivision plat was recorded without completion of the required improvements and without security for those improvements, the Notice of Restriction requires that those improvements are so constructed or secured prior to the sale or transfer of individual lots within the River Park development. The effect of the Notice of Restriction, therefore, is consistent with the requirements of condition of approval #5 from the 2011 Subdivision approval as well as the requirements of Sections 7.11, 7.12 and 7.13 of the Subdivision Regulations cited above.

STAFF COMMENTS

A. Vesting:

With respect to the River Park development as approved per the 2019 Notice of Action or with respect to any phase thereof, the applicant has clearly not achieved either “active and substantial development” as that term is defined in Section 14.1.B.1, nor has it achieved “substantial completion” as that term is defined in Section 14.B.2. However, RSA 674:39, III, provides that, “[t]he planning board may, as part of its subdivision and site plan regulations **or as a condition of subdivision plat or site plan approval**, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project[.]” (emphasis added)

The ability of the Planning Board to define the thresholds for vesting on a project-by-project basis is reiterated in Sections 14.1.B.1.b, and 14.1.B.2.b of the Subdivision Regulations. Here, the Planning Board did so for River Park with the above-quoted condition of approval #29 of the 2019 Notice of Action which provides that the entire River Park development will vest upon completion of the Phase 1 site improvements, which were identified by the applicant and incorporated in the Planning Board’s approval as follows:

Phase	Improvements
1	46,925 ² -square-foot building for office and retail use located on Lot 1 with temporary parking located on Lot 2 and Lot 3. Phase 1 also includes construction of a portion of the development roadway sufficient to access Lot 3, the southerly development entrance intersection, the extension of Crafts Avenue, and the installation of water and sewer lines necessary for this portion of the site.

The only portion of Phase 1 that has been constructed to date are sewer and water line extensions from Crafts Avenue to Lot 1 where those lines dead-end.

Condition of approval #29 of the 2019 Notice of Action establishes a threshold for vesting that is significantly lower than what Section 14.1.B of the Subdivision Regulations would otherwise require. The applicant is now requesting a modification to the Planning Board’s approval that would further lower that already generous vesting threshold.

To support its request, the applicant asks the Board to redefine Phase 1 to retroactively include the Crafts Avenue residential subdivision improvements, which have never been considered part of the River Park development (the Crafts Avenue improvements were not identified in the 2019 approval as part of the River Park development, nor were they identified as part of the River Park development when it was originally approved on October 24, 2011). Staff notes that the Crafts Avenue improvements were installed primarily to support a residential subdivision which is now complete. It was a related but standalone project which is why it wasn’t considered part of the River Park development originally approved in 2011 and reapproved in 2019.

Staff recommends that the Planning Board retain its already generous condition that the entire River Park development will vest upon completion of the Phase 1 improvements identified in the 2019 Notice of Action.

To the extent the applicant argues that the Planning Board is legally obligated to retroactively include the Crafts Avenue residential subdivision improvements and, in light of those improvements, to determine that the entire River Park development is vested, it is not clear how such legal conclusions can be drawn. The purpose of RSA 674:39 is not to establish an independent standard for common law vesting, but to provide a developer with additional time to meet the common law vesting standard. *AWL Power, Inc. v. City of Rochester*, 148 N.H. 603, 607 (N.H. 2002). Consequently, if the vesting requirements of RSA 674:39 as enunciated in the Lebanon Subdivision Regulations and the 2019 Notice of Action have not been met, it is not clear how the applicant can demonstrate vesting under common law if the statutory vesting standard is not independent of the common law standard.

Nevertheless, if the applicant believes they are entitled to a determination that the entire River Park development is vested despite not satisfying the statutory vesting standard as enunciated in the Lebanon Subdivision Regulations and in condition of approval #29 of the 2019 Notice of Action, staff recommends that the Planning Board obtain an opinion from the City's legal counsel prior to making a determination on the applicant's request. (It is also not clear how the applicant is entitled to a vesting determination in contradiction of Condition of Approval #29 if Condition of Approval #29 was agreed to by the applicant and not appealed.)

Even if the Board grants the applicant's request and deems the entire River Park development "vested," it's not clear what the applicant gains. Vesting is intended to protect approved developments against future changes to local land use regulations and there haven't been any such changes to the Zoning Ordinance, Site Plan Review Regulations or Subdivision Regulations that would substantially impact the River Park development (and there are no changes on the horizon as of the writing of this staff memo).

More significantly, the applicant is still required to meet the time thresholds for each phase as set forth in the 2021 Notice of Action regardless of whether the entire development is deemed to be "vested". If the deadlines are not met, the River Park approval will be subject to revocation pursuant to Section 14.1.C of the Subdivision Regulations and NH RSA 676:4-a, even if the project is otherwise "vested" from future changes to the City's land use regulations.

If the Board is inclined to determine that the project is "vested", or if it determines it is obligated to make such a determination based on advice from legal counsel, staff recommends that the Board also obtain an opinion from legal counsel as to what precisely is the legal and practical effect of determining that the entire River Park development is vested.

B. Transfer of Lots:

The purpose of providing performance security, as required in the Board's regulations and by state law, is to ensure that a local community is not left to pay the costs of completing a project in the event an applicant fails to do so for any reason. Given that a subdivision plat can be revoked by the Planning Board for failure to maintain adequate security and for failure to complete the project within the timeframes set forth in the Notice of Action, there is a strong public policy consideration at stake in restricting the transfer on individual lots until the required improvements are made or adequate security is posted and maintained.

However, there appears to be a disconnect between what the applicant is apparently requesting in the June 5, 2023 letter from Lyme Properties and the proposed change to the 2019 Notice of Action that staff

presumes is intended to effect the requested change. The applicant proposes the following change to Condition of Approval #9 in the 2019 Notice of Action as set forth in the applicant's redline:

9. Prior to the issuance of any Certificate of Occupancy for each phase, the applicant shall enter into a Performance Security Agreement, pursuant to Section 8.2 of the Site Plan Review Regulations for any unfinished and outstanding improvements, unless waivers have been granted, that are required for the current development phase, both on- and off-site, including, but not limited to: parking and sidewalk improvements, sewer and water utilities, storm drainage systems, landscaping, and lighting, in an amount considered adequate by the Department of Public Works, and in a form satisfactory to the City Attorney. The Performance Security Agreement shall be secured by a surety bond, a letter of credit, or an escrow account. The Performance Security Agreement shall not restrict, impair or impede the sale, transfer, or other conveyance of any lot in the phased development, and the notice of restriction previously recorded in the Registry of Deeds in connection with the Performance Security Agreement related to Phases 1.1, 1.2 and 1.3 shall be released.

The proposed language appears to simply explain the effect of entering into a performance security for each phase and appears to be entirely consistent with what is contemplated under NH state statute and the Lebanon Subdivision Regulations. Moreover, whereas the June 5th Lyme Properties letters appears to request that the Notice of Restriction is removed, the proposed change to Condition of Approval #9 contemplates removing the Notice of Restriction in connection with the posting of security for each phase of the development. Again, this is consistent with NH state statute and local regulations.

However, to the extent the applicant is requesting the wholesale removal of the Notice of Restriction without requiring performance security or completion of improvements, the Planning & Development Department recommends that the Planning Board deny the applicant's request.

As a reminder, the performance security amount can be reduced as portions of the infrastructure are completed, inspected, and approved.

STAFF RECOMMENDATIONS

A. Vesting: Staff recommends that the Planning Board retain its already generous condition of approval allowing the entire River Park development to vest upon completion of the Phase 1 improvements identified in the 2019 Notice of Action. Alternatively, as noted above, staff recommends that the Planning Board obtain an opinion from the City's legal counsel prior to making a determination as to whether the project is vested as a matter of law, and if so, what precisely is the legal and practical effect of determining that the entire River Park development is vested.

B. Transfer of Lots: Staff recommends that the Notice of Restriction remain in place in order to ensure that the required improvements for each phase are either completed or secured prior to the transfer of individual lots. However, if the Planning Board is inclined to approve the request, staff recommends that the Board obtain legal review before making a determination to confirm that the Board has the legal authority to approve the applicant's request, and if so, what are the legal and practical ramifications of allowing the removal of the Notice of Restriction for the River Park development.

C. Phasing changes and other changes to the 2019 Notice of Action conditions of approval:

- The Board should consider whether the application needs to be renoticed to identify the applicant's proposed changes to the phasing schedule.
- If inclined to approve the changes, staff recommends that the Board first obtain review the City Engineer, particularly with respect to the proposed changes to the phasing schedule and the change to condition of approval #11 on page 9 (relating to ownership of stormwater management infrastructure).

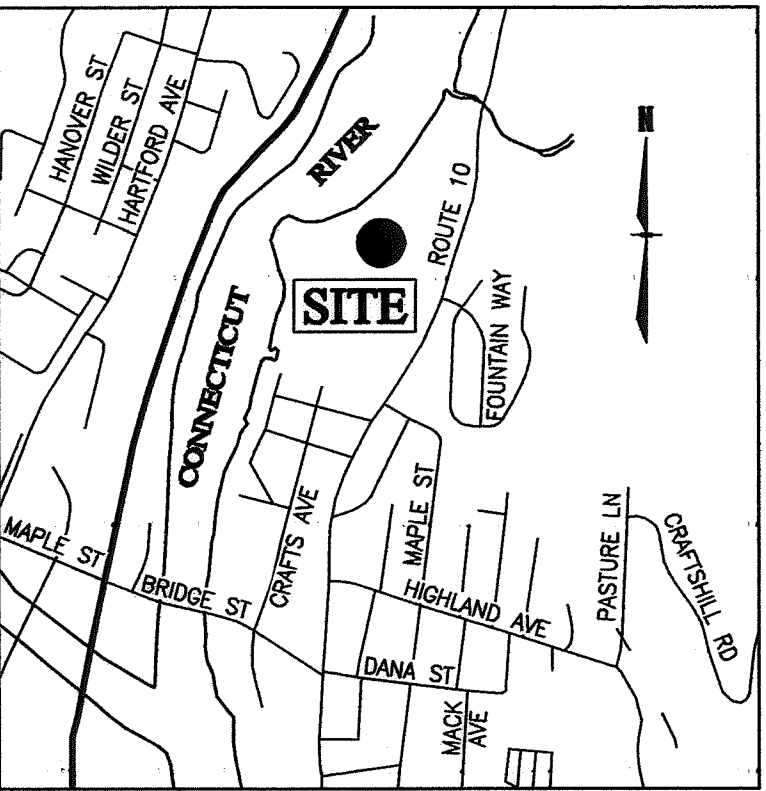
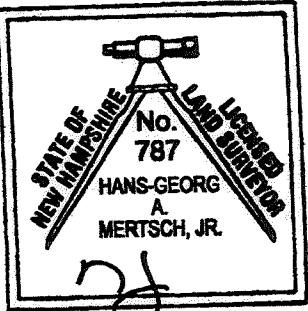
Attachments

cc: David Clem, XYZ Dairy, LLC (via e-mail)
Chet Clem, Lyme Properties (via e-mail)
Phil Hastings, Esq. (via e-mail)
File

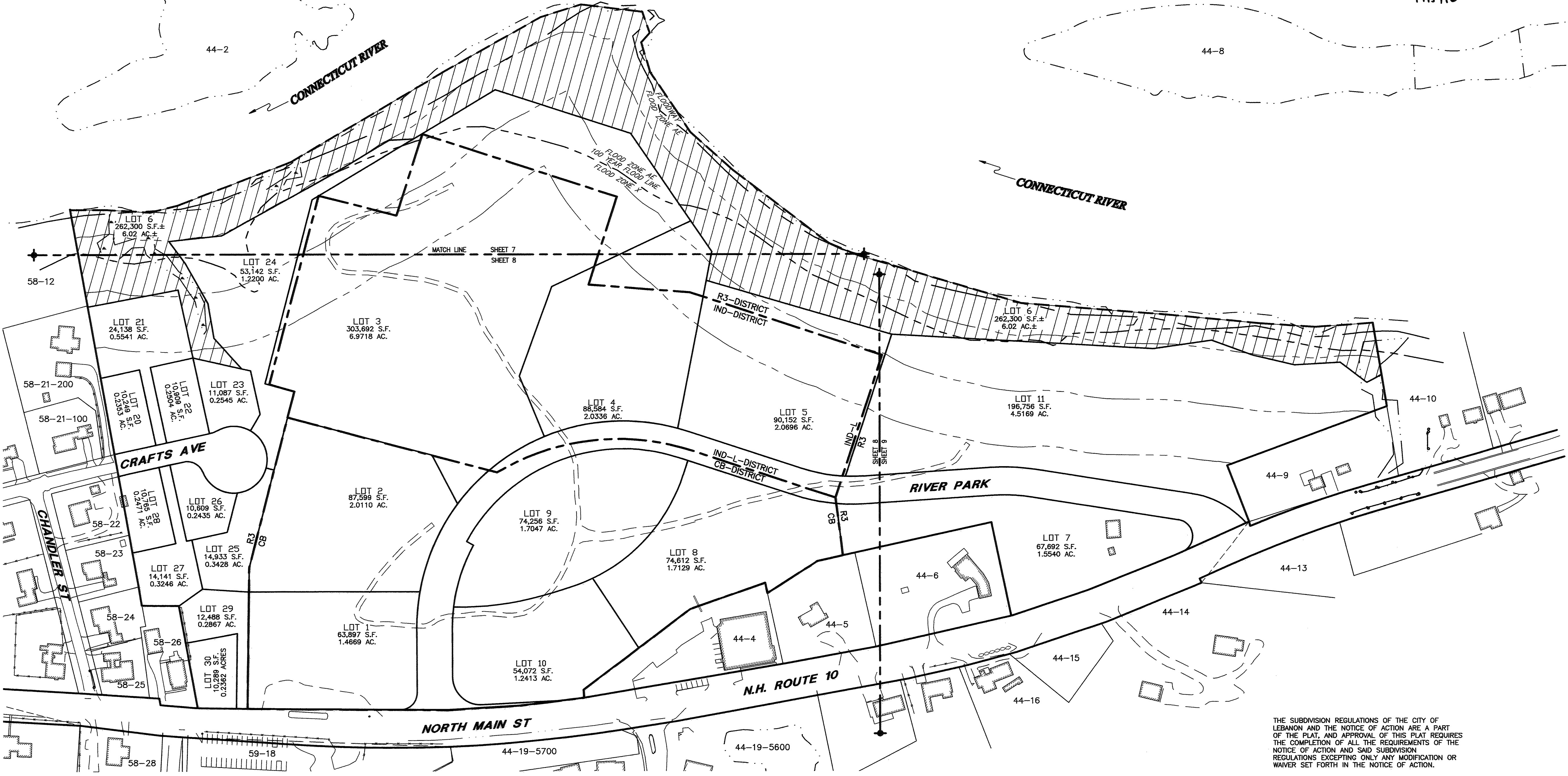
CERTIFICATION

I HEREBY CERTIFY, TO MY KNOWLEDGE, INFORMATION AND BELIEF, THAT THIS PLAN SHOWS THE RESULTS OF AN ON THE GROUND "STANDARD PROPERTY SURVEY" AND THAT SAID SURVEY MEETS THE MINIMUM PRECISION AND/OR ACCURACY MEASUREMENTS FOR SURVEY CLASSIFICATION "U" (URBAN) AS SET FORTH IN TABLE 500.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS ADOPTED 8/23/01, EFFECTIVE 8/24/01.

I FURTHER CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS A MAXIMUM ERROR OF CLOSURE OF ONE PART IN TEN THOUSAND ON ALL PROPERTY LINES WITHIN AND BORDERING THE SUBJECT PROPERTY.



LOCATION MAP
NOT TO SCALE



LEBANON PLANNING BOARD
APPROVED: 10/11/15 + 5/11/15
CHAIRMAN
Kuo W. Wu
DATE OF SIGNATURE
12/20/17
TIME: 3:15p

THE SUBDIVISION REGULATIONS OF THE CITY OF LEBANON AND THE NOTICE OF ACTION ARE A PART OF THE PLAT, AND APPROVAL OF THIS PLAT REQUIRES THE COMPLETION OF ALL THE REQUIREMENTS OF THE NOTICE OF ACTION AND SAID SUBDIVISION REGULATIONS EXCEPTING ONLY ANY MODIFICATION OR WAIVER SET FORTH IN THE NOTICE OF ACTION.



Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

48 Constitution Drive
Bedford, NH 03110
Phone (603) 472-4488
Fax (603) 472-9747
www.tfmoran.com

DR	-	CK	-	FB	-	JOB No.
CADFILE						95718-01 Site
						95718.01
						Graphic Scale in Feet

TAX MAP 44 LOTS 3 & 7, TAX MAP 58 LOT 27
OVERVIEW / INDEX PLAN (LOT LAYOUT)
RIVER PARK
NORTH MAIN ST. (N.H. ROUTE 10) & CRAFTS AVE. LEBANON, NEW HAMPSHIRE

Date	Revision	Dr.	Ck.
4/27/15	REVISION 3: ISSUED FOR CITY PERMITTING; NOT FOR CONSTRUCTION	JH.	RD.
8/13/15	REVISION 5: CITY COMMENTS	MC.	RD.
8/31/15	REVISION 6: NHDES COMMENTS	JH.	RD.
9/16/15	REVISION 8: CITY ENGINEERING COMMENTS	JH.	RD.
10/8/15	REVISION 9: MINOR EDITS FOR RECORDING	MC.	RD.
7/15/16	REVISION 14: CHANGE ROAD NAME	JH.	HM.

Date: 03-09-2015
Scale: 1"=100'
SHEET 2 OF 53

NOTICE OF RESTRICTION

Effective Date: December 15, 2017

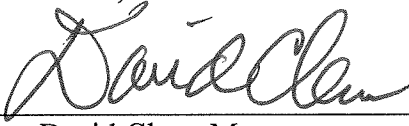
Owner of Record/Subdivider: XYZ Dairy, LLC
57 Main Street
West Lebanon, NH 03784

Premises Subject to Restriction: Certain tracts or parcels of land located in the City of Lebanon, Grafton County, New Hampshire, shown as Lots 1 through 11 (exclusive of Lot 7) and Lots 20 through 30 on a plan entitled "Subdivision Plans, River Park, North Main Street (N.H. Route 10) & Crafts Avenue, Lebanon, New Hampshire, Grafton County, Tax Map 44 Lots 3 & 7, Tax Map 58 Lot 27," cover sheet and sheets 2, 3, 7, 8 & 9, issue date July 15, 2016, prepared by TF Moran, and recorded in the Grafton County Registry of Deeds as Plan #_____.

Terms of Restriction: This Notice of Restriction is given in accordance with Section 1 of the Performance Bond/Security Agreement between the City of Lebanon and the Subdivider (a copy of which is attached hereto as Exhibit A), pursuant to which, and subject to the exceptions set forth therein, no individual lots, sites or units within the above-described premises may be sold or transferred until such time as adequate performance security has been posted for the infrastructure required therefor as required by the Notice of Action of the Lebanon Planning Board dated October 24, 2011, as may be duly modified, and until a full or partial release of the above restrictions, executed by the City Manager, has accordingly been recorded in the Grafton County Registry of Deeds.

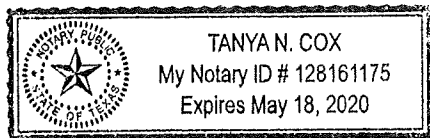
Executed on this 15th day of December, 2017.

OWNER OF RECORD/SUBDIVIDER:
XYZ DAIRY, LLC

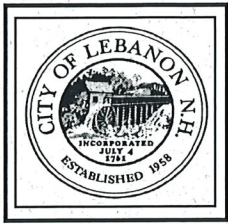
By: 
David Clem, Manager

STATE OF ~~NEW HAMPSHIRE~~ ^{Texas}
COUNTY OF ~~GRAFTON~~ ^{Hays}, ss.

Then personally appeared before me this 15 day of December, 2017, the above-named David Clem, the manager of XYZ Dairy, LLC, who acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said limited liability company.




Notary Public/Justice of the Peace
Name: Tanya N. Cox
My commission expires: May 18, 2020



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF ACTION LEBANON PLANNING BOARD

Notice is hereby given that on **October 12, 2021**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

Matthew Hall moved that the Lebanon Planning Board finds the application of XYZ Dairy, LLC for an extension of the timelines set forth in the Planning Board Notice of Action dated September 9, 2019 (PB2018-34-SPA) for the commencement of construction and completion of the River Park development, (PB2021-29-EXT) is complete enough to accept jurisdiction and commence review.

The motion was seconded by Jeremy Rutter. The vote on the motion was unanimous in favor, 6-0.

Notice is hereby given that on **October 12, 2021**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

Matthew Hall moved that the Lebanon Planning Board **APPROVE** the application of XYZ Dairy, LLC, PB2021-29-EXT, for a two-year extension of the timelines set forth in the Planning Board Notice of Action dated September 9, 2019 (PB2018-34-SPA) ("2019 Notice of Action"). Consequently, the following conditions of approval from the 2019 Notice of Action are hereby revised as follows (the text of each condition to be removed is struck through; the new language is in bold and underlined):

- 14-2. The construction of Phase 1 infrastructure improvements, which commenced in 2018, shall be completed within 5 7 years from the date of the Planning Board's final subdivision approval, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 15-1. As proposed by the applicant, the construction of Phase 1-A improvements shall commence before the end of 2023 2025 and shall be completed within 2 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 16-1. As proposed by the applicant, the construction of Phase 1-B improvements shall commence before the end of 2024 2026 and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 17-1. As proposed by the applicant, the construction of Phase 2 infrastructure improvements shall commence before the end of 2026 2028 and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 18-1. As proposed by the applicant, the construction of Phase 3 improvements shall commence before the end of 2028 2030 and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.

PLANNING BOARD NOTICE OF ACTION

River Park Drive (Tax Map 44, Lots 3 & 7 & Tax Map 58, Lot 27)

PB2021-29-EXT

October 12, 2021

Page 2 of 2

- 19-1. As proposed by the applicant, the construction of Phase 4 improvements shall commence before the end of 2030 **2032** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 20-1. As proposed by the applicant, the construction of Phase 5 improvements shall commence before the end of 2032 **2034** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 21-1. As proposed by the applicant, the construction of Phase 6 improvements shall commence before the end of 2035 **2037** shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
26. In accordance with the City's Impact Fee Ordinance fee schedule adopted on September 13, 2010, this application is exempt from impact fees for a period of 5 years from the date of the Planning Board's final approval. Building permits obtained after the 5-year period shall be subject to impact fees in existence at the time of the Building Permit application submission. [Note: The River Park subdivision plat (#PB2011-01-FMAJ) was recorded on January 2, 2018, representing the final approval for the subdivision and starting the 5-year exemption period, which. The 5-year exemption period shall now expire on January 2, 2023 **2025**.]
29. Effect of Approval. This approval is a final, conditional site plan approval for a "phased development" under Section 4.9 of the Site Plan Review Regulations and is a final decision of the Planning Board for purposes of RSA 677:15, I. As set forth in Section 4.10(C) of those Regulations, the deadlines for the construction of improvements within each phase shall be as stated in the approved phasing plan, rather than the 1-year period under Section 4.10(A). It is the intent and effect of this approval, subject to the satisfactory completion of the financial security requirements set forth in Condition #5 of the Final Major Subdivision approval (#PB2011-01-FMAJ) for the development, that upon completion of the Phase 1 infrastructure improvements within 5 **7** years of the final subdivision approval, as set forth in Condition #14-2 above, the subdivision as a whole, including all phases, shall vest as provided in RSA 674:39, II, and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect this phased development, provided that the applicant and its successors-in-interest continue to comply with all conditions of this approval and of the Planning Board's approval of Final Major Subdivision application #PB2011-01-FMAJ, including the time limits set forth in the phasing plan, unless such a limit is extended for good cause by the Planning Board, acting upon an application submitted prior to the expiration of such limit.

The motion was seconded by Jeremy Rutter. The vote on the motion was unanimous in favor, 6-0.

THE CITY OF LEBANON

By: 
Planning Board Chair

DATE: 3/28/2022

CITY OF LEBANON APPLICATION FOR

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT

☒ OTHER Amendment
PROPERTY OWNER (APPLICANT):

NAME: XYZ Dairy, LLC TEL.#: (603) 676-7800

MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784

E-MAIL ADDRESS: dclcm@lymeproperties.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Lyme Properties TEL.#: (603) 676-7106

MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784

E-MAIL ADDRESS: chet@lymeproperties.com

PROJECT LOCATION:

TAX MAP #: 44 LOT#: 21-30 & 7 PLOT #: ZONE: CBD, IND-L, R3

STREET ADDRESS OF PROJECT: River Park Drive, West Lebanon, NH

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

River Park Site Plan amendment.

TYPE OF OCCUPANCY:

EXISTING ☒ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
 PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☒ MULTI-FAMILY ☒ COMMERCIAL ☒ INDUSTRIAL
 IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**
 USE: Office, Retail, Apartments

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on June 12, 2023, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: David Clem DATE: 5/8/2023

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: David Clem DATE: 5/8/2023

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
5/8/2023	44/21-30+	PB2023-			
	7	22-SPA			

May 8, 2023

Lebanon Planning Board
City of Lebanon
55 N. Park Street
Lebanon, NH 03766

Re: Request for amendments to River Park Site Plan approvals

Members of the Lebanon Planning Board,

Lyme Properties, acting as the development agent for XYZ Dairy, LLC the owner of record for the River Park West Lebanon development, respectfully submits this memo to request a hearing at the June 12, 2023 meeting of the Lebanon Planning Board for consideration of Amendments to the River Park Subdivision and Site Plan approvals.

These matters stem from Lyme's April 7, 2023 communication "A More Productive Path Forwards"¹ in reference to the 10-step proposal laid out at www.riverparkwestlebanon.com/path-forwards.

In keeping with Dep. City Manager David Brooks' April 21, 2023 memo in response, Lyme requests that the Lebanon Planning Board consider items #7, #8, and #9 which fall within their jurisdiction.

It is my intent and expectation that Lyme will work with the Lebanon Planning Department during "Staff Review" to hold preliminary discussions and inform the final application materials submitted to the Planning Board in advance of the June 12, 2023 hearing. It is unclear if this application is considered Schedule A or Schedule B, so we will await guidance:

Those items are included here, along with relevant sections of Mr. Brooks' response in **bold**.

7. Vest River Park's Approvals

River Park has invested \$-millions in municipal infrastructure to meet the City's conditions of approval and facilitate the project despite numerous setbacks resulting in lost-revenue to pay for them. We ask the Planning Board to re-consider if our investments to date meet the City's present requirements of "vesting" to protect our investments in West Lebanon, which include the following that have been built by River Park and transferred to the City of Lebanon.

- Crafts Avenue Sewer & Roadway Improvements
- Crafts Avenue Extension
- Cross Country Connector

Action: Amend approvals to deem the above work sufficient to vest the River Park subdivision and site plan, reflecting delays and costs, and de-risking future investment.

¹ <https://tinyurl.com/riverparkpath>

7. **The Planning Board approval already allows for vesting of the River Park development following the completion of the infrastructure improvements associated with Phase 1 of the seven-phase project. Portions, but not all, of the Phase 1 infrastructure improvements have been completed. Nevertheless, if you would like to have that condition of approval altered, a formal application must be submitted to the Planning Board requesting an amendment to the development approvals.**

8. Turn off the “shot clock”

River Park abides by the approved phasing plan of the 8-phases approved in 2011, and adapted in 2019. Having extended them multiple times due to past delays, it’s unfair and unreasonable to hold private property owners to a tight and ticking time-clock when— as the latest 107 day delay illustrates— there is little sense of urgency from City Hall in responding to critical project deadlines that have significant ripple effects on project timing and execution. We’d rather focus on building great places than meeting unnecessary deadlines, and the purpose of a Phased Development is to be market-responsive...not hit arbitrary dates that don’t reflect procedural realities.

Action: Eliminate arbitrary dates & deadlines on phases but retaining mitigation requirements tied to certain phases that generate traffic impact.

8. **The Planning Board approval incorporates timelines for the completion of phased developments as a means to address the statutory requirements for Active and Substantial Development and Substantial Completion (RSA 674:39) that would otherwise apply to the project. If you would like to have those timelines and conditions of approval altered, a formal application must be submitted to the Planning Board requesting an amendment to the development approvals.**

With respect to the Building Permit for Building #1, the State Building Code is the controlling code. Section 105.5 (Expiration) of the 2018 International Building Code (IBC) states that “[e]very permit issued *shall* become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance.... The building official is authorized to grant, in writing, one or more extensions of time, for periods *not more than 180 days each*. The extension shall be requested in writing and justifiable cause demonstrated.” Until such time that Lyme Properties begins actual construction of the building on the property, the State Building Code requires that justifiable cause be demonstrated to warrant additional extensions of time that are limited to not more than 180 days each.

9. Eliminate Costly + Restrictive Conditions

Eliminate conditions of approval from 2011 subdivision and site plan that make it procedurally challenging and financially impossible to advance the project in an efficient and cost-effective manner.



Restriction on Lot Transfer: None of the River Park lots can be subdivided until the Route 10 and Roads are done. That prevents us from structuring deals for each phase and arranging financing/joint-venture partners for each phase, effectively requiring substantial upfront investment before anything can be built

Action: Eliminate the Lot Transfer Restriction placed on River Park at the Grafton Registry of Deeds so River Park buildings can be financed efficiently.

9. If you would like to have the Planning Board reconsider conditions of approval that you believe are overly restrictive, a formal application must be submitted to the Planning Board requesting an amendment to the development approvals.

I look forward to productive conversations with the Planning Staff in the coming weeks to ensure that questions can be answered, current and proposed conditions discussed collaboratively, and final presentation materials to the Planning Board be determined. This is part of my proposal, as outlined in my April 25, 2023 response to Mr. Brooks, to avoid communication issues that have plagued River Park's past approvals and amendments.

Sincerely,

A handwritten signature in black ink that reads "Chet Clem". The signature is fluid and cursive.

Chet Clem
Lyme Properties
57 Main Street
West Lebanon, NH 03784

June 5, 2023

Lebanon Planning Board
City of Lebanon
55 N. Park Street
Lebanon, NH 03766

Re: Request for amendments to River Park Site Plan approvals

Members of the Lebanon Planning Board,

This is an updated version of our May 8, 2023 memo requesting to appear before the Planning Board. At the request of the Lebanon Planning Department, we have added additional information and prepared a “redline” of the September 9, 2019 drafts of the River Park approvals.

Lyme Properties, acting as the development agent for XYZ Dairy, LLC the owner of record for the River Park West Lebanon development, respectfully submits this memo to request a hearing at the June 12, 2023 meeting of the Lebanon Planning Board for consideration of Amendments to the River Park Subdivision and Site Plan approvals.

These matters stem from Lyme’s April 7, 2023 communication “A More Productive Path Forwards”¹ in reference to the 10-step proposal laid out at www.riverparkwestlebanon.com/path-forwards.

In keeping with Dep. City Manager David Brooks’ April 21, 2023 memo in response, Lyme requests that the Lebanon Planning Board consider items #7, and #9 which fall within their jurisdiction. Since our initial application we have elected to withdraw item #8 from consideration at this time.

Those items are included here, along with relevant sections of Mr. Brooks’ April 21, 2023 response in **bold**.

April 7, 2023: Lyme’s Communication:

7. Vest River Park’s Approvals

River Park has invested \$-millions in municipal infrastructure to meet the City’s conditions of approval and facilitate the project despite numerous setbacks resulting in lost-revenue to pay for them. We ask the Planning Board to re-consider if our investments to date meet the City’s present requirements of “vesting” to protect our investments in West Lebanon, which include the following that have been built by River Park and transferred to the City of Lebanon.

- Crafts Avenue Sewer & Roadway Improvements
- Crafts Avenue Extension
- Cross Country Connector

¹ <https://tinyurl.com/riverparkpath>

Action: Amend approvals to deem the above work sufficient to vest the River Park subdivision and site plan, reflecting delays and costs, and de-risking future investment.

April 21, 2023: Dep. City Manager David Brooks' Response:

- 7. The Planning Board approval already allows for vesting of the River Park development following the completion of the infrastructure improvements associated with Phase 1 of the seven-phase project. Portions, but not all, of the Phase 1 infrastructure improvements have been completed. Nevertheless, if you would like to have that condition of approval altered, a formal application must be submitted to the Planning Board requesting an amendment to the development approvals.**

June 5, 2023: Additional Information Provided

It is Lyme's contention that the Lebanon Subdivision Regulations have changed since 2011 and XYZ Dairy, LLC has met the City of Lebanon's present-day standard to vest the River Park project, and that the Lebanon Planning Board has the authority to amend the River Park approvals to deem the project vested.

The River Park approvals achieved on October 11, 2011 established "Phase 1 Infrastructure" that needed to be completed prior to vesting the approvals. The original plan was that the entirety of Phase 1 infrastructure would be completed alongside construction of the Phase 1 building in a timely manner. This condition was agreed to by XYZ Dairy, LLC following the October 11, 2011 final action by the Lebanon Planning Board. It was on the assumption that the project would be allowed to advance expeditiously following the drawn-out approvals process, which took 501 days for approval—well beyond the 90-day statutory requirement.

Subsequently, XYZ Dairy, LLC incurred numerous delays and challenges in subsequent years beyond its control, including a 4-year delay achieving requisite approvals from the NH DOT, project stoppages in 2016 and 2018, the Covid-19 pandemic suspending construction in March, 2020 and resultant delays and economic conditions. Throughout these delays and despite the lack of revenue-generating development being completed as intended in parallel, XYZ Dairy, LLC made significant investments in municipal infrastructure to enable the project.

Completed:

- 1.1 Crafts Avenue Sewer & Roadway Improvements (CASRI). *Completed* 2019, \$1,048,348.
- 1.2 Crafts Avenue Extension (CAE). *Completed* 2020, \$382,306
- 1.3 Cross Country Connector (CCC). *Completed* 2022, \$109,208
 - Infrastructure materials purchased for Phase 1.4 and 1.5: \$361,104
 - Total invested in municipal infrastructure to-date: **\$1,900,967**

Outstanding:

- 1.4 1 River Park Drive, a 46,925 sq. ft. mixed-use building.
- 1.5 Route 10 Southern Entrance (RT10) and River Park Drive – Segment 1 (RPD1)

Per the attached redline approvals, we have updated the Phase 1 infrastructure into proposed Phases 1.1-1.5 to reflect the five distinct phases within the so-called Phase 1 Infrastructure. Three phases have been completed to-date to enable the first building and serve the overall project, with two phases outstanding:

- Phase 1.4 is the construction of the 46,925 sq. ft. mixed-use building known as 1 River Park drive under active City of Lebanon building permit 2016-00293.
- Phase 1.5 is the Route 10 Southern Entrance and River Park Drive, which is the subject of ongoing discussions with the City of Lebanon regarding a more efficient approach to infrastructure development to serve the project and associated public benefits.
-

Of note, 1.1, 1.2, 1.3 were necessary for the advancement of 1.4. However, per the River Park approvals none are “due” until the Certificate of Occupancy issued for 1.4.

The Lebanon Subdivision Regulations have been updated and amended since the River Park project, providing greater clarity and flexibility for vesting infrastructure– specifically as it relates to Phased Developments. River Park was the first project entitled through the City’s Phased Development ordinance.

Section 14.1.B.1.a allows for the Planning Board to modify these requirements, and elsewhere in the Subdivision regulations Phased Developments approved in accordance with Section 7.13 are granted more flexibility to reflect the complexities of phased development.

Per the 2021 Lebanon Subdivision Regulations, Section 14.1 B 1.a.i:

- i) Construction of and/or installation of basic infrastructure to support the development (including all of the following: **one or more subdivision roadways** [emphasis added], access ways, etc. to a minimum gravel base; and **water and wastewater lines** and other utilities placed in underground conduit ready for connection to proposed buildings/structures) in accordance with the approved plans; and,

River Park has met the standard of the present-day Lebanon Subdivision Regulations of installing basic infrastructure to support the development having completed “one of more subdivision roadways” [Crafts Avenue Extension (CAE)], and “water and wastewater lines” [Crafts Avenue Sewer and Roadway Improvements (CASRI); Cross Country Connector (CCC)].

Per the 2021 Lebanon Subdivision Regulations, Section 7.13.C.4:

The phasing schedule may also specify threshold levels of work and time lines which must be completed, in order for the project, as a whole, or particular phase(s) of the project, to be considered “vested” pursuant to RSA 674:39, and the New Hampshire common law of vested rights.

The Lebanon Planning Board has been granted the authority under New Hampshire RSA 674:39 to “otherwise stipulate” that the vesting of XYZ Dairy, LLC’s property rights in accordance with the approved subdivision and site plan has been sufficiently completed. Per New Hampshire RSA 674:39 II:

- II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval ***or unless otherwise stipulated by the planning board*** [emphasis added], the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

The outstanding Phase 1 Infrastructure segments– as presently approved– represent considerable additional private investment in municipal infrastructure prior to any revenue generating development. XYZ does not believe that is a prudent path forward, because:

The City of Lebanon’s standards have evolved, and an argument has been made that XYZ’s investments to-date would satisfy the present standards. That would put River Park at an economic disadvantage compared to other projects in the City of Lebanon.

XYZ Dairy, LLC and Lyme Properties have made significant and concerted efforts to advance the project collaboratively with the City of Lebanon, and those discussions are ongoing with matters before the Lebanon Zoning Board of Adjustment, Lebanon Planning Board, and Lebanon City Council.

The remaining Infrastructure segments are required to be completed prior to a Certificate of Occupancy being issued for 1 River Park, but the timelines of the infrastructure and the building construction are not in sync with the Site Plan and Subdivision approvals.

Continuation of investment in municipal infrastructure by XYZ Dairy, LLC under the present approvals, and in light of the aforementioned facts, would be practically and economically unfeasible, as it would entail substantial investment of resources and efforts without assurances that the City of Lebanon would not revoke the River Park approvals despite delays incurred, the evolution of subdivision regulations since, and the realities of present economic conditions.

Ongoing discussions regarding a more efficient and collaborative approach to economic development in West Lebanon include proposals that would utilize municipal development tools employed elsewhere in the City equitably at River Park and in West Lebanon would make the present requirements of full, up-front private investment in municipal infrastructure unnecessary in favor of mutually-beneficial approaches, and potentially making use of applicable State and Federal grant programs.

Thus, it is XYZ Dairy, LLC's request that the Approvals be amended to vest the project based upon the investments to date in infrastructure. The necessary changes to the approvals are reflected in the attached red-line draft.

April 7, 2023: Lyme's Communication:

8. Turn off the "shot clock"

River Park abides by the approved phasing plan of the 8-phases approved in 2011, and adapted in 2019. Having extended them multiple times due to past delays, it's unfair and unreasonable to hold private property owners to a tight and ticking time-clock when— as the latest 107 day delay illustrates— there is little sense of urgency from City Hall in responding to critical project deadlines that have significant ripple effects on project timing and execution. We'd rather focus on building great places than meeting unnecessary deadlines, and the purpose of a Phased Development is to be market-responsive...not hit arbitrary dates that don't reflect procedural realities.

Action: Eliminate arbitrary dates & deadlines on phases but retaining mitigation requirements tied to certain phases that generate traffic impact.

April 21, 2023: Dep. City Manager David Brooks' Response:

- 8. The Planning Board approval incorporates timelines for the completion of phased developments as a means to address the statutory requirements for Active and Substantial Development and Substantial Completion (RSA 674:39) that would otherwise apply to the project. If you would like to have those timelines and conditions of approval altered, a formal application must be submitted to the Planning Board requesting an amendment to the development approvals.**

~~With respect to the Building Permit for Building #1, the State Building Code is the controlling code. Section 105.5 (Expiration) of the 2018 International Building Code (IBC) states that "[e]very permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance.... The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated." Until such time that Lyme Properties begins actual construction of the building on the property, the State Building Code requires that justifiable cause be demonstrated to warrant additional extensions of time that are limited to not more than 180 days each.~~

Note: The second paragraph is not relevant to the matter at hand, and is in reference to the 1 River Park building permit issue which is being addressed simultaneously through the Lebanon Zoning Board of Adjustment appeal process.

June 5, 2023: Additional Information Provided

XYZ Dairy, LLC has withdrawn this request from consideration at this time.

9. Eliminate Costly + Restrictive Conditions

Eliminate conditions of approval from 2011 subdivision and site plan that make it procedurally challenging and financially impossible to advance the project in an efficient and cost-effective manner.

Restriction on Lot Transfer: None of the River Park lots can be subdivided until the Route 10 and Roads are done. That prevents us from structuring deals for each phase and arranging financing/joint-venture partners for each phase, effectively requiring substantial upfront investment before anything can be built.

Action: Eliminate the Lot Transfer Restriction placed on River Park at the Grafton Registry of Deeds so River Park buildings can be financed efficiently.

April 21, 2023: Dep. City Manager David Brooks' Response:

9. If you would like to have the Planning Board reconsider conditions of approval that you believe are overly restrictive, a formal application must be submitted to the Planning Board requesting an amendment to the development approvals.

June 5, 2023: Additional Information Provided

In the December 15, 2017 Subdivision Agreement between the City of Lebanon and XYZ Dairy, LLC, Section K states that "Upon recording of the Final Plat, the Subdivider shall have the right to convey lots or units in the Subdivision." The Final Plat was recorded on January 2, 2018.

The Security Bond/Performance Agreement between the City of Lebanon and XYZ Dairy, LLC, also executed on December 15, 2017 put lot transfer restrictions on the entirety of the River Park subdivision, allowing for the single-family house lots to be released from restriction upon completion of the Crafts Avenue Extension scope of work. Those restrictions on lots 20-30 were released upon completion of Crafts Avenue Extension in 2020. The commercial lots remain under restriction.

The purpose was to restrict lot transfers until the remainder of the Phase 1 Security was supplied, as the initial security deposit (in the form of a Letter of Credit) was only for the Crafts Avenue Sewer & Roadway Improvements (CASRI) and Crafts Avenue Extension (CAE).

XYZ Dairy, LLC conceded to this requirement by the City's attorney at the time, despite Lot Transfer restrictions not being reflected in the 2011 River Park approvals or specifically addressed in the Site Plan or Subdivision regulations. At the time we did not suspect it would be an issue, as the entirety of Phase 1 infrastructure was originally anticipated be completed concurrent with the construction of Phase 1 (1 River Park).

Again, the delays incurred from 2016-2022 and the infrastructure work completed during that time (as spelled out in Item #7 above) have made significant changes to the approach. The assumption

at the time of executing the 12/15/17 contract was that the CASRI and CAE scopes of work would proceed expeditiously and sequentially, even allowing for the “roll-over” of security funds so as not to place an unnecessary financial burden on XYZ Dairy, LLC. This was done in response to the original Security Fund request by the City Engineer being considerably higher than the estimates provided for the work in question, creating a significant additional financial burden to XYZ Dairy, LLC.

Unfortunately, the documented delays incurred during the CASRI process resulted in the security funds being held for considerably longer, despite the work being completed and billed for by the contractor. The effect was that XYZ Dairy, LLC had to put up \$2 for every \$1 of work completed, tying up working capital for months.

Specifically, the request by XYZ Dairy, LCC to roll-over the aforementioned security funds to enable the completion of the CAE on-schedule in November, 2018 was not responded to by the City Engineer in a timely manner, and ultimately she suspended that work when the excavation moratorium

The scopes of work (CASRI & CAE) covered by that agreement were completed in 2019 and 2020, respectively, effectively completing the December 15, 2017 Performance Bond/Security Agreement. A separate Performance Bond/Security Agreement was required for the subsequent Cross Country Connector (CCC) scope of work in 2022.

The effect of this restriction is a significant and undue financial burden on XYZ Dairy, LLC that has been brought to the attention of the Planning Department in 2020 and 2022, without resolution.

1. To advance the development of each lot a separate single-purpose entity would be created to finance each building. Can't address that basic reality of real estate development process with these over-burdensome restrictions in place.
2. XYZ Dairy, LLC has invested \$1.9M to date in infrastructure, which enables the development of 1 River Park (e.g. required fire hydrant for construction (CASRI/CAE), water/sewer lines to the building (CCC), and the remaining infrastructure does not need to be completed until issuance of a Certificate of Occupancy for 1 River Park Drive.
3. Having to put an estimated \$3-5M (depending on if River Park/Lyman street are expanded to serve *Advance Transit*) forwards for infrastructure (or a security note to that effect) prior to development of the first building being underway, is limiting and financially burdensome.
4. Given the investments XYZ has made to date, and the costs incurred during various stoppages and as reflected in the increased costs of development since the overall projects and the building in Phase 1 were first conceived and approved, an adjustment is warranted.

Per Section 7.10 of the 2021 Subdivision Regulations:



The Applicant may request a public hearing before the Board, with notice as provided in Section 7.6 of these regulations to be paid for by the Applicant, regarding any issue related to the form and adequacy of the security.

Given that "the Applicant shall be liable for the entire actual cost of construction and installing all improvements required by the Board regardless of the amount of the Performance Security Agreement" per Section 7.10 of the 2021 Subdivision Regulations, the City is protected from any exposure. The significant investment in the buildings in the River Park project (e.g. Building 1, Building 8) served by the outstanding infrastructure in question represent a considerable private investment, which would be put at risk if XYZ Dairy, LLC did not complete the work.

We thusly request that the lot transfer restrictions be removed to address the real business challenges they pose.

Sincerely,

A handwritten signature in black ink that reads "Chet Clem". The signature is fluid and cursive.

Chet Clem
Lyme Properties
57 Main Street
West Lebanon, NH 03784

**PROPOSED REVISIONS TO EXISTING PHASING
PLAN AND CONDITIONS OF SITE PLAN
APPROVAL (FOR CONSIDERATION AT 6-12-23
PLANNING BOARD MEETING) ARE SHOWN IN
REDLINE**

**LEBANON PLANNING BOARD
FINAL MOTION FOR #PB2018-34-SPA**

Date: September 9, 2019

Moved that the Lebanon Planning Board **APPROVE** the application of **XYZ DAIRY, LLC** for an amendment to the Site Plan approval for the River Park mixed-use development to (i) change the sequence of the project phasing, (ii) increase the number of proposed residential dwelling units from 80 to 125, (iii) relocate the proposed sewer line from Crafts Avenue Ext. across Lot 2, and (iv) allow temporary parking facilities on Lots 2, 3, 4, and 5 for the first three phases of the development, #PB2018-34-SPA, including any and all supplemental submissions and testimony provided for and during the public hearing, and per the conditions of approval noted below.

Approval of the River Park development is in accordance with the Lebanon Zoning Ordinance dated December 5, 1990, last revised July 21, 2010, and the Lebanon Site Plan Review Regulations dated May 9, 1977, last revised November 9, 2009. The phased build-out of River Park shall be as shown on the map and described in the chart under the heading “NEW PHASING PLAN” on page 5 of this Decision¹ (the “New Phasing Plan”), and is projected to occur over a 15-year period, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.

This Site Plan approval is related to a subdivision plat for River Park that was originally approved by the Planning Board on October 11, 2011 (#PB2011-01-FMAJ), was revised on May 11, 2015 (#PB2015-07-FMAJ) and was recorded in the Grafton County Registry of Deeds on January 2, 2018.

PRIOR NOTICES OF ACTION

River Park, located at North Main Street, Tax Map 44, Lots 3 & 7 and Tax Map 58, Lot 27, in the CBD, IND-L and R-3 zones, was originally approved in 2011, and received extensions and modifications in 2013, 2015, and 2016. This Notice of Action is intended to consolidate and update all prior conditions of Site Plan approval for River Park and, therefore, is intended to supersede and replace the following Notices of Action:

- Notice of Action dated October 24, 2011, approving the site plan review application for XYZ DAIRY, LLC for a seven (7) phase development known as River Park, located at North Main Street, Tax Map 44, Lots 3 & 7 and Tax Map 57, Lot 27, West Lebanon, NH, in the CBD, IND-L and R-3 zones, #PB2010-25-SPR, as shown on plans titled “Site Plans – River Park” (Sheets numbered 1 through 5; D1 through D18; 1-1 through 1-16; 2-1 through 2-21; 3-1 through 3-16; 4-1 through 4-9; 5-1 through 5-7; 6-1 through 6-9; and 7-1 through 7-8),

¹ The New Phasing Plan replaces and supersedes the Master Phasing Plan (Sheet 5 of the Approved Plan Set).

prepared by Holden Engineering & Surveying, Inc., issued for permitting: June 10, 2010, latest issue: May 2, 2011.

- Notice of Action dated September 9, 2013, approving the request of XYZ Dairy, LLC, for an extension of time in order to obtain Building Permits for each phase of a phased development known as River Park, located at North Main Street, Tax Map 44, Lots 3 and 7, and Tax Map 58, Lot 27, in the CBD, IND-L and R-3 zones, #PB2013-22-EXT.
- Notice of Action dated June 8, 2015, approving the application of XYZ DAIRY, LLC for a Site Plan Amendment to amend the layout of Lot 1, including changes to the building footprint, parking layout, vehicular circulation, loading location of the building, landscaping, lighting, and drainage and engineering of the site and associated site improvements, located at North Main Street, Tax Map 44, Lot 3, in the CBD district, #PB2015-10-SPA, plans titled "River Park, Proposed Amendment to Site Plan – Lot 1, West Lebanon, Grafton County, New Hampshire" prepared by Elkus/Manfredi Architects, dated April 13, 2015, and plans titled "Site Plans, River Park, River Park Drive, Lebanon, New Hampshire, Grafton County," prepared by TF Moran, dated May 26, 2015.
- Notice of Action dated November 9, 2015, approving the application XYZ DAIRY, LLC for an extension pursuant to the Site Plan Review Regulations for a 7-phase development known as River Park, located at North Main Street, Tax Map 44, Lots 3 and 7, and Tax Map 58, Lot 27, in the CBD, IND-L, and R-3 zones, #PB2015-34-EXT, as requested in a letter from David Clem of Lyme Properties.
- Notice of Action dated November 14, 2016, approving the request of XYZ DAIRY, LLC, for an extension of Site Plan Approval for a seven (7) phase development known as River Park, located at North Main Street, Tax Map 44, Lots 3 and 7, and Tax Map 58, Lot 27, in the CBD, IND-L, and R-3 zones, #PB2016-28-EXT.

The approval documented by this Notice of Action for #PB2018-34-SPA incorporates the following:

- The following approvals granted on October 24, 2011, as part of #PB2010-25-SPR:
 - A conditional use permit for the use of off-lot parking within the development in accordance with Section 607.5 of the Zoning Ordinance as set forth in the "Master Plan-Phasing Parking" table on Sheet 5 of the Approved Plan Set.
 - Waivers for Sections 5.2.A (Statement of Service from Utilities) and Section 7.3.C (Use of Landscape Architect) of the Site Plan Review Regulations for the overall development.

- Any and all supplemental submissions and testimony provided for and during the public hearings for #PB2010-25-SPR, #PB2013-22-EXT, #PB2015-10-SPA, #PB2015-34-EXT, #PB2016-28-EXT, and for the current application, #PB2018-34-SPA.

APPROVED SITE PLANS

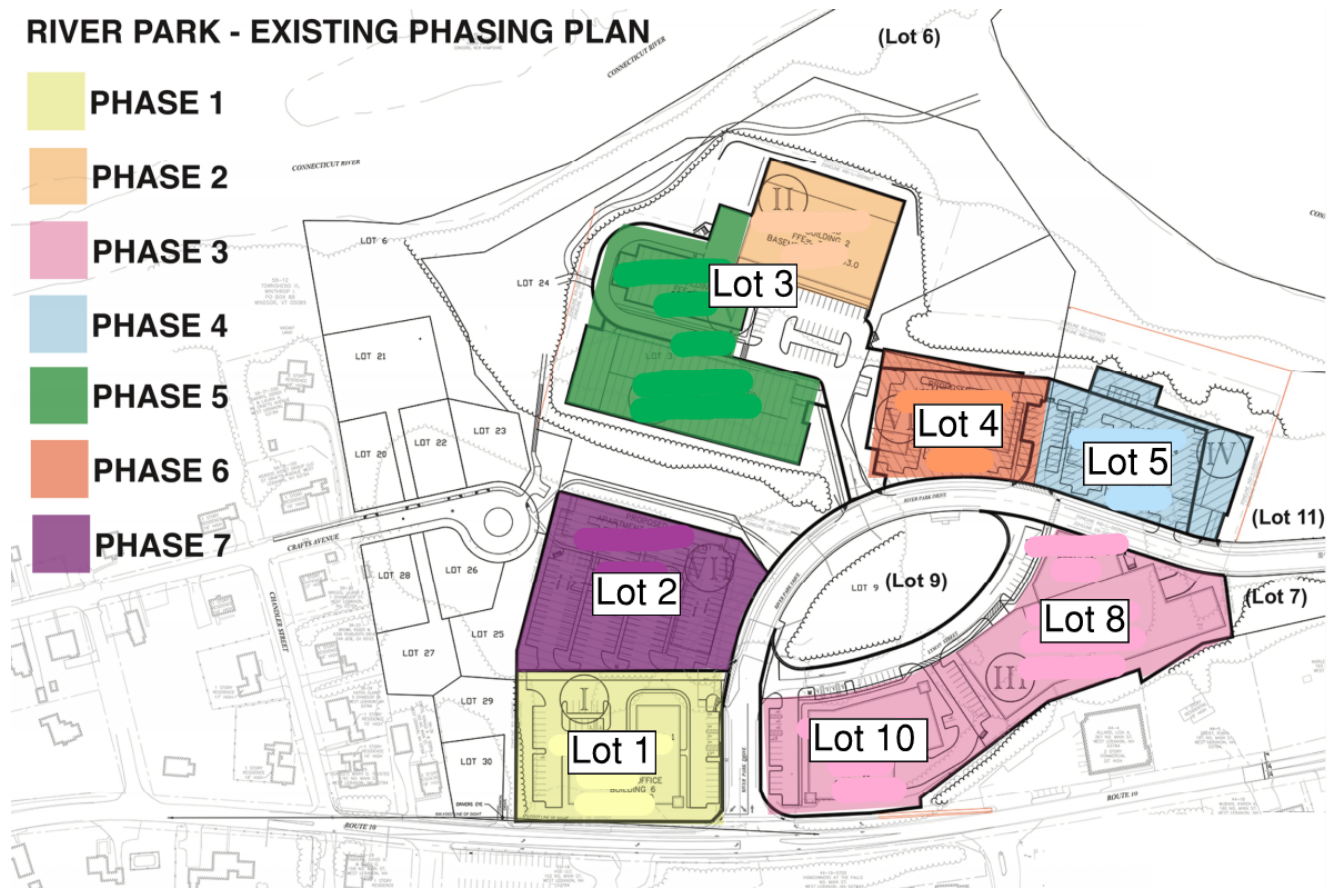
As set forth in the Notices of Action outlined above, the approved site plans for River Park consist of the following:

- Plans titled “Site Plans – River Park” (Sheets numbered 1 through 5; D1 through D18; 1-1 through 1-16; 2-1 through 2-21; 3-1 through 3-16; 4-1 through 4-9; 5-1 through 5-7; 6-1 through 6-9; and 7-1 through 7-8), prepared by Holden Engineering & Surveying, Inc., issued for permitting: June 10, 2010, latest issue: May 2, 2011 (“Approved Plan Set”).
- Plans titled “River Park, Proposed Amendment to Site Plan – Lot 1, West Lebanon, Grafton County, New Hampshire” prepared by Elkus/Manfredi Architects, dated April 13, 2015, and plans titled “Site Plans, River Park, River Park Drive, Lebanon, New Hampshire, Grafton County,” prepared by TF Moran, dated May 26, 2015. [These plans sets supersede and replace Sheets 1-1 through 1-16 of the Approved Plan Set].

PRIOR PHASING PLAN

River Park was originally approved as a seven (7) phase project as follows:

RIVER PARK - EXISTING PHASING PLAN

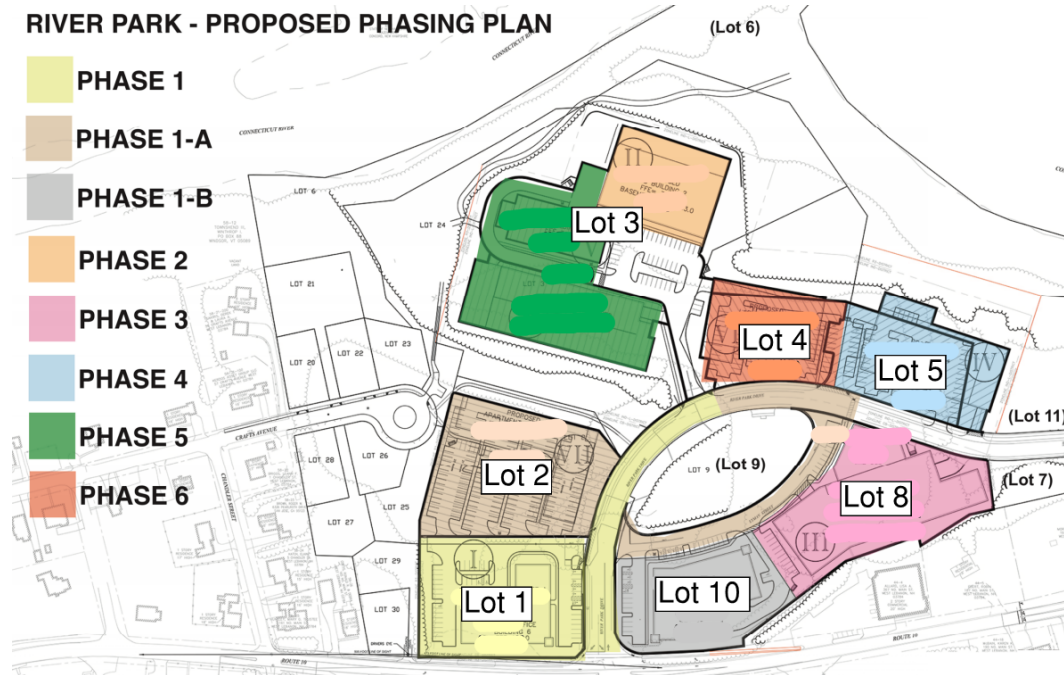


PRIOR PHASING -- APPROVED ON 10/24/11

Phase	Improvements
1	48,750-square-foot building for office and retail use located on Lot 1 with temporary parking located on Lot 2. Phase 1 also includes construction of a portion of the development roadway sufficient to access the proposed building, the southerly development entrance intersection, the extension of Crafts Avenue, and the installation of water and sewer lines necessary for this portion of the site.
2	178,650-square-foot building for laboratory/office use located on Lot 3 with temporary parking located on Lots 4 and 5. Phase 2 also includes the construction of the remainder of the development roadway and the northerly access intersection.
3	95,800-square-foot building for office and retail use located on Lot 10; a 23,000-square-foot building for office and retail use and a 585-space parking garage located on Lot 8, and construction of proposed Lyman Street.
4	153,120-square-foot building for laboratory/office use located on Lot 5.
5	81,500-square-foot building for laboratory/office use and an 808-space parking garage located on Lot 3.
6	133,200-square-foot building for laboratory/office use located on Lot 4.
7	125,125-square-foot building for 80 units of multi-family housing located on Lot 2.

NEW PHASING PLAN

This Notice of Action approves the rephasing of the River Park development, as follows:



NEW PHASING	
Phase	Improvements
1.1	Crafts Avenue Sewer and Roadway Improvements (CASRI) (COMPLETED 2019)
1.2	Extension of Crafts Avenue (CAE) (COMPLETED 2020)
1.3	Installation of water and sewer lines for Lot 1 and Lot 2 via Cross Country Connector (CCC) (COMPLETED 2022)
1.4	46,925 ² -square-foot building for office and retail use located on Lot 1 with temporary parking located on Lot 2 and Lot 3. Phase 1 also includes construction of a portion of the development roadway sufficient to access Lot 3, the southerly development entrance intersection, the extension of Crafts Avenue, and the installation of water and sewer lines necessary for this portion of the site.
1.5	Construction of the southerly development entrance intersection (Route 10) and portion of the development roadway sufficient to access Lots 1, 2 and 3 (River Park Drive Segment 1).
1-A	125,125-square-foot building for 125 units of multi-family housing located on Lot 2, and the construction of a temporary parking lot on Lot 3 and Lot 4. Phase 1-A also includes the extension of the development roadway (River Park Drive to the northern Lyman Street intersection) Segment 1 to the extent not completed as part of Phase 1.5 and construction of proposed Lyman Street.
1-B	95,800-square-foot building for office and retail use located on Lot 10 with temporary parking on Lot 3, Lot 4, and Lot 5.
2	178,650-square-foot building for laboratory/office use located on Lot 3 with temporary parking located on Lot 3, Lot 4, and Lot 5. Phase 2 also includes the construction of the

² Reduced from 48,750 sq. ft. per Notice of Action dated June 8, 2015, #PB2015-10-SPA. The applicant may apply to the Planning Board for a Site Plan Amendment to reallocate the 1,825 sq. ft. difference towards another building or buildings in the River Park development.

	remainder of the development roadway (River Park Drive from the northern Lyman Street intersection) and the northerly access intersection.
3	23,000-square-foot building for office and retail use and a 585-space parking garage located on Lot 8.
4	153,120-square-foot building for laboratory/office use located on Lot 5.
5	81,500-square-foot building for laboratory/office use and an 808-space parking garage located on Lot 3.
6	133,200-square-foot building for laboratory/office use located on Lot 4.

CONDITIONS OF APPROVAL

[DRAFTING NOTE: the conditions of approval below are substantially based on the October 24, 2011 Notice of Action for #PB2010-25-SPR but have been renumbered.]

GENERAL CONDITIONS-PRECEDENT TO THE ISSUANCE OF A BUILDING PERMIT FOR EACH PHASE:

1. The applicant shall submit final designs, including construction drawings, of all infrastructure features associated with each phase, including proposed on- and off-site roadway and parking areas, sidewalks, water and sewer utilities, and storm drainage systems, to the City Engineer for approval, which shall not be unreasonably withheld.
2. The applicant has submitted sufficient site and building information to obtain Site Plan approval for development of the site. However, the applicant shall be required to submit updated site plans, building elevations, and phasing information sufficient to demonstrate compliance with the approval to the City for review and approval by the Planning Department, prior to the issuance of Building Permits for each phase and prior to the start of any construction activities for development shown or described in all remaining phases as depicted on the New Phasing Plan. For purposes of this decision, construction activities shall include any construction, excavation, or other site work associated with the construction or installation of buildings, roadways, parking, water, sewer, or storm drainage infrastructure. All such plans and information shall be in accordance with the Site Plan Review Regulations dated last revised November 9, 2009. Such Planning Department review shall be for the purpose of ensuring that the proposed building design and uses are in substantial conformance with the approved phased development project and with the Site Plan Review Regulations referenced above.
3. The applicant shall complete all required improvements for all approved phases in accordance with the New Phasing Plan and in accordance with this decision, except that the applicant, upon written notice to the Planning Board, may elect to commence Phase 3 (including the 585-space parking garage located on Lot 8) at any time prior to the date referenced in Condition #18-1. In so doing, the applicant may commence Phase 3 prior to any one or more of the phases preceding Phase 3 in the sequence set forth in the New Phasing Plan. For purposes of this decision, the commencement dates referenced on the New Phasing Plan and in this

decision shall be deemed to be the date by which a Building Permit shall have been applied for with stamped construction drawings prepared by a licensed architect and engineer for that phase, pursuant to Section 4.9.C(4) of the Site Plan Review Regulations, and the phasing deadline is tolled until the Building Permit is issued. If the applicant anticipates being unable to meet any time deadline(s) set forth in this decision with respect to any phase(s), the applicant shall submit an updated phasing schedule to the Planning Board for review and approval in accordance with Section 4.9.E of the Site Plan Review Regulations. In determining whether to grant any requested extensions, the Board shall consider the totality of the circumstances, including the extent and complexity of the conditions-precedent, and whether the need for more time is attributable to circumstances beyond the control of the applicant, rather than to the applicant's neglect or failure to proceed with reasonable promptness.

4. Prior to the start of any construction activities for which construction inspection is required pursuant to this decision or any applicable ordinance or code for each phase of the project, the City shall retain the services of an independent 3rd party inspector, for which the applicant shall be responsible for all inspection fees related to construction and installation of on- and off-site roadways, parking, sidewalks, water and sewer utilities, storm drainage, and erosion control, in accordance with Chapter 181 of the City Code and Section 14 of the Subdivision Regulations unless waivers have been granted. The applicant shall provide funding for inspection services in a form acceptable to the City. Third party engineer inspection reports and as-built drawings provided by the applicant (using NH State Plane Coordinate system), including tie sheets and Northing and Easting coordinates and elevations of underground utilities, shall be reviewed and approved by the City Engineer, prior to acceptance of any utility improvements by the City and all inspection reports shall be made available to the applicant.
5. Edge-of-Disturbance fencing shall be installed and maintained before and during any site work for each phase under construction, to be verified by the City Engineer or City's third-party inspector on site.
6. The applicant shall be required to have at least one fire hydrant operational within the development prior to the issuance of any Building Permit for structural improvements (excluding the building foundation) to the satisfaction of the Lebanon Fire Department. Note: the Lebanon Fire Department has approved the fire hydrant on Crafts Avenue extension as satisfaction of this condition.
7. Temporary parking facilities.
 - a. Temporary parking facilities are approved in accordance with the chart attached hereto as Exhibit "A".
 - b. Prior to the issuance of a building permit for any phase involving the construction of a temporary parking facility, the applicant shall provide the

Planning & Development Department with plans for the proposed temporary parking facility, together with an operation and maintenance plan.

- c. Each temporary parking facility shall be designed to ensure the safe movement of vehicles and pedestrians to the satisfaction of the Director of the Department of Public Works and the Director of the Planning Department, which shall not be unreasonably withheld. It shall be the responsibility of the applicant to maintain each temporary parking facility in accordance with the operation and maintenance plan.
- d. The temporary parking identified in Exhibit A may be used until such parking is replaced by the permanent parking garage included in Phase 3 or December 31, 2038, whichever is earlier.

GENERAL CONDITIONS-PRECEDENT TO THE ISSUANCE OF CERTIFICATES OF OCCUPANCY FOR EACH PHASE:

Temporary Certificates of Occupancy:

- 8. A water flow test shall be completed on the new water main within the development as soon as the water main is substantially complete and prior to any occupancy of any new buildings within the subdivision. Such test is for the purpose of designing fire suppression sprinkler systems for each building and shall be witnessed and approved by the Lebanon Fire Department.
- 8a. The subdivision plat shall be recorded in the Grafton County Registry of Deeds prior to any occupancy of any new buildings within the subdivision. Note: The River Park Subdivision plat was filed on December 27, 2017 and recorded on January 2, 2018 in the Grafton County Registry of Deeds.
- 9. Prior to the issuance of any Certificate of Occupancy for each phase, the applicant shall enter into a Performance Security Agreement, pursuant to Section 8.2 of the Site Plan Review Regulations for any unfinished and outstanding improvements, unless waivers have been granted, that are required for the current development phase, both on- and off-site, including, but not limited to: parking and sidewalk improvements, sewer and water utilities, storm drainage systems, landscaping, and lighting, in an amount considered adequate by the Department of Public Works, and in a form satisfactory to the City Attorney. The Performance Security Agreement shall be secured by a surety bond, a letter of credit, or an escrow account. The Performance Security Agreement shall not restrict, impair or impede the sale, transfer, or other conveyance of any lot in the phased development, and the notice of restriction previously recorded in the Registry of Deeds in connection with the Performance Security Agreement related to Phases 1.1, 1.2 and 1.3 shall be released.
- 10. Prior to the issuance of any Certificate of Occupancy for each phase, the applicant shall be required to provide the City with a copy of a recorded deed or easement,

a 99-year lease, or other legal instrument acceptable to an attorney representing the City for off-lot parking in accordance with Section 607.5.A(2) of the Zoning Ordinance to ensure that the occupants of each phase have adequate on-site or off-site parking at all times.

Final Certificates of Occupancy:

11. Prior to the issuance of a final Certificate of Occupancy for each phase, the applicant shall dedicate the completed water mains and hydrants within the current development phase, excluding service connections beyond the curb shut-off valves, to the City for ownership and maintenance, subject to any appropriate easements. Stormwater management systems serving municipal and/or state roadways (e.g. Crafts Avenue Extension, North Main Street/NH Route 10) shall be dedicated to the City for maintenance, subject to any appropriate easements. Said conveyance and easements shall be approved by the City Attorney and the Department of Public Works and recorded in the Grafton County Registry of Deeds prior to acceptance of any utility improvements by the City.
12. Prior to the issuance of a final Certificate of Occupancy for each phase, the applicant shall comply with all other applicable provisions of Chapter 181 of the City Code, to the satisfaction of the Department of Public Works.
13. Prior to the issuance of a final Certificate of Occupancy for each phase, the applicant shall provide a digital as-built record drawing for each lot (Cad .dwg format using the NH State Plane Coordinate System).

SPECIFIC CONDITIONS FOR PHASES 1.1 THROUGH 1.5:

- 14-1. The Applicant shall ensure that all trees are a minimum of ten (10) ft. from the water and sewer mains when planted.
- 14-2. The construction of ~~Phase 1~~the infrastructure improvements described in Phases 1.1 through 1.5, which commenced in 2018, shall be completed within 7 years from the date of the Planning Board's final subdivision approval, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 14-3. This condition was originally Condition #14-2 in the October 24, 2011 Notice of Action, and was obviated by the Planning Board's Notice of Action dated June 8, 2015 (#PB2015-10-SPA). It is included below for historical purposes only:

Prior to the issuance of a Building Permit for Phase 1 of the development, the applicant shall provide two complete sets of revised plans to the Planning Department, depicting the following plan changes:

- a) Sheet 1 of the approved Site Plan sets shall be revised to include the tax map and lot number and abutter name and address for the adjacent islands

within the Connecticut River, which are owned by the State of New Hampshire.

- b) Sheets 2 & 3 of the approved Site Plan sets shall be revised to eliminate the reference to "Lot 6" within the boundaries of proposed Lot 21.
 - c) Sheet 3 of the approved Site Plan sets shall be revised to relocate the Surveyor's signature block and to properly label Lot 21.
 - d) As proposed by the applicant in a letter to the Planning Board dated July 19, 2011, the Phasing Notes on Sheet 5 of the approved Site Plan sets shall be revised to push back by one year the dates of commencement for each phase of the overall development.
 - e) Sheets 1-9 and 1-11, and any other applicable plan sheets, shall be revised to depict bollards or other safety measures around all propane tanks that are exposed to vehicle traffic to the satisfaction of the Lebanon Fire Department.
- 14-4. Prior to the issuance of a Building Permit for Phase 1 of the development, the applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit
 - NHDES approval for Sewage Discharge
- Note: this requirement has already been satisfied. Alteration of Terrain Permit #AoT-0994 dated October 6, 2015 and Sewage Discharge Permit #D2015-0802 dated September 10, 2015, have been issued by NH DES for Phase 1.
- 14-5. The requirements of Sections 6.2.B(1) of the Site Plan Review Regulations are waived for improvements on Lot 2 for Phases [1.1 through 1.5](#). See also Condition 15-3.
- 14-6. As proposed by the applicant, the southerly development entrance improvements shall be constructed as part of Phase [1.5](#) of the development. If a Traffic Signal Warrant Analysis for the southerly development entrance indicates that signalization of the intersection will be required during any phase of the development, the applicant shall be required to install and activate traffic signal improvements when actual traffic conditions warrant such implementation, pursuant to Condition 14-8 of this decision. Note: the applicant has provided a Traffic Signal Warrant Analysis as required by this condition.
- 14-7. As recommended in Phase "A" of the applicant's Traffic Impact and Site Access Study, prepared by Holden Transportation Engineering, dated August 17, 2010, the applicant shall be required to implement traffic signal timing optimization improvements at the intersection of Main Street/Bridge Street/Dana Street within 6 months following the issuance of any Certificate of Occupancy for Phase [1.4](#) of

the development to the satisfaction of the Department of Public Works which shall not be unreasonably withheld. Prior to issuing any Certificate of Occupancy for Phase 1.4, the applicant shall provide the City with an acceptable performance security in an amount sufficient to guarantee the completion of the traffic signal timing update as required. Any performance security required under this condition for Phase 1.4 shall be separate from any performance security required by Condition 9 of this decision.

- 14-8. The applicant shall be required to monitor traffic volumes and distribution patterns at both the northerly and southerly development entrances to ensure the adequacy of proposed mitigation measures as outlined in the Traffic Impact and Site Access Study, prepared by Holden Transportation Engineering, dated August 17, 2010, and to determine when signalization of the southerly development intersection might be required, based on the Traffic Signal Warrant Analyses to be prepared by the applicant and provided to the City. Such monitoring shall be conducted within 6 months following the issuance of any Certificate of Occupancy for Phase 1.4 and for each later phase to the satisfaction of the Department of Public Works. The applicant shall be required to install and activate traffic signal improvements, to the satisfaction of the Department of Public Works, when actual traffic conditions warrant such implementation. Prior to issuing any Certificate of Occupancy for Phase 1.4 and for each later phase, the applicant shall provide the City with an acceptable performance security in an amount sufficient to guarantee the completion of the traffic monitoring as required. Any performance security required under this condition for Phase 1.4 and for each later phase shall be separate from any performance security required by Condition 9 of this decision. Note: the applicant has provided a Traffic Signal Warrant Analysis as required by this condition.

[DRAFTING NOTE: conditions 14-9 through 14-16 are based on the Notice of Action dated June 8, 2015, for #PB2015-10-SPA.]

- 14-9. Prior to the issuance of a Building Permit, the applicant shall submit an updated Site Plan that reflects the correct and updated phasing schedule as approved as part of the Subdivision Amendment approved by the Planning Board May 11, 2015. Note: With the approval of the New Phasing Plan, this condition is no longer applicable.
- 14-10. Prior to the issuance of a Building Permit, the applicant shall submit an updated landscaping plan, to the satisfaction of the Planning Department, with a table indicating the proposed number, size, and species names of all the proposed plantings for Lot 1, as well as updating parking shading calculations for Lot 1 only. Note: the applicant has satisfied this condition.
- 14-11. Prior to the issuance of a Building Permit, the applicant shall submit an updated lighting plan showing the number of proposed light poles for Lot 1 and the location of any proposed lighting on the building façade, if applicable. The applicant shall also confirm that the lighting intensity on the residential lots to the south does not

exceed 0.1 foot-candles, to the satisfaction of the Planning Department. Note: the applicant has satisfied this condition.

- 14-12. Prior to the issuance of a Building Permit, the applicant shall obtain approval from the Fire Department regarding the turning radius of the fire trucks and location of the proposed fire hydrants on Lot 1, and all plans shall reflect the final and approved details. Note: the applicant has satisfied this condition.
- 14-13. The applicant shall provide appropriate signage and/or pavement markings to identify the one-way circulation of the proposed driveway on site to the satisfaction of the City Engineer. Note: the applicant has satisfied this condition.
- 14-14. The applicant shall provide an accurate drainage report that shall reflect current and proposed drainage, to the satisfaction of the City Engineer. Note: the applicant has satisfied this condition.
- 14-15. The applicant shall provide a plan that demonstrates a lack of conflict between overhead utilities and landscaping, to the satisfaction of the City Engineer. Note: the applicant has satisfied this condition.
- 14-16. The requirements of Sections 5.1.E(13) and 6.2.B of the Site Plan Regulations are waived as was requested by the applicant in connection with the Site Plan Review approval for #PB2015-10-SPA.

SPECIFIC CONDITIONS FOR PHASE 1-A:

[DRAFTING NOTE: Phase 1-A conditions are taken from the Phase 7 conditions set forth in the 10/24/11 Notice of Action]

- 15-1. As proposed by the applicant, the construction of Phase 1-A improvements shall commence before the end of **2025** and shall be completed within 2 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 15-2. The applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit, if applicable
 - NHDES approval for Sewage Discharge
- 15-3. The requirements of Section 6.2.B(1) of the Site Plan Review Regulations are waived for improvements on Lot 2 for Phase 1-A.

SPECIFIC CONDITIONS FOR PHASE 1-B:

[DRAFTING NOTE: Conditions 16-1 & 16-2 are taken from the Phase 3 conditions set forth in the 10/24/11 Notice of Action]

- 16-1. As proposed by the applicant, the construction of Phase 1-B improvements shall commence before the end of **2026** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 16-2. The applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit
 - NHDES approval for Sewage Discharge
- 16-4. The requirements of Section 6.2.B(6) of the Site Plan Review Regulations are waived for improvements on Lot 8 for Phase 1-B.

SPECIFIC CONDITIONS FOR PHASE 2:

- 17-1. As proposed by the applicant, the construction of Phase 2 infrastructure improvements shall commence before the end of **2028** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 17-2. Prior to the issuance of a Building Permit for Phase 2 of the development, the applicant shall provide two complete sets of revised plans to the Planning Department, depicting the following plan changes:
- a) Landscaping on Sheet 2-15 shall be revised and foundation plantings added along the westerly side of the parking garage structure to be consistent with the relocated garage #2 layout as depicted on Sheet 5-4, dated last revised May 2, 2011.
- 17-3. The applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit
 - NHDES approval for Sewage Discharge
 - NHDES Comprehensive Shoreland Protection permit
- 17-4. As proposed by the applicant, the northerly development entrance improvements shall be constructed as part of Phase 2 of the development. Prior to the issuance of a Building Permit and prior to the start of any construction activities for Phase 2, the applicant shall have received approval from the NH Department of Transportation for the northerly development entrance and any other improvements within the portion of NH Route 10 under NHDOT jurisdiction. Signalization of the northerly development entrance shall be subject to approval and requirement of the NH Department of Transportation.
- 17-5. As recommended in Phase "A" of the applicant's Traffic Impact and Site Access Study, prepared by Holden Transportation Engineering, dated August 17, 2010, the applicant shall be required to implement traffic signal timing optimization

improvements at the intersections of Main Street/Tracy Street and Main Street/South Main Street/Maple Street within 6 months following the issuance of any Certificate of Occupancy for Phase 2 of the development. Prior to issuing any Certificate of Occupancy for Phase 2, the applicant shall provide the City with an acceptable performance security in an amount sufficient to guarantee the completion of the traffic signal timing optimization as required. Any performance security required under this condition for Phase 2 shall be separate from any performance security required by Condition 9 of this decision.

SPECIFIC CONDITIONS FOR PHASE 3:

- 18-1. As proposed by the applicant, the construction of Phase 3 improvements shall commence before the end of **2030** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 18-2. The applicant shall obtain all required State approvals including, but not limited to, the following:
 - NHDES Alteration of Terrain Permit
 - NHDES approval for Sewage Discharge
- 18-3. As recommended in Phase “B” of the applicant’s Traffic Impact and Site Access Study, prepared by Holden Transportation Engineering, dated August 17, 2010, the applicant shall be required to make a payment to the City in the amount of \$274,554.00 toward design, construction and installation by the City of geometric improvements and/or traffic signal upgrades as outlined in the Study for the intersection of Main Street/Bridge Street/Dana Street intersection and/or traffic signal upgrades at Main Street/Tracy Street and Main Street/South Main Street/Maple Street intersections prior to the issuance of any Certificate of Occupancy for Phase 3 of the development.

If the City elects to pursue geometric improvements at the Main Street/Bridge Street/Dana Street intersection, the City shall determine whether any existing on-street parking spaces on Main Street will be lost due to construction of these intersection improvements. If existing on-street parking spaces are to be lost, the applicant shall, prior to the issuance of any Certificate of Occupancy for Phase 3, be required to pay to the City an amount equal to \$4,700.00 per space for each lost parking space, which is the amount estimated by the City needed to pay for land and construction costs necessary to replace such lost parking. Any funds received by the City from the applicant shall be used by the City to study the parking needs of the West Lebanon Village Central Business District and to identify locations for and/or to reconstruct such lost parking spaces. Any funds not expended by the City within a period of 6 years from receipt shall be returned to the applicant in accordance with RSA 674:21,V(j).

- 18-4. The applicant shall be required to monitor and update traffic signal timing optimization along Main Street as individual phases of the development are

completed and occupied to ensure optimal traffic operations through the Main Street corridor for the duration of the project build-out. Such monitoring shall be conducted within 6 months, and updates shall be implemented within 1 year, following the issuance of any Certificate of Occupancy for Phase 3 and for each later phase, to the satisfaction of the Department of Public Works. Prior to issuing any Certificate of Occupancy for Phase 3 and for each later phase, the applicant shall provide the City with an acceptable performance security in an amount sufficient to guarantee the completion of the traffic signal timing monitoring and updates, as required. Any performance security required under this condition for Phase 3 and each later phase shall be separate from any performance security required by Condition 9 of this decision.

- 18-5. The requirements of Section 6.2.B(6) of the Site Plan Review Regulations are waived for improvements on Lot 8 for Phase 3.

SPECIFIC CONDITIONS FOR PHASE 4:

- 19-1. As proposed by the applicant, the construction of Phase 4 improvements shall commence before the end of **2032** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 19-2. The applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit, if applicable
 - NHDES approval for Sewage Discharge
 - NHDES Comprehensive Shoreland Protection permit

SPECIFIC CONDITIONS FOR PHASE 5:

- 20-1. As proposed by the applicant, the construction of Phase 5 improvements shall commence before the end of **2034** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 20-2. Prior to the issuance of a Building Permit for Phase 5 of the development, the applicant shall provide two complete sets of revised plans to the Planning Department, depicting the following plan changes:
- a) Landscaping on Sheet 5-7 shall be revised and foundation plantings added along the westerly side of the parking garage structure to be consistent with the relocated garage #2 layout as depicted on Sheet 5-4, dated last revised May 2, 2011.
- 20-3. The applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit, if applicable

- NHDES approval for Sewage Discharge
- NHDES Comprehensive Shoreland Protection permit

SPECIFIC CONDITIONS FOR PHASE 6:

- 21-1. As proposed by the applicant, the construction of Phase 6 improvements shall commence before the end of **2037** shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 21-2. The applicant shall obtain all required State approvals including, but not limited to, the following:
- NHDES Alteration of Terrain Permit, if applicable
 - NHDES approval for Sewage Discharge
 - NHDES Comprehensive Shoreland Protection permit

GENERAL CONDITIONS OF APPROVAL:

22. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.
23. All proposed streets, sidewalks, water and sewer mains, and service lines shall be constructed pursuant to the City's standards.
24. All required landscape plantings shall meet the minimum size requirements for such plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.
25. Any light fixtures used to illuminate signage, including building-mounted signage, shall be installed to light the signs from above and shall conform to the City Site Plan Review Regulations.
26. In accordance with the City's Impact Fee Ordinance fee schedule adopted on September 13, 2010, this application is exempt from impact fees for a period of 5 years from the date of the Planning Board's final approval. Building permits obtained after the 5-year period shall be subject to impact fees in existence at the time of the Building Permit application submission. [Note: The River Park subdivision plat (#PB2011-01-FMAJ) was recorded on January 2, 2018, representing the final approval for the subdivision and starting the 5-year exemption period. **The 5-year exemption period shall now expire on January 2, 2025.**
27. The applicant shall provide to the City copies of any agreements, memoranda of understanding, or licenses granting permission for Advance Transit and other local transit service providers to utilize the River Park development as a transfer point for existing and future transit routes serving West Lebanon. Any such documents shall be provided as soon as practicable and prior to the relocation of transit

services from Main Street to the River Park development. [An August 17, 2021 Memo of Understanding between XYZ Dairy, LLC and Advance Transit has been provided to the City.](#)

28. The applicant is encouraged to work with tenants and residents of the River Park development to implement Transportation Demand Management measures, including flexible work hours, incentives for carpooling, adequate parking and showers and changing rooms for bicyclists, and other measures, to reduce peak hour travel and reliance on single-occupancy vehicles.
29. Effect of Approval. This approval is a final, conditional site plan approval for a “phased development” under Section 4.9 of the Site Plan Review Regulations and is a final decision of the Planning Board for purposes of RSA 677:15, I. As set forth in Section 4.10(C) of those Regulations, the deadlines for the construction of improvements within each phase shall be as stated in the approved phasing plan, rather than the 1-year period under Section 4.10(A). It is the intent and effect of this approval, ~~subject to the satisfactory completion of the financial security requirements set forth in Condition #5 of the Final Major Subdivision approval (#PB2011-01-FMAJ) for the development, that upon~~ [that the](#) completion of the ~~Phase 1 infrastructure improvements~~ [Phases 1.1, 1.2 and 1.3](#) within 5 years of the final subdivision approval, ~~as set forth in Condition #14-2 above,~~ [constitutes the vesting of](#) the subdivision as a whole, including all phases, ~~shall vest~~ as provided in RSA 674:39, II, and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect this phased development, provided that the applicant and its successors-in-interest continue to comply with all conditions of this approval and of the Planning Board’s approval of Final Major Subdivision application #PB2011-01-FMAJ, including the time limits set forth in the phasing plan, unless such a limit is extended for good cause by the Planning Board, acting upon an application submitted prior to the expiration of such limit.
30. If any dispute arises over the interpretation or application of any of the above conditions, such dispute shall be resolved by the Planning Board itself after notice and public hearing.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

June 12, 2023 Meeting

Staff Memorandum – PB2023-23-AAD

APPLICATION INFORMATION

Agenda Item: 3.D

Application ID#:
PB2023-23-AAD

Application Type:
Administrative Appeal

Property Location:
North Main Street,
West Lebanon

Property Owner/Applicant:
XYZ Dairy, LLC/Lyme Properties

Property Size:
+/-38.18 Ac. (combined tract)

Zoning District(s):

- Central Business District (CBD)
- Light Industrial (IND-L)
- Residential Three (R-3)

Overlay District:

- Wetlands Conservation District
- Flood Plain District

Attachments:

- Planning & Development Dep't e-mail correspondence with applicant (5 pages)

LEGAL NOTICE

XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3: Appeal of administrative decision to require Minor Site Plan Review per Section 3.1.C of the Site Plan Review Regulations for a proposed restaurant use. PB2023-23-AAD

APPLICATION MATERIALS

- ▶ Application form (1 page)
- ▶ Letter from Chet Clem, Lyme Properties, dated April 23, 2023 (appeal of administrative decision; 1 page)
- ▶ Site sketch titled "XYZ Dairy, LLC Diner Pop-Up," dated April 20, 2023

COMPLETENESS REVIEW

This application has been reviewed in accordance with the Lebanon Site Plan Review Regulations. The Planning and Development Department recommends that the Board find that the application is complete enough to accept jurisdiction and to commence review.

BACKGROUND

On October 24, 2011, the Planning Board granted approval for a seven (7) phase development known as River Park. As approved, the development would consist of eight (8) non-residential or multi-family residential buildings totaling 839,145 square feet plus two parking garages for 1,393 vehicles on 7 parcels within the CBD and IND-L zoning districts. (PB2010-25-SPR).

The applicant was granted an extension to the approved site plan on September 9, 2013, and on June 8, 2015, the applicant was granted a site plan amendment for the layout of Lot 1, which included changes to the building footprint, parking layout, vehicular circulation, loading location of the building, landscaping, lighting, and the drainage and engineering of the site. (PB2015-10-SPA). On November 9, 2015, the applicant was granted additional time within which to obtain Building Permits for each approved development phase.

On September 9, 2019, the Planning Board approved an amendment to the site plan to, among other things, change the sequencing of the project phasing and increase the number of residential dwelling units from 80 to 125 in Building #8 (PB2018-34-SPA). The Notice of Action for this approval

was written to supersede and replace all prior Notices of Action relating to the River Park site plan approval. On October 12, 2021, the Planning Board approved a request to extend the phasing deadlines (PB2021-19-EXT).

APPLICATION OVERVIEW

On April 7, 2023, staff received the following request from the applicant via e-mail:

[Lyme Properties] would like to connect the River Park diner to the Cross Country Connector water and sewer on a temporary basis, and a modular bathroom facility for trail users, Diner visitors, and events.

This would re-utilize the 1920s Worcester Dining car for what they were built for originally: temporary food-service during the development of larger projects. It's a temporary structure, and TF Moran can prepare drawings.

Additional information and details related to the applicant's proposed use and improvements are set forth in the attached e-mail correspondence between staff and the applicant and in the attached letter from Chet Clem, Lyme Properties, dated April 23, 2023.

On April 10, 2023, staff made the following determination with respect to the applicant's proposed use and site improvements:

[Staff] is not familiar with the "River Park diner". If your proposal is to locate a refreshment stand/restaurant within the Central Business District portion of the River Park development, it would be an allowed use of the property, but would require minor site plan review per Sections 3.1.C.1 and 3.2 of the Site Plan Review Regulations. [...] Water, wastewater and the cross country connection will be evaluated by staff as part of the minor site plan review process.

Staff reiterated this determination on April 21, 2023, following additional correspondence from the applicant arguing that, *inter alia*, the proposed use already has site plan approval as part of the River Park development.

SITE PLAN REVIEW REGULATIONS

The Site Plan Review Regulations regulate "land development" which is defined in Article II ("Definitions") as follows:

A physical improvement or alteration to a lot, whether vacant or improved, and/or an increase in the size of a building, and/or a change of use to a non-residential, mixed use, or multi-family dwelling. The term "land development" does not include the following:

- The construction of one-family and two-family dwelling units or associated accessory uses [...]
- Repair or maintenance that does not result in any changes to the layout or design of the property [...]
- The following home-based businesses: [...]
- Buildings and structures in the Rural Lands (RL) One, Two, and Three zoning districts that are used for an agriculture use.
- Physical alterations to the natural landscape that are made independently of any development of the lot. Such physical alterations include but are not limited to logging and grading.

If a proposed improvement or use constitutes “land development”, staff must then determine whether the land development:

- Is exempt from site plan review (Section 3.1.B); or
- Requires site plan review from the Minor Site Plan Committee (Section 3.1.C); or
- Requires site plan review from the Planning Board (Section 3.1.D).

If a land development meets any of the thresholds set forth Section 3.1.C.1 or if it constitutes a “minor change”, the land development requires site plan review from the Minor Site Plan Committee. If the land development constitutes a “major change”, site plan review from the Planning Board is required.

“Minor change” is defined in Article II as follows:

Any *land development* which, in the reasonable determination of the Planning and Development Department, is not a *major change*, but does necessitate or result in an appreciable change to access; parking, vehicular and/or pedestrian circulation; traffic; drainage patterns or drainage structures; topography; lighting; visual features; natural resources; City services or facilities; improved surfaces; and/or required landscaping.

Figure 1. Bird’s Eye View of subject property as of April 2021 (looking west).



©2021 Eagleview (image taken 4/3/2021)

Figure 2. Site improvements on the subject property made since April 2021 without Site Plan Review.



STAFF COMMENTS

Staff determined that the proposed use and improvements constitute a “land development” and a “minor change” that requires minor site plan review. The question for staff was not whether site plan review was required at all, but only whether the proposal constituted a “minor change” or a “major change” requiring full site plan review from the Planning Board. The determination that the proposal required only minor site plan review was a close call and was ultimately made in favor of the applicant.

It should be noted that none of the improvements shown in the applicant’s photo provided to staff (see Figure 2) have obtained site plan approval where site plan approval would have clearly been required for what has already been completed.

STAFF RECOMMENDATIONS

The Planning & Development Department recommends that the Planning Board deny the applicant’s appeal and require site plan review from either the Minor Site Plan Committee or from the Planning Board both for the proposed restaurant/refreshment stand use and associated site improvements, as well as the unpermitted site improvements made sometime since April 2021.

Attachments

cc: XYZ Dairy, LLC (via e-mail)
Lyme Properties (via e-mail)
File

Tim Corwin

From: Tim Corwin
Sent: Friday, April 21, 2023 9:52 AM
To: Chet Clem
Cc: Nathan Reichert; Crystal Taplin
Subject: RE: [EXTERNAL] River Park Diner pop-up

Chet –

It is staff's determination that the proposed land development constitutes a minor change requiring minor site plan review per Section 3.1.C of the Site Plan Review Regulations. You have the option of appealing this determination to the Planning Board. If you'd like to do so, we'll need an [application form](#), narrative explaining your appeal, [notification list](#), and [fees](#). Provided that you submit the appeal by the [May 8th application deadline](#), we can schedule the hearing on your appeal at the June 12th Planning Board meeting.

If you have any questions, please let me know.

Thank you,

TIM CORWIN, AICP

DEPUTY PLANNING AND DEVELOPMENT DIRECTOR
CITY OF LEBANON
(603) 448-1524 (OFFICE)
(603) 442-6127 (DIRECT)
TIM.CORWIN@LEBANONNH.GOV
[BOOK A TIME TO MEET WITH ME](#)

From: Chet Clem <chet@lymeproperties.com>
Sent: Thursday, April 20, 2023 4:42 PM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Cc: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Crystal Taplin <Crystal.Taplin@lebanonnh.gov>
Subject: Re: [EXTERNAL] River Park Diner pop-up

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim and Nate,

I am writing in follow-up to my initial email on 4/7/23 regarding temporarily connecting the River Park dining car to the water and sewer lines installed by XYZ Dairy, LLC in August-October 2022. Tim's 4/10/23 response directed us towards Minor Site Plan Review, and corrected my error regarding 211.4 Temporary Structures For Permitted Uses not applying to the CBD district.

I just had a chance to discuss with my Attorney who had been out of town, and he questioned whether this rises to the level of requiring Minor Site Plan Review, or is it something that can be handled at the administrative level. Per Section 3.1.B, Site Plan Review is not required unless there is an appreciable change.

Our position is that the retail use in question is in fact already approved as part of Building 3 / Phase 1B / Lot 10 (a 95,800 S.F. building for office and retail) in the River Park approvals, and the associated water and sewer requirements have been approved accordingly. As such, what we are proposing on a temporary basis is considerably less than what is already approved.

The access, parking, etc. is merely a continuation of the existing condition, which has been sufficient for public access to the River Park waterfront and trails for years, as well as the 2020 Trails + Trucks food truck series, the 2021 launch of UV Just Bagels in the dining car, the 2022 use of this pop-up area for public art, coffee and bagel events, and the upcoming 2023 Hootenanny event with Lebanon Opera House. The question is whether this can be improved upon by making use of the water and sewer lines that XYZ Dairy completed the installation of last year.

The temporary use is for a committed, future full-time tenant at River Park, and is a Lebanon-based business looking for a 2nd location and specifically a West Leb location. We have had fruitful discussions for the past 3 years while navigating delays and Covid realities, and they are an operator that I believe the community will be quite excited with. This temporary approach is in keeping with the #1 priority of the 2021 Action Plan For West Leb "Prioritize High-Impact, Visible Improvements That Can Be Accomplished While Larger Efforts Evolve." This is a historically accurate re-use of the 1920s Worcester Dining Car approximately 100 years after it was built to serve as temporary retail at construction sites.

I am attaching a diagram of the Dining car's location on Lot 10 and in relation to the water and sewer lines in question. The orange line denotes the fenced-in construction area.

Put simply, per Section 3.1.B. of the Site Plan Review Regulations XYZ Dairy, LLC is asking the Planning and Development Department to make the reasonable determination that this proposed use does not necessitate or result in any appreciable changes that would necessitate Site Plan review.

Thank you,

Chet Clem
President
Lyme Properties

chet@lymeproperties.com
(603) 676-7106 (direct)
(207) 576-1410 (mobile)

[Calendly: book a Zoom with me](#)

[Lyme Properties](#)
[The UV Observer](#)
[River Park West Lebanon](#)
[Action Plan for West Leb](#)
[A Green Vision for West Leb](#)
[Humor & Downtowns?](#)
[Decriminalize Development](#)

On Apr 10, 2023, at 8:26 PM, Chet Clem <chet@lymeproperties.com> wrote:

Thanks, Tim. This would be a temporary structure for permitted uses in CBD and per the River Park approvals per 211.4.

The Diner is presently located on Lot 10. This is a temporary solution for a committed future retail tenant for River Park, looking to take an entrepreneurial approach this summer to opening their 2nd location in West Leb and help build excitement for the project.

Happy to show you it any time,

Chet

Chet Clem
President
Lyme Properties

chet@lymeproperties.com
(603) 676-7106 (direct)
(207) 576-1410 (mobile)

[Calendly: book a Zoom with me](#)

[Lyme Properties](#)

[River Park West Lebanon
Action Plan for West Leb
A Green Vision for West Leb
Humor & Downtowns?
Decriminalize Development](#)

On Apr 10, 2023, at 8:08 PM, Tim Corwin <Tim.Corwin@lebanonnh.gov> wrote:

Chet –

I'm not familiar with the "River Park diner". If your proposal is to locate a refreshment stand/restaurant within the Central Business District portion of the River Park development, it would be an allowed use of the property, but would require [minor site plan review](#) per Sections 3.1.C.1 and 3.2 of the [Site Plan Review Regulations](#). The Minor Site Plan Committee application deadline and meeting schedule is available [on-line here](#) (the next deadline is 4/25 for the 5/11 meeting). Water, wastewater and the cross country connection will be evaluated by staff as part of the minor site plan review process.

If you have any questions, please don't hesitate to ask.

Thank you,

TIM CORWIN, AICP

DEPUTY PLANNING AND DEVELOPMENT DIRECTOR
CITY OF LEBANON
(603) 448-1524 (OFFICE)
(603) 442-6127 (DIRECT)
TIM.CORWIN@LEBANONNH.GOV
[BOOK A TIME TO MEET WITH ME](#)

From: David Brooks <David.Brooks@lebanonnh.gov>

Sent: Monday, April 10, 2023 9:57 AM

To: 'Chet Clem' <chet@lymeproperties.com>

Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Nathan Reichert
<Nathan.Reichert@lebanonnh.gov>; Brian Vincent <brian.vincent@lebanonnh.gov>;
Rod Finley <rod.finley@lebanonnh.gov>

Subject: RE: [EXTERNAL] River Park Diner pop-up

Chet

I see that this request was sent to me, with copies to Planning and Engineering. However, as a brand new issue/request, I don't need to be involved since I'm no longer in the Planning Department. I have asked Planning, Building, Engineering and Water/Wastewater to review the request and respond to you as appropriate.

David

DAVID R. BROOKS

DEPUTY CITY MANAGER — ADMINISTRATIVE SERVICES

CITY OF LEBANON

(603)-448-4220 (OFFICE)

(603) 442-6134 (DIRECT)

DAVID.BROOKS@LEBANONNH.GOV

From: Chet Clem <chet@lymeproperties.com>

Sent: Friday, April 7, 2023 3:24 PM

To: David Brooks <David.Brooks@lebanonnh.gov>

Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Nathan Reichert

<Nathan.Reichert@lebanonnh.gov>; Brian Vincent <brian.vincent@lebanonnh.gov>;

Rod Finley <rod.finley@lebanonnh.gov>

Subject: [EXTERNAL] River Park Diner pop-up

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I would like to connect the River Park diner to the Cross Country Connector water and sewer on a temporary basis, and a modular bathroom facility for trail users, Diner visitors, and events.

This would re-utilize the 1920s Worcester Dining car for what they were built for originally: temporary food-service during the development of larger projects. It's a temporary structure, and TF Moran can prepare drawings.

But before I start spending money and going down a path, I'd like to know what the City will require to make this happen.

I have a local, beloved coffeeshop onboard and ready to make this happen.

Please advise,

Chet Clem
President



CITY OF LEBANON APPLICATION FOR

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☒	☐	CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: XYZ Dairy, LLC TEL.#: 603-676-7800

MAILING ADDRESS: 57 Main Street, W. Lebanon, NH 03784

E-MAIL ADDRESS: chet@lymeproperties.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Lyme Properties TEL.#: 603-676-7800

MAILING ADDRESS: 57 Main Street, W. Lebanon, NH 03784

E-MAIL ADDRESS: chet@lymeproperties.com

PROJECT LOCATION:

TAX MAP #: LOT#: 44 PLOT #: 29 ZONE: CBD

STREET ADDRESS OF PROJECT: 173 N. Main Street / 0 River Park Drive

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

TYPE OF OCCUPANCY:

EXISTING ☒ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**
USE: connection of pop-up dining ca

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on June 12, 2023, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: David Clam

DATE: April 25, 2023

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: David Clam

DATE: April 25, 2023

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
4/25/2023	44-29-	PB2023-			
		23-AAD			



April 25, 2023

Lebanon Planning Board
City of Lebanon
51 N. Park Street
Lebanon, NH 03766

Appeal of Administrative Decision by Lebanon Deputy Planning and Development Director

Members of the Lebanon Planning Board,

Lyme Properties serves as the development agent on behalf of XYZ Dairy, LLC, the owner of record of the River Park West Lebanon development. We are hereby respectfully appealing the April 21, 2023 decision by the City of Lebanon Deputy Planning and Development Director that our request to make temporary water and sewer connections from the Cross Country Connector (which River Park installed at our cost in 2022 in accordance with River Park's approvals) rises to the level of requiring a Minor Site Plan Review.

In accordance with Section 3.1.B of the Lebanon Site Plan Review Regulations River Park asked the Lebanon Planning and Development Department to make the reasonable determination that this proposed use does not necessitate or result in any appreciable changes that would necessitate Site Plan review. Our intent was to allow the staff to consult directly with River Park on what was required and provide direction to our civil engineers to design a solution accordingly, lessening the cost and expediting the pace of approvals.

On April 21, 2023 we received confirmation "It is staff's determination that the proposed land development constitutes a minor change requiring minor site plan review per Section 3.1.C of the Site Plan Review Regulations."

This connection is intended to serve a historic 1920s Dining Car for the purpose of a pop-up coffee-shop. The connection would allow the existing water line to be used productively, instead of simply "bled" into the ground as occurs at Airpark Road and other sites where infrastructure is installed but not under use.

The operator, a very popular Lebanon-based coffeeshop, recently committed to open a second location at River Park in the future. This would serve as an entrepreneurial approach to "testing the market" and aligns with the 2021 Action Plan for West Leb which had the #1 priority of "Actionable Improvements: Prioritize High-Impact, Visible Improvements That Can Be Accomplished While Larger Efforts Evolve." It is our hope that we can address requirements at the staff level before incurring significant consultant costs.

The pop-up coffee shop is intended to be opened in time for the Lebanon Opera House's June 10th "Hootenanny" at River Park, and will serve as a trail-head amenity while the River Park project is being developed. This is a historically accurate re-use of an antique 1920s Worcester Dining Car,



which was designed specifically for this purpose almost 100 years ago to "roll-on" temporary food and beverage services while construction projects were underway. Many Worcester Dining Cars, including West Lebanon's own 4 Aces, end up incorporated into full-time venues which River Park has intended to do with this car since it was first moved to the site in 2015.

Per Section 3.1.B of the Lebanon Site Plan Review Regulations, Site Plan review is not required unless there is an appreciable change. It is XYZ Dairy's position that the retail use in question is in fact already approved as part of Building 3 / Phase 1B / Lot 10 ("a 95,800 S.F. building for office and retail") in the River Park approvals, and the associated water and sewer requirements have been approved accordingly. Based on advice of XYZ's legal counsel, the proposed use of a Dining Car for its original intended purpose on this parcel during the adjacent construction of the future, full-time location of the tenant/operator in question is an administrative decision.

In accordance with Section 3.1.B XYZ Dairy, LLC asked the Lebanon Planning and Development Department to make the reasonable determination that this proposed use does not necessitate or result in any appreciable changes that would necessitate Site Plan review. On April 21, 2023 we received confirmation "it is staff's determination that the proposed land development constitutes a minor change requiring minor site plan review per Section 3.1.C of the Site Plan Review Regulations."

As suggested by the Deputy Planning and Development Director in his April 21st communication, we are appealing that decision to the Lebanon Planning Board.

Sincerely,

A handwritten signature in black ink that reads "Chet Clem". The signature is written in a cursive, flowing style.

Chet Clem
Lyme Properties
57 Main Street
West Lebanon, NH 03784

Cc:
David Clem, Lyme Properties
Angela McCanna, Lyme Properties
Philip Hastings, Cleveland, Waters & Bass.

DRAFT

LEBANON PLANNING BOARD
Regular Session
Monday, May 8, 2023, 6:30 PM
Council Chambers, City Hall
or Remote Via Microsoft Teams
LebanonNH.gov/Live

MEMBERS PRESENT: Jeremy Rutter (Vice Chair), Karen Zook (City Council Rep) - remote, Kim Chewning, Bruce Garland, Kathie Romano, Laurel Stavis

MEMBERS ABSENT: Matthew Hall (Chair)

STAFF PRESENT: Nathan Reichert (Planning Director), Tim Corwin (Deputy Planning Director), Brian Vincent (City Engineer)

1. Call to Order

Vice Chair Rutter called the meeting to order at 6:32 PM.

Vice Chair Rutter announced that there are two new members of the Planning Board in attendance and awaiting official swearing in before taking their seats on the Board at the next meeting.

2. Notice of Regional Impact

The following applications were received by the Planning and Development Department on or before May 8, 2023:

Choice Storage, LLC, 0 Etna Road (Tax Map 126, Lot 17), zoned IND-L & RL-3: Request for Site Plan Review for a contractor's yard, consisting of pads/terraces, contractor equipment and other associated drainage and site work. **PB2023-21-SPR**

XYZ Dairy, LLC, 0 River Park Drive (Tax Map 44, Lots 21-30 & Tax Map 44, Lot 7), zoned IND-L: Request to amend the previously approved site plan for the River Park development (PB2021-29-EXT). **PB2023-22-EXT**

XYZ Dairy, LLC, 173 N. Main Street & 0 River Park Drive (Tax Map 44, Lots 21-30 & Tax Map 44, Lot 7), zoned IND-L: Appeal of administrative decision per Section 3.1.B of the Site Plan Review Regulations. The applicant is appealing the decision that minor site plan is required for a temporary restaurant use and temporary water and sewer connections. **PB2023-23-AAD**

Mr. Corwin stated that Staff recommends none of the above applications has the potential for regional impact.

A MOTION by Bruce Garland that none of the above applications has the potential for regional impact.

The motion was seconded by Laurel Stavis

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

1 Mr. Reichert stated that items E and F need to be postponed to June 12, 2023.

2
3 ***A MOTION by Bruce Garland to postpone items E and F to June 12, 2023, at 6:30 PM.***

4 ***The motion was seconded by Kathie Romano.***

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

6
7 **3. Public Hearing Items**

- 8
9 A. **Vincent & Tarah Cantore, 121 Slayton Hill Road (Tax Map 134, Lot 10), zoned RL-2:**
10 Request for approval of a proposed three (3)-lot Minor Subdivision. **PB2023-13-MIN**

11
12 Mr. Corwin stated that this application needs to be postponed to June 12, 2023.

13
14 ***A MOTION by Laurel Stavis to postpone the application of Vincent & Tarah Cantore, 121 Slayton Hill***
15 ***Road (Tax Map 134, Lot 10), zoned RL-2, to June 12, 2023.***

16
17 ***The motion was seconded by Bruce Garland.***

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

- 19
20 B. **Cicotte Properties, LLC, 175 Heater Road (Tax Map 64, Lot 30), zoned IND-**
21 **L:** Request for Site Plan Review to expand the paved area to increase the vehicle storage
22 area for the existing vehicular sales use. **PB2023-01-SPR - Application postponed from**
23 **February 13, 2023.**

24
25 Dan Nash of Advanced Geomatics & Design appeared in support of the application. Mara Robinson,
26 landscape designer, appeared online.

27
28 Mr. Nash reported on the progress on the site plan since the previous meeting.

29
30 Mr. Corwin stated that they are recommending third party inspection for this project and provided
31 additional information regarding the site plan.

32
33 The Board members discussed the landscaping plans. Mr. Corwin stated the landscaping requirements
34 under the current regulations. Mr. Nash explained the waiver from including landscaping outside the site
35 area.

36
37 Mr. Nash questioned the need for third party inspection given the nature of the project. Mr. Vincent stated
38 that there is a sidewalk installation and drainage that need oversight. Mr. Garland noted the previous
39 requirement for test pits. Mr. Vincent stated that those requirements were met.

40
41 Mr. Rutter invited public comment. There was none.

42
43 The waiver requests were explained and discussed.

44
45 ***A MOTION by Bruce Garland*** that for the application of Cicotte Properties, LLC, PB2023-01-SPR, the
46 Lebanon Planning Board **APPROVE** waivers from the following sections of the Site Plan Review
47 Regulations:

- 48
49 • **Article V Submission Requirements** – *application submission requirements*

- **Section 6.5.D.5** – requiring sidewalks along the property’s frontage
- **Section 6.2.E.3** – requiring landscape islands between double rows of parking

The motion was seconded by Laurel Stavis.

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

Ms. Zook joined the meeting remotely.

Mr. Vincent noted the need for third party review.

Vice Chair Rutter closed the Public Hearing.

A MOTION by Bruce Garland that the Lebanon Planning Board **APPROVE** the application of Cicotte Properties, LLC, PB2023-01-SPR, for Site Plan Review to expand the paved area to increase the vehicle storage area for the existing vehicular sales use at 175 Heater Road (Tax Map 64, Lot 30), zoned IND-L, as shown on a plan set titled “Volvo/Volkswagen of Lebanon – Site Plan Amendment,” prepared by Advanced Geomatics & Design, dated November 14, 2022, last revised April 24, 2023, PN: 20-011 (14 Sheets), including any and all submissions and testimony provided for and during the public hearing.

In support of its decision, the Board finds that the applicant has submitted plans, testimony, technical data, information, reports, and studies that together satisfactorily demonstrate compliance with the applicable requirements of the Site Plan Review Regulations, except as may reasonably be addressed through the imposition of certain conditions of approval, set forth below, and except as may have been waived pursuant to Section 7.1.

This approval is subject to the following conditions:

General Conditions

1. It shall be the applicant’s responsibility to be familiar with and aware of these conditions of approval, and it shall be the applicant’s responsibility to satisfy these conditions of approval and to satisfy them within the relevant timeframes outlined below.
2. “Active and substantial development,” as defined in Section 8.4.A.1 of the Site Plan Review Regulations, shall be achieved within two (2) years of the date of this approval (8.4.A.2), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 8.4.A.3. If active and substantial development is not achieved within two (2) years of the date of the Planning Board’s approval, the development shall be subject to any changes in the City’s land use regulations.
3. “Substantial completion,” as defined in Section 8.4.B.1 of the Site Plan Review Regulations, shall be achieved within five (5) years of the date of this approval. If substantial completion is not achieved within five (5) years of the date of the Planning Board’s approval, the development shall be subject to any changes in the City’s land use regulations.
4. All required landscape plantings shall meet the minimum size requirements for such plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.

- 1 5. The applicant shall implement and maintain NHDES Site Specific Best Management
- 2 Practices before, during, and after construction.
- 3
- 4 6. The property owner is responsible for the maintenance and operation of the stormwater
- 5 management system in accord with the O&M plan, and such responsibility shall run with the
- 6 land. (Section 6.6.H.2.b of the Site Plan Review Regulations).
- 7

8 **Conditions to be Satisfied Prior to Any Construction Activities**

9

- 10 7. The applicant shall make the following revisions to the plan set to the satisfaction of the
- 11 Planning and Development Department:
- 12 a) Add the Wetland Delineation Plan dated February 27, 2022 and the Sheet C-5
- 13 Heater Road Sidewalk Plan dated April 26, 2023 to the plan set and update the
- 14 Table of Contents and plan sheet pagination accordingly.
- 15 b) Add one linden or elm tree along the northwest perimeter of the new parking area to
- 16 replace the existing tree that has been removed.
- 17 c) Amend the cover sheet to provide description of plan revisions (5.1.E.4.d).
- 18

19 The applicant shall provide the Planning and Development Department with one (1) full size copy

20 of the revised plan set, and a digital copy of the revised plan set saved in a PDF-A format for

21 archival purposes.

22

- 23 8. The applicant shall apply for and obtain a Building Permit (if required by the Building
- 24 Code) and a Zoning Permit per Section 901.1 of the Zoning Ordinance.
- 25
- 26 9. The applicant shall obtain a Driveway Permit and, for any site work in the public right-of-
- 27 way, an Excavation Permit from the Department of Public Works prior to any work in the
- 28 right-of-way.
- 29
- 30 10. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site
- 31 Plan Review Regulations. (*Note: applicant can request an invoice from the Department of*
- 32 *Public Works*).
- 33

34 **Conditions to be Satisfied Prior to the Issuance of a Zoning Permit**

35

- 36 11. Prior to the start of any construction activities on the property for which construction
- 37 inspection is required pursuant to this decision or any applicable ordinance or code, the City
- 38 shall retain the services of an independent third-party inspector, for which the applicant shall
- 39 be responsible for all inspection fees related to (a) on-site work related to temporary
- 40 sedimentation and erosion control, and drainage improvements, and (b) all off-site work
- 41 within the City's right-of-way, in accordance with Section 8.2 of the Site Plan Review
- 42 Regulations. The applicant shall provide funding for inspection services in a form and
- 43 amount acceptable to the City and shall sign an Infrastructure Inspection Agreement.
- 44

45 **Conditions to be Satisfied Prior to the Issuance of a Certificate of Completion**

46

- 47 12. Third-party engineer inspection reports and as-built drawings provided by the applicants
- 48 (PDF format and CAD .dwg format, using the NH State Plane Coordinate System) shall be
- 49 reviewed and approved by the City Engineer.
- 50

13. All improvements depicted on the plan set (as modified pursuant to Condition of Approval #7) shall be completed and shall be constructed as depicted on the approved plan, including any modifications to the plan as may be approved by the Planning Board in accordance with the Site Plan Review Regulations.

The motion was seconded by Laurel Stavis.

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

- C. **Upper Valley Technology Park LLC, 0 Plainfield Road (Tax Map 131, Lot 3), zoned IND-L:** Request for a Conditional Use Permit per Section 501.4 of the Zoning Ordinance and for Minor Subdivision approval of a proposed 3-lot Industrial Planned Unit Development (IPUD). The proposal is intended to supersede and replace the 3-lot IPUD approved on December 19, 2022 (PB2022-51-CUPMIN). **PB2023-16-CUPMIN**

Mr. Corwin stated that Staff recommends the application is complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION by Bruce Garland that the application of Upper Valley Technology Park LLC, 0 Plainfield Road (Tax Map 131, Lot 3), zoned IND-L, is complete enough for the Planning Board to accept jurisdiction and commence review.

The motion was seconded by Kim Chewning.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook

Voting Against – None

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

Adam Morse of Engineering Ventures and Robert Wells representing the owner appeared in support of the application.

Mr. Morse stated that the potential buyer for the property wishes to see a building envelope. The slope and wetlands are being eliminated from the plan.

Mr. Wells commented on the plan for above ground power lines to avoid going through the wetlands. Mr. Corwin explained that there was no need for a waiver. Mr. Wells noted that the underground lines would cause substantial delays for special equipment and adding that all of Airpark Road has overhead power. Mr. Corwin stated that legal counsel found that the plan satisfies the requirements.

The Board members received clarification on several other issues.

Vice Chair Rutter invited public comment.

Maryann Mastro of Ward 2 commented on the requirement for underground power and the cost of a delay in construction.

Ms. Romano asked for clarification on requirement for underground power. Mr. Morse stated that 5-10 feet would be required within the wetlands to install the transformer.

Mr. Rutter took a straw vote regarding requiring that power be underground, and the board members expressed that preference unanimously (6-0).

Mr. Wells stated that the potential buyer is under time constraints, and overhead power could be temporary and later be converted to underground when the equipment is available. Mr. Corwin stated that the City would hold security to make that an option.

Vice Chair Rutter closed the Public Hearing.

A MOTION by that the Lebanon Planning Board **APPROVE** the application of Upper Valley Technology Park, LLC, for a Conditional Use Permit per Section 501.4 of the Zoning Ordinance and for Minor Subdivision approval of a proposed 3-lot Industrial Planned Unit Development (IPUD), PB2023-16-CUPMIN, as shown on a plat titled “Subdivision Plat for Upper Valley Tech Park LLC Planned Unit Development,” prepared by Latitudes Land Surveying, dated April 2, 2023, project no: 22015, including any and all supplemental submissions and testimony provided during the public hearing.

In support of its decision, the Board finds that the applicant has submitted plans, testimony, technical data, information, reports, and studies – variously prepared by a professional civil engineer, professional traffic engineer, and a licensed land surveyor – that together satisfactorily demonstrate compliance with the applicable requirements of the Subdivision Regulations and the Planned Unit Development regulations of the Zoning Ordinance, except as may reasonably be addressed through the imposition of certain conditions of approval, set forth below.

This approval is subject to the following conditions:

Conditions to be Satisfied Prior to the Signing and Recording of the Plat

1. The applicant shall revise the subdivision plat to the satisfaction of the Planning and Development Department and the City’s legal counsel, as follows:
 - a. Contact the Police Department to obtain addresses for each lot and add to the plat.
 - b. Identify how the open space will be physically delineated in accordance with Section 501.1.F.7.b of the Zoning Ordinance.
 - c. Provide date and description of any revisions made (9.5.A.1).
2. The applicant shall provide a digital record drawing of the revised subdivision plat (Cad .dwg format using NH State Plane Coordinate system or an alternative approved by the City’s GIS Coordinator).
3. All outstanding engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations.
4. The Declaration of Restrictive Covenant shall be reviewed by the City Attorney and shall be revised to the satisfaction of the City Attorney.

General Conditions

5. The plat, as revised per condition of approval #1, shall be recorded simultaneously with the Declaration of Restriction Covenant, as may be revised per condition of approval #4, in accordance with Planning & Development Department procedures.

6. Recording of the plat as revised per condition of approval #1 above shall satisfy condition of approval #10 as set forth in the March 20, 2023 Notice of Action for PB2023-07-SPR and condition of approval of approval #10 as set forth in the January 23, 2023 Notice of Action for PB2022-53-SPR.
7. Applicant may choose to install pole mounted transformers and overhead power connections along Airpark Road for Lots 1 and 2 on a temporary basis in order to facilitate the timely development of these lots pursuant to the March 20, 2023 Notice of Action for PB2023-07-SPR and the January 23, 2023 Notice of Action for PB2022-53-SPR, provided that a) the applicant provides security in a form acceptable to the City attorney and in an amount necessary to install permanent underground electricity for Lots 1 and 2, b) the applicant enters into a security agreement with the City, and c) the permanent underground electrical improvements are made within one (1) year of the issuance of a temporary certificate of occupancy for the buildings on each lot.
8. Future development on the new lots 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 October 12, 2021, and such fees shall be due and payable at the time of issuance of a Certificate of Occupancy. 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.
9. All future construction shall substantially conform with and shall be subject to the requirements and specifications of the recorded plat. (Section 7.9.A.2)

The motion was seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook

Voting Against – None

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

A MOTION by Bruce Garland that the Lebanon Planning Board authorizes the Chair to sign the subdivision plat for Upper Valley Technology Park, LLC, PB2023-16-CUPMIN, as revised pursuant to the Board's conditions of approval.

The motion was seconded by Kathie Romano.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook

Voting Against – None

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

- D. **One Mechanic Street, LLC and FSP LLC, 1 Mechanic Street (Tax Map 91, Lot 264) and 0 Foundry Street (Tax Map 91, Lot 262), zoned LD:** Request per Section 213.8.B of the Zoning Ordinance to waive the public school impact fees for an approved 18-unit multi-family conversion (PB2020-29-SPR & PB2022-54-SPR). **PB2023-14-SPA**

1 Mr. Corwin stated that Staff recommends the application is complete enough for the Planning Board to
2 accept jurisdiction and commence review.

3
4 ***A MOTION by Bruce Garland that the above application is complete enough for the Planning Board***
5 ***to accept jurisdiction and commence review.***

6
7 ***The motion was seconded by Kim Chewning.***

8 ***Roll Call Vote:***

9 ***Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook***

10 ***Voting Against – None***

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

12
13 Mr. Jeremy Katz, Manager of One Mechanic Street LLC, appeared in support of the application.

14
15 Mr. Katz stated that the units will be studio apartments for single occupancy, and he is requesting relief
16 from school impact fees.

17
18 Mr. Corwin stated that the Board is allowed to grant a waiver from the school impact fees based upon the
19 size of the units, which must be under 500 sq. ft. Sixteen of the eighteen units meet that criterion.
20 Although the Board members expressed concern over the potential for more similar projects to avoid
21 school impact fees, the unit size was established and allows the waiver.

22
23 Mr. Katz noted that the proposal has been for this size unit since 2019 and cannot imagine more than one
24 or possibly two adults would occupy the studio apartments. Mr. Corwin suggested that only the sixteen
25 units could fall under that waiver and those that don't meet the requirement would still have to be subject
26 to the school impact fees. Mr. Rutter suggested that the amount be prorated for the two units that do not
27 meet the requirement.

28
29 Mr. Rutter invited public comment.

30
31 Maryann Mastro of Ward 2 inquired about the off-site parking and legal approval. Vice Chair Rutter
32 confirmed that the issue was already settled.

33
34 Judy Ryder, Ward 2, appreciated the comments regarding the housing situation and noted the likelihood
35 that there may be a child in the efficiency apartments.

36
37 Mr. Garland noted that the use of "may" for the Board's discretion in waiving the school impact fees
38 gives the Board that option.

39
40 Vice Chair Rutter closed the Public Hearing.

41
42 Mr. Corwin noted that condition #7 covers the prorating of the impact fees.

43
44 Mr. Rutter took a straw vote regarding the prorating of the two larger units. The Board indicated their
45 approval unanimously (6-0).

46
47 ***A MOTION by Bruce Garland that the Lebanon Planning Board APPROVE the application of One***
48 ***Mechanic Street, LLC regarding 1 Mechanic Street (Tax Map 91, Lot 264), zoned LD, PB2023-14-SPR,***
49 ***requesting a waiver per Section 213.8 of the Zoning Ordinance of the public school impact fees for an***
50 ***approved 18-unit multi-family conversion (PB2020-29-SPR & PB2022-54-SPR), including any and all***
51 ***submissions and testimony provided for and during the public hearing. In support of its decision, the***

Board finds that the applicant has submitted testimony and information that together satisfactorily demonstrate compliance with the applicable requirements of Section 213.8.B of the Zoning Ordinance. The Board's approval is subject to the following conditions:

1. The applicant shall satisfy and comply with the Planning Board Notice of Action for PB2020-28-SPR, dated November 23, 2020, and all conditions of approval thereof except as provided in Condition of Approval #2 below, and with the Planning Board Notice of Action for PB2022-54-SPR, dated December 12, 2022, and all conditions of approval thereof.

2. Conditions #7 and #11 set forth in the Planning Board Notice of Action for PB2020-28-SPR, dated November 23, 2020, are hereby stricken and replaced with the following:

The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance, except that payment of public impact fees is waived pursuant to Section 213.8 of the Zoning Ordinance for all residential units that have a gross living area of 500 sq. ft. or less. The Impact Fee shall be calculated based on the Impact Fee Schedule adopted on August 13, 2018, and shall be paid prior to the issuance of a Certificate of Occupancy. 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.

The motion was seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Zook

Voting Against – Ms. Chewning, Ms. Romano

**The MOTION was approved (4-2).*

E. NH Group, LLC (applicant), 369 Miracle Mile LLC & Seacoast Motorcycle Leasing, Inc. (property owners), 369 Miracle Mile (Tax Map 103, Lot 11) & 351 Miracle Mile (Tax Map 103, Lot 9), zoned GC: The applicant requests a Conditional Use Permit pursuant to Section 607.5.A of the Zoning Ordinance to allow off-lot parking at 351 Miracle Mile to meet the minimum parking requirements of NH Group, LLC's proposed charity gaming center at 369 Miracle Mile (PB2023-04-SPR). **PB2023-18-CUP – Continued to 6/12**

F. NH Group, LLC (applicant), 369 Miracle Mile LLC (property owner), 369 Miracle Mile (Tax Map 103, Lot 11), zoned GC: Request for Site Plan Review to convert the existing building into a +/-18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements. **PB2023-04-SPR - Continued from March 20, 2023 – Continued to 6/12**

G. Irving Oil Marketing (applicant), Rancho Lebanon, LLC & Cobalt Prop NH Corp (property owners), 200 South Main Street (Tax Map 114, Lot 5) & 206 South Main Street (Tax Map 115, Lot 1), zoned GC: Request for Site Plan Review to construct a +/-4,465 sq. ft. convenience store on the site of a closed laundromat at 200 South Main Street

1 and five (5) fuel dispenser islands with an overhead canopy on the site of a closed
2 convenience store at 206 South Main Street, together with shared access and associated site
3 improvements. For the proposed convenience store at 200 South Main Street, the applicant
4 also requests a Conditional Use Permit per Section 607.5 of the Zoning Ordinance to allow
5 off-site parking at 206 South Main Street. **PB2023-15-SPR**
6

7 Nicole Duquette and Traffic Engineer Heather Monticup of GPI, Jennifer Daigle of Irving, and Atty.
8 Maria Dolder appeared in support of the application.
9

10 Mr. Corwin stated that Staff recommends the application is complete enough for the Planning Board to
11 accept jurisdiction and commence review.
12

13 ***A MOTION by Bruce Garland that the application of Irving Oil Marketing (applicant), Rancho***
14 ***Lebanon, LLC & Cobalt Prop NH Corp (property owners), 200 South Main Street (Tax Map 114, Lot***
15 ***5) & 206 South Main Street (Tax Map 115, Lot 1), zoned GC, is complete enough for the Planning***
16 ***Board to accept jurisdiction and commence review.***
17

18 ***The motion was seconded by Laurel Stavis.***

19 ***Roll Call Vote:***

20 ***Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook***

21 ***Voting Against – None***

22 ****The MOTION was approved (6-0).***
23

24 Ms. Duquette described Irving's redevelopment of the site, the location, and existing buildings. She also
25 provided a history and the new plan for the site including stormwater management, drainage, and
26 landscaping. Ms. Duquette also described the waivers.
27

28 Ms. Monticup described the traffic study encompassing all aspects of the site.
29

30 ***A MOTION by Bruce Garland to extend the meeting to 10:00 PM.***

31 ***The motion was seconded by Laurel Stavis.***

32 ***Roll Call Vote:***

33 ***Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook***

34 ***Voting Against – None***

35 ****The MOTION was approved (6-0).***
36

37 Mr. Corwin commented on several conditions of approval.

38 Atty. Dolder provided information regarding all leases and the ability to use the properties.
39

40 Mr. Garland inquired about site remediation. Ms. Daigle described the process for investigating and
41 remediating the site before any construction begins. Ms. Stavis inquired about remediation of the Kleen
42 Laundry site. Ms. Daigle stated that it was a drop off site with no chemicals used. Ms. Stavis inquired
43 about seating. Ms. Daigle noted that there would be outdoor seating and there may be indoor seating from
44 an independent food company. Ms. Romano inquired about protection from vehicles for the outdoor
45 seating. Ms. Daigle stated that bollards would be along the sidewalk in the parking area
46

47 Mr. Rutter invited public comment.
48

49 Judy Ryder, Ward 2, asked if they could increase the width of the entrances. Ms. Duquette stated that they
50 are 31 feet wide and would be sufficient.
51

Ms. Romano expressed concern over traffic backing up at left turn light.

A MOTION by Bruce Garland that for the application of Irving Oil Marketing, PB2023-15-SPR, the Lebanon Planning Board **APPROVE** waivers from the following sections of the Site Plan Review Regulations:

- **Section 6.2.B.1**
- **Section 6.2.B.2**
- **Section 6.2.B.10**
- **Section 6.2.E.1**
- **Section 6.2.E.7**
- **Section 6.7.B.2**

A **General waiver** from having to satisfy the Site Plan Review Regulations outside the portion of the property that is proposed to be developed.

The motion was seconded by Kathie Romano.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook

Voting Against – None

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

3. MOTION RE: CONDITIONAL USE PERMIT

Date: May 8, 2023

A MOTION by Bruce Garland that the Lebanon Planning Board **APPROVE** the application of Irving Oil Marketing, PB2023-15-SPR, for a Conditional Use Permit per Section 607.5 of the Zoning Ordinance to allow off-site parking at 206 South Main Street, in connection with the applicant's proposed convenience store use at 200 South Main Street (Tax Map 114, Lot 5), as shown on a site plan set titled, "Proposed Retail Motor Fuel Outlet Site Redevelopment Plans," prepared by Greenman-Pedersen, Inc., dated March 9, 2023, revised April 27, 2023 (20 sheets). Based on testimony given, application materials presented, and supporting documents submitted, the Planning Board concludes the following with respect to the criteria set forth in §607.5.A of the Zoning Ordinance:

1. The minimum number of required off-street parking spaces as calculated per Section 607 **CANNOT BE** feasibly be accommodated on-site (§607.5.A.1)
2. The off-lot uses to be served are allowed uses in the zoning district in which the off-lot parking areas will be located. (§607.5.A.2)
3. The off-lot parking areas **ARE** in an appropriate location for the uses served by the parking and will not be detrimental to abutting properties. (§607.5.A.3)
4. Such parking arrangements **WILL BE** either permanently deeded and recorded or conveyed by an irrevocable 99-year lease or some other legal instrument, acceptable to an attorney representing the City, that will ensure that such parking arrangement will remain as long as the need exists. (§607.5.A.4)
5. The off-lot parking **WILL NOT** constitute a hazard to traffic or pedestrians. (§607.5.A.5)

Now therefore be it resolved, the Planning Board, on this **8th day of May, 2023**, hereby **GRANTS** the request of Irving Oil Marketing for a Conditional Use Permit per Section 607.5.A of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted in connection with PB2023-15-SPR, and per the following condition:

1. The applicant shall provide the Planning and Development Department with appropriate documentation in accordance with Section 607.5.A.4 of the Zoning Ordinance.

The motion was seconded by Kim Chewning.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook

Voting Against – None

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

Vice Chair Rutter closed the Public Hearing.

A MOTION by Bruce Garland that the Lebanon Planning Board **APPROVE** the application of Irving Oil Marketing (applicant), Rancho Lebanon, LLC & Cobalt Prop NH Corp (property owners), regarding 200 South Main Street (Tax Map 114, Lot 5) & 206 South Main Street (Tax Map 115, Lot 1), zoned GC, PB2023-15-SPR, for Site Plan Review to construct a +/- 4,465 sq. ft. convenience store on the site of a closed laundromat at 200 South Main Street and five (5) fuel dispenser islands with an overhead canopy on the site of a closed convenience store at 206 South Main Street, together with shared access and associated site improvements, as shown on a plan set titled set titled, “Proposed Retail Motor Fuel Outlet Site Redevelopment Plans,” prepared by Greenman-Pedersen, Inc., dated March 9, 2023, revised April 27, 2023 (20 sheets), including any and all submissions and testimony provided for and during the public hearing.

In support of its decision, the Board finds that the applicant has submitted plans, testimony, technical data, information, reports, and studies that together satisfactorily demonstrate compliance with the applicable requirements of the Site Plan Review Regulations, except as may reasonably be addressed through the imposition of certain conditions of approval, set forth below, and except as may have been waived pursuant to Section 7.1.

This approval is subject to the following conditions:

General Conditions

1. It shall be the applicant’s responsibility to be familiar with and aware of these conditions of approval, and it shall be the applicant’s responsibility to satisfy these conditions of approval and to satisfy them within the relevant timeframes outlined below.
2. The development is subject to the Site Plan Review Regulations adopted May 13, 1991, last revised January 23, 2023, and the Zoning Ordinance adopted January 16, 2013, last amended March 14, 2023, which are the regulations in effect at the time the application was submitted.
3. A building permit must be applied for *and issued* within two (2) years of the date of this approval (4.10.A), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 4.10.B.

1 4. "Active and substantial development," as defined in Section 8.4.A.1 of the Site Plan Review
2 Regulations, shall be achieved within two (2) years of the date of this approval (8.4.A.2), subject to
3 an extension if applied for by the applicant and if approved by the Planning Board per Section
4 8.4.A.3. If active and substantial development is not achieved within two (2) years of the date of the
5 Planning Board's approval, the development shall be subject to any changes in the City's land use
6 regulations.

7
8 5. "Substantial completion," as defined in Section 8.4.B.1 of the Site Plan Review Regulations, shall
9 be achieved within five (5) years of the date of this approval. If substantial completion is not achieved
10 within five (5) years of the date of the Planning Board's approval, the development shall be subject to
11 any changes in the City's land use regulations.

12
13 6. All required landscape plantings shall meet the minimum size requirements for such plantings set
14 forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.

15
16 7. The applicant shall implement and maintain NHDES Site Specific Best Management Practices
17 before, during, and after construction.

18
19 8. Edge-of-disturbance fencing shall be installed and maintained before and during any site work, to
20 be verified by the City Engineer or City's third-party inspector on site.

21
22 9. The property owner is responsible for the maintenance and operation of the stormwater
23 management system in accord with the O&M plan, and such responsibility shall run with the
24 land. (Section 6.6.H.2.b of the Site Plan Review Regulations).

25
26 **Conditions to be Satisfied Prior to Application for a Building Permit and Prior to the Start of Any**
27 **Construction Activities**

28
29 10. Applicant shall satisfy all conditions of the off-lot parking Conditional Use Permit approved by
30 the Planning Board on May 8, 2023 (PB2023-15-SPR).

31
32 11. For review and approval by the City's legal counsel, prepare and record a cross easement
33 agreement or similar legal agreement between the subject property to ensure access to shared
34 facilities (e.g., shared vehicular access, dumpster access, stormwater facilities, etc.).

35
36 12. Applicant shall obtain a Floodplain Permit from the Floodplain Administrator and shall verify
37 with the Building Inspector that development complies with the applicable floodplain-related
38 requirements of the Building Code.

39
40 13. To the satisfaction of the Fire Department, the applicant shall revise the plan set to provide the
41 requisite 10 feet of clearance between the building and the underground propane tanks.

42
43 14. The applicant shall provide a letter or certification from the engineer of record or other qualified
44 design professional confirming that the approved plan set meets the accessibility standards of the
45 State of New Hampshire Building Code.

46
47 15. The applicant shall schedule and hold a pre-building permit application meeting with the
48 Planning and Development Department, City Building Inspectors, City Engineer/Department of
49 Public Works, and Fire Department, in order to help streamline the building permit review
50 process and to review applicable code requirements.
51

- 1 16. The applicant shall obtain approval from the City Council or the City Manager's office for any
2 additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the
3 City Code.
4
- 5 17. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan
6 Review Regulations. (*Note: applicant can request an invoice from the Department of Public*
7 *Works*).
8

9 **Conditions to be Satisfied Prior to the Issuance of a Building Permit**
10

- 11 18. Prior to the start of any construction activities on the property for which construction inspection is
12 required pursuant to this decision or any applicable ordinance or code, the City shall retain the
13 services of an independent third-party inspector, for which the applicant shall be responsible for
14 all inspection fees related to (a) on-site work related to sewer, water, temporary sedimentation
15 and erosion control, and drainage improvements, and (b) all off-site work within the City's right-
16 of-way (including but not limited to water, sewer, driveways, drainage), in accordance with
17 Chapters 136 and 182 of the City Code and Section 8.2 of the Site Plan Review Regulations. The
18 applicant shall provide funding for inspection services in a form and amount acceptable to the
19 City and shall sign a Water & Sewer Extension and Infrastructure Inspection Agreement in
20 accordance with Chapters 136 and 182 of the City Code.
21
- 22 19. The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the
23 Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance
24 based on the Impact Fee Schedule adopted on October 12, 2021. In accordance with RSA 674:39,
25 the approved site plan shall be exempt from any future changes in impact fees and methodology
26 for five years from the date of approval; however, any building permits which are issued after the
27 end of that five-year period shall be fully subject to whatever impact fees and methodology are in
28 effect at the time of building permit issuance.
29
- 30 20. All water and sewer fees shall be paid as set forth in City Code Chapter 68.
31
- 32 21. Prior to the start of any construction activities on the property, the applicant shall obtain or update
33 (if appropriate) any required State approvals.
34
- 35 22. The applicant shall obtain an Excavation Permit from the Department of Public Works for any
36 site work in the public right-of-way prior to any work in the right-of-way, and construction or
37 installation of any new driveway(s) shall also require a Driveway Permit from the Department of
38 Public Works.
39

40 **Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy**
41

- 42 23. The impact fee calculated pursuant to Condition of Approval #19 shall be paid.
43
- 44 24. Third-party engineer or design engineer inspection reports and as-built drawings provided by the
45 applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate System),
46 including tie sheets, shall be reviewed and approved by the City Engineer prior to acceptance of
47 any utility improvements by the City.
48
- 49 25. All improvements depicted on the plan shall be completed and shall be constructed as depicted on
50 the approved plan, including any modifications to the plan as may be approved by the Planning
51 Board in accordance with the Site Plan Review Regulations.

1
2 *The motion was seconded by Kathie Romano.*

3 *Roll Call Vote:*

4 *Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook*

5 *Voting Against – None*

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

7
8 *A MOTION by Bruce Garland to extend the meeting to 10:10 PM.*

9 *The motion was seconded by Laurel Stavis.*

10 *Roll Call Vote:*

11 *Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook*

12 *Voting Against – None*

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

14
15 **4. Other Business**

- 16
17 A. **Upper Valley Technology Park, LLC, 0 Plainfield Road (Tax Map 131, Lot 3), zoned**
18 **IND-L: Review of a minor alteration to an approved site plan (PB2023-07-SPR) per**
19 **Section 9.2 of the Site Plan Review Regulations**

20
21 Civil Engineer and owner Adam Morse and property representative Robert Wells appeared in support of
22 the application.

23
24 Mr. Corwin noted that there are changes that can be approved administratively, but the Board can weigh
25 in on the decision.

26
27 *A MOTION by Bruce Garland that the Board accepts the minor modifications as approved by the City*
28 *Administration.*

29 *The motion was seconded by Laurel Stavis.*

30 *Roll Call Vote:*

31 *Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Rutter, Ms. Chewning, Ms. Romano, Ms. Zook*

32 *Voting Against – None*

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

34
35
36 **5. Approval of Minutes**

- 37
38 A. March 20, 2023

39
40 *A MOTION by Laurel Stavis to approve the Planning Board Minutes of March 20, 2023, as presented.*

41
42 *The motion was seconded by Bruce Garland.*

43 *Roll Call Vote:*

44 *Voting in Favor – Ms. Chewning, Mr. Garland, Mr. Rutter, Ms. Zook, Ms. Romano, Ms. Stavis*

45 *Voting Against – None*

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

47
48
49 **6. Adjournment**

50
51 *A MOTION by Bruce Garland to adjourn the meeting.*

1

2 *The motion was seconded by Kathie Romano.*

3 *Roll Call Vote:*

4 *Voting in Favor – Ms. Chewning, Mr. Garland, Mr. Rutter, Ms. Zook, Ms. Romano, Ms. Stavis*

5 *Voting Against – None*

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

7

8 The meeting was adjourned at 10:07 PM.

9

10 Respectfully submitted,

11

12 Holly Howes

13 Recording Secretary