



**LEBANON CITY COUNCIL
JULY 5, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

1. Call to Order

To participate in this meeting, please [join live via Microsoft Teams](#) or call 929-229-5356 (access code: 290 308 85#). If you have trouble accessing this meeting, please [email Shaun Mulholland](#).

The July 5, 2023 Lebanon City Council Meeting is hereby called to order.

2. Pledge of Allegiance

3. Public Forum Announcement by the Mayor

Any member of the public who desires to speak on any item may do so when the item is taken up by the Council and will be allowed to speak on the subject for not more than three minutes. **(Note: Speakers are asked to state their name, ward of residence, and to use the microphone provided.)**

4. Open to the Public

5. Recognitions: None

6. Approval of Minutes

- A. MOTION TO approve the minutes as presented in the July 5, 2023 agenda packet.

7. Appointments: None

8. Public Hearing Items

- A. SUPPLEMENTAL APPROPRIATION: A public hearing for the purpose of receiving public input and taking action on the request for Supplemental Appropriation in the amount of \$116,350 for operation and maintenance of 14, 28 & 30 Main Street, West Lebanon for the remainder of Fiscal Year 2023
- i. Presentation:
 - ii. Opening of the Public Hearing:
 - iii. Questions & Comments by the Public:
 - iv. Closing of the Public Hearing:
 - v. Council Deliberation & Action:
- B. AMENDMENT TO LEBANON AIRPORT-TECH PARK TAX INCREMENT FINANCE (TIF) DISTRICT BOUNDARY: A public hearing for the purpose of receiving public input and taking action on a proposal to amend the Lebanon Airport-Tech Park Tax Increment Finance (TIF)

District Boundary pursuant to NH RSA 162-K:5

- i. Presentation:
- ii. Opening of the Public Hearing:
- iii. Questions & Comments by the Public:
- iv. Closing of the Public Hearing:
- vi. Council Deliberation & Action: (Action to take place August 2, 2023 per 162-K:4)

9. Old Business: None

10. New Business

- A. Discussion and Set Public Hearing for July 19, 2023: Ordinance #2023-03 to amend City Code Chapter 97, relative to changes in landfill operations
- B. Discussion and Set Public Hearing for July 19, 2023: Consideration of Provisional Dedication and Acceptance of an alternate Barden Hill Road (Highway or Class A Trail)
- C. Discussion and Set Public Hearing for July 19, 2023: Discontinuance of a section of Class VI Road #14 (Barden Hill Road); Discontinuance of a section of Class VI Road #19 (Durkee Road); Discontinuance of Class VI Road #20 (Atherton Road); and Discontinuance of Class VI Road #21 (McCallister Road)
- D. Authorization for City Manager to sign a Declaration of Restrictive Covenants for Upper Valley Tech Park, LLC Planned Unit Development
- E. Request by Lyme Properties, LLC to have City Council reconsider acceptance of River Park Drive and Lyman Street
- F. Discuss Revised Membership Composition for Lebanon Energy Advisory Committee

11. City Manager Report

12. Council Representatives to Other Bodies Report

13. Future Agenda Items

14. Non-Public Session

15. Adjournment

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 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.

FUTURE BOARD/COMMITTEE/COMMISSION APPOINTMENTS

Board/Committee: Zoning Board of Adjustment
Position: Regular Member
Applicant: J. Walker
Assigned Councilor: D. Whittlesey
Assigned Date: 05/31/2023

Board/Committee: Library Board of Trustees (LibraryBoard makes recommendation to Council)

Lebanon City Council Agenda
July 5, 2023

Position: Regular Member
Applicant: Y. Volentino
Assigned Councilor: K. Hill
Assigned Date: 06/12/2023

PROPOSED FUTURE AGENDA ITEMS: Dates may be tentative and this list is not considered all-inclusive.

July 19, 2023 – 6:00pm Start

Public Hearing Items:

- A. PROVISIONAL DEDICATION AND ACCEPTANCE OF AN ALTERNATE BARDEN HILL ROAD (HIGHWAY OR CLASS A TRAIL) – A public hearing for the purpose of receiving public input and taking action on a request by Patch Forest, LLC for the provisional dedication and acceptance of an alternate Barden Hill Road (Highway or Class A Trail).
- B. DISCONTINUANCE OF A SECTION OF CLASS VI ROAD #14 (BARDEN HILL ROAD); DISCONTINUANCE OF A SECTION OF CLASS VI ROAD #19 (DURKEE ROAD); DISCONTINUANCE OF CLASS VI ROAD #20 (ATHERTON ROAD); AND DISCONTINUANCE OF CLASS VI ROAD #21 (MCCALLISTER ROAD) – A public hearing for the purpose of receiving public input and taking action on a request by Patch Forest, LLC for the discontinuance of a section of Class VI Road #14 (Barden Hill Road); the discontinuance of a section of Class VI Road #19 (Durkee Road); the discontinuance of Class VI Road #20 (Atherton Road); and the discontinuance of Class VI Road #21 (McCallister Road).
- C. ORDINANCE #2023-03 – A public hearing for the purpose of receiving public input and taking action on Ordinance #2023-03 to amend City Code Chapter 97, relative to changes in landfill operations.
- D. SUPPLEMENTAL APPROPRIATION - A public hearing for the purpose of receiving public input and taking action on a request for Supplemental Appropriation in the amount of \$425,000 for the Purchase of 160 Mechanic Street, Lebanon, and Authorization to Issue Bonds or Notes.

August 2, 2023

Old Business:

- A. Lebanon Airport-Tech Park Tax Increment Finance (TIF) District – Action to amend the Lebanon Airport – Tech Park TIF District Boundary (Public Hearing held July 5, 2023)

New Business:

- A. Official acceptance of \$55,000 donation from the Rotary Club of Lebanon, NH to the City of Lebanon for Harmony Park
- B. Annual review and re-adoption of City Council Policy CC-100, Cash Management & Investment
- C. Annual review of City Council Policy CC-101, Fund Balance
- D. Annual review of City Council Policy CC-106, Capital Reserve Fund
- E. Review and adoption of City Council Policy CC-103 - Procurement Policy
- F. Review and Discussion of 2023 2nd Quarter Budget Reports

**Agenda
Lebanon City Council
July 05, 2023**

6. Acceptance Of Minutes:

Minutes To Be Accepted

- June 21, 2023 (Regular Meeting)

MOVED, to approve the minutes as presented in the July 5, 2023 agenda packet.

DRAFT

LEBANON CITY COUNCIL
REGULAR SESSION MINUTES
Wednesday, June 21, 2023, 7:00 p.m.
Council Chambers

Remote Via Microsoft Teams: LebanonNH.gov/Live

MEMBERS PRESENT: Mayor Tim McNamara, Assistant Mayor Clifton Below, Karen Liot Hill, Christian Simon, George Sykes, Douglas Whittlesey, Devin Wilkie, and Karen Zook (Remote)

MEMBERS ABSENT: Erling Heistad

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager David Brooks, City Clerk Jaseya Ewing, Deputy Director of Planning & Development Tim Corwin, DPW Administrative Services Manager Kelly Crate, Chief Innovation Officer Melanie McDonough

1
2 **1. CALL TO ORDER:** Mayor McNamara called the meeting to order at 7:00 p.m.

3
4 **2. PLEDGE OF ALLEGIANCE:** Councilor Sykes led the Council in the Pledge.
5 • City Manager Shaun Mulholland announced the meeting criteria for the public.
6 • Councilor Zook attended the meeting remote because of health reasons.

7
8 **3. PUBLIC FORUM:** Mayor McNamara made the Public Forum announcement.

9
10 **4. OPEN TO PUBLIC:** No one came forth

11
12 **5. RECOGNITIONS:**

- 13 • **RESOLUTION HONORING EAGLE SCOUT NICHOLAS B. LAMONTAGNE**
14

15 *WHEREAS*, the City of Lebanon takes pride in recognizing and honoring the achievements and
16 contributions of its residents, particularly those who have demonstrated exceptional dedication to
17 community service; and

18
19 *WHEREAS*, the Boy Scouts of America, through its time-honored program, encourages young individuals
20 to develop leadership skills, engage in meaningful community projects, and uphold the values of
21 citizenship and service; and

22
23 *WHEREAS*, Nicholas Lamontagne, a distinguished resident of West Lebanon, has displayed an
24 exemplary commitment to these principles, successfully earning his Eagle Scout rank through tireless
25 efforts and commendable dedication; and

26
27 *WHEREAS*, throughout his journey to achieve the esteemed Eagle Scout rank, Nicholas has devoted
28 countless hours of service to our community, undertaking various activities that have greatly benefited our
29 citizens. He actively participated in community parades, showcasing his commitment to our city's
30 traditions, and fostering a sense of unity and pride among its residents; and

31
32 *WHEREAS*, as part of his notable Eagle Scout project, Nicholas conceived and executed the creation of
33 workout stations on the Mascoma River Greenway, providing a valuable resource for our citizens to

engage in physical fitness activities while enjoying the natural beauty of our city.

NOW, THEREFORE BE IT RESOLVED, that the Lebanon City Council, on behalf of the City of Lebanon, extends its heartfelt congratulations and deepest appreciation to Nicholas B. Lamontagne for achieving the rank of Eagle Scout and for his outstanding community service, dedication, and leadership. He serves an inspiration to other young individuals within our city to pursue excellence, service, and the pursuit of their dreams.

Dated this 21st day of June 2023.

Timothy J. McNamara, Mayor
on behalf of the Lebanon City Council

6. ACCEPTANCE OF MINUTES: June 7, 2023 (Regular Meeting)

Councilor Whittlesey MOVED to approve the June 7, 2023 minutes as written and presented in the June 21, 2023 City Council agenda packet.

Seconded by Councilor Simon.

Roll Call Vote:

Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara all voting Yea.

None voted Nay.

Absent from vote: Councilor Heistad; Councilor Zook was not present at the time of this vote.

****The Vote on the Motion was approved by Council members present (7-0).***

7. APPOINTMENTS:

A. Swearing in of Jaseya Ewing as City Clerk was done by Mayor McNamara

- City Clerk Jaseya Ewing spoke about her background history

Councilor Zook arrived at approximately 7:12 PM.

B. - Lebanon Housing Authority, Matthew Brown (Reappointment)

Assistant Mayor Below MOVED to NOMINATE Matthew Brown for Re-appointment as a member of the Lebanon Housing Authority for a five-year term as recommended by D. Alonso.

Term: (6/23-6/28)

Seconded by Councilor Liot Hill.

Roll Call Vote:

Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara all voting Yea.

None voted Nay.

Absent from vote: Councilor Heistad

****The Vote on the Motion was approved by Council members present (8-0).***

1 - Pedestrian & Bicyclist Advisory Committee, M. Jared Toon (Alternate Member)

2
3 ***Councilor Sykes MOVED to NOMINATE M. Jared Toon for appointment as an alternate member of***
4 ***the Pedestrian & Bicyclist Advisory Committee for a three-year term.***

5 ***Term: (6/23-6/26)***

6 ***No Second needed.***

7
8 **Roll Call Vote:**

9 Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor
10 McNamara all voting Yea.

11 None voted Nay.

12 Absent from vote: Councilor Heistad

13
14 ****The Vote on the Motion was approved by Council members present (8-0).***

15
16 **8. PUBLIC HEARING ITEMS:**

17 **A. COMMUNITY REVITALIZATION TAX RELIEF PROGRAM APPLICATION – A**
18 **public hearing for the purpose of receiving public input and taking action on a Community**
19 **Revitalization Tax Relief Program Application (per NH RSA 79-E) by Your Best Day,**
20 **LLC for rehabilitation of property at 3 Main Street, West Lebanon**

21
22 Included in the agenda packet: ***(Pages 39-56, Council agenda packet.)***

- 23 1. May 25, 2023 Memorandum from Deputy Planning & Development Director Tim Corwin re:
24 Community Revitalization Tax Relief Incentive Program (RSA 79-E) Application of Foremost
25 Builders/Your Best Day, LLC – 3 Main Street; M/L 86-22, including a Sample Resolution
26 2. 79-E Application & Supporting Documentation: Foremost Builders/Your Best Day, LLC

27
28 Mr. Tim Corwin, Deputy Director of Planning and Development, and Mr. David Clarenbach (owner of
29 Foremost Builders/Your Best Day LLC) came before the Council to review the 79-E application as listed
30 above.

31
32 Mr. Corwin reviewed the background and the contents of his memo ***as detailed on pages 42-44, Council***
33 ***agenda packet.*** Other than what was listed in his memo, he believed there was another requirement that
34 needed to be satisfied in order to grant the tax relief, which requires the governing body to find that the
35 proposed use is consistent with the municipality's Master Plan and Development Regulations. Since he
36 was representing the Planning and Development Department, he attested to the fact that the project is
37 consistent with the City's Master Plan and Development Regulations.

38
39 **BACKGROUND**

40 On February 17, 2016, the City Council adopted the provisions of the Community Revitalization Tax
41 Relief Incentive Program pursuant to NH RSA 79-E to encourage the rehabilitation of existing buildings
42 and structures in downtown Lebanon and downtown West Lebanon. On May 22, 2023, Foremost Builders
43 and Your Best Day, LLC applied for consideration under the program.

44
45 Your Best Day, LLC is the owner of property located at 3 Main Street, West Lebanon (Tax Map 86, Lot
46 22), which is situated in the Central Business (CB) Zoning District and is currently improved with two
47 attached multi-tenant commercial buildings. The anticipated improvements will include exterior

1 renovations and an interior renovation of +/-2500 sq. ft. of retail space into additional office space for
2 Foremost Builders, a current tenant.

3
4 Location of property



5
6
7 Proposed Exterior Renovations



8
9 Proposed Interior Renovations



10
11
12 Under the terms of the 79-E program, the City Council must hold a public hearing within 60 days from
13 receipt of the application to determine whether the structure is a Qualifying Structure; whether the
14 proposed project is a Substantial Rehabilitation; and whether there is a Public Benefit to granting the
15 requested tax relief, and if so, for what duration.

1
2 If the Council choses to grant the tax relief, you are authorized under the Statute to grant up to zero (0) to
3 five (5) years of tax relief. In this case the applicant has requested three (3) years of tax relief.
4

5 Mr. Clarenbach noted he would like request five (5) years under his 79E application for tax relief.
6

7 For detailed information regarding the project, please see the memo from Deputy Planning &
8 Development Director Tim Corwin, along with the accompanying application and supporting
9 documentation submitted by Your Best Day, LLC. *(Pages 39-56, Council agenda packet.)*
10

11 In closing, Mr. Corwin recommended the Council carefully balance the benefits of the 79-E Program
12 offers in terms of enabling projects that might not otherwise pencil out and the benefits that those projects
13 create (i.e., the property tax revenue that would be forgone through the tax relief).
14

15 Mr. Clarenbach reviewed his and his wife's 79-E Application and the memo he sent to the City Council
16 dated May 19, 2023 *(pages 45-46, Council agenda packet)*.
17

18 **Mayor McNamara opened the Public Hearing. Hearing no comments from the public, the Public**
19 **Hearing was closed.**
20

21 **Council Discussions:** 22

23 Mayor McNamara spoke about the significant investment this project would have on Main Street in
24 Downtown West Lebanon noting one of our goals was to revitalize Main Street by encouraging private
25 property owners in that area to do their own revitalizations: 79-E is one way to encourage that.
26 According to his rough calculations (based on the applicant's estimate), if the assessment from the
27 property were to go up by the amount of the improvements Mr. Clarenbach is proposing, it would be \$4-
28 5K/year in initial property tax relief and over three (3) years it would be +/- \$12-15K in tax relief. Based
29 on the budget he was seeing, he would support an expanded period of time beyond three (3) years of 79-
30 E relief if the exterior improvements (not interior) could be expanded to the UnDun building to bring
31 everything together visually. His concern was there does not seem to be a proposal to do anything to the
32 exterior of the UnDun building, which would support our goal of trying to spruce up Main Street.
33

34 In response to Councilor Whittlesey's question, Mr. Corwin said the tax base would be frozen at the pre-
35 rehabilitation value.
36

37 Councilor Liot Hill also spoke about the exterior rehabilitation noting it does not meet that \$75K
38 threshold as it is only \$15K for the entire project. The most significant reason why the 79-E was created
39 was really about generating that increased investment of exterior improvements and trying to make Main
40 Street West Lebanon more of a destination. She asked Mr. Clarenbach if he would be open to taking
41 more time to modifying his application.
42

43 In response to Councilor Sykes question, City Manager Mulholland noted this is one taxable lot, but that
44 does not mean Mr. Clarenbach cannot come back and ask for a modification of what was approved.
45

46 Mr. Clarenbach noted that while the facade was important, it was not in their budget to do the exterior of
47 the UnDun building at this time but they would be looking into grants from the Upper Valley Business

1 Alliance to fund exterior upgrades and was uncertain if the landlord of UnDun had funds that would allow
2 them to re-side the whole building.

3
4 Deputy City Manager David Brooks noted there is a section in the Statute that says, “The tax relief
5 granted under this chapter shall only apply to substantial rehabilitation that commences after the
6 governing body approves the application.” So, if Mr. Clarenbach comes back with a subsequent
7 application, he needs to make sure that he does so before the proposed application is granted.

8
9 Councilor Whittlesey’s concern about this application was that the bulk of this project was really about
10 the remodeling of the interior business space in this facility. There is very limited exterior remodeling and
11 felt the bulk of the costs was routine business expenses for expansion and remodeling on the interior and
12 was concerned about the precedent this would set for tax relief from other business owners for interior
13 redevelopment, which is not in line with goals of the City’s Strategic Plan.

14
15 Councilor Simon spoke about his reasons supporting this application for three (3) years.

16
17 Councilor Wilkie concurred with what other Councilors said and spoke about his reasons for supporting
18 the application for 3 years. He also was concerned about the precedent this might set for others who seek
19 tax relief from 79-E for interior renovations.

20
21 Councilor Liot Hill felt there was an openness from Councilors to consider the five (5) year request if the
22 project was potentially reconceived and again asked Mr. Clarenbach if he thought having more time to
23 revise his application and bringing it back before the Council in July would be helpful.

24
25 Mr. Clarenbach said probably not and spoke about the research he did for this application. He also
26 reviewed the work that was done on the interior of the building and the proposed work to be done on the
27 exterior of the building, noting that some of the exterior renovations would have to wait due to economic
28 circumstances. He felt he checked off all the boxes laid out in City’s Master Plan and the 79-E
29 application and questioned why he was answering questions about the facade of the rest of the building.

30
31 Councilor Hill noted that a lot of businesses in Lebanon make interior renovations and do not come to the
32 Council for a 79-E application. The 79-E program was specifically created to encourage redevelopment
33 and development in certain areas for very specific public benefits (i.e., the Lebanon housing shortage,
34 which serves the public benefit). She also spoke about the lack of investment by property owners in West
35 Lebanon’s Downtown corridor noting the 79-E Zone was created in order to facilitate investment by
36 property owners in the Downtown corridor as part of the Economic Development Strategy for West
37 Lebanon. The law requires the Council to look at the public benefit. Councilor Liot Hill and Mr.
38 Clarenbach continued to discuss what this project would bring to the table (i.e., public vs. private
39 benefits).

40
41 Councilor Simon noted that the Council are all volunteers and are vested by the members of their
42 community to make the best possible sound decisions. The questions we are asking will be asked by our
43 constituents tomorrow. The Council is not just giving their own opinions, we are representing the
44 citizenry of the community.

45
46 Councilor Whittlesey again spoke about his reasons why he felt this application was a private benefit (i.e.,
47 plumbing, new interior lighting, heating, ventilation system, interior partitions for offices, new cabinetry,

etc.), noting that most of those benefits will be going to customers and not generating tax revenues for the City. In his opinion, we are investing in Mr. Clarenbach's business while the City is foregoing tax revenue. The Council was just trying to understand what the personal benefit vs. public benefits are for this application.

Assistant Mayor Below suggested a compromise to approve this application for two (2) years' worth of (property tax) abatement. It is a sort of a precedent and felt there was a hesitancy to endorse commercial interior renovations, but thought the façade improvements were proportionate to the investment in the interior renovations. He felt there was some public benefit and it is consistent with our goal of seeing the look, feel, and activity on the West Lebanon Main Street and further explained his reasonings. This is a significant upgrade on the interior, but it ultimately is an enhancement.

ACTION:

Councilor Liot Hill MOVED, the following:

BE IT HEREBY RESOLVED by the Lebanon City Council, after a duly-noticed public hearing, that:

WHEREAS, the City Council has determined that the application of Your Best Day, LLC (hereinafter the "Applicant") for property assessment tax relief under the City's 79-E Program is complete enough to commence consideration, and

WHEREAS, the City Council has determined that the Applicant's property, 3 Main Street, Tax Map 86, Lot 22 (hereinafter the "Property"), is situated in the Downtown West Lebanon 79-E District as adopted by the City and, therefore, meets the 79-E Program requirement as a Qualifying Structure, and

WHEREAS, the City Council has determined that the Applicant's project to complete interior renovation and exterior rehabilitation on the Property pursuant to plans and information provided in the application (hereinafter the "Project") exceeds the lesser of 15% of the current pre-rehabilitation assessed valuation or \$75,000 and, therefore, meets the 79-E Program requirement as a Substantial Rehabilitation, and

WHEREAS, the City Council has determined that the Applicant's proposed Project will generate one or more Public Benefits to the City, including:

- 1. Enhancement of the economic vitality of Downtown West Lebanon, and***
- 2. Promotion of the preservation and reuse of existing building stock, and***
- 3. Promotion of the development of municipal centers, providing for efficiency, safety, and a greater sense of community consistent with RSA 9-B***

NOW THEREFORE, pursuant to the provisions of the Community Revitalization Tax Relief Incentive (NH RSA 79-E) Program, as adopted by the City, the City Council hereby grants to the Applicant two (2) years of property assessment tax relief for the Property to commence upon completion of Project, with the following conditions:

- 1. The Applicant shall grant to the City of Lebanon a Declaration of Covenant to be recorded in the Grafton County Registry of Deeds ensuring that the Project shall be maintained and used in a manner that furthers the Public Benefit(s) set forth above for which this property tax relief is granted. The term***

1 *of the Declaration of Covenant shall be effective for four (4) years, which is twice the duration of the*
2 *approved tax relief period as permitted under RSA 79-E:8, II.*

3
4 *2. The Applicant shall obtain and maintain property and casualty insurance, as well as flood*
5 *insurance, if appropriate, for the term of the Declaration of Covenant set forth above to ensure proper*
6 *restoration or replacement of the Project and Property. Such insurance shall, effective as of the date*
7 *on which the Project is completed, name the City of Lebanon as an additional insured by endorsement*
8 *and the City shall be provided with certificates of insurance annually. Further, the applicant shall*
9 *agree to have the City made a Loss Payee of the proceeds of any property or casualty insurance*
10 *coverage, subject to the rights of any current or future mortgagee of the Property and any structures*
11 *thereon, for the purpose of ensuring proper and timely restoration or demolition of the Property,*
12 *including any damaged structures thereon. The Applicant shall agree to commence any restoration or*
13 *demolition of such structures within one year following the date of any occurrence or incident for*
14 *which an insurance claim is or could be made; otherwise the Applicant shall be subject to the*
15 *termination provisions set forth in RSA 79-E:9, I.*

16
17 *3. The Applicant shall obtain a Building Permit for the Project and commence construction no later*
18 *than one year from the date of this Resolution, unless otherwise extended by the City Council in*
19 *writing. The Project, as approved, shall be completed on or before March 31, 2024, unless otherwise*
20 *extended by the City Council in writing.*

21 *Seconded by Assistant Mayor Below.*

22
23 **Roll Call Vote:**

24 Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Wilkie, Zook and Mayor McNamara all
25 voting Yea.

26 Voting Nay: Councilor Whittlesey

27 Absent from vote: Councilor Heistad

28
29 **The Vote on the Motion was approved by Council members present (7-1).*

30
31 **9. OLD BUSINESS-NONE**

32
33 **10. NEW BUSINESS**

34 **A. Warrant for Civil Forfeiture Notice**

35
36 Included in the agenda packet: *(Pages 57-58, Council agenda packet.)*

37 1. Warrant for Civil Forfeiture Notice

38
39 **BACKGROUND**

40 Per statute, dogs are required to be licensed annually by April 30th. To procure a dog license, a current
41 rabies vaccination must be on file with the City Clerk's Office. The month of May is a grace period which
42 allows dog owners to follow up on expired rabies vaccinations in order to obtain a license. Any dog that
43 remains unlicensed as of June 1st is assessed with a \$25.00 Civil Forfeiture fine and \$1.00 late fees which
44 accumulates each month that the dog remains unlicensed.

45
46 **ACTION:**

1 **Councilor Sykes *MOVED*, that the Lebanon City Council hereby issues a warrant to City Clerk,**
2 **Jaseya Ewing, authorizing the issuance of a civil forfeiture for each dog which remains unlicensed**
3 **at the close of business on June 21, 2023.**

4 ***Seconded by Councilor Wilkie.***

5
6 **Roll Call Vote:**

7 Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor
8 McNamara all voting Yea.

9 None voted Nay.

10 Absent from vote: Councilor Heistad

11
12 ****The Vote on the Motion was approved by Council members present (8-0).***

13
14 **B. Appointment of Jaseya Ewing as Municipal Agent for Motor Vehicle Registrations**
15 ***(See page 59, Council agenda packet.)***

16
17 **BACKGROUND**

18 Each municipality in the State of New Hampshire that processes motor vehicle registrations is required to
19 have a designated Municipal Agent. The Municipal Agent is responsible for all motor vehicle related
20 inventory, including but not limited to, official stamps, decals, registration materials, license plates, etc.
21 The Municipal Agent is also the point of contact for audits conducted by the State of New Hampshire, and
22 is charged with ensuring compliance, integrity, and confidentiality of all motor vehicle transactions
23 performed within the City of Lebanon.

24
25 The process for appointing a Municipal Agent is found in NH State RSA 261:74-a, which reads as follows:

26
27 **261:74-a Agents Appointed.** – With the approval of the governing body of a city or town and subject to
28 the direction and approval of the commissioner, the director may appoint municipal officials as agents to
29 issue, renew or transfer motor vehicle registrations. The director shall determine the optimum number of
30 registration agents that the division can reasonably accommodate. The appointment of any municipal
31 official as a registration agent for the purposes of this subdivision shall continue while the agent holds his
32 office or employment with the municipality, except as provided in RSA 261:74-b and 261:74-f.

33
34 The City Clerk's department is charged with motor vehicle registrations for the City of Lebanon. As such,
35 Interim City Clerk Darlene Cook was previously appointed as the Municipal Agent for the City. The role
36 of Municipal Agent is not inherent to the position of City Clerk, and as stated in RSA 261:74-a, requires
37 approval of the governing body before the Director of the Division of Motor Vehicles can appoint.

38
39 Interim City Clerk/Deputy Tax Collector Darlene Cook was appointed as Municipal Agent effective April
40 20, 2023, pending the completion of the City Clerk hiring process. Jaseya Ewing was appointed by City
41 Manager Shaun Mulholland as City Clerk on June 5, 2023. City Manager Mulholland is requesting that
42 the City Council support and approve the appointment of Ms. Ewing as the City's next Municipal Agent
43 for Motor Vehicle Registrations.

44
45 **ACTION:**

46 ***Councilor Liot Hill *MOVED*, that the Lebanon City Council hereby supports and approves the***
47 ***appointment of Jaseya Ewing as Municipal Registration Agent for the City of Lebanon to be***
48 ***effective June 22, 2023.***

49 ***Seconded by Councilor Sykes.***

1
2 **Roll Call Vote:**

3 Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor
4 McNamara all voting Yea.

5 None voted Nay.

6 Absent from vote: Councilor Heistad
7

8 **The Vote on the Motion was approved by Council members present (8-0).*
9

10 **C. Request for transfer of funds from Miracle Mile Water Main Replacement Project to the**
11 **South Main Street Water Improvement Project**
12

13 Included in the agenda packet: *(Pages 60-63, Council agenda packet.)*

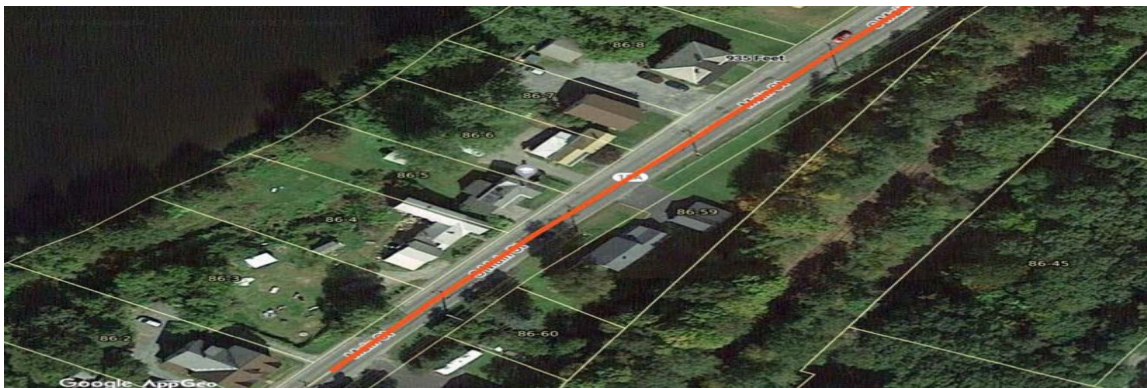
14 1. Memo from Assistant DPW Director Jay Cairelli, dated May 31, 2023, including map
15 of South Main Street Water Improvements Project Area
16

17 City Manager Mulholland noted this item was not required for the Council to approve but when the
18 Council appropriates money for a specific project, and if he asks the Council to do something different, he
19 needs to come back before the Council for their approval.
20

21 **BACKGROUND**

22 The location of this proposed project is South Main Street in West Lebanon. In this location there are two
23 parallel water mains: one unlined, six-inch cast iron main installed before 1927 and one 12-inch cement
24 lined ductile iron main installed in 1968. The current six-inch main is in poor condition, services 19
25 properties, and has suffered several water breaks in recent years. It is also a dead-end line, meaning it is a
26 branch off the water distribution system that is not tied back in, and the only use is from individual house
27 services. Future failures will require a large shutdown of the area causing substantial outages that extend
28 beyond the 19 properties served. The 12-inch main is in good condition and has no record of previous water
29 breaks. All the properties served by the six-inch main are on the west side of South Main Street. Properties
30 on the east side of the street are already served by the 12-inch main.
31

32 This proposed project extends approximately 935 linear feet from the end of CSO #13 to the beginning of
33 the Route 12A “Dry Bridge” Project and includes extending twelve (12) water services from the six-inch
34 main to the 12-inch main. The Dry Bridge project includes extending the remaining services on seven (7)
35 of the properties from the six-inch main to the 12-inch main. The 12-inch main is in good condition so the
36 water services can be removed from the older six inch main and connected to the existing 12-inch main
37 without installing new water main. Included in this project will be paving the road.
38



1
2 **Council Discussions:**
3

4 In response to Councilor Liot Hill's question regarding whether or not the sidewalks would be included in
5 this project, City Manager Mulholland noted he was uncertain and would need to check with DPW. Once
6 he has an answer, he will email the Council with a response.
7

8 **ACTION:**

9 *Councilor Whittlesey MOVED that the Lebanon City Council hereby authorizes the transfer of funds*
10 *from the Miracle Mile Water Main Replacement Project to the South Main Street Water Main*
11 *Improvements Project in the amount of \$500,000 for relocation of twelve (12) residential water services*
12 *and repaving of approximately 935 linear feet of South Main Street.*
13 *Seconded by Councilor Simon.*
14

15 **Roll Call Vote:**

16 Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor
17 McNamara all voting Yea.

18 None voted Nay.

19 Absent from vote: Councilor Heistad
20

21 **The Vote on the Motion was approved by Council members present (8-0).*
22

23 **D. Discussion and Set Public Hearing for July 5, 2023: Amendment to the Lebanon Airport- Tech**
24 **Park Tax Increment Finance (TIF) District Boundary**
25

26 Included in the agenda packet: *(Pages 64-68, Council agenda packet.)*

- 27 1. Lebanon Airport-Tech Park TIF District Boundary as adopted on November 6, 2019
28 2. Proposed Expansion Area of the Lebanon Airport-Tech Park TIF District Boundary
29 and map of existing Public Infrastructure on Technology Drive
30

31 **BACKGROUND**

32 On July 11, 2018, the City Council unanimously adopted the provisions of NH RSA 162-K (Municipal
33 Economic Development and Revitalization Districts) allowing for the creation of Tax Increment Finance
34 (TIF) Districts and also established the Downtown Lebanon TIF District. Subsequently, on November 6,
35 2019, the Council voted to create a second district, titled the Lebanon Airport-Tech Park TIF District. As
36 indicated on the attached graphic, the Airport-Tech Park TIF District encompasses three tax parcels: M/L
37 131-3, owned by Upper Valley Tech Park, LLC (UVTP), and M/L 159-4 and 131-8, both owned by the
38 City of Lebanon.
39

40 Since the creation of the District, the City has extended Airpark Road into the City's parcel, which has
41 created developable areas on both the City's land as well as the UVTP parcel. To date, two development
42 applications have been approved by the Planning Board for the easterly side of the UVTP parcel, accessed
43 from the extended roadway, and the City is planning for the development of an Early Childhood Education
44 facility on the City's parcel.
45

46 The owners of the UVTP parcel have also received interest for a potential development on the westerly side
47 of their property, which would be accessed from Technology Drive within the Phase 1A Airport Business
48 Park. However, the constructed portion of Technology Drive and the associated water and sewer
49 infrastructure do not extend the full length of the public right-of-way and stop short of the UVTP parcel

1 boundary. It is expected that any further extension of the roadway and utility infrastructure within the public
2 right-of-way will become the City's responsibility for ownership and maintenance.

3
4 By statute, tax increment funds generated within the TIF District can only be expended within the District.
5 Since the portion of Technology Drive leading to the UVTP parcel is not within the District, the incremental
6 revenues generated by the development of the UVTP parcel cannot be used to pay for, or repay, the costs
7 of extending the public infrastructure to the property boundary.

8
9 The City Manager, as the TIF District Administrator, is recommending that the TIF District Boundary be
10 expanded to include the southernmost +/-220 feet of the Technology Drive right-of-way. Including the
11 area of right-of-way will not have any fiscal impact on the district itself since the area is non-taxable, but
12 will allow for TIF revenues to be used for the construction and maintenance of the new segments of roadway
13 and utility infrastructure within the right-of-way.

14
15 As required by RSA 162-K:9, the Grafton County Commissioners and the Lebanon School Board were
16 provided with notice of this public in order to be informed of the fiscal and economic implications of the
17 proposed TIF District. If the Council decides to move forward with the proposed amendment, the Council
18 will be asked to schedule a public hearing for July 5, 2023. Grafton County Commissioners and Lebanon
19 School Board members will again be provided with a special notice of the public hearing pursuant to RSA
20 162-K:9.

21
22 If scheduled, a public hearing would be held to receive input regarding the amendment to the Airport-Tech
23 Park TIF District. It is important to note, however, that RSA 162-K:4 requires that the public hearing take
24 place at least 15 days prior to the final action. Therefore, the City Council would hold the public hearing
25 on July 5th but would **not** take action until the regular meeting on August 2nd.



1 Deputy City Manager David Brooks reviewed the background. He noted that for full disclosure, the Tech
2 Park property has already received subdivision approval for the three lots and two of those lots have
3 received Planning Board approval for Site Plan applications, so there is going to be development
4 happening within the Tech Park property, which is within the TIF District. The Early Education facilities
5 are being designed for the City's property in that district.

6
7 The Tech Park owners have received interest for the rest of their property, the other 26 acres that has
8 frontage and access from Technology Drive through the original Airport Business Park, noting the
9 physical infrastructure within Technology Drive does not extend all the way to their property line. There
10 is approximately 110 ft. of road that has not been built; about 200 ft. of sewer; and approximately 210 ft.
11 of water line that has not been built. (See details below.) They are recommending that the TIF District
12 Boundary be expanded within the Tech Drive right-of-way by about 220 ft. to cover that area of physical
13 public improvements that have not already been built and will work with the Upper Valley Tech Park
14 property owners and their potential buyers to get those improvements constructed.

15
16 City Manager Mulholland noted they are talking about improvements on City-owned property and
17 explained how TIF revenues would be generated.

18
19 Attorney Pamela Moreau (General Council for DEW Construction/a.k.a. DEW Properties), came forth to
20 represent the members of the Upper Valley Technology Park, LLC. We hope to file building permits soon
21 and begin construction in August. She spoke about the 3rd-lot subdivision that has wetlands noting it will
22 be conserved as a conservation pathway. However, because of the way this 3rd lot is being developed, the
23 28 acres really only has access to Technology Drive. A question was raised by the buyer about a title issue
24 regarding the access to this property. We are trying to remove the hurdles so the buyer will be able to buy
25 the property and develop it. With this one hurdle (right-of-way) removed, we are hoping to be able to sell
26 the land by December 2023 or January 2024.

27
28 It has been proposed that this expansion become part of the TIF District that will help the development of
29 the project.
30



Airport-Tech Park TIF Expansion Area



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 06/07/2023
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Council Discussions:

In response to Mayor McNamara's question regarding taxation of lots, City Manager Mulholland explained there will be a Development Agreement (for the right of way) that affects only this particular lot (not the remaining lots) because it (the right of way) would only serve this particular project.

ACTION:

Councilor Liot Hill MOVED that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 5, 2023, beginning at 7:00pm, in Council Chambers, City Hall and remote via the City's Virtual Platform, for the purpose of receiving public input and taking action to amend the Lebanon Airport-Tech Park Tax Increment Finance (TIF) District Boundary to include the southernmost 220 feet of the right-of-way of Technology Drive adjacent to the existing TIF District. Seconded by Councilor Whittlesey.

Roll Call Vote:

Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara all voting Yea.

None voted Nay.

Absent from vote: Councilor Heistad

****The Vote on the Motion was approved by Council members present (8-0).***

E. Authorization to Purchase 160 Mechanic Street, Lebanon (Tax Map 105, Lot 27)

1
2 Included in the agenda packet: *(Page 69, Council agenda packet)*
3

4 **BACKGROUND**

5 On May 20th, the City received a communication from the owner of 160 Mechanic Street, Lebanon (Tax
6 Map 105, Lot 27) offering to sell the property to the City.
7

8 The parcel, situated at the northeast corner of the intersection of Mechanic Street and Slayton Hill Road,
9 is integral to a transportation project that is currently on the NHDOT Ten-Year Plan (Lebanon 42604).
10 The Ten-Year Plan project proposes the construction of a roundabout at the intersection with preliminary
11 engineering slated to begin in 2025, right-of-way acquisition programmed for 2027, and construction
12 starting in 2029. Acquisition of the property is necessary based on the conceptual intersection
13 improvement design submitted with the Ten-Year Plan proposal.
14

15 City Manager Mulholland reviewed the background, noting the NH DOT capped the project at \$3M. He
16 felt this property should be purchased now and paid for using 2023 dollars. If it is purchased in 2023, it will
17 fall under the rules and requirements of the NH DOT now and will involve relocation costs for any businesses
18 located there. The occupants of the present property have a lease that ends at the end of August 2023 and
19 had offered them the opportunity to purchase the property, which they chose not to do, so we have negotiated
20 a price with the property owner in the amount of \$400K. There may be side benefit to purchasing this
21 property, which is a possible location for a homeless shelter that could house up to 15 people, but a
22 Feasibility Study would need to be done.
23

24 **Council Discussions:**

25 Councilor Whittlesey suggested the City use the \$100K approved in this year's budget for the Human
26 Services Department to help pay for the purchase of this property and explained his reasons.
27

28 **ACTION:**

29 ***Councilor Wilkie MOVED the following:***
30

31 ***FOR THE PURPOSE OF acquiring a parcel of land, and the improvements thereon, situated at 160***
32 ***Mechanic Street, Lebanon (Tax Map 105, Lot 27; ~0.23 Acres), (hereinafter the "Property"), for a***
33 ***purchase price of \$400,000 (Four Hundred Thousand Dollars); it is hereby:***
34

35 ***MOVED, that the Lebanon City Council, pursuant to its authority under NH RSA 47:5 to purchase***
36 ***real property, hereby designates and authorizes the City Manager to act on behalf of the City Council***
37 ***to undertake all actions and execute all documents as may be required to enter into a Purchase & Sale***
38 ***Agreement (P&S) for the acquisition of the Property; to perform all obligations of the City under the***
39 ***P&S; to execute a closing of the real estate purchase transaction described in the P&S; and to complete***
40 ***the City's acquisition of the Property free and clear of all liens and encumbrances, except as may be***
41 ***specified in the P&S.***
42

43 ***Seconded by Councilor Sykes.***
44

45 Councilor Simon voiced his opposition to this motion, noting the City has purchased a lot of properties
46 since he has been on the Council and we need to start putting some of these properties back on the tax
47 role moving forward.
48

1
2 **Roll Call Vote:**

3 Assistant Mayor Below, and Councilors Liot Hill, Sykes, Whittlesey, Wilkie, Zook and Mayor
4 McNamara all voting Yea.

5 Voted Nay: Councilor Simon

6 Absent from vote: Councilor Heistad
7

8 **The Vote on the Motion was approved by Council members present (7-1).*
9

10 **F. Discussion and Set Public Hearing for July 19, 2023: Request for Supplemental**
11 **Appropriation in the amount of \$425,000 for the Purchase of 160 Mechanic Street,**
12 **Lebanon, and Authorization to Issue Bonds or Notes**
13

14 Included in the agenda packet: *(See page 70, Council agenda packet.)*
15

16 **BACKGROUND**

17 In a separate agenda item on the June 21st meeting, the City Council was asked, pursuant to its authority
18 under NH RSA 47:5, to authorize the purchase of 160 Mechanic Street, Lebanon (Tax Map 105, Lot 27)
19 for a purchase price of \$400,000.
20

21 In the event that the Council elects to authorize the acquisition of the property, the City Manager will
22 initiate negotiations with the property owner on behalf of the City and take all actions and execute all
23 documents as may be required to enter into a Purchase & Sale Agreement (P&S) with the seller. The City
24 Manager will also initiate due diligence efforts, including deed and title research and an environmental
25 review of the property prior to closing. It is estimated that Phase 1 and Phase 2 Environmental Site
26 Assessments may cost approximately \$20,000 and that legal costs for the title research and closing may
27 cost approximately \$5,000, bringing the total cost of acquiring the property to \$425,000.
28

29 **ACTION:**
30

31 *Councilor Whittlesey MOVED that the Lebanon City Council hereby schedules a public hearing for*
32 *Wednesday, July 19, 2023, beginning at 6:00pm, in Council Chambers, City Hall and remote via the*
33 *City's Virtual Platform, for the purpose of receiving public input and taking action to appropriate the*
34 *sum of \$425,000 to fund the purchase and acquisition of property located at 160 Mechanic Street,*
35 *Lebanon, and to authorize the issuance of bonds or notes in the amount of \$425,000 in accordance*
36 *with the Municipal Finance Act (NH RSA 33).*

37 *Seconded by Councilor Liot Hill.*
38

39 **Roll Call Vote:**

40 Assistant Mayor Below, and Councilors Liot Hill, Sykes, Whittlesey, Wilkie, Zook and Mayor
41 McNamara all voting Yea.

42 Voted Nay: Councilor Simon

43 Absent from vote: Councilor Heistad
44

45 **The Vote on the Motion was approved by Council members present (7-1).*
46

47 **11. City Manager Report:**

48 City Manager Mulholland updated the Council on the following:

- Proposed Child Care Center/a.k.a. Early Learning Center of the Upper Valley: The City asked for \$3M from Congresswoman Custer's office. What we were told was this is in the 2024 Federal Budget, which has not been passed by Congress yet. The encouraging news is that we have not been cut out of the process. (See part of the Conceptual Plan below.)

COURTYARD



- Upcoming City Council Community Conversations
 - September 26, 2023, 6:30PM, City Hall
 - October 24, 2023, 6:30PM, Kilton Library
 - There will be 4 community conversations in 2024 but these are yet TBD.
- COMING SOON: City Council and other Board/Committee/Commission Podcasts. Details are being ironed out.

12. COUNCIL REPRESENTATIVES TO OTHER BODIES: NONE

13. FUTURE AGENDA ITEMS: NONE SUGGESTED

14. NON-PUBLIC SESSION:

- A. NH RSA 91-A:3, II(c) – “Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself...”

Assistant Mayor Below MOVED to go into Non-Public Session for the purpose of discussing NH RSA 91-A:3, II(c) – “Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself...”

Seconded by Councilor Wilkie.

Roll Call Vote:

Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and Mayor McNamara all voting Yea.

None voted Nay.

Absent from Vote: Councilor Heistad

Staff Present: City Manager Mulholland, Deputy City Manager David Brooks

**The Vote on the MOTION was approved by Council members present (8-0)*

1
2 **The Council Entered into Non-Public Session at 9:10 PM**

3
4 **The Council Discussed:** NH RSA 91-A:3, II(c) – “Matters which, if discussed in public, would likely
5 affect adversely the reputation of any person, other than a member of the public body itself...”
6

7 *Councilor Wilkie MOVED to come out of Non-Public Session.*
8 *Seconded by Councilor Whittlesey.*
9

10 **Roll Call Vote: (Note: Not required when going out of Non-Public.)**

11
12 **The Vote on the MOTION was approved by Council members present (8-0).*
13

14 **The Council came OUT of Non-Public Session at 9:32 PM**

15
16 **The Council was back in Public Session.**
17

18 **SEALING OF THE JUNE 21, 2023 NON-PUBLIC SESSION MINUTES:**

19
20 *Councilor Whittlesey MOVED to seal the June 21, 2023 Non-Public Session Minutes because it was*
21 *determined that the divulgence of this information would affect adversely the reputation of any person*
22 *other than a member of this Board.*
23

24 *Seconded by Councilor Wilkie.*
25

26 **Roll Call Vote:**

27 **Assistant Mayor Below, and Councilors Liot Hill, Simon, Sykes, Whittlesey, Wilkie, Zook and**
28 **Mayor McNamara all voting Yea.**

29 **None voted Nay.**

30 **Absent from Vote: Councilor Heistad**

31 **Staff Present: City Manager Mulholland, Deputy City Manager David Brooks**
32

33 **The Vote on the MOTION was unanimously approved by Council members present (8-0).*
34

35 **15. ADJOURNMENT:**

36
37 *Assistant Mayor Below MOVED for adjournment.*

38 *Seconded by Councilor Whittlesey.*
39

40 **The Vote on the MOTION was unanimously approved by Council members present (8-0).*
41

42 **The meeting was adjourned at 9:33 PM.**
43

44 Respectfully submitted,
45 Dona E. Gibson
46 Recording Secretary

**Agenda
Lebanon City Council
July 05, 2023**

8. Public Hearing Items:

**8.A – Request for Supplemental Appropriation in the Amount of \$116,350 for
Operation and Maintenance of 14, 28, and 30 Main Street, West Lebanon
For the Remainder of Fiscal Year 2023**

A public hearing for the purpose of receiving public input and taking action to appropriate the sum of \$116,350 to fund the operation and maintenance of City-owned properties located at 14, 28, and 30 Main Street, West Lebanon for the remainder of Fiscal Year 2023.

The City Council scheduled this public hearing at its June 7, 2023 regular meeting. The public hearing was properly noticed in the *Valley News* on Saturday, June 24, 2023 and Tuesday, June 27, 2023 in accordance with City Code and State Law.

Background

On February 1, 2023, the City Council authorized the City Manager to negotiate a Purchase & Sale Agreement and to take further actions necessary to pursue acquisition of multiple properties along Main Street in West Lebanon, specifically: 14 Main Street, 28 Main Street, and 30 Main Street. The City and the property owner entered into a Purchase & Sale Agreement on February 27, 2023, and the acquisition of the properties was completed on May 31, 2023.

Following acquisition of the properties, the City anticipates continuing to lease the occupied (or occupiable) commercial and residential spaces to existing and/or future tenants while the City and the community develop a plan for how best to utilize the properties.

On June 7, 2023, the City Council established an Enterprise Properties Revolving Fund to allow for the accrual of lease revenues and for the payment of applicable property taxes, utility bills, and other expenses associated with the operation and maintenance of the properties. In conjunction with the Revolving Fund, the City Council must appropriate funds for the City's anticipated expenses associated with the properties, which will be offset to some extent by lease revenues from the existing and potential future tenants.

The Department of Public Works has developed an estimated annual budget for the City to operate and maintain the existing structures based on revenue and expenditure information provided by the seller as well as from other information sources. The cost for a full year of operation and maintenance is estimated at just over \$156,000. In addition, the expected annual debt service associated with a short-term loan for the purchase of the properties will be \$76,500.

The projected full-year expenses for Fiscal Year 2024 will be incorporated into next year's budget. However, a supplemental appropriation in the amount of \$116,350, representing approximately one-half of the estimated annual budget, is required to cover the anticipated expenses for the remainder of the current fiscal year (FY2023).

Pursuant to Section C419:43, Appropriations After Budget is Adopted, requests for appropriations that are not included in the annual budget require a two-thirds (2/3) majority vote of the Council after a public hearing.

Action

If the Council decides to move forward, the following motion is offered for consideration:

FOR THE PURPOSE OF operating and maintaining City-owned properties located at 14, 28, and 30 Main Street, West Lebanon for the remainder of Fiscal Year 2023;

NOW THEREFORE BE IT RESOLVED, by the City of Lebanon, that funds be appropriated for expenditure in the Enterprise Properties Revolving Fund in the amount of \$116,350 (One Hundred Sixteen Thousand Three Hundred Fifty Dollars) for the operation and maintenance of City-owned properties located at 14, 28, and 30 Main Street, West Lebanon.

This resolution shall be effective upon passage.

Included in this Section:

2. Notice of Public Hearing as Published in the Saturday, June 24 and Tuesday, June 27, 2023 Edition of the *Valley News*



**LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARING**
Wednesday, July 05, 2023 - 7:00 PM
Council Chambers, City Hall or
REMOTE VIA VIRTUAL PLATFORM
LebanonNH.gov/LIVE

The Lebanon City Council will hold public hearings on July 5, 2023, beginning at 7:00pm for the following:

A. SUPPLEMENTAL APPROPRIATION: A public hearing for the purpose of receiving public input and taking action on the request for Supplemental Appropriation in the amount of \$116,350 for operation and maintenance of 14, 28 & 30 Main Street, West Lebanon for the remainder of Fiscal Year 2023

B. AMENDMENT TO LEBANON AIRPORT-TECH PARK TAX INCREMENT FINANCE (TIF) DISTRICT BOUNDARY: A public hearing for the purpose of receiving public input and taking action on a proposal to amend the Lebanon Airport-Tech Park Tax Increment Finance (TIF) District Boundary pursuant to NH RSA 182-K:5

The July 5, 2023 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning June 30, 2023: LebanonNH.gov/Agendas

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 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.

NE-421314

The foregoing notice was published in the *Valley News*, a newspaper of general circulation in the City of Lebanon, in accordance with the Code of the City of Lebanon on Saturday, June 24, 2023, and Tuesday, June 27, 2023.


Jaseya Ewing, City Clerk

Agenda
Lebanon City Council
July 05, 2023

8. Public Hearing Items:

**8.B – Amendment to Lebanon Airport-Tech Park
Tax Increment Finance (TIF) District Boundary**

A public hearing for the purpose of receiving public input and taking action to amend the Lebanon Airport-Tech Park Tax Increment Finance (TIF) District Boundary pursuant to NH RSA 162-K:5. Due to the minimum 15-day delay requirement as outlined in NH RSA 162-K:4, action by the Council will take place at the August 2, 2023 meeting.

The City Council scheduled this public hearing at their June 21, 2023 regular meeting. The public hearing was properly noticed in the *Valley News* on Saturday, June 24 and Tuesday, June 27, 2023 in accordance with City Code and State Law.

Background

On July 11, 2018, the City Council unanimously adopted the provisions of NH RSA 162-K (Municipal Economic Development and Revitalization Districts) allowing for the creation of Tax Increment Finance (TIF) Districts and also established the Downtown Lebanon TIF District. Subsequently, on November 6, 2019, the Council voted to create a second district, titled the Lebanon Airport-Tech Park TIF District. As originally established, the Airport-Tech Park TIF District encompasses three tax parcels: M/L 131-3, owned by Upper Valley Tech Park, LLC (UVTP), and M/L 159-4 and 131-8, both owned by the City of Lebanon.

Since the creation of the District, the City has extended Airpark Road to access developable areas on both the City's land as well as the UVTP parcel. To date, UVTP has received approval for a 3-lot Planned Unit Development of its property, and development applications have been approved by the Planning Board for the two parcels accessed from the extended Airpark Road (see the attached plan of the UVTP Planned Unit Development). In addition, the City is planning for the development of an Early Childhood Learning Center facility on the City's parcel.

The owners of the UVTP parcel have also received interest for a potential development on the westerly side of their property (the third lot of the 3-lot PUD), which would be accessed from Technology Drive within the Phase 1A Airport Business Park. However, the constructed portion of Technology Drive and the associated water and sewer infrastructure do not extend the full length of the public right-of-way and stop short of the UVTP parcel boundary. Since the Technology Drive right-of-way is already publicly owned, it is expected that any further extension of the roadway and utility infrastructure within the right-of-way will become the City's responsibility for ownership and maintenance.

By statute, tax increment funds generated within the TIF District can only be expended within the District. Since the portion of Technology Drive leading to the UVTP parcel is not within the existing District, the incremental revenues generated by the development of the UVTP parcel cannot be used to pay for, or repay, the costs of extending the public infrastructure to the property boundary.

The City Manager, as the TIF District Administrator, is recommending that the TIF District Boundary be expanded to include the southernmost +/-220 feet of the Technology Drive right-of-

way. Including the area of right-of-way will not have any fiscal impact on the district itself since the area is non-taxable, but will allow for TIF revenues to be used for the construction and maintenance of the new segments of roadway and utility infrastructure within the right-of-way.

As required by RSA 162-K:9, the Grafton County Commissioners and the Lebanon School Board have been provided with notice of the public hearing on July 5, 2023 in order to be informed of the fiscal and economic implications of the proposed TIF District.

As a reminder, the Council will only hold the public hearing on July 5th to receive input regarding the proposed amendment of the Lebanon Airport-Tech Park TIF District boundary. However, pursuant to RSA 162-K:4, the Council will not take action relative to the proposed amendment until its meeting on August 2nd.

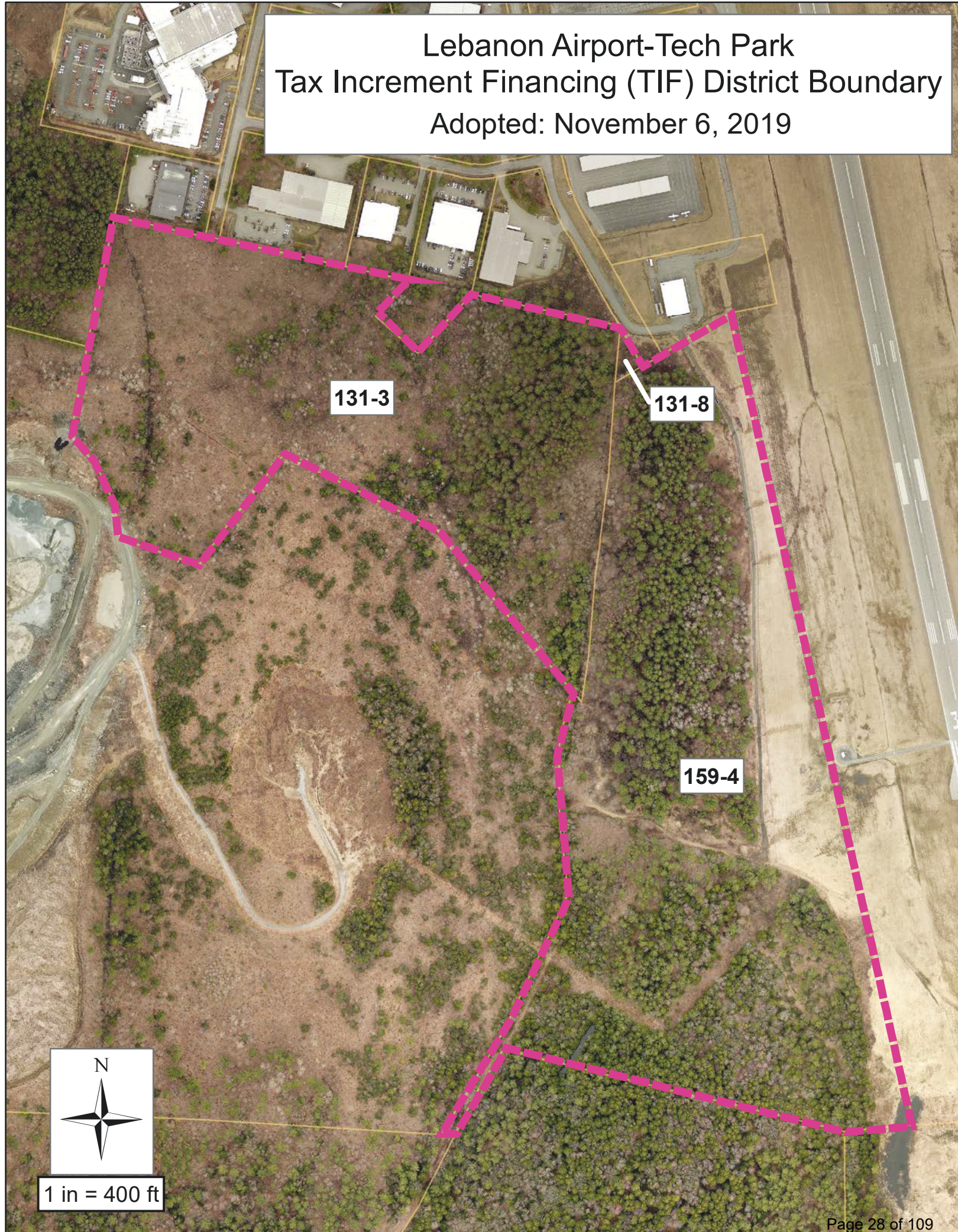
Action

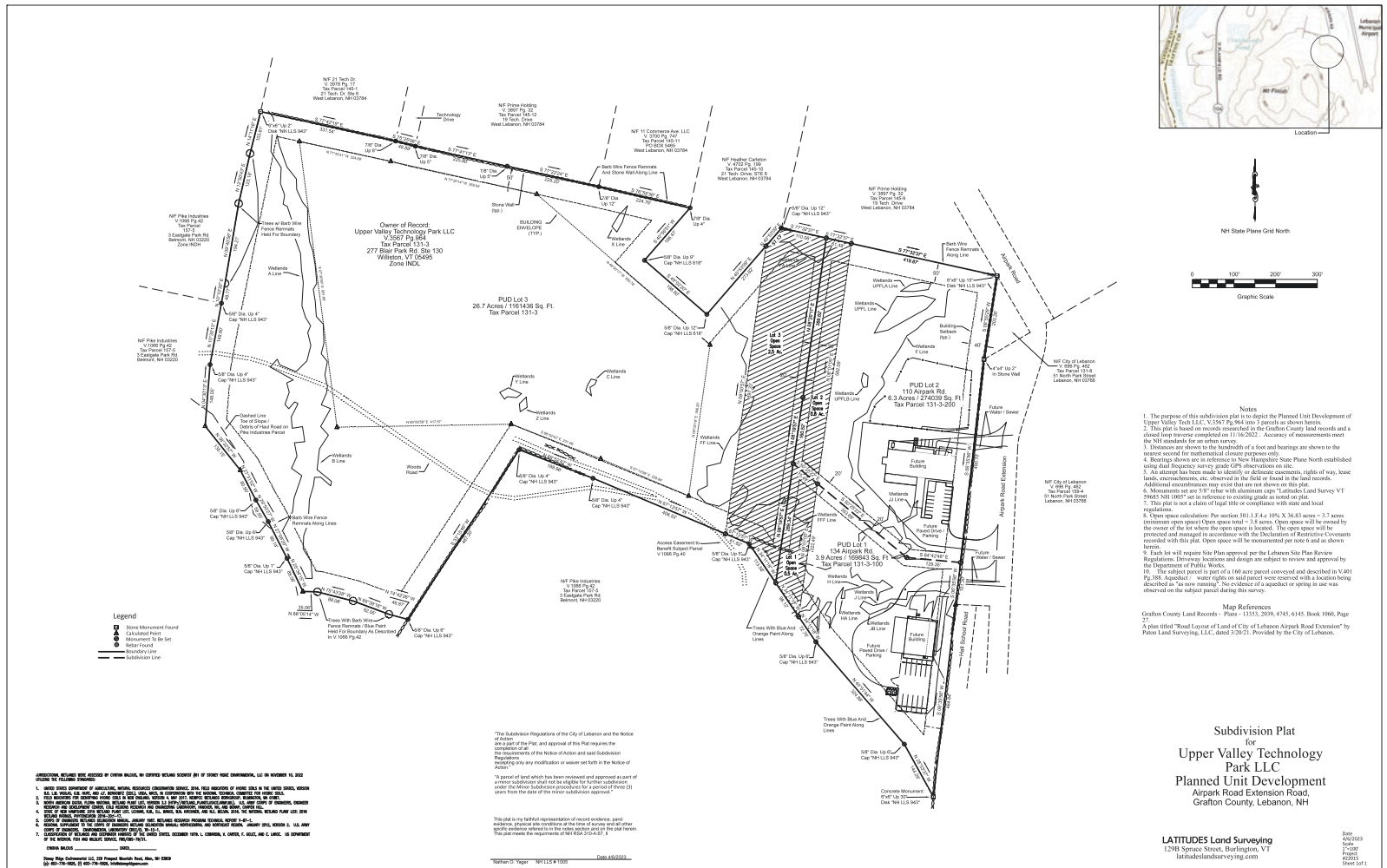
Action will be scheduled for August 2, 2023.

Included in this Section:

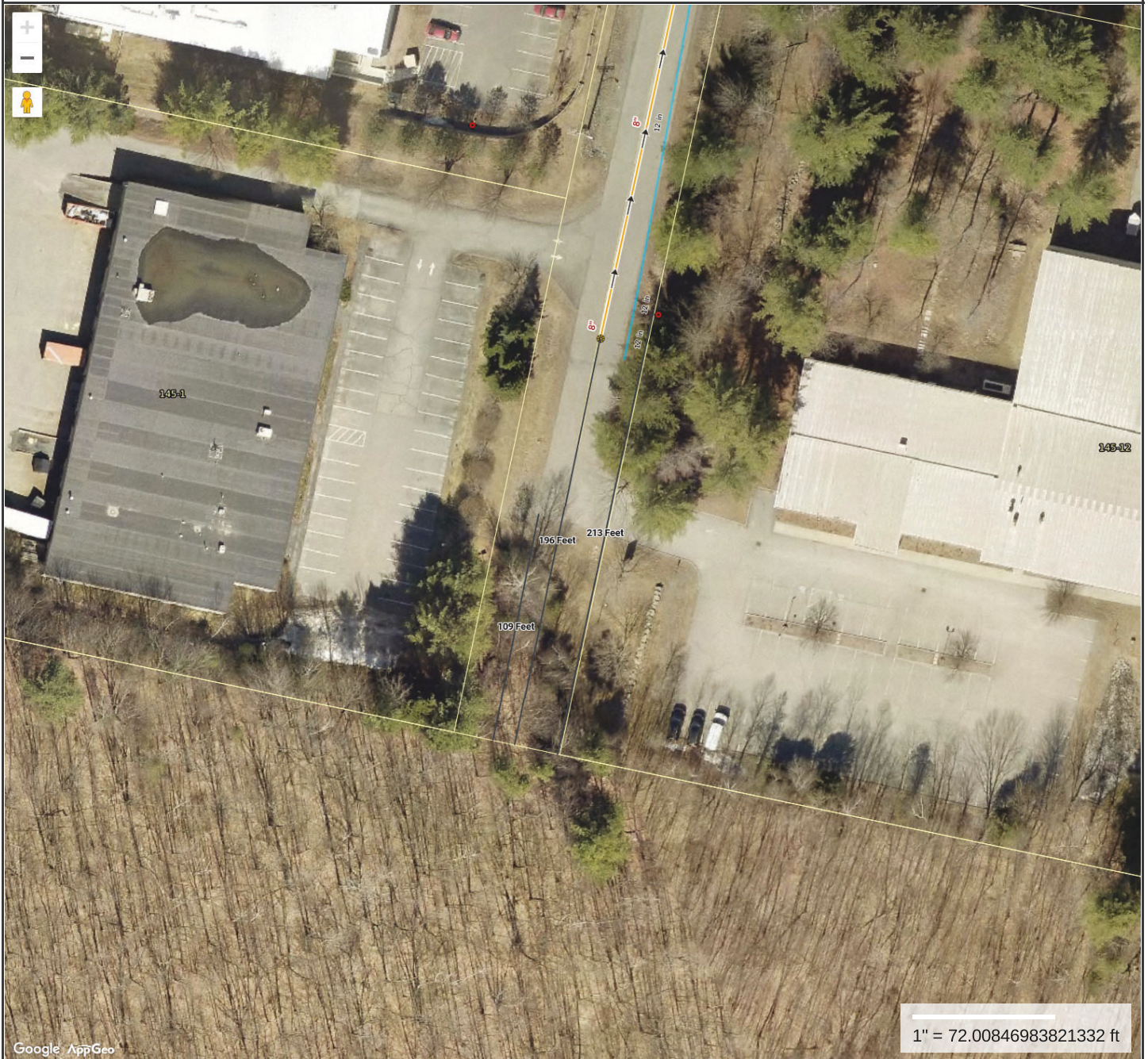
1. Lebanon Airport-Tech Park TIF District Boundary as adopted on November 6, 2019
2. Proposed Expansion Area of the Lebanon Airport-Tech Park TIF District Boundary and map of existing Public Infrastructure on Technology Drive
3. Notice of Public Hearing as Published in the June 24 and June 27, 2023 Editions of the *Valley News*

Lebanon Airport-Tech Park
Tax Increment Financing (TIF) District Boundary
Adopted: November 6, 2019





Airport-Tech Park TIF Expansion

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 06/07/2023
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Airport-Tech Park TIF Expansion Area

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The Lebanon City Council will hold public hearings on July 5, 2023, beginning at 7:00pm for the following:

A. SUPPLEMENTAL APPROPRIATION: A public hearing for the purpose of receiving public input and taking action on the request for Supplemental Appropriation in the amount of \$116,350 for operation and maintenance of 14, 28 & 30 Main Street, West Lebanon for the remainder of Fiscal Year 2023

B. AMENDMENT TO LEBANON AIRPORT-TECH PARK TAX INCREMENT FINANCE (TIF) DISTRICT BOUNDARY: A public hearing for the purpose of receiving public input and taking action on a proposal to amend the Lebanon Airport-Tech Park Tax Increment Finance (TIF) District Boundary pursuant to NH RSA 162-K:5

The July 5, 2023 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning June 30, 2023: LebanonNH.gov/Agendas

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 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.

NE-421914

The foregoing notice was published in the *Valley News*, a newspaper of general circulation in the City of Lebanon, in accordance with the Code of the City of Lebanon on Saturday, June 24, 2023, and Tuesday, June 27, 2023.

Jaseya Ewing

Jaseya Ewing, City Clerk

**AGENDA
LEBANON CITY COUNCIL
JULY 05, 2023**

10. NEW BUSINESS:

**10.A – Discussion and Set Public Hearing for July 19, 2023:
Ordinance #2023-03 to Amend City Code Chapter 97,
Landfill Regulations**

Background:

Proposed changes to the City's Pay-As-You-Throw (PAYT) Program at the Landfill were presented to the Council at its June 7, 2023, meeting. Along with changes to the PAYT Program, updates to the permitting system were also discussed. To effectuate the changes as presented, amendments to City Code Chapter 97 are required.

Attached is proposed Ordinance #2023-03, which outlines the proposed amendments to Chapter 97, as follows:

Section 97-4, Definitions:

- Amends definitions for “Landfill Punch Cards” and “Solid Waste Facility User Permit;”
- Provides definitions for “Municipal Pay-As-You-Throw (PAYT) Trash Bags,” and “Smaller-Load Hauler.”

Section 97-6, Permits:

- Amends requirements for both residential and commercial permits to require that both are obtained annually; and provides parameters for the number of vehicles allowed for each permit;
- Includes references and requirements for the new EB2gov permit software platform (new permits to be obtained through use of the software beginning September 1, 2023; and existing permits must be updated beginning September 1, 2023 and before December 31, 2023);
- Requires Smaller-Load Haulers to create a commercial user account; and
- Requires Temporary/One-Time Users to obtain permits through EB2gov.

Section 97-7, Commercial Generators/Waste Haulers Accounts & Billing:

- Defines parameters for Smaller-Load Haulers

Section 97-8, Fees:

- Incorporates use of credit cards, includes annual fees for permits, and includes a reactivation fee for residential permits that have been suspended.

Appendix A, Fee Schedule:

- Adding a line in MSW-Residential to delineate costs for PAYT trash bags (\$1.00 for 15-gallon; \$2.00 for 30-gallon).

If the Council decides to move forward with proposed Ordinance #2023-03, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 19, 2023, beginning at 6:00p.m. in Council Chambers, City Hall, and remote via City's Virtual Platform, for the purpose of receiving public input and taking action on proposed Ordinance #2023-03, to amend the Code of the City of Lebanon, Chapter 97, Landfill Regulations, to effectuate changes to the City's Pay-As-You-Throw and Permitting Programs.

Included in this Section:

1. Proposed Ordinance #2023-03
2. June 28, 2023 Legal Opinion by Attorney Christine Johnston

**CITY OF LEBANON
ORDINANCE #2023-03**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 97, LANDFILL REGULATIONS, Sections 97-4, 97-6, 97-7, and 97-8 to update existing language; add a definition; and update fees for Solid Waste Facility User Permits.

BE IT ORDAINED, by the City Council of the City of Lebanon, as follows:

Section 1

Section 97-4, Definitions, is hereby amended to amend the definitions of “Landfill Punch Cards” and “Solid Waste Facility User Permit” and to add the definitions of “Municipal Pay-As-You-Throw (PAYT) Trash Bags” and “Smaller-Load Hauler.”

§97-4 DEFINITIONS

LANDFILL PUNCH CARDS – Form of currency utilized at the Solid Waste Facility for noncommercial users to pay for disposal of trash and recycling. (NOTE: Landfill Punch Cards will not be accepted as a form of currency for non-Lebanon residents beginning January 1, 2024 but will remain an option for Lebanon residents.)

MUNICIPAL PAY-AS-YOU-THROW (PAYT) TRASH BAGS – Bags for purchase at local retailers customized for and authorized by the City of Lebanon for disposal of residential bagged refuse. Lebanon residents may use either PAYT Trash Bags or punch cards for this purpose. (NOTE: Beginning January 1, 2024, all non-Lebanon residents directly disposing of bagged refuse at the Solid Waste Facility rather than through (i.e., not utilizing a local transfer station or a commercial hauler) will be required to use Municipal PAYT Trash Bags.)

SMALLER-LOAD HAULER – Haulers disposing of less than 1,000 lbs a week and/or making less fewer than 8 visits a month to the landfill.

SOLID WASTE FACILITY USER PERMIT (hereinafter referred to as “permit”) – A permit issued by the City of Lebanon ~~or participating community~~ that permits access and use of the Lebanon Solid Waste Facility under the provisions of this Chapter.

Section 2

Section 97-6, Permits, is hereby repealed in its entirety and replaced with the following:

§97-6 PERMITS

Applications for permits ~~may~~ must be submitted electronically using the form provided on the City’s website, ~~or printed and submitted via hardcopy.~~ All applications for permits will be submitted to the Solid Waste Manager for review and approval.

A. Residential Permits:

- (1) Residents of the City of Lebanon or participating communities transporting and disposing of their own residential refuse and/or recycling are required to obtain a permit to access the Facility and its services. In order to obtain a permit, residents must provide the following:

- a) A completed application submitted electronically using the form provided on the City's website ~~filed with the Solid Waste Division~~ with (proof of residency in Lebanon or in a participating community is required)
- b) Payment of applicable fee

~~(2) Lebanon Residents~~—Issued permits will be valid for one (1) year and must be renewed before expiration of existing issued permit. ~~three (3) years.~~ Fees for permits will be as outlined in §97-8.

NOTE: Beginning September 1, 2023, all existing residential permit holders must update their permits within the EB2gov software system through the City's website before December 31, 2023. Permits issued prior to September 1, 2023 and not updated will not be valid beginning January 1, 2024.

~~—Permits are~~

~~—Participating Community Residents~~—Issued permits will be valid for two (2) years. Fees for permits will be as outlined in §97-8.

~~(3) Permits are~~ required to be displayed upon entrance to the Solid Waste Facility and may be required to be presented upon demand of staff on site at any time. Those in possession of an invalid permit will be denied access.

~~—One Permit is valid for two vehicles from the same household.:~~

~~(4)~~

~~—In order~~

~~(5) In order~~ to retain a permit, permit holders must comply with all local, state, and federal regulations for disposal of waste. If a permit holder is found to have violated regulations, permit and associated access to the facility may be revoked.

B. Commercial Permits:

(1) All commercial generators/waste haulers delivering commercial and/or residential refuse are required to obtain a permit to access the Facility and its services. All refuse delivered for disposal must originate from homes, institutions, medical facilities, or businesses located within Lebanon or a participating community. In order to obtain a permit, commercial generators/waste haulers must provide the following:

Establishment of new Waste Hauler Account (to include a Smaller-Load Hauler) if not an existing customer.

- a) ~~A completed application filed with the Solid Waste Division to include current Customer Number associated with Commercial Waste Hauler Account for the City of Lebanon (Note: Commercial Waste Hauler Account must be in good standing in order for permit to be issued)~~
- b) A completed application submitted electronically using the form provided on the City's website to include current Customer Number associated with Commercial Waste Hauler Account for the City of Lebanon (Note: Commercial Waste Hauler Account must be in good standing in order for permit to be issued) ~~Establishment of new Waste Hauler Account if not an existing customer.~~
- c) Payment of applicable fee

(2) Permits are required to be displayed upon entrance to the Solid Waste Facility and may be required to be presented upon demand of staff on site at any time. Those in possession of an invalid permit will be denied access.

(3) One Permit per vehicle is required.

— In order

(4) ~~In order~~ to retain a permit, permit holders must comply with all local, state, and federal regulations for disposal of waste. If a permit holder is found to have violated regulations, permit and associated access to the facility may be revoked.

— Issued permits

~~(5) will be valid for one (1) year and must be renewed before expiration of existing issued permit. Commercial Waste Hauler Account must be in good standing in order for permit to be renewed. Fees for permits will be as outlined in §97-8. Issued permits will be valid as long as permit holder's Waste Hauler Account is in good standing.~~

NOTE: Beginning September 1, 2023, all existing commercial permit holders must update their permits within the EB2gov software system through the City's website before December 31, 2023. Permits issued prior to September 1, 2023 and not updated, will not be valid beginning January 1, 2024.

C. Temporary/One-Time Use Permits:

Temporary permits will be issued to landfill users that would need the Facility's services for one-time use and/or for periods not to exceed 30-days. The thirty-day timeframe begins the day the permit is issued. Temporary Permit applications must be submitted electronically using the form provided on the City's website ~~are not available online and must be obtained in person at Lebanon City Hall or City/Town Hall of participating communities.~~ Access to the facility will be permitted for 30 days only, and fees for disposal services are paid via ~~Landfill Punch Cards~~ credit card ~~or Commercial Waste Hauler accounts only.~~ In order to obtain a temporary permit, users must provide the following:

1. A completed application submitted electronically using the form provided on the City's website along with ~~filed with the Solid Waste Division (proof that refuse or recycling delivered for disposal originated from a home or business located within Lebanon or a participating community will be required).~~

In order to retain a permit, permit holders must comply with all local, state, and federal regulations for disposal of waste. If a permit holder is found to have violated regulations, permit and associated access to the facility may be revoked.

D. Implementation Provision:

The effective date of this Section will be upon passage by the City Council. Implementation of requirements for updated Solid Waste Facility User Permits will be on-going until December 31, 2023, ~~August 31, 2021~~, after which date all users will be required to have and display a valid permit issued through the EB2gov Software platform for entry into the Solid Waste Facility.

Section 3

Chapter 97, is hereby amended to add new Section 97-7, "Commercial Generators/Waste Haulers Accounts & Billing", is hereby repealed in its entirety and replaced with the following: to read as follows:

§97-7 COMMERCIAL GENERATORS/WASTE HAULERS ACCOUNTS & BILLING

All Commercial Generators/Waste Haulers (to include Smaller-Load Haulers) must establish an account with the City of Lebanon before they will be permitted to access and use the Solid Waste Facility. Establishment of an account must be completed in accordance with the requirements of the City's Finance Department.

A. Use of the Facility:

All commercial generators/waste haulers (to include Smaller-Load Haulers) are required to utilize the scales when entering and exiting the facility. Waste will be measured in pounds and charged at the rates provided in the Fee Schedule (attached as Appendix A).

B. Billing:

Commercial generators/waste haulers other than Smaller-Load Haulers will be invoiced monthly for all solid waste brought to the facility in the previous month. Payment is due in full within 30 days of the date of the invoice. Failure to pay in full within 60 days of the invoice date shall result in the suspension of the commercial permit and prohibit access to the facility. Past due accounts will be assessed interest in the amount of eight percent (8%), which will accrue monthly.

Smaller-Load Haulers are not eligible for invoiced billing will not be billed for waste disposal. Payment is expected required from Smaller-Load Haulers per transaction according to the Fee Schedule at the time of service and must be paid with a valid credit card. Smaller-Load Haulers who have exceeded the 1000 lbs/week and/or 8 trips/month threshold for one year can be reclassified at that time as ordinary Commercial Generators/Waste Haulers for invoicing/billing purposes.

If a permit is suspended for non-payment, it will not be reinstituted and access will not be permitted until such a time that payment is received in full, including interest, plus a \$25 permit reactivation fee.

Section 4

Section 97-7~~8~~, Fees, is hereby amended to renumber the Section as Section 97-8, to describe methods of acceptable payments, and to add new paragraphs "G. Permit Fees," and "H. Minimum Charge for Scaled Waste," amended as follows:

§97-8 FEES

Fees for authorized users of the landfill are in accordance with the City Council approved Fee Schedule for Disposal at the Lebanon Solid Waste Facility (attached as Appendix A). Method of payments accepted at the Facility include landfill punch cards (for residential bagged refuse by Lebanon residents only after December 31, 2023), credit cards (for online payments and any fees for itemized or weighed material), and commercial generator/waste hauler accounts ~~only~~.

G. Permit Fees

- Residential:
~~In-person application—\$450.00 annually~~
~~Online application—\$25.00 Reactivation Fee if permit is suspended—\$0.00~~
- Commercial:
~~\$50.00 annually (One Time fee when Waste Hauler Account is established)~~
~~\$250.00 Reactivation Fee if permit is suspended~~
- Temporary/One Time Use: \$50.00 (per occurrence)

Section 5

Appendix A, Fee Schedule, is hereby amended to delineate costs for PAYT Trash Bags in MSW-Residential as follows:

<u>MSW- RESIDENTIAL</u>	<u>\$1.00/15-Gallon PAYT household bag</u> <u>\$2.00/30-Gallon PAYT household bag (or 1 punch on punch card for non-PAYT bags)</u>
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Section 56. Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 67

Effective date: This Ordinance shall become effective upon passage. The implementation of Municipal PAYT Trash Bags, changes to the use of punch cards, and requirements for updated Solid Waste Facility User Permits through EB2gov Software program will occur as provided herein.~~The effective date of these amendments will be upon passage by the City Council. Implementation of requirements for all sections will be on going until December 31, 2023, after which date all requirements will be in full use and effect.~~



**C. Christine (Fillmore)
Johnston**
Admitted in NH

603.792.7417

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670 N. Commercial Street, Suite 207
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603.716.2895 Main
603.716.2899 Fax

June 28, 2023

Shaun Mulholland
City Manager
City of Lebanon, NH
51 N. Park Street
Lebanon, NH 03766

RELEASED TO THE PUBLIC
Lebanon City Manager's Office

Date: 06/29/2023

^{DS}

**RE: Ordinance #2023-03 Landfill Regulations
Ch. 97**

Mr. Mulholland:

This is a legal opinion as required by § 115-3 of the Lebanon City Code concerning the proposed Ordinance 2023-03, Landfill Regulations, which your office forwarded to me on June 14, 2023 and in revised form on June 28, 2023. The goals of the proposed ordinance as I understand them are to amend the existing Chapter 97 of the City Code to implement the use of Municipal Pay-As-You-Throw Trashbags for residential trash, phase out punch cards for non-resident residential users and make all residential permits valid for one year, to transition the permitting and renewal process for all Landfill permit holders to the City's electronic system (EB2gov), and to require Smaller-Load Haulers (a subset of commercial haulers/waste generators) to make payment at the time of disposal instead of through monthly invoicing.

I have reviewed the proposed ordinance in detail. In my opinion, the ordinance is consistent with New Hampshire law and I discern no legal problems.

Please do not hesitate to contact me with additional questions or comments.

Sincerely,

C. Christine (Fillmore) Johnston

**Agenda
Lebanon City Council
July 05, 2023**

10. New Business:

**10.B – Discussion and Set Public Hearing for July 19, 2023:
Consideration of Provisional Dedication and Acceptance of an
Alternate Barden Hill Road (Highway or Class A Trail)**

Background

Patch Forest, LLC has submitted a new proposal to discontinue several Class VI roads passing through the Patch Forest property, including a section of Class VI Road #14 (Barden Hill Road); a section of Class VI Road #19 (Durkee Road); Class VI Road #20 (Atherton Road); and Class VI Road #21 (McCallister Road).

In conjunction with the proposed discontinuances, Patch Forest proposes to identify and create an alternate Barden Hill Road (Highway or Class A Trail) for consideration of dedication and acceptance by the City.

The City Council is asked to schedule a public hearing for July 19, 2023, at which time presentations and information from Patch Forest, LLC and from the City will be provided in relation to the proposed provisional dedication and acceptance.

Action

The following motion is offered for the Council's consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 19, 2023, beginning at 6:00pm, in Council Chambers, City Hall and remote via the City's Virtual Platform, for the purpose of receiving public input and taking action on a proposal from Patch Forest, LLC for provisional dedication and acceptance of an alternate Barden Hill Road (Highway or Class A Trail).

**Agenda
Lebanon City Council
July 05, 2023**

10. New Business:

**10.C – Discussion and Set Public Hearing for July 19, 2023:
Discontinuance of a Section of Class VI Road #14 (Barden Hill Road);
Discontinuance of a Section of Class VI Road #19 (Durkee Road);
Discontinuance of Class VI Road #20 (Atherton Road); and
Discontinuance of Class VI Road #21 (McCallister Road)**

Background

Patch Forest, LLC has submitted a new proposal to discontinue several Class VI roads passing through the Patch Forest property, including a section of Class VI Road #14 (Barden Hill Road); a section of Class VI Road #19 (Durkee Road); Class VI Road #20 (Atherton Road); and Class VI Road #21 (McCallister Road).

The City Council is asked to schedule a public hearing for July 19, 2023, at which time presentations and information from Patch Forest, LLC and from the City will be provided in relation to the proposed discontinuances.

Action

The following motion is offered for the Council's consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 19, 2023, beginning at 6:00pm, in Council Chambers, City Hall and remote via the City's Virtual Platform, for the purpose of receiving public input and taking action on a proposal from Patch Forest, LLC for discontinuance of a section of Class VI Road #14 (Barden Hill Road); discontinuance of a section of Class VI Road #19 (Durkee Road); discontinuance of Class VI Road #20 (Atherton Road); and discontinuance of Class VI Road #21 (McCallister Road).

**Agenda
Lebanon City Council
July 05, 2023**

10. New Business:

**10.D – Authorization for City Manager to Sign Declaration of Restrictive
Covenant For Upper Valley Tech Park, LLC Planned Unit Development**

Background

On May 8, 2023, the Planning Board approved Upper Valley Technology Park, LLC's request for a Conditional Use Permit and Minor Subdivision to develop Tax Map 131, Lot 3 as a 3-lot Planned Unit Development (PUD). As required by the PUD regulations in Section 501 of the Zoning Ordinance, the Upper Valley Technology Park, LLC Planned Unit Development (UVTP PUD) has set aside 3.8 acres (10.4%) of the total PUD lot area as open space.

The applicant has proposed a Declaration of Restrictive Covenant to establish the restrictions on how the open space can be utilized and maintained. As written, the Declaration grants the City the ability, but not the obligation, to enforce the restrictions.

As required by the Planning Board's condition of approval #4 and Section 501.1.F.7.a of the Zoning Ordinance, the City's legal counsel has reviewed the proposed Declaration of Restrictive Covenant and recommended edits to ensure that it meets the PUD open space ownership and protection requirements of Section 501.1.F.5 and 6. Those edits have been accepted by the applicant and are reflected in the attached Declaration.

By statute, conservation, preservation, and agricultural preservation restrictions are considered to be interests in real estate and any document creating such a restriction shall be deemed to be a conveyance of real estate. Therefore, the City Council must authorize the acceptance of the Declaration and the City must sign the acceptance of the Declaration as required by NH RSA 477:47.

Please see the attached memo from Deputy Planning & Development Director Tim Corwin, along with supporting information and materials.

Action

If the City Council decides to accept the conveyance of a conservation restriction for the Upper Valley Tech Park, LLC parcel, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby authorizes the City Manager to accept a Declaration of Restrictive Covenant, pursuant to NH RSA 477:47, from the Upper Valley Technology Park, LLC to the City of Lebanon, with respect to portions of land as shown on a plan titled, "Subdivision Plat for Upper Valley Technology Park, LLC, Planned Unit Development," prepared by Latitudes Land Surveying, dated April 6, 2023, which was approved by the Lebanon Planning Board on May 8, 2023. The Declaration of Restrictive Covenant has been reviewed and approved by the City's legal counsel as sufficiently providing for the permanent preservation of the Open Space as required by Section 501 of the Lebanon Zoning Ordinance, Section 12 of the Lebanon Subdivision Regulations, and Condition #4 of the Planning Board's Notice of Action dated May 8, 2023.

Included in this Section:

1. June 22, 2023 Memorandum from Deputy Planning & Development Director Tim Corwin re: Upper Valley Technology Park, LLC, M/L 131-3 – Restrictive Covenants for Upper Valley Technology Park, LLC Planned Unit Development (PUD), including the following attachments:
 - May 8, 2023 Planning Board Notice of Action (PB2023-16-CUPMIN)
 - Plat titled, “Subdivision Plat for Upper Valley Tech Park LLC Planned Unit Development,” prepared by Latitudes Land Surveying, dated April 6, 2023, Project # 22015
 - Draft Declaration of Restrictive Covenant



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Honorable Mayor and City Councilors

CC: Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
Nathan Reichert, Planning & Development Director

FROM: Tim Corwin, Deputy Planning & Development Director

RE: Upper Valley Technology Park LLC, M/L 131-3 - Restrictive Covenants for Upper Valley Technology Park LLC Planned Unit Development (PUD)

DATE: June 22, 2023

INTRODUCTION:

On May 8, 2023, the Planning Board approved Upper Valley Technology Park, LLC's request for a Conditional Use Permit and Minor Subdivision to develop Tax Map 131, Lot 3 as a 3-lot Planned Unit Development (PUD) (PB2023-16-CUPMIN). Copies of the Notice of Action and approved subdivision plat are attached for reference.

Lots 1 and 2 have received site plan approval for a food distribution/warehouse facility and an equipment rental business, respectively. Construction of both projects is expected to commence this year. Lot 3 was the subject of the discussion by the Council on June 21, 2023 regarding the proposed expansion of the Airport-Tech Park TIF District to encompass a portion of Technology Drive.

As required by the Planned Unit Development regulations in Section 501 of the Zoning Ordinance, the Upper Valley Technology Park, LLC Planned Unit Development (UVTP PUD) has set aside 3.8 acres of the total PUD lot area as open space. See Section 501.1.F.4.c of the Zoning Ordinance. The open space is depicted as the hatched area on the attached subdivision plat and burdens portions of all 3 lots. Ownership and maintenance of the PUD open space must meet the requirements of Sections 501.1.F.5 & 6 of the Zoning Ordinance, respectively.

As permitted by Section 501.1.F.5.e (allowing an alternative ownership structure "deemed by the City Attorney to be legally adequate to carry out the intent of Section 501 and the decision of the Planning Board"), the developer designed the open space as an easement over the 3 lots in the PUD so that the open space will be owned by the individual lot owners.

Section 501.1.F.6 provides flexibility in how the open space will be protected. Here, the applicant has proposed the attached Declaration of Restrictive Covenant which establishes the following restrictions on how the open space can be utilized (see Section 1(a)):

[T]he Open Space shall be managed and maintained in perpetuity [...] in an undeveloped state; (ii) no new structure, paving, or other improvements shall be constructed on, and no new modifications or landscaping activities [...] shall be carried out within the Open Space; and (iii) the use of the Open Space shall be

limited solely to passive open or green space. The intent of these covenants and restrictions is to preserve the Open Space as a conservation corridor for wildlife and vegetation for the benefit of the lots shown on the Plan and as conservation restrictions under RSA 477:45 and pursuant to the City of Lebanon Planning Board's approval dated May 8, 2023.

Section 2 of the Declaration ("Enforcement") grants the City the ability (but not the obligation) to enforce the restrictions set forth in Section 1(a):

In the event of a breach or threatened breach of this Declaration, any fee owner of a lot shown on the Plan, or the City of Lebanon or any agency thereof where the Property is located, shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof. The prevailing party in any such action shall be awarded its costs and expenses, including reasonable attorneys' fees, which shall be deemed to have accrued on the commencement of such action.

As required by the Planning Board's conditions of approval and Section 501.1.F.7.a of the Zoning Ordinance, the City's legal counsel has reviewed the applicant's proposed Declaration of Restrictive Covenant and recommended edits to ensure that it meets the PUD open space ownership and protection requirements of Section 501.1.F.5 and 6. Those edits have been accepted by the applicant and are reflected in the attached Declaration.

Among the edits recommended by legal counsel was additional language to clarify that the restrictions are (a) appurtenant to the individual lot owners, but also (b) in gross to the City and a public conservation restriction under both the subdivision approval and RSA 477:45. It is important that the Declaration is clear on this so there is no question in the future as to what kind of restrictions these are and who has standing to enforce them.

By statute, conservation, preservation, and agricultural preservation restrictions are considered to be interests in real estate and any document creating such a restriction shall be deemed to be a conveyance of real estate. Therefore, the City Council must authorize the acceptance of the Declaration and the City must sign the acceptance of the Declaration as required by RSA 477:47 (see page 4 of the Declaration), and all signatures must be notarized.

RECOMMENDATION:

Staff recommends that the City Council determine whether to authorize the City Manager to sign an acceptance of the Declaration on behalf of the City.

Attachments

- May 8, 2023 Planning Board Notice of Action (PB2023-16-CUPMIN)
- Plat titled, "Subdivision Plat for Upper Valley Tech Park LLC Planned Unit Development," prepared by Latitudes Land Surveying, dated April 6, 2023, project no: 22015
- Draft Declaration of Restrictive Covenant



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF ACTION LEBANON PLANNING BOARD PB2023-16-CUPMIN

Notice is hereby given that on **May 8, 2023**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

“Bruce Garland moved 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. The vote on the motion was unanimous in favor, 6-0.

Notice is hereby given that on **May 8, 2023**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

“Bruce Garland moved 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. The vote on the motion was approved, 6-0.

Notice is hereby given that on **May 8, 2023**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

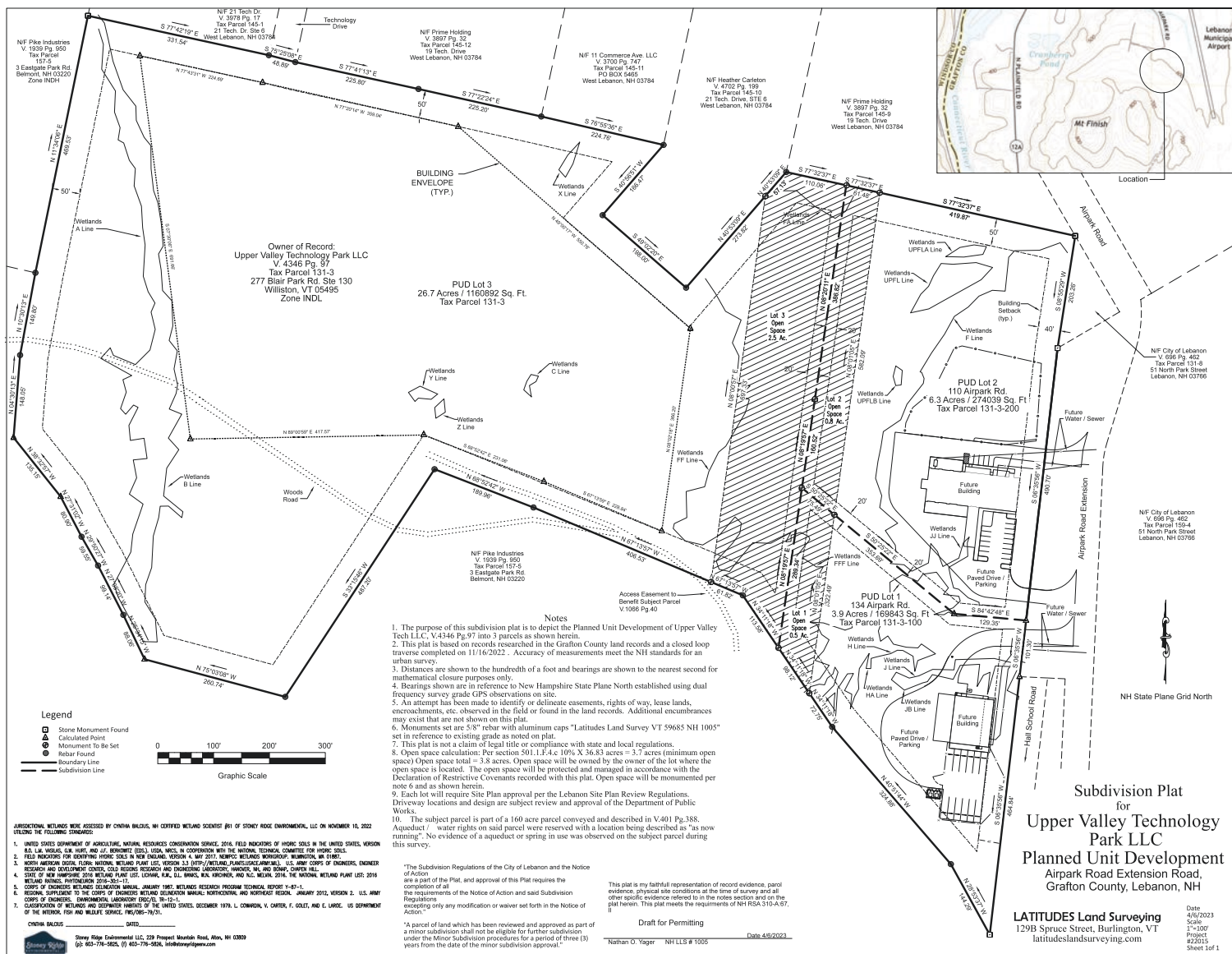
Bruce Garland moved that the Lebanon Planning Board authorizes the Chair to sign the subdivision plat for Upper Valley Technology Park, LLC, PB2023-16-CUPMIN, as revised pursuant to the Board's conditions of approval.

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

THE CITY OF LEBANON

By: _____
Planning Board Chair

DATE: _____



WHEN RECORDED RETURN TO:

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant ("**Declaration**") is executed as of this ____ day of _____, 20__ (the "**Effective Date**"), by Upper Valley Technology Park, LLC ("**Owner**").

RECITALS

- A. Owner is the owner of that certain parcel of land located in the City of Lebanon, County of Grafton, State of New Hampshire (the "**State**"), known as Tax Parcel 131-3 and more particularly described in that certain Warranty Deed dated November 26, 2008 and recorded in the Grafton County Registry of Deeds (the "**Registry**") at Book 3567, Page 964 (except and excluding as described in Warranty Deed dated February 21, 2018 and recorded in said Registry at Book 4346, Page 97, the "**Property**").
- B. In connection with the development of the Property, Owner has agreed to establish certain restrictions with respect to the use of property designated as open space located on the Property and more particularly described on the Plan referenced below ("**Open Space**"), that are intended to run with the land and benefit and burden the Property as more fully set forth herein.
- C. The Property and the Open Space are depicted on a plat titled "Subdivision Plat for Upper Valley Tech Park LLC Planned Unit Development," prepared by Latitudes Land Surveying, dated April 6, 2023, revised _____, 2023, project no: 22015, approved by the City of Lebanon Planning Board on May 8, 2023, recorded in the Registry on _____, 2023 as Plan # _____ (the "**Plan**").
- D. The purpose of this Declaration is to provide for permanent preservation of the Open Space as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

- 1. Use Restrictive Covenant.
 - (a) From and after the Effective Date, (i) the Open Space shall be managed and maintained in perpetuity by the Owner, and all of Owner's successors in interest or title, transferees,

vendees, lessees, mortgagees and assigns when such are owners and/or users of the Property, in an undeveloped state; (ii) no new structure, paving, or other improvements shall be constructed on, and no new modifications or landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding or seeding, or other similar activities) shall be carried out within the Open Space; and (iii) the use of the Open Space shall be limited solely to passive open or green space. The intent of these covenants and restrictions is to preserve the Open Space as a conservation corridor for wildlife and vegetation for the benefit of the lots shown on the Plan and as conservation restrictions under RSA 477:45 and pursuant to the City of Lebanon Planning Board's approval dated May 8, 2023.

- (b) This Declaration and the covenants set forth herein restricting the use and occupancy of the Open Space (i) shall be and are covenants running with, touching, and encumbering the Property, binding upon the Owner and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property, and (ii) are not merely personal covenants of the Owner.
- (c) Any and all requirements of the laws of the State to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the land. Each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof (excluding instruments granting security interests) shall expressly provide that such conveyance is subject to this Declaration, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.
- 2. Enforcement. In the event of a breach or threatened breach of this Declaration, any fee owner of a lot shown on the Plan, or the City of Lebanon or any agency thereof where the Property is located, shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof. The prevailing party in any such action shall be awarded its costs and expenses, including reasonable attorneys' fees, which shall be deemed to have accrued on the commencement of such action.
- 3. Superiority. The benefits and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, shall remain in full force and effect, but are subordinate to the security interests of record on the Effective Date. Provided, however, that a breach of any of the restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The charges and burdens of this Declaration are not intended to and shall not either create a lien upon the Property, or grant any right of foreclosure, to any person or party.
- 4. Release. Any person or entity having or acquiring fee or leasehold title to the Property or any portion thereof shall be required to comply with this Declaration only during the period such

person or entity is the fee or leasehold owner of the Property, and thereafter shall be released therefrom, except that such person or entity shall continue to be liable for, and shall not be released from liability for, obligations, liabilities or responsibilities that accrue or accrued during said period of ownership or tenancy. Although persons or entities may be released under this paragraph, the restrictions of this Declaration shall continue to be restrictions upon the Property, running with the land, and shall inure to the benefit of, and be binding upon, their successors and assigns in title or interest.

5. Notices. All notices provided for herein may be delivered in person, sent by overnight courier service, mailed in the United States mail postage prepaid, or sent by electronic transmission, and, regardless of the method of delivery used, shall be considered delivered upon the actual receipt or refusal of receipt thereof. The name, address and other information to be used in connection with such correspondence and notices to Owner shall be the then-current owner's name and address information maintained in the official real property tax records with respect to all or any portion of the Property.
6. Miscellaneous.
 - (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
 - (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
 - (c) Governing Law. This Declaration shall be construed and enforced in accordance with the laws of the State.
 - (d) No General Public Access. This Declaration does not establish any rights of access in favor of the general public for any purposes whatsoever, or create any rights or benefits to any person not expressly granted herein.
 - (e) Entire Agreement. This Declaration constitutes the entire agreement of Owner with respect to the subject matter hereof and supersedes all prior negotiations or discussions, whether oral or written, with respect thereto.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first above written.

OWNER

Upper Valley Technology Park, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

On this _____ day of _____, 2023, before me, a notary public, personally appeared _____, the _____ of the _____ [the _____ of _____], a _____, named in the foregoing instrument and acknowledged said instrument on behalf of the _____.

Notary Public

ACCEPTED BY the City of Lebanon pursuant to RSA 477:47.

GRANTEE CITY OF LEBANON

By: _____
Printed Name: _____
Title: _____

STATE OF _____)
COUNTY OF _____)

On this _____ day of _____, 2023, before me, a notary public, personally appeared _____, the _____ of the _____ [the _____ of _____], a _____, named in the foregoing instrument and acknowledged said instrument on behalf of the _____.

Notary Public

**Agenda
Lebanon City Council
July 05, 2023**

10. New Business:

**10.E – Request by Lyme Properties, LLC for City Council to Reconsider
Acceptance of River Park Drive and Lyman Street**

Background:

By letter dated June 13, 2023, Chet Clem of Lyme Properties, LLC, acting as development agent for XYZ Dairy, LLC, submitted a proposal to have the City Council reconsider a prior decision concerning the acceptance of River Park Drive and Lyman Street as public streets.

On May 18, 2011, the City Council voted to decline the previous request of XYZ Dairy, LLC to conditionally accept River Park Drive as a public highway for reasons outlined in a May 3, 2011 memo from then-City Manager Greg Lewis. The May 18, 2011 agenda packet and an excerpt of the Council's minutes from the meeting are attached.

Also attached are the approved subdivision lot layout plan for River Park recorded in the Grafton County Registry of Deeds on January 2, 2018 as Plan #15441; the Overview/Index Plan with approved building layouts; and the revised development phasing plan approved on September 9, 2019.

Action:

Action to be determined based on the Council's discussion.

Included in this Section:

1. Letter dated June 13, 2023 from Chet Clem of Lyme Properties, LLC, with Proposal for Acceptance of River Park Drive & Lyman Street
2. Agenda Packet from May 18, 2011 City Council meeting re: Request by XYZ Dairy, LLC for Conditional Acceptance of River Park Drive
3. Excerpt of City Council meeting minutes from May 18, 2011
4. Overview / Index Plan (Lot Layout) of River Park, prepared by TF Moran, Sheet 2 of 53, dated March 9, 2015, last revised April 27, 2015
5. Overview / Index Plan (Lot Layout with Buildings) of River Park, prepared by TF Moran, Sheet 1 of 72, dated March 9, 2015
6. River Park – Proposed Phasing Plan, approved by Planning Board on September 9, 2019.

June 13, 2023

Lebanon City Council
City of Lebanon
51 N Park Street
Lebanon, NH 03766

Proposal for Acceptance of River Park Drive & Lyman Street

Members of the Lebanon City Council,

Lyme Properties, acting as development agent for XYZ Dairy, LLC, the owner of record of the River Park West Lebanon mixed-use project, respectfully requests to be included on the June 21, 2023 Lebanon City Council meeting agenda.

For your consideration is a proposal by XYZ Dairy, LLC that the City of Lebanon accept River Park Drive and Lyman Street as municipal streets upon completion of the work according to the plans and specifications already approved by the City. This is specifically important to facilitate public transportation improvements via the inclusion of a 4-line Advance Transit hub at River Park, a plan in motion since 2010, documented in the August 17, 2021 Memorandum of Understanding between the parties, and included as Item #22 in the March 25, 2022 *Framework for Public Private Partnership*. Both documents have been submitted to the City previously, and are attached for the Council's reference.

Please note that this is a discrete request solely for item #5 "Qualify Streets for Transit Funding," within the broader 10-part *Proposed Path Forwards* for River Park by Lyme Properties (www.riverparkwestlebanon.com/path-fowards). We anticipate a subsequent appeal to the Council to address other items under your jurisdiction once ongoing items at the Lebanon Building Code Board of Appeals and Lebanon Planning Board are addressed, which have now been continued to the July 11th and June 26th meetings, respectively.

This proposal would reverse a 2012 decision by the Lebanon City Council based on the advice of the City Manager at the time that the streets "served no public benefit." We disagreed then, and continue to believe that substantial economic development, providing public access to the trails + riverfront, and facilitating regional public transportation improvements as laid out in the approved River Park plans is sufficient public benefit.

Since the 2012 decision, we have transferred ownership of the 6-acre waterfront parcel (Lot #6) at River Park to the *Friends of River Park*, a non-profit organization formed to facilitate public access and recreation in West Lebanon; executed the aforementioned MOU with Advance Transit, constructed over two miles of publicly accessible trails at River Park in collaboration with the Upper Valley Trails Alliance; and just last weekend hosted the Lebanon Opera House's Hootenanny at River Park, bringing over 600 people down to the riverfront for a day of "great music in the great outdoors."



In the River Park plan, all of these public benefits are only accessible via River Park Drive, and the Lyman Street loop enables the Advance Transit hub to provide equitable access to the outdoors via free-ride public transit to the trails and riverfront.

River Park Drive and Lyman Street were designed to City standards and approved accordingly. As raised in the past, the acceptance is necessary to qualify the River Park project for unprecedented opportunities for federal transportation funding. The River Park project meets U.S. Sec. of Transportation Buttigieg's five policy goals: safety, jobs, equity, climate, and innovation, and it would be a shame to continue missing opportunities to bring investment to West Lebanon.

Thank you for your consideration,

A handwritten signature in black ink that reads "Chet Clem". The signature is fluid and cursive, with the first name "Chet" and last name "Clem" clearly distinguishable.

Chet Clem
President
Lyme Properties
57 Main Street
West Lebanon, NH 03784
chet@lymeproperties.com
603-676-7106

August 17, 2021

Van Chesnut
Advance Transit, Inc.
PO Box 1027
Wilder, VT 05088

Re: Memo of Understanding – Advance Transit Bus Transfer Station at River Park West Lebanon

Van,

In follow-up to our recent conversation, this non-binding letter of intent is intended to memorialize the current understanding of XYZ Dairy, LLC, d/b/a River Park West Lebanon ("**River Park**") and Advance Transit ("**Advance Transit**") relating to the potential development of a public multi-modal transit stop, Advance Transit transfer station, and park-and-ride facility ("**Station**") as part of the mixed-use River Park development in West Lebanon, NH.

Conversations between River Park and Advance Transit have been ongoing since approximately 2009 and continue in earnest despite set-backs in the execution of River Park. As multi-stakeholder discussions about infrastructure at River Park and regional transportation are now underway, the Bus Transfer Station remains a key component of interest to private and public parties and relevant to planning efforts and funding opportunities at the local, regional, state, and federal level. As such, advancing the inclusion of Advance Transit in the River Park planning efforts is now especially timely.

This letter of intent is intended to be preliminary in nature and is not intended to be binding upon River Park or Advance Transit. Neither party shall be legally bound unless and until definitive lease documentation has been executed by both parties.

1. **An Ongoing Conversation:** Lyme Properties 2, LLC ("**Lyme**") in its capacity as the developer of River Park has been engaged in conversation with Advance Transit since regional transportation options were first considered during the 2007-2009 *Neighborhood Planning Process* for River Park.
2. **A Transit Oriented Development:** River Park has been intentionally designed as a Transit Oriented Development (TOD), prioritizing public transportation with Advance Transit and alternative (pedestrian/bike) transportation via the proposed West Lebanon Greenway, seeking to limit single-occupancy vehicle traffic and integrate the River Park development into the broader community and existing transit network.
3. **Aligned With Regional Transportation Goals:** Advance Transit, a not-for-profit charitable organization providing free transit in Vermont and New Hampshire with the goal of reducing traffic congestion, currently operates six (6) public bus routes and three (3) shuttle

routes in the region. The proposed River Park Bus Transfer Station would contribute to many of Advance Transit's goals, as published at <https://advancetransit.com/about/>

4. **Along Existing Route:** An Advance Transit Orange Route stop currently exists on Route 10 (North Main Street) alongside the River Park project. A four-line (Orange, Yellow, Red, Green Routes) transfer station exists approximately 0.5 miles south from River Park at the Kilton Public Library.
5. **An Improved Location:** The River Park location has been included in Advance Transit's long-term capital planning efforts since 2010, as the Kilton Library transfer location was deemed "inadequate for the long term needs of Advance Transit to accommodate anticipated growth in the system." The Kilton location creates bus stacking issues along Main Street, limits public street parking, and does not provide adequate public and ADA accessible parking. The River Park Transfer Station would replace and/or improve the uses at Kilton Library, and contribute to downtown West Lebanon revitalization efforts.
6. **Included in River Park Planning Efforts:** The "River Park Transit Integration Schematic Plan," dated 6/28/2010 and prepared by ORW (attached herein), has served as the basis of the shared understanding for the location and conceptual configuration of the Bus Transfer Station at River Park.
7. **Included in Advance Transit/City of Lebanon Planning Efforts:** The November, 2010 "Lebanon Bus Stop Design Study: City of Lebanon, New Hampshire" prepared for Advance Transit and the City of Lebanon concludes that "the best option appears to be co-locating the transfer stop with new commercial development nearby," and references that Advance Transit is working with the developer of the River Park development.
8. **Meeting A Regional Transportation Need:** The need to "Design and construct a mobility hub in West Lebanon Village" serving Route 10 North was identified in the Upper Valley Lake Sunapee Regional Planning Commission (UVLSRPC) 2015 Regional Plan – Chapter 3, Transportation.
9. **A Mixed-Use, Accessible Community:** The 2015 UVLSRPC Regional Plan advocates for "[Encouraging] the development of local land use ordinances that facilitate compact, mixed-use, pedestrian-oriented, and handicap-accessible communities" which the River Park Master Plan achieves.
10. **Park And Ride Opportunity:** The 2015 UVLSRPC Regional Plan identifies the need– and funding challenges– for constructing park-and-ride facilities. Lyme has volunteered to City and Regional planners and large regional employers that River Park's approved parking facilities could function as a "joint-use opportunity" for park-and-ride and Garage #1 is permitted for this use accordingly.
11. **Equitable and Accessible Access to Outdoor Recreation:** In addition to public transportation and parking needs, the Station also serves to provide greater public access to the outdoors, including the publicly accessible waterfront parcel at River Park and the broader West Lebanon Greenway efforts in motion with a coalition of groups working to connect a multipurpose trail from the Mascoma River Greenway to the Wilder Dam/Boston Lot.

In recognition of the foregoing, Lyme Properties and Advance Transit are advancing conversations towards achieving the long-discussed Station at River Park West Lebanon. The purpose of these discussions are three-fold:

- A. In support of current efforts to achieve these multi-purpose benefits at River Park, including the acceptance of River Park Drive as a City of Lebanon street to qualify for city/state/federal funding opportunities and facilitate the development of River Park and broader economic development efforts in West Lebanon.
- B. To document the Station opportunity in a manner that can be shared with all stakeholders, to ensure that these efforts are incorporated in broader planning efforts, and in particular the UVLSRPC's upcoming Route 10 Corridor transportation analysis.
- C. To advance planning conversations to ensure that the Station design adequately meets the needs of Advance Transit and regional transportation goals, is incorporated in the upcoming Transit Development Plan and stakeholder engagement process, and is intelligently included in the design plans for River Park.

We look forward to continuing the conversation with Advance Transit and continue to believe that River Park can positively contribute to the larger regional transportation network.

Sincerely,



Chet Clem
President
Lyme Properties

Counter-signed:



Van Chesnut
Executive Director
Advance Transit

\$(%(&'Ä!#ÄÄ" "!

Date

Cc:

Tim McNamara, City of Lebanon
David Brooks, City of Lebanon
Meghan Butts, Upper Valley Lake Sunapee Regional Planning Commission
Michael Kiess, Vital Communities



**River Park Transit
Integration Schematic Plan**
1:50' scale
6/28/2010

March 25, 2022

A Framework for Public-Private Partnership

City Manager Mulholland,

Thank you for your comments to the Planning Board on October 12, 2021 in support of River Park's successful request for an extension of our Subdivision and Site Plan approvals due to the Covid-19 pandemic. This extension provides critical time to advance discussions that were first initiated in conversations and your subsequent email of July 28, 2021 outlining a proposed framework for a Tax Increment Financing (TIF) district for River Park.

Lyme Properties is optimistic that we can reach a new approach to facilitate economic development at River Park that aligns our mutual goals for smart growth and revitalization in West Lebanon. Enclosed please find Lyme's proposed framework to advance a Public-Private Partnership (PPP) that will more efficiently advance development and associated public improvements in West Lebanon.

I believe this public-private partnership approach generates the greatest possible community value (tax-base, recreational opportunities, regional transportation, housing development, and downtown revitalization) for West Lebanon.

This document shall supersede previous proposals and the initial framework memo from Lyme Properties dated August 3, 2021. This version is further informed by our conversation on September 22, 2021 and subsequent efforts to advance relevant matters, and is supported by the attached appendices. To follow will be a draft presentation to the City Council, in follow-up to the conceptual introduction you provided in the City Manager's report to the Council on October 6, 2021 that received strong support.

Where applicable I have synchronized efforts with the outcomes and priorities of the *Action Plan for West Leb*, as was presented to the City Council by the West Lebanon Revitalization Advisory Committee on January 19, 2022. I have also cross-referenced to the "City of Lebanon Outcomes & Work Plan 2021-2023 (OWP) that was included in the City's 2022 Budget, as it provides a timely overview of priorities within the next two years– the same time-frame in which Lyme has to make critical decisions regarding River Park.

There are many parallel conversations underway that are relevant to River Park and West Lebanon efforts as a whole, including those with Advance Transit, Senator Hassan's office, Representative Kuster's office, the Wilder Hydroelectric Dam owner Great River Hydro, the West Lebanon Greenway coalition members, and more. This overall plan benefits from the collaboration of a broad coalition of stakeholders.

I am including some of the broader thinking that has informed Lyme's efforts at River Park and in West Lebanon village. I recognize that some of this may ultimately fall outside the final TIF deal terms, but believe it informs the broader planning.

Recognizing that these discussions will involve multiple stakeholders within City Hall, and subsequent presentation(s) to the Lebanon City Council, I thought it best to provide a comprehensive document proposing this new approach in simple terms, to facilitate discussion and conceptual buy-in. There are many moving pieces, but the sum of these efforts is an approach that will bring significant, positive growth and associated community improvements to West Lebanon.

As always, time is of the essence in advancing these discussions. Lyme has released Nott's Excavating to purchase the necessary materials to advance the remaining Phase 1 infrastructure work starting in the Summer of 2022. Nott's is familiar with the past and future infrastructure work at River Park, and they are scheduled to recommence work that was suspended by the Covid-19 pandemic in March, 2020. We've already seen significant price increases and limited material availability, which has pushed the anticipated start from April into July. Given ongoing supply chain issues and price escalations we did not want to risk further delays or costly increases.

In parallel with the PPP and TIF conversation, we will need to negotiate a new Security Bond & Performance Agreement (SBPA) between XYZ Dairy, LLC and the City of Lebanon for the remainder of the Phase 1 Infrastructure, as the previous agreement was completed on November 9, 2020 with the Crafts Avenue Extension work.

The SBPA agreement can be advanced simultaneously with the TIF as they are closely connected, but should remain separate documents. Should the broader PPP approach fail to proceed, the SBPA will need to stand on its own to enable Lyme to complete the remaining Phase 1 infrastructure in accordance with the existing Lebanon Planning Board approvals and timeline.

Lyme has been invested in West Lebanon revitalization and economic development efforts since purchasing the former Bailey Brothers property in 2007. We continue to be committed to these goals despite many challenges and setbacks over the past 15 years. After a 2-year *Neighborhood Planning Process* and an arduous and approvals process, Lyme attempted to commence work on River Park in 2016 and again in 2018, only to encounter disruptive and costly delays. The third commencement attempt in 2020 was suspended by the Covid-19 pandemic.

Those suspensions resulted in lost tenants and revenue, significant costs to XYZ Dairy, LLC and Lyme Properties, and a loss of project momentum that has created uncertainty in the marketplace that hinders our development and leasing efforts.

As Lyme re-initiates pre-construction, marketing, and leasing efforts in 2022, we do so in the hope that River Park and the City of Lebanon can start a collaborative chapter to achieve our shared, mutually beneficial goals in West Lebanon. I look forward to continuing this conversation in earnest.

Sincerely,



Chet Clem

President, Lyme Properties

A. Recitals

1. XYZ Dairy, LLC is the ownership entity for River Park West Lebanon "**River Park**". CAESD, LLC and 193 NMWL, LLC are the ownership entities of adjacent parcels under our control.
2. Lyme Properties 2, LLC "**Lyme**" serves as the development agent for River Park and associated entities.
3. The City of Lebanon shall be referred to herein as "**City.**"
4. Both parties are interested in the development of River Park West Lebanon, which was approved in 2011 as a mixed-use commercial and residential campus to bring new development and additional tax base to West Lebanon.
5. City Manager Mulholland put it best in his October 12, 2021 comments to the Lebanon Planning Board: River Park is "one of the greatest opportunities we'll have for economic development in West Lebanon. There is no other project that will have the impact that this will have if it is allowed to continue and be developed as proposed and as planned."
6. Since 2018, the City has utilized Tax Increment Financing (TIF) to facilitate two Public-Private Partnership projects in Lebanon: Downtown Lebanon and Airpark Drive. The City has created a Mt. Support Road Special Assessment District to coordinate housing development and transportation improvements on Mt. Support Road and Lahaye Drive in partnership with private developers.
7. Lyme and the City are interested in a Public-Private Partnership approach that could result broader economic value to Lebanon as a whole, and the opportunity to allocate new tax revenue towards top priorities in West Lebanon as were identified in the *2021 Action Plan for West Leb.*
8. As approved, River Park can be a key contributor to the broader goals of economic development in West Leb that generates the greatest possible community value (tax-base, jobs, recreational opportunities, regional transportation, housing development, and downtown revitalization) for West Lebanon.
9. Similar to the Downtown Lebanon and Lebanon Airport Tech Park TIF Districts, a River Park TIF District would facilitate economic development and create significant new tax revenue for the City of Lebanon.
10. As Director of Planning David Brooks attested during the 0 Airpark Road Extension (PB2021-07-DED), creating "pad-ready sites" is a critical priority for attracting new businesses to the City of Lebanon, as companies need certainty and confidence in execution. River Park is fully entitled and the subdivision and site plan approved.

11. 1 River Park Drive (formerly known as 100 River Park Drive but adjusted in response to street numbering policy communicated by the former City Engineer) is fully designed, engineered, and permitted. The building was designed to LEED Gold standards by Boston-based Elkus-Manfredi Architects.
 - a. Lyme Properties is known for green buildings, having developed the first privately-financed LEED Platinum office building in the United States, 500 Kendall Street in Kendall Square, which won the 2008 Harleston Parker Medal for “The Most Beautiful Building” in Boston.
 - b. This proactively addresses sustainability goals in the Lebanon Master Plan, and ongoing work of the Lebanon Energy Advisory Committee (LEAC).
12. In order to provide a level playing field and to stimulate economic development equally throughout the City, River Park seeks similar support from the City of Lebanon as projects elsewhere in the City have benefited from.
13. The **River Park Master Plan** was developed with significant, proactive public engagement and community involvement during the 2007-2009 *Neighborhood Planning Process*. The resultant plan required a zoning change, which was accomplished via a citizen-initiated ballot measure. On the March 9, 2010 ballot the rezoning received 67% support City-wide, and 75% support in West Lebanon’s Ward 1 where the project is located.
14. The River Park Subdivision approval issued on October 11, 2011 and the River Park Site Plan approval issued on October 24, 2011, as amended on September 9, 2019, and extended on October 12, 2021 shall herein be referred to as the “**River Park Approvals.**”
15. River Park has already made considerable, private investments in infrastructure improvements in West Lebanon through the Crafts Avenue Sewer & Roadway Improvements and Crafts Avenue Extension projects to facilitate River Park.
 - a. The City’s addition of a water main down Crafts Avenue in 2018 is an example of logical, cooperative efforts to achieve efficiency.
16. Maximizing the utilization of existing and approved infrastructure is a goal of the 2012 Lebanon Master Plan and a Smart Growth priority shared by both parties. Generating new property tax and fee-paying development will assist in reducing the increasing infrastructure costs presently being paid by all Lebanon taxpayers.
17. “Big picture thinking” and a coordinated effort between Lyme and the City could advance numerous priorities simultaneously in West Lebanon, and a Public-Private Partnership could be a more efficient, productive, and cost-effective approach for both parties.

B. Recent Advancements

18. Since 2010, Lyme has developed and maintained trails at River Park and has encouraged public access. In 2020-2021, we made significant improvements to those trails and officially

transferred ownership of the 6-acre waterfront parcel to *Friends of River Park*, an independent New Hampshire not-for-profit entity, which will oversee open space programming at River Park. This achieves the number one priority expressed by the West Lebanon community during the 2007-2009 *Neighborhood Planning Process* conducted by Lyme Properties: public access to the Connecticut River. The trails are well-used, have been expanded in partnership with the Upper Valley Trails Alliance, and are groomed during the winter in collaboration with the Lebanon Rec, Arts, and Parks Department.

19. Lyme has continued to expend considerable time and resources towards advancing West Lebanon goals as expressed in the 2012 Lebanon Master Plan and 2019 West Lebanon Village Visioning Charrette, including the preservation and redevelopment of the former West Lebanon Library, and the preservation, relocation, and redevelopment of the former Westboro Rail Yard Ticket Office.
20. Lyme has facilitated the growing West Lebanon Greenway coalition, to connect from the Mascoma River Greenway to the Boston Lot via Westboro Yard, downtown West Lebanon, River Park, and Wilder Dam. This is in keeping with decades of plans and efforts towards the "String of Pearls" as first envisioned by the Lebanon Rotary. In coordination with the *Friends of River Park*, this has successfully brought in assistance from the US National Park Service's *Rivers, Trails and Conservation Assistance* program, secured grant funding from the Rails-to-Trails Conservancy, and solicited donations from local companies.
21. On June 4, 2021, Lyme hosted U.S. Senator Maggie Hassan at River Park to talk about "A Green Vision For West Lebanon, NH" and to discuss the power of partnerships, and how economic development and public recreational improvements can work together. We were joined by Lebanon Mayor Tim McNamara and representatives from the US National Park Service, Upper Valley Land Trust, Upper Valley Trails Alliance, NH Dept. of Business and Economic Affairs, Connecticut River Conservancy, and the Granite Outdoor Alliance. The project continues to be informed by these organizations, and our shared goals for environmentally sensitive, recreationally oriented, smart growth development.
22. On August 17, 2021, River Park and Advance Transit executed a Memorandum of Understanding (MOU) that memorialized the long-standing plan to include a public multi-modal transit stop, Advance Transit transfer station, and park-and-ride facility as part of the River Park development. This plan dates back to 2009, and was included in the November, 2010 "Lebanon Bus Stop Design Study: City of Lebanon, New Hampshire" prepared for Advance Transit and the City of Lebanon.
23. A conversation between Lyme Properties and Great River Hydro– owner of the Wilder Hydroelectric Dam– is ongoing, in pursuit of recreational and renewable energy opportunities. This has been strengthened through collaboration with the Connecticut River Conservancy and the office of Representative Anne Kuster, who has co-sponsored the bipartisan *Twenty-First Century Dams Act* to seek ways to modernize dams in mutually

beneficial ways that achieve economic, environmental, and recreational benefits for all parties.

24. In his volunteer capacity as a business representative and Vice Chair of the West Lebanon Revitalization Advisory Committee, Chet Clem of Lyme Properties prepared the resultant *Action Plan for West Leb* which was presented to the Lebanon City Council on January 19, 2022. This document boils down decades of studies and a year of committee work into an actionable plan to reorient the downtown to the river, weave the West Lebanon Greenway through the historic downtown and connect to new development, and encourage the (re)investment necessary to create a vibrant village at an important crossroads in the Upper Valley. Lyme Properties is excited to continue to be an active participant in these efforts, and believes that River Park can be a critical piece of this larger puzzle.
25. Lyme has re-engaged Nott's Excavating to update their Phase 1 Infrastructure Site Work estimates from March, 2020. Nott's had been awarded the Site Work contract for Phase 1 Infrastructure and Building 1, prior to the March 24, 2020 Covid-19 suspension. They also performed the Crafts Avenue Sewer & Roadway Improvements work in 2017-2019 for Lyme and the City, and the Crafts Avenue Extension work in 2020.
 - a. Lyme has released the purchase of necessary materials to advance Phase 1 infrastructure in the Summer of 2022.
 - b. The delivery of materials are underway, but continue to be impacted by supply-chain issues and the cost-escalations are significant.
26. Lyme has initiated our 2022 marketing effort, starting with a full-page advertisement that ran in the *Boston Globe* on Sunday, February 27, 2022 and in the *Busines* section on Monday, February, 28, 2022. Our marketing continues to promote not only River Park, but West Lebanon as a whole, in keeping with our commitment to the broader revitalization effort. We continue to pursue opportunities that promote River Park and West Lebanon.

C. Proposed Approach

Over the course of the past 15 years of the River Park project, there are far too many examples of working against each other, as the attached timelines in Appendix G illustrate. This is counterproductive when our desired outcomes are seemingly aligned and fully consistent with the City's Master Plan. This has proven costly and counterproductive. If Lyme and the City are on the same side of the table, we can avoid unnecessary expenses, create more efficient solutions, and better coordinate efforts with outside parties, especially given State and Federal funding opportunities.

Lyme is prepared to continue performing the work and will commit to backstopping the infrastructure work until sufficient building property tax revenue is generated. This differs greatly from the other TIF districts in the City, in that there is no up-front debt service burden placed on the Lebanon taxpayer until the revenue-generating buildings come into service.

What we ask of the City is alignment, and coordination support consistent with efforts in other parts of the City.

What follows is an outline of how we believe we can initiate this next phase of River Park development more efficiently and productively. Lyme is prepared to present the final version of the presentation (draft attached) to the City Council.

D. Coordination, Cost Savings & Efficient Execution of Economic Development

River Park has suffered from substantial price increases and escalations resulting from past delays. Had 1 River Park been constructed in 2016 as planned and originally bid and mobilized, the construction cost would have been >20% less than the estimates received in March, 2020.

The price escalation driven by the supply chain disruptions and material shortages caused by the Covid-19 pandemic, coupled with the financial impacts of ongoing inflation in 2022, further emphasizes the importance of value-engineering where possible.

- 27. River Park TIF District:** The City will create a TIF District encompassing River Park “RP-TIF” for the purpose of stimulating economic development in West Lebanon through the construction of enabling infrastructure utilizing the City’s bonding authority. The RP-TIF will cover surface and subsurface infrastructure improvements as outlined in Appendix E and previously approved by the Lebanon Planning Board, Lebanon Department of Public Works, and the NH Department of Transportation.
- a. The formation of Public-Private Partnerships is called for in the City of Lebanon Outcomes & Work Plan 2021-2023 (OWP), as a top strategy for Enhanced Sustainable Economic Development (OWP, Page 45)
 - b. A West Lebanon TIF District, potentially including River Park, is the #2 “Looking Ahead (2022-2023)” item in the West Lebanon section of the OWP (OWP, Page 23).
- 28. Acceptance of River Park Roadways as City Streets:** To facilitate the RP-TIF district and qualify this project for consideration for additional funding opportunities, the approved River Park Roadways will need to be accepted by the Lebanon City Council.
- a. River Park Drive was originally not approved on the recommendation of the then City Manager on grounds of “no public benefit.” We respectfully disagree with that assessment, have outlined the public benefits in Section 38, and believe that this decision should be revisited for River Park Drive and Lyman Street.
 - b. Request that the Lebanon City Council move to accept River Park Drive upon completion of the improvements just like the City Council did for Crafts Avenue Extension.
- 29. Review & Coordination of Infrastructure:** Lyme and the City and associated consultants will review and approve all relevant infrastructure construction plans in the River Park Approvals to seek opportunities for value engineering and cost savings to minimize costs of construction and maintenance for all parties.

- a. Original engineering according to the phasing plan and conditions of approval required the segmentation of infrastructure for distinct phases and resultant ownership/maintenance. The RP-TIF approach could simplify the design and result in significant cost-savings.
- b. It benefits both parties to seek efficiency and eliminate redundancy to minimize construction costs of the RP-TIF district and on-going municipal maintenance costs.
- c. There are two additional, significant costs borne by XYZ Dairy, LLC when addressing municipal infrastructure.
 - i. The City's Security Bond & Performance Agreement requires that the full, equivalent amount be held in escrow as a Letter of Credit or bonded by the applicant. The former ties up working capital, and the latter is an additional cost— especially if/when delays occur because of municipal action, as was the case on Crafts Avenue and Crafts Avenue Extension.
 - ii. A 3rd Party inspection fee paid by XYZ Dairy to the City in advance of construction, to hire an engineer to oversee the work. For Crafts Avenue and Crafts Avenue Extension, this fee represented a 10% additional cost to the project.

30. City/State Route 10 Stormwater: One example of potential cost savings is the existing municipal and NHDOT stormwater line running from Route 10 through River Park Lot 1 to the ravine. As presently required, the replacement of this public system XYZ Dairy, LLC represents a significant expense (a recent estimate shows it to be as much as \$900,000) borne by River Park to address a municipal and state issue.

- a. This existing infrastructure does not have an easement to cross private property, bisects the foundation of 1 River Park Drive, and prevents the construction of the first building until the line is relocated.
- b. This stormwater line is solely used by the N.H. DOT and City of Lebanon to remove water from Route 10.
- c. All River Park lots have independent approved systems to address storm water produced on-site.
- d. The system as originally mandated requires an independent Stormtech system on Lot 9, which represents a significant cost to the project.
- e. This restricts the utilization of Lot 9, the "Village Green" which is currently approved as green space open to the public.
- f. This system represents an ongoing maintenance cost, which will need to be negotiated between the City, State, and River Park.
- g. An alternative solution exists: run the stormwater line into the ravine that has been used for decades, and is approved by River Park's current Alteration of Terrain "AoT" permit from the State of New Hampshire.
 - i. This line has already been relocated as part of the 1 River Park Building Permit and as approved in the AoT to handle stormwater.
- h. Since this was originally approved as a condition of approvals in 2011, Lyme assumed that City/NHDOT would assume ownership and maintenance of the stormwater system just as it has for water and sanitary sewer.

- i. It was only when the Crafts Avenue Extension stormwater system was rejected by David Brooks, did it raise the question and is not addressed in the Site Plan and Subdivision Approvals.

31. **Route 10 Paving:** As a private property owner and developer, Lyme does not receive direct communication from the NHDOT, which has created coordination issues in the past. On July 28, 2020 the State of NH first advertised their intent to repave the section of Route 10 running from Maple Street, West Lebanon to Brook Road, Hanover. We received no formal notice and discovered it purely by happenstance. On August 11, 2020 we sent a communication to the NHDOT in hopes of avoiding duplicative efforts, and to find an efficient way to coordinate construction and paving.

- a. On August 14, 2020 we received an email response from Chris Turgeon of NH DOT District 2 suggesting that River Park should commission new our traffic studies despite there being no material change to the previously approved subdivision and site plan programs after extensive traffic studies paid for entirely by XYZ.
- b. On September 11, 2020 we responded with a letter to Mr. Turgeon and copying other stakeholders outlining our position and referencing previous communications, and proposed a meeting to discuss further.
- c. We have not received any response from the NHDOT.
- d. We have also not received an update regarding their adjusted timeline for this paving work and communications thus far have been in conflict with the Urban Compact boundaries. This confusion impacts other properties as well.

32. **Coordination of Route 10 Efforts:** Vanasse Hangen Brustlin “VHB” was the Civil Engineering consultant that the City of Lebanon and NHDOT requested that River Park use for the River Park Southern and Northern Entrance designs, which received final approval by the NHDOT in January, 2015 as outlined in Sections 36 and 37.

- a. The River Park Southern Entrance scope of work impacts both the Lebanon Urban Compact and the N.H. State Route 10, and would benefit from coordination of the Route 10 work by all parties.
- b. The Southern Entrance includes addressing the Municipal stormwater line as outlined in Section 30.
- c. The Route 10 plans were prepared by VHB at the City and State’s request and approved by both parties.
- d. VHB is presently engaged by the City of Lebanon on other projects in West Lebanon, including the analysis and planning of Main Street and intersection improvements in downtown West Lebanon.
- e. Given past challenges, it would be beneficial if the City Planning Department and Department of Public Works could provide coordination with the NHDOT and VHB that aligns with other efforts underway.
- f. Aligns with OWP, Page 65: “Assess where projects may overlap with future private ventures; combine efforts where possible.”

E. Infrastructure Segments, Phasing, and Cost Estimates

33. **River Park Phase 1 Infrastructure:** As presently approved the following is required to achieve a certificate of occupancy for the first building (1 River Park Drive). Lyme has been advancing this work since 2016, and has already made substantial, private investments in municipal infrastructure.
- a. Crafts Avenue Sewer & Roadway Improvements (CASRI)
 - i. Completed by XYZ Dairy, LLC 2018-19.
 - b. Crafts Avenue Extension (CAE),
 - i. Completed by XYZ Dairy, LLC 2020.
 - c. Cross Country Connector (CCC)
 - d. River Park Southern Entrance (RPSE)
 - e. River Park Drive, Segment 1 (RPD-1)
34. **River Park Roadways:** The RP-TIF will provide for the construction of River Park Drive and Lyman Street (the River Park Roadways) per the River Park Approvals, inclusive of the water, sanitary sewer, stormwater management, electric and tel/data conduit, and surface roadway improvements (road, sidewalks, landscaping, etc.). It will also include the Municipal Water and Sewer service running from the terminus of Crafts Avenue Extension to River Park Drive, known as the "Cross Country Connector."
- i. River Park Drive is currently classified as Lebanon Parcel ID 44-30
 - ii. Parcel 44-30 will be amended to include Lyman Street and the River Park Entrances (Sections 35-37).
 - iii. The City would own the land for the River Park Roadways, and all of the subsurface infrastructure improvements within the Roadways. The City will own via easement all of the subsurface infrastructure improvements within the Cross Country Connector. The streets will become City streets which would be maintained by the City upon final completion.
 - iv. The public benefits of the River Park Roadway network are further outlined in Section 38
35. **River Park Entrances:** There are two entrances to River Park from North Main Street/NH Route 10. These driveways were ultimately approved in January, 2015 after 4+ years of consideration by the NH Department of Transportation (NHDOT).
36. The **River Park Southern Entrance** will serve as the initial and primary access to the River Park roadway network, which provides frontage and municipal street access to the development parcels, access to the Lot 6 publicly accessible riverfront parcel, and will service the proposed Advance Transit bus station on Lyman Street.
- a. The River Park Southern Entrance on Route 10 is necessary for the River Park roadway network, frontage and municipal street access to the development parcels,

access to the Lot 6 publicly accessible riverfront parcel, and the proposed Advance Transit bus station.

- i. The Southern Entrance was engineered by VHB at the direction of the City and New Hampshire Department of Transportation. VHB is currently engaged by the City as a consultant.
- ii. Traffic mitigation and schedule of payments to the City of Lebanon have already been negotiated and approved.

37. The **River Park Northern Entrance** was moved by approximately 40' from an existing curb cut location in order to improve sightlines. At the request of the City of Lebanon and State of New Hampshire, Vanasse Hangen Brustlin ("VHB") was engaged to advance the engineering of the Route 10 improvements independently of River Park's site engineer of record.

- i. The Northern Entrance is slated to be constructed alongside River Park Phase 2, when projected traffic generated by the overall project may require it.
- ii. The off-site mitigation per the NHDOT approvals has been previously negotiated.

38. **River Park Roadway Public Benefits:** The River Park Roadway network serves the following public benefits, and should be accepted as municipal streets by the City of Lebanon accordingly:

- a. On November 30, 2020, XYZ Dairy, LLC consummated the transfer of Lot 6, the 6.02-acre waterfront parcel at River Park, to Friends of River Park, a New Hampshire not for profit entity tasked with the future development and maintenance of Lot 6 as waterfront open space accessible to the general public.
- b. Lot 6 has deed restrictions accepted by the City, and is only accessible to the public via River Park Drive and the Southern Entrance.
- c. The Roadway network provides legal street frontage to all lots within the approved River Park subdivision, with the exception of Lot 7 which is accessible via Route 10.

39. The **Advance Transit multimodal transportation hub** and park-and-ride facility as illustrated in the June 28, 2010 "River Park Transit Integration Schematic Plan" attached herein as Appendix D.

- a. Integration of public transportation minimizes single occupancy vehicle traffic at River Park, and alleviates impacts in downtown West Lebanon per the November, 2010 "Lebanon Bus Stop Design Study: City of Lebanon, New Hampshire" prepared for Advance Transit and the City of Lebanon.
 - i. OWP Chapter 7, Looking Ahead 2022-2023, #4: "Partner with Advance Transit and development applicants, as opportunities arise, to implement improvements as recommended in 2010 Bus Stop Study.
- b. This transportation hub will provide equitable public access to the Lot 6 open space and future West Lebanon Greenway via public transportation.

- c. Per Section 22, River Park and Advance Transit have entered into a Memorandum of Understanding to advance these plans, which is attached as Appendix E.
 - d. The top two strategies in the OWP Plan for Multi-modal Transportation are “encourage a diversity of transportation uses within the CBDs by improving roadway design, increasing incentives for mass transit use, and providing pedestrian and bicycle linkages (3.1.S12; 3.1.A8; 9.4.S4) and “encourage and support transportation alternatives to single-occupancy vehicles, including mass transit, pedestrian and bicycle paths and facilities, ride-sharing, etc. (5.1.S16; 9.2.S3).
40. **TIF Roadway and Infrastructure Cost Estimates:** For the sake of comparative analysis, the \$/LF cost estimates from the City’s Airpark Road TIF have been used to calculate corresponding estimates for roadway and utility infrastructure segments for the RP-TIF. These are included in Appendix A.
41. **TIF Improvements Phasing:** As proposed in this agreement, the River Park Infrastructure will be accelerated to facilitate the development of the road network efficiently and in a manner that supports the development of the *Advance Transit* station and create “pad-ready” development sites as the market desires per Section 10.
- a. The Phasing Schedule for the work is outlined in Appendix A.
 - b. The corresponding map of segments is included in Appendix B. This updated plan is consistent with the River Park Approvals and phasing schedule as amended in 2019.
42. **Performance of TIF Improvements:** The work will be executed by Nott’s Excavating, under contract to XYZ Dairy, LLC. Lyme retains the right to supervise and approve all work to ensure it meets the River Park Approvals.
43. **Debt Service Schedule:** Payment of the debt service for the RP-TIF District infrastructure will be determined by the City of Lebanon, and Appendix C is included as a placeholder.
- a. XYZ Dairy, LLC will escrow and maintain one full year of debt service payments until there is completed building improvement tax revenue to cover it.

Grants & Funding Opportunities

The River Park Master Plan has been designed to facilitate access to the riverfront, trails, and a walkable campus by the public. There are also considerations for public transit and broader recreational opportunities– on-site and off-site– which will require additional funding to achieve long-standing plans and community desires. All of this is in keeping with the City of Lebanon Master Plan (2012), and other planning studies. In order to effectively pursue these improvements, Lyme advocates for the thoughtful consideration of potential funding opportunities.

44. **Aligning with Long Term Local and Regional Goals:** River Park can play a role in facilitating the West Lebanon Greenway, and numerous transportation priorities within the Route 10 corridor as was recently outlined in the UVLSRPC Regional Corridor Transportation Plan.

45. **Current Use Penalty Fees:** The City and Lyme will evaluate the possibility of directing Current Use penalty payments from River Park house lots towards publicly accessible recreational improvements on Lot 6 owned by *Friends of River Park*. This tactical application of LOST funds would result in the execution of improvements to the publicly accessible trails and waterfront park.
- This concept was first presented by Lyme to the Lebanon Conservation Commission in November, 2019.
 - To date, River Park has paid \$117,649 in Land Use Change Taxes as a result of the sale of the single-family house lots.
 - River Park will pay significant additional Penalty Fees when the remaining development lots are taken out of Current Use.
 - A proactively negotiated agreement to allocate these penalty fees towards public recreation goals in West Lebanon would create a significant funding opportunity for long-standing community recreation goals, and without any impact on the Lebanon taxpayer.
46. **Available Infrastructure Funds:** Senator Maggie Hassan's office has provided Lyme with an overview of Federal programs resulting from President Biden's Infrastructure Plan.
- Although there were no West Lebanon infrastructure requests included in the 2021 "earmarks" submitted to Rep. Kuster's office by the City of Lebanon, the work of the WLRAC has helped prioritize improvements in West Lebanon.
 - The Potential Streetscape Improvements for Main Street as proposed by the City to the West Lebanon Revitalization Advisory Committee do not meet the City's *Complete Streets* (2017) policy, as there is no bike lane presently planned for Main Street or Route 10 given corridor restrictions.
 - The West Lebanon Greenway, as a parallel alternative transportation route, may assist in qualifying for certain State and Federal grant programs.
 - Included herein as Appendix F is the Fact Sheet provided by Sen. Hassan's office, providing an overview of Federal infrastructure funds that may be applicable for the West Lebanon Greenway, intermodal transportation improvements, and economic development.
 - Potential opportunities worthy of consideration for West Lebanon projects have been highlighted for further discussion.

Facilitating Economic Development for 2030

As the City initiates the Master Plan Review Process to ensure the 2012 plan is progressing towards the 2030 planning horizon a review of land-use policies and development procedures in West Lebanon is warranted: "

The 2021 *Action Plan For West Leb* identifies the need to encourage further investment in the Central Business Districts to drive revitalization, increase the tax base, and achieve the City's broader goals of economic development, infill development, and better utilization of existing infrastructure instead of sprawl.

Furthermore, as was the topic of much discussion in the West Lebanon Revitalization Advisory Committee, and documented in Chapter 5 of the *Action Plan For West Leb*, the economic development of West Lebanon is dependent upon collaboration between the Public and Private sectors.

With a background of strong public support for River Park, and a track-record of advancing broader community priorities, Lyme Properties is invested in West Lebanon. Lyme has the development expertise necessary to advance River Park to the same level of national recognition as its previous mixed-use development projects, and seeks the support of the City of Lebanon to do so.

To best achieve this, a collaborative process to review the City's land-use policies related to River Park is warranted, especially as it relates to the evolving needs of the region, the City of Lebanon, and specifically West Lebanon. The Public-Private Partnership approach to smart growth, and specifically the structure of a TIF district, is predicated on the idea of efficiently and expeditiously enabling "highest and best use" development to generate additional tax revenue.

In addition to the specific items outlined above, the following steps can be taken to better encourage development at River Park, better utilize existing approved infrastructure, and respond to changes that have occurred over the course of the 15-year River Park planning and development period.

47. Adoption of 2030 Future Land Use Map: The 2012 Lebanon Master Plan includes the 2030 Future Land Use Map (FLUM) that shows anticipated and planned zoning and land-use changes. That public document has served to guide policy at the City level, and inform the decisions of private property owners.

- a. Since 2012, the entirety of the River Park property and numerous adjacent parcels have been shown as a “Mixed Use” district.
- b. Mixed Use districts have been proposed by the City numerous times, including a 2010 effort at River Park, but have thus far not passed.
 - i. On March 12, 2010, the Lebanon City Council proposed a Mixed Use District for the River Park property. This occurred just three days after the March 9, 2010 vote to rezone portions of the property to CBD and IND-L, and Lyme vehemently opposed the re-zoning as the dimensional restrictions would have effectively prevented the River Park Master Plan.
 - ii. The River Park Subdivision and Site Plan applications were filed within the 90-day statutory window imposed by the City Council to protect our property rights against this attempted down-zoning.
- c. On March 2, 2022, the City of Lebanon Planning & Development office announced it is “initiating a process to review and update the overall Master Plan on a chapter-by-chapter basis over the next 3-4 years.”
- d. In keeping with the Economic Development goals herein, Lyme would like to initiate a conversation with the Planning & Development office regarding a Mixed Use district that would build upon River Park’s current approvals.

48. **Facilitating Additional Housing Development at River Park:** There are additional development opportunities utilizing unprogrammed River Park subdivision parcels and the strategic acquisition of abutting parcels by Lyme.
- a. In response to the well documented housing shortage in Lebanon and the Upper Valley as recently presented at the Lebanon City Council Housing Summit on July 19, 2021, and in accordance with the housing and economic development priorities in the 2012 Lebanon Master Plan, Lyme has been considering these sites for additional residential development. These sites would benefit from the full completion of the approved infrastructure in River Park Drive and avoid further disruptions of NH Route 10.
 - b. At the Housing Summit on July 19, 2021 the Lebanon Planning Director acknowledged that the PUD density bonus chart in Section 507.1 of the Lebanon Zoning Ordinance remains in need of completion.
 - c. The “Missing Middle” Housing presentation by Opticos Design on January 25, 2022 and the subsequent Lebanon City Council Work Session on January 26, 2022 provided a helpful primer on the type of housing that is not presently allowed under the Lebanon Zoning Ordinance. Achieving these typologies is a shared objective of Lyme, and we have previously attempted “Missing Middle” projects at River Park and adjacent properties in the past.
 - i. A 2020-2021 attempt to explore a modular typology in partnership with Bequall and CBT Architects was suspended following 6mos of delays and staff and board decisions falling outside of the written ordinance that levied additional costs, uncertainty, and risk on the project.
 - d. Lyme proposes working collaboratively with the City to advance the 2030 Future Land Use Map, per Section 48, in a manner that facilitates additional housing development in keeping with the aforementioned goals.
 - e. The approved infrastructure at River Park can be leveraged, and increasing the taxable land and building values goes towards the pay-off of the RP-TIF funds invested for the development of the roadway and municipal infrastructure that will serve additional lots.

Attachments:

- A. Appendix A: RP-TIF Roadway and Infrastructure Cost Estimates
- B. Appendix B: RP-TIF Roadway and Infrastructure Segment Map
- C. Appendix C: RP-TIF Debt Service Estimate & Schedule
- D. Appendix D: River Park Transit Integration Schematic Plan
- E. Appendix E: Advance Transit MOU
- F. Appendix E: Federal Infrastructure
- G. Appendix F: Timelines of Delays

**AGENDA
LEBANON CITY COUNCIL
MAY 18, 2011**

9. NEW BUSINESS:

9.A – REQUEST BY XYZ DAIRY, LLC:

CONDITIONAL ACCEPTANCE OF RIVER PARK DRIVE

BACKGROUND

By a letter dated April 6, 2011, Attorney John H. Sokul, Jr., on behalf of XYZ Dairy, LLC, is requesting that Council take advance action to “conditionally” accept River Park Drive as a public highway. This request is one derived from various options outlined by Carmela Hennessy, Codes Enforcement Director (with the advice of Attorney Bernie Waugh) in response to a potential zoning violation concerning the use of the proposed road within the residential portion of the River Park Development. Please see Attorney Sokul’s letter (and attachments thereto) for more information.

A meeting was held on May 2nd between City Staff and the Applicant to further discuss the request.

At this time, City Administration is recommending that the Council not accept River Park Drive as a public street for reasons stated in the May 3, 2011 memo from City Manager Greg Lewis (attached).

ACTION

If the Council decides to accept the recommendation of City Administration, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby declines the request of XYZ Dairy, LLC to conditionally accept River Park Drive as a public highway for the reasons outlined in the May 3, 2011 memo from City Manager Greg Lewis, as presented in the May 18, 2011 City Council agenda packet.

Included in this Section:

1. April 6, 2011 Letter (with attachments) from Attorney John H. Sokul, Jr. to Lebanon City Council re: Request to Conditionally Accept River Park Drive (“Road”) of the “River Park” Project as a Public Street.
 - Petition to City Council by XYZ Dairy, LLC with proposed Resolution for Conditional Acceptance of River Park Drive
 - July 15, 2010 Letter to Attorney John Sokul from Attorney Bernie Waugh
 - September 16, 2010 Memo to the Lebanon Planning Board from Carmela Hennessy, Codes Enforcement Director
 - Draft Public Right of Way Deed
 - Proposed Subdivision/Lot Layout Plan for River Park Dated June 10, 2010, last revised February 25, 2011
2. May 3, 2011 Memo from City Manager Greg Lewis re: Acceptance of River Park Drive as a Public Street.

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John H. Sokul, Jr.
jsokul@haslaw.com



April 6, 2011

Lebanon City Council
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Lebanon Planning Board
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Request to Conditionally Accept River Park Drive ("Road") of the "River Park" Project
as a Public Street

Dear City Council and Members of the Planning Board:

This firm is counsel to XYZ Dairy, LLC ("XYZ") with respect to the proposed 21-lot major subdivision known as River Park ("River Park"). River Park is to be located on North Main Street (Route 10), Tax Map 44, Lots 3 and 7, Tax Map 58, Lot 27 in Lebanon, NH.

In connection with review of River Park's subdivision and site plan applications, Carmela Hennessy, the city's code enforcement director, has identified a zoning issue involving the subdivision roadway. The issue relates to the fact that the proposed Road passes through multiple zoning districts and, in particular, the northerly portion of the Road within the R-3 District would service traffic from other areas of the River Park project in commercial and industrial zoning districts and, therefore, would violate the Lebanon Zoning Ordinance.

In a memo dated September 16, 2010 to the Planning Board (copy enclosed), Ms. Hennessy states: "A public street is not subject to the terms of the Zoning Ordinance, however, private driveways are. New Streets being proposed through more restrictive districts (i.e., a driveway/street extending from an industrial or commercial district through a more restrictive residential district) are not permitted. Unless one of the following options are met, I recommend that the Planning Board not grant final approval of the layout on the grounds that it violates the Zoning Ordinance."

One of the options suggested by Ms. Hennessey in her September 16th memo to the Planning Board, with advice of Bernie Waugh, the City's legal counsel, is for the developer to request:

April 6, 2011
Page 2

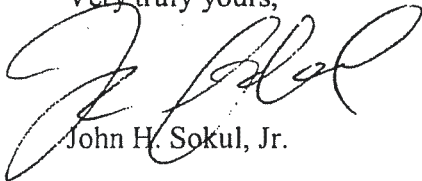
"that the City council take advance action to *conditionally* accept the street as a public highway. That action would make it exempt from zoning under Section 214 of the Ordinance. This would have to occur prior to final approval of the subdivision by the Planning Board. The process for acceptance is contained in RSA 674:40 "Improvements in Unapproved Streets."

After considering the options available to it, XYZ has decided to proceed in accordance with one of the alternatives recommended by Ms. Hennessey and Attorney Waugh; namely, to request that the City Council take advance (i.e., prior to subdivision approval) action to conditionally accept the road as a public highway, in such a way as to make it exempt under Section 214 of the Lebanon Zoning Ordinance. This letter is XYZ's formal request to the City Council to take such action.

Accordingly, for the foregoing reasons, XYZ hereby offers to dedicate the Road to the City of Lebanon as a public street and hereby requests that the City Council conditionally accept the Road as public street in accordance with RSA 674:40,III(b) and in doing so exempt the Road from zoning under Section 214 of the City of Lebanon Zoning Ordinance. I have attached a proposed draft form of petition for your use and consideration.

Please let me know if you have any questions or need anything further to review this petition.

Very truly yours,



John H. Sokul, Jr.

cc: David Clem
John Billings
H. Bernard Waugh, Jr.

Encls.

**ATTACHMENT
PETITION TO THE CITY OF LEBANON**

[See Attached]

**LEBANON CITY COUNCIL
PETITION
APRIL 20, 2011**

**RE: CONDITIONAL APPROVAL OF PROPOSED RIVER PARK DRIVE
IN THE RIVER PARK PROJECT AS A PUBLIC STREET**

BACKGROUND

XYZ Dairy, LLC ("XYZ") has proposed a 21-lot major subdivision known as River Park on North Main Street (Route 10), Tax Map 44, Lots 3 and 7, Tax Map 58, Lot 27 in Lebanon, NH ("River Park"). See enclosed copy of subdivision plan. In connection with review of River Park's subdivision and site plan applications, Carmela Hennessy, the City's Code Enforcement Director, has identified a zoning issue involving the subdivision roadway. The issues relates to the fact that the proposed Road passes through multiple zoning districts and, in particular, the northerly portion of the Road within the R-3 District would service traffic from other areas of the River Park project in commercial and industrial zoning districts and, therefore, would violate the Lebanon zoning Ordinance.

In a memo dated September 16, 2010 to the Planning Board (copy enclosed), Ms. Hennessy states: "A public street is not subject to the terms of the Zoning Ordinance, however, private driveways are. New Streets being proposed through more restrictive districts (i.e., a driveway/street extending from an industrial or commercial district through a more restrictive residential district) are not permitted. Unless one of the following options are met, I recommend that the Planning Board not grant final approval of the layout on the grounds that it violates the Zoning Ordinance."

One of the options suggested by Ms. Hennessey in her September 16th memo to the Planning Board, with advice of Bernie Waugh, the City's legal counsel, is for the developer to request:

"that the City council take advance action to *conditionally* accept the street as a public highway. That action would make it exempt from zoning under Section 214 of the Ordinance. This would have to occur prior to final approval of the subdivision by the Planning Board. The process for acceptance is contained in RSA 674:40 "Improvements in Unapproved Streets."

XYZ has elected to proceed in accordance with the foregoing recommendation and is requesting that the City Council take advance (i.e., prior to subdivision approval) action to vote to *conditionally* accept the road as a public highway, in such a way as to make it exempt under Section 214 of the Lebanon Zoning Ordinance. The acceptance by the City Council would be conditioned on approval of the subdivision plan by the Planning Board.

XYZ has offered to dedicate the Road to the City of Lebanon as a public street and has requested that the City Council conditionally accept the Road as public street in accordance with RSA 674:40,III(b) and in doing so exempt the Road from zoning under Section 214 of the City of Lebanon Zoning Ordinance.

ACTION

The following is offered for Council consideration:

RESOLUTION

WHEREAS: XYZ Dairy, LLC ("XYZ") is seeking subdivision approval of River Park – a 21 lot major subdivision - from the City of Lebanon's Planning Department; and

WHEREAS: River Park Drive ("Road") is a proposed street within River Park as shown on a set of plans entitled "Subdivision Plans, River Park", drawn by Holden Engineering & Surveying, Inc., dated June 10, 2010 and revised July 29, 2010 that will service both the R-3 and IND-L districts in River Park; and

WHEREAS: Petitioner has dedicated the Road to the City of Lebanon for acceptance as a public street and has requested that the City Council vote to conditionally accept the Road as a public street in accordance with RSA 674:40,III(b) and to exempt it from zoning under Section 214 of the Lebanon Zoning Ordinance.

NOW THEREFORE BE IT RESOLVED by the Lebanon City Council:

- A. That the City Council, in accordance with the provisions of NH RSA 674:40, III(b), votes to accept River Park Drive ("Road") to become a public street. This acceptance is conditioned upon (1) approval of the River Park Subdivision Plan by the Lebanon Planning Board and (2) upon certification by the City Manager that the City Engineer has confirmed that the Road has been constructed in accordance with Section 13.5 of the City of Lebanon's Subdivision Regulations and the approved design plans and specifications as required by the Planning Board's Subdivision Approval.
- B. That XYZ is charged with the construction of the Road in conformance with Section 13.5 of the City of Lebanon's Subdivision Regulations and the approved design plans and specifications as required by the Planning Board's Subdivision Approval.
- C. That the City Council votes to authorize the City Manager to accept and record a quitclaim deed from XYZ, or its successors or assigns, to the City and the

recorded deed will serve as evidence of satisfaction of the conditions of acceptance of the Road.

- D. That River Park Drive shall be exempt from zoning under Section 214 of the Lebanon Zoning Ordinance.

Included in this Section:

1. 7/15/10 letter from Attorney H. Bernard Waugh, Jr. regarding River Park Project Our File No. 1931
2. 9/16/10 Memorandum from Carmela Hennessy, Codes Enforcement Director, to the Subject: XYZ Dairy LLC – Major Subdivision.
3. Draft Public Right of Way Deed – from XYZ Dairy, LLC to City of Lebanon (Roads to be used as public highways)
4. “Subdivision Plans, River Park”, drawn by Holden Engineering & Surveying, Inc., dated June 10, 2010 and revised July 29, 2010

**ATTACHMENT 1
LETTER**

LAW OFFICE OF
GARDNER FULTON & WAUGH P.L.L.C.
A PROFESSIONAL LIMITED LIABILITY COMPANY

ADELE M. FULTON*
H. BERNARD WAUGH, JR.

SHAWN M. TANGUAY
J. JUSTIN SLUKA*

* ALSO ADMITTED IN VT

78 BANK STREET
LEBANON, NEW HAMPSHIRE 03766-1727

TELEPHONE (603) 448-2221
FAX (603) 448-5949

G&F.LAW@GARDNERFULTON.COM

LAURENCE F. GARDNER
(RETIRED)

July 15, 2010

RECEIVED
JUL 17 2010

John H. Sokul, Esq.
Hinckley Allen & Snyder LLP
11 South Main St., Suite 400
Concord, NH 03301-4846

HINCKLEY ALLEN
& SNYDER-LLP

Re: River Park Project
Our Lebanon File No. 1931

Dear Attorney Sokul:

I have been asked by the Zoning Administrator to respond to your letter dated June 30, 2010.

Preliminary Caveats:

1. First, my letter to the Council dated November 23, 2009 (which you quoted) did not directly address the question now being raised, because I did not at that time have any proposed subdivision before me for review. All I had before me was a proposed rezoning which created three different zones within a single lot.

2. Secondly, I want to clarify that I am writing to you solely in my capacity as legal advisor to the Zoning Administrator (but making that advice public, at her request). I have not been asked to be an advocate for any particular position. Moreover, I am not an official of the City, and the City's officials are not required to follow my advice. It is the City's officials whose decisions have a presumption of validity, not mine. It is possible that whatever decision the Zoning Administrator makes concerning this matter could be appealed to the Board of Adjustment, and that the ZBA could make a decision inconsistent with this letter – even possible that I might later be defending such a position.

3. As a final preliminary comment, I'm sure you are aware that City officials are required to administer the City's regulations in an impartial manner, in such a way as to be able to consistently and reasonably take account of all the different potential variations which might arise. That's not merely the right thing to do. To do otherwise can also lead to legal problems. Hence I would not advise the Zoning Administrator to

adopt an approach which may seem to make sense in the River Park case, but which raises too many unresolved questions in other potential cases. This problem is not merely theoretical – the question of an access way approaching one district through a more restrictive district has arisen in more than one proposal before the City, both in the past and currently. Thus any approach which might be based on the unique facts attributable to the River Park rezoning would arise only in the context of a possible variance request.

* * *

Let us now turn to the substantive question (one upon which – as I'm sure you are aware, having addressed it in detail – there does not appear to be a lot of dispositive New Hampshire law):

(a) As I understand your letter, you appear not to be disputing the general proposition that an access *driveway* is "accessory" to the use to which it provides access, and that therefore – applying the general "permissive zoning" rule from cases such as *Triesman v. Kamen*, 126 N.H. 372, 375-6 (1972), that the only uses of land permitted within a zoning district are those expressly permitted plus those which are accessory to those expressly permitted – one must conclude that a driveway which is accessory only to primary uses permitted in some *other* district would not be deemed permitted.

A national zoning treatise, Salkin (formerly Anderson) "American Law of Zoning" (2009 Ed) at Section 9.27 states the following:

"An ordinance excluding commercial or industrial uses from a residential district excludes the maintenance of driveways which provide ingress and egress for such uses (citing *Town of Chelmsford v. Byrne*, 379 N.E.2d 1307 (MA 1978)). This problem frequently arises when a shopping center or supermarket is established on land adjacent to a residential district. Such uses need parking space and convenient access which sometimes is available only if the driveway can be routed through a residential district....Exceptions to the general rule have been made where the proposed route was already classified as a public road by force of statute."

(b) At the other end of the zodiac of possibilities, in a case where the Council has specifically voted to exempt a governmental use from the Zoning Ordinance, Section 214 of the Ordinance would apply, which says: "*Governmental Uses shall be governed by RSA 676:54; provided, however, that governmental uses proposed by the City of Lebanon shall be considered to be subject to this Ordinance, unless expressly exempted from it by vote of the City Council.*" Thus in a case where the Council accepts a street as a public highway, and moreover does so in such a way as to (expressly or impliedly)

John Sokul, Esq.

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exempt it from the Zoning Ordinance, it would be clear that that street would not be subject to the "permissive zoning" rule, because it would not be subject to the zoning ordinance at all.

(c) As I understand your letter, your view appears to be that as long as a developer constructs an access way to the City's "street" standards and offers to dedicate it to the City, that the "permissive zoning" rule would not apply to such a "street." Your reasoning appears to be that: (i) a street which has been accepted (or laid out) as a public highway under RSA 229:1 is self-evidently exempt from zoning district regulations, and (ii) that since land use boards have no authority to determine when a street will or will not be accepted by the Council, anything which constitutes a "street" under the zoning ordinance definition must be similarly exempt.

(d) I am highly reluctant to accept such a blanket conclusion – especially your second step. Let us presume, for argument's sake, that you are correct that all City-accepted public highways are zoning-exempt [despite the statement in RSA 674:55, III(a) that the general treatment of governmental uses in 674:54 "shall not apply" to layout or construction of public highways, the result of which is highly unclear to me – but that's a question for another day].

(e) The trouble with extending such a presumed exemption to streets which have *not* been accepted, is that it would appear to give developers unilateral authority to confer a zoning exemption in precisely the kinds of cases where the quote from Salkin (above) would indicate that a driveway should be prohibited. For example, in Lebanon several years ago there was a proposal for a commercial use. Direct access onto the street upon which the property had frontage was limited by wetlands and the fact that the road was a limited-access state highway, so the owner had proposed that its driveway come through an abutting residentially-zoned lot which it had purchased. The City ruled then that this was not permitted. According to your view (if I am understanding it correctly) all that owner would have needed to do was to construct its driveway to "street" standards and offer to dedicate it to the City as a public highway (regardless of how realistic it was that it would actually be accepted), and it would then have become a permitted use of the residentially-zoned lot.

Of course if the zoning ordinance itself contained plain language which legitimized the above-described loophole, or there were some unambiguous statute or case law pointing that direction, then both I and the Zoning Administrator would have to accept it. But I don't believe you have cited anything in the Ordinance, or from any other source of authority, leading unambiguously toward the conclusion that access ways become exempt from the "permissive ordinance" rule merely by being constructed to a certain standard and offered to the public as a "street." On the

John Sokul, Esq.

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contrary, Section 214 implies that only the Council can exempt a use from the Ordinance (aside, of course, from the variance mechanism).

(f) In my view there is another approach which both makes sense and is also justified by the Ordinance's wording. Please allow me to use an analogy with the way the Zoning Ordinance treats sewer, water, electric lines and facilities, etc. These are all defined in Appendix A of the Zoning Ordinance as "Essential Services." It is also highly relevant that the term "Essential Service" is listed as a use *allowed by special exception* in all of the residential districts. Does this mean that every time, say, that a sewer line extension is constructed in a residential district, it requires a special exception? No it doesn't. The practice within the City – as I understand it – has been that the installation of pipes, wires, or other utility facilities which appear on virtually every lot, and whose nature is typical of those types of facilities which commonly serve residential lots, will simply be treated as "accessory" to the residential lots they are installed upon. And this is true regardless of the fact that those facilities may help serve properties other than the lot upon which they are installed.

This does *not* mean, however, that *all* essential services are considered "accessory." An electric generating station, or water pumping station, may well need a special exception, depending upon the normal factors governing whether a use is "accessory" or not – viz., its size, whether it is the only use proposed for a lot, etc. This is fully consistent with the decided accessory use cases such as *Marchand v. Town of Hudson*, 147 N.H. 380 (2001), where it was held that while one amateur radio antenna on a residential lot might be considered an accessory use, *three* such antennas would not be.

I was involved in an "essential service" case in another municipality whose zoning on that subject is similar to Lebanon's. In that case a commercial developer also owned an abutting residential lot, upon which it had installed various types of utility structures whose function was to serve the adjoining commercial development. In that case the ZBA decided that a small 2.5' x 3' utility cabinet which was of the variety commonly found in residential neighborhoods would be permitted to remain, but that a much larger utility structure 8 feet high and 6 feet wide would not be considered "accessory" (customarily subordinate and incidental) in the residential neighborhood, and would have to be relocated to the commercial district.

(g) I think an analogous view is justified for proposed streets. In a typical residential subdivision (regardless of whether the streets are dedicated or are intended to remain private), the reason why the residential streets to be constructed as part of that subdivision do not violate the "permissive ordinance" rule – despite the fact that the streets are not listed as an expressly permitted use – is that they are "accessory" to every lot which they serve. By contrast, in the case of an access way running through a

John Sokul, Esq.

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residentially-zoned lot to serve a commercial development, it is not "accessory" to the residentially-zoned lot, regardless of whether it is constructed to "street" standards or whether it is dedicated to the City, because it violates the normal "permissive ordinance" rule, as not being accessory to any expressly permitted use.

(h) It appears to me that a functional analysis approach to the issue is justified, which would include questions such as: (i) Is the primary purpose of the access way to serve uses in a different zoning district? (ii) Does the access way also serve properties within that same zoning district? (iii) Would the access way be likely to generate volumes and/or types of traffic which would not normally be seen on an access way whose purpose is to serve the district where that access way is located?

(i) I have before me a Holden Engineering plan for the proposed subdivision in "River Park." The facilities to be served by the proposed access way include a proposed retail building on Lot #1, a proposed retail building on Lot #10, a proposed apartment building on Lot #2, two office buildings and a 5-story parking garage on Lot #3, proposed office buildings on lots #4 and #5, a proposed restaurant and large parking deck on Lot #8, and Lots #9, #6 and #7 whose uses are undesignated.

(j) Using the functional analysis as referred to above, it seems to me that the Zoning Administrator could reasonably decide that the southwesterly arm of the proposed access road would be allowed as "accessory" to *both* CBD and IND districts, because that section of roadway does indeed provide access to both the proposed CBD district uses and the proposed IND district uses, with neither predominating over the other as being the primary purpose of the access way, and furthermore that the levels and types of traffic generated by the proposed IND uses and running through the more restrictive CBD district are not out of line with what might be expected to be generated by permitted uses within the CBD district itself.

(k) On the other hand it appears to me that the northeasterly portion of the road (the portion running through the R-3 district) cannot be deemed "accessory" under such a functional analysis. It does not appear to be serving any uses proposed for the R-3 district itself. Its primary purpose appears to be the serving of the uses in the other two districts, and the levels of traffic to be generated by the office buildings, retail uses, and parking structures are clearly out of line with the traffic which would be generated by any uses permitted in the R-3 district.

* * *

In conclusion, my advice to the Zoning Administrator will be that the northerly portion of the proposed roadway – that portion within the R-3 district – is not permitted unless (a) a variance is obtained from the ZBA, or (b) the Council takes advance action

John Sokul, Esq.

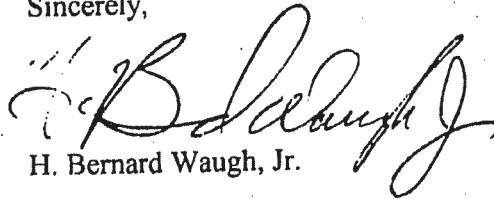
July 15, 2010

Page 6

to conditionally accept the road as a public highway, in such a way as to make it exempt under Section 214 of the Ordinance. The third option, of course, would be to re-design the proposal so that the street serving the CBD and IND portions of the lot did not go through the R-3 portion.

Please don't hesitate to get back to me about this subject.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Bernard Waugh, Jr.", written in a cursive style.

H. Bernard Waugh, Jr.

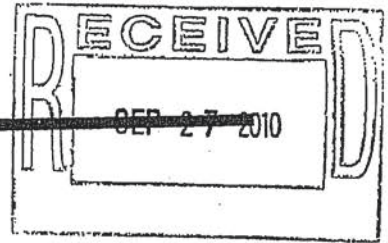
cc: Carmela Hennessy
Leonard Jarvi

ATTACHMENT 2
MEMO



MEMO

Codes Department
City of Lebanon, NH



To: Lebanon Planning Board
From: Carmela Hennessy, Codes Enforcement Director
Subject: XYZ Dairy LLC - Major Subdivision
Date: September 16, 2010

A public street is not subject to the terms of the Zoning Ordinance, however, private driveways and streets are. New streets being proposed through more restrictive districts (i.e., a driveway/ street extending from an industrial or commercial district through a more restrictive residential district) are not permitted. Unless one of the following options are met, I recommend that the Planning Board not grant final approval of the layout on the grounds that it violates the Zoning Ordinance. The following options were developed with the advice of the City's legal counsel:

1. A variance from the Zoning Board is obtained to allow the street to run through residentially zoned land.
2. The developer requests that the City Council take advance action to *conditionally* accept the street as a public highway. That action would make it exempt from zoning under Section 214 of the Ordinance. This would have to occur prior to final approval of the subdivision by the Planning Board. The process for acceptance is contained in RSA 674:40 "Improvements in Unapproved Streets."
3. The Planning Board grants *conditional* approval for the subdivision that only becomes final "if" the City Council accepts the public highway. The Planning Board's *conditional* approval should make it clear that a 2/3 vote of the Council, accepting the street as a public highway, has to occur prior to the plan being recorded as final (a condition precedent).
4. Redesign the proposal so that the streets serving the industrially and commercially-zoned land do not run across residentially-zoned land.

As Zoning Administrator I advise the Planning Board on issues concerning the Zoning Ordinance. However, the Planning Board has the authority to reach its own conclusion on the issue of whether this street violates the Zoning Ordinance. If the Planning Board arrives at a different conclusion, and finds the proposed street and application in compliance with the Zoning Ordinance, an aggrieved party would appeal that conclusion directly to the Zoning Board of Adjustment under RSA 676:5, III.

**ATTACHMENT 3
DRAFT PUBLIC RIGHT OF WAY DEED**

PUBLIC RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, that XYZ Dairy, LLC, a New Hampshire limited liability company, of 23 South Main Street, Hanover, County of Grafton and State of New Hampshire, for consideration paid, does hereby grant unto the City of Lebanon, a municipal corporation having a mailing address of 51 North Park Street, Lebanon, County of Grafton and State of New Hampshire, with QUITCLAIM COVENANTS, for an easement for public highway purposes, the following described real estate located in Lebanon, Grafton County, State of New Hampshire:

All of those certain roads identified as RIVER PARK DRIVE and CRAFT AVE (collectively, the "Roads") to be used as public highways or streets as shown on a set of plans (the "Plans") entitled "Subdivision Plans, River Park", drawn by Holden Engineering & Surveying, Inc., dated June 10, 2010 and revised July 29, 2010, as approved by the City of Lebanon Planning Board at a meeting held on _____, 2011 and as recorded in the Grafton County Registry of Deed as Plan # _____.

There are also being conveyed all water, sewer and drainage lines, pipes, culverts and appurtenances located in the Roads and located within the Subdivision Property.

For Grantor's title, see deed recorded at Book 3455, Page 503 in the Grafton County Registry of Deeds.

This transfer is exempt from NH Transfer Tax under RSA C-78-B:2, I

EXECUTED this ____ day of _____, 2011.

XYZ DAIRY, LLC

By: _____
Name: _____
Its: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____

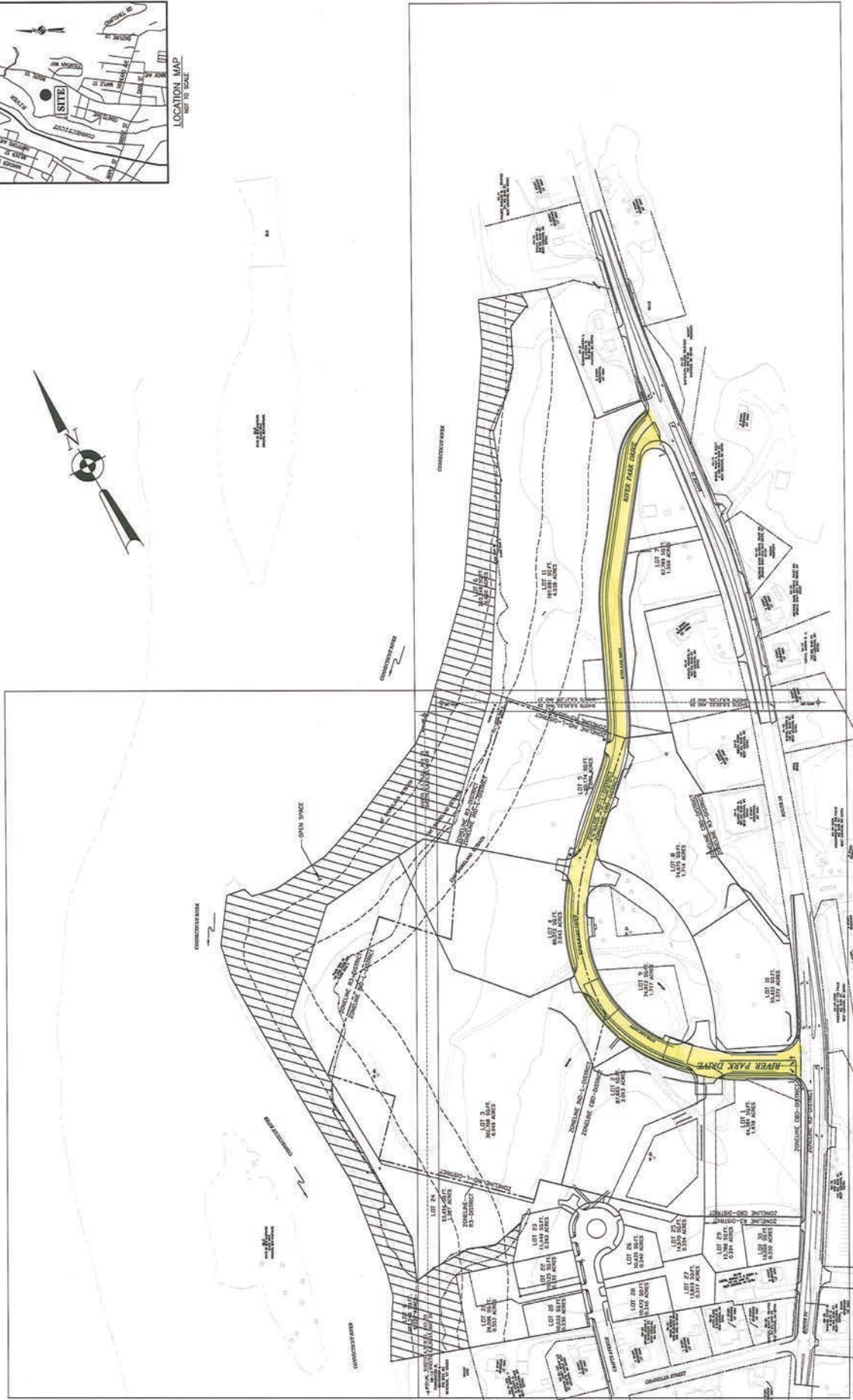
On this ____ day of _____, 2011, before me, personally appeared _____ of XYZ Dairy, LLC, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and being authorized so to do, made oath that he/she executed the same as his/her free act and deed for the purposes therein contained on behalf of XYZ Dairy, LLC.

Before me,

Notary Public/Justice of the Peace
My commission expires

899404v1

**ATTACHMENT 4
SUBDIVISION PLANS**



OVERVIEW / INDEX PLAN (LOT LAYOUT)
RIVER PARK
LEBANON, NEW HAMPSHIRE

Project:	02/21/10
Address:	02/21/10
City:	02/21/10
State:	02/21/10
Zip:	02/21/10
Owner:	02/21/10
Design:	02/21/10
Drawn:	02/21/10
Check:	02/21/10
Date:	02/21/10
Scale:	1"=100'
Dr. By:	MC CA BY: BT
Job No.:	1020132
Sheet no.:	2 of 72

HOLDEN ENGINEERING & SURVEYING, Inc.

100 Main Street, Suite 200
Lebanon, NH 03756
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www.holden-engineering.com

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CITY MANAGER'S OFFICE
City of Lebanon, NH
51 North Park Street
Lebanon, NH 03766
(603) 448-4220 fax (603) 484-9175

TO: Honorable Mayor and City Council
CC: Attorney John Sokul (Representing XYZ Dairy, LLC)
FROM: Greg Lewis, City Manager
DATE: May 3, 2011
RE: Acceptance of River Park Drive as a Public Street

After review and consideration of the request put forth by XYZ Dairy, LLC, and a meeting held between City Staff and the applicant on May 2nd, City Administration is recommending that the City Council not accept River Park Drive as a public street. Reasoning for this recommendation is as follows:

- There is no public benefit to making this a public street. It is not a thru road, it does not take traffic from one route to another, and does not serve as an alternate route.
- On-going maintenance cost for an additional road and two additional bridges.
- River Park Drive will only serve the uses in River Park. Other such roads in recently approved developments (Timberwood, Prospect Hills, Rock Ridge, etc.) are private.
- XYZ Dairy, LLC has expressed an interest in keeping the road private and has been provided with alternatives to keep the road private.
- The Project has a (+/-) 15 year build-out. The road and both bridges would need to be inspected for maintenance to ensure that they have maintained their integrity throughout the construction process.

It is understood that XYZ Dairy has presented a request of the City Council and is looking for action on their request. If, at the conclusion of its deliberations, the City Council decides to act to conditionally accept River Park Drive, Administration would request that the Council table action to June 1st to afford staff the time necessary to develop potential conditions.

OFFICIAL

**CITY OF LEBANON
CITY COUNCIL
Minutes, Regular Session, May 18, 2011
City Hall—Council Chambers
7:00 p.m.**

MEMBERS PRESENT: Mayor Georgia Tuttle, Assistant Mayor Scott Pauls, Councilors Bruce Bronner, Nicole Cormen, Carol Dustin, Erling Heistad, Karen Liot Hill, Suzanne Prentiss, Stephen Wood

MEMBERS ABSENT: None

STAFF PRESENT: City Manager Greg Lewis, Executive Assistant Paula Maville, City Clerk Sandra Allard, Public Works Director Michael Lavalla, Zoning Administrator Carmela Hennessy, Fire Chief Chris Christopoulos, City Engineer Christina Hall, Senior Planner David Brooks, Utility Maintenance Superintendent Carl Colburn

The meeting was called to order at 7:03 by Mayor Tuttle.

VIII. OLD BUSINESS

A. Water & Sewer Extension Request: XYZ Dairy, LLC for River Park, Route 10 (North Main Street), West Lebanon.

(Councilor Cormen recused herself at this time.)

Mr. Lewis said the City Manager, with the assistance of Public Works, Planning and Zoning and the City attorney, recommends passage of the motion as included in the May 18 agenda packet.

Stephen Wood moved that the Lebanon City Council hereby authorizes the City Manager to negotiate and execute all necessary agreements in accordance with Chapter 181, Water and Sewer Main Extensions, of the Code of the City of Lebanon, for the construction, connection, and acceptance of water and sewer mains in order to serve the proposed River Park Development located off Route 10 (North Main Street), West Lebanon, subject to the following conditions:

- 1. The sewer line in Crafts Avenue be replaced and upsized to a minimum 15" line, and be installed pursuant to City Code. Prior to**

commencing construction, the applicant shall coordinate with the Department of Public Works to ascertain the City's ability to install an 18" line. If feasible, the City will be responsible to fund the difference in cost between the 15" and the 18" line.

2. In order to determine whether upgrades to the existing water system are necessary, additional on-site flow testing must be completed. Testing will include running flow tests with either Route 10 (to the north of the development) or Fountain Way isolated from the water system to determine if the 6" section of pipe along Route 10 is adequate to support required fire flows from both directions. Fire flows for the River Park Development require a sustained minimum flow of 2,000 gpm. In order for this minimum to be available at the development site, Route 10, during the duration of the tests, must be able to provide 2,000 gpm @ 45psi to meet minimum domestic requirements at the service connection to each building. If Route 10, as it exists, is found to be adequate, no upgrades to the water system will be required. If Route 10 proves to be inadequate, XYZ Dairy, LLC will be required to either upgrade the Route 10 system to provide the necessary flow, or to upgrade the service in Crafts Avenue and loop it with the Route 10 water lines.
 - Necessary upgrades to Route 10 will be determined by the City in accordance with the results of the on-site flow testing.
 - Upgrades to Crafts Avenue Line will include replacing the existing water main with a 12" ductile iron line.
3. Following the Crafts Avenue sewer line replacement as set forth in Condition #1, and the water line replacement if applicable under Condition #2, XYZ Dairy, LLC shall be responsible for the cost of reconstruction of the full length and width of Crafts Avenue, including sidewalks, to reflect its current dimensions and level of service. If the City wishes to upgrade any aspect of Crafts Avenue, for example upgrades to the drainage, or replacement of existing asphalt curbing with granite, additional costs of such upgrades shall be borne by the City. All required roadway improvements shall be completed prior to the acceptance of the sewer (and/or water) lines.

Seconded by Erling Heistad.

David Clem of Hanover, owner of XYZ Dairy and Lyme Properties, thanked the Council for postponing this item from April 20 and thanked the City Manager for responding to his requests for a meeting. He said the Council has the right to impose reasonable conditions. He said the original conditions proposed would have been excessive. He said he takes exception to the need for a 15-inch line. He understands why the City wants this upgrade, but he does not think there is a nexus that makes River Park responsible for it. He cited his objections to the original plan to expand Crafts Avenue,

and he said even the amended condition is somewhat ambiguous. He said the original data his company submitted was altered; they have redesigned Crafts Avenue twice, and now they must do so a third time. He said he hopes his representatives can meet with the City expeditiously to resolve this. He said the motion as stated will cause disruption to the neighborhood. He said they will have to build the road before they can obtain a building permit. He said he hopes the City Manager has some leeway in negotiating the language of the agreement.

Terrill Salter, Ward 1, said it is not clear to her if Condition #3 means the road will be widened to City standards. Mayor Tuttle said the road would remain its current width. Tony Perrone, Ward 1, said he has been going to meetings about this project on a regular basis. He said River Park has done a lot to make this a smooth process. It is a difficult project, and a lot needs to be worked out. He said voters overwhelmingly approved the zoning change needed to make this project happen, and now the community is making the project difficult. He said there is a perception that someone does not want this project to happen. He does not understand why the City keeps adding more requirements. Catherine Goodall Heising, Ward 1, suggested that the Council change the motion to give the City Manager more leeway to negotiate. She said there are many reasons why the width of Crafts Avenue should stay the same.

Mayor Tuttle said this request was postponed for two weeks at the request of the applicant. She said all applicants are treated the same. She said the Council has a clear responsibility to protect those who live and pay taxes in Lebanon. The water and sewer plants are close to capacity, and the proposed work would not have been done if not for this development. She said she believes the City has done due diligence; a 15-inch pipe is required for this project, and the City is willing to pay to upgrade that to 18 inches so the road will not have to be torn up again later. She said the proposed motion protects everyone and treats the applicant fairly.

Assistant Mayor Pauls said he will support the motion. He said assuming the 18-inch line is installed, the City will be spending about \$285,000 on wastewater upgrades and \$100,000 to upgrade Crafts Avenue. If the motion is amended to upgrade the wastewater system to what the staff and consultant feel is appropriate, the cost would be much higher. One million dollars in work would raise the tax rate by five cents. He said he has heard people say that this project will increase the tax base; based on the fiscal impact numbers, the project will provide tax relief to the school district, but the municipal taxes will about break even with expenses. The work done by the City at the site will not be paid back. He said it is prudent to stick with the motion as presented.

Councilor Hill said she supports the motion. She said she hopes the developer will have clarity and will be able to create a final design, know the scope of work, and move forward. Councilor Heistad said he supports the motion because it supports the residents of Lebanon and allows the project to move forward. He said he is concerned about the lack of sewer capacity and the financial impact to the City. Councilor Bronner said he will support the motion. He said the City Councilors are not engineers, and they are obligated to support City staff and their recommendations. Councilor Prentiss said

she will support the motion for the reasons stated by others. She said both sides have crafted clear, collaborative language, and there is room for further conversation.

****The motion passed 8-0.***

Mr. Lewis complimented Mr. Clem and his representatives and said their two meetings contributed to the dialogue. He said he hopes that tone can be maintained. Mayor Tuttle thanked the City manager for initiating this process.

IX. NEW BUSINESS

A. Request by XYZ Dairy, LLC: Conditional Acceptance of River Park Drive

Mr. Lewis reviewed his memo to the Council regarding this issue. He said staff had a good dialogue with XYZ Dairy, LLC and discussed other alternatives.

Stephen Wood moved that the Lebanon City Council hereby declines the request of XYZ Dairy, LLC to conditionally accept River Park Drive as a public highway for the reasons outlined in the May 3, 2011 memo from City Manager Greg Lewis, as presented in the May 18, 2011 City Council agenda packet. Seconded by Carol Dustin.

Mr. Clem said his subdivision application cannot be considered complete until this issue is resolved. He said over 11 months and a number of meetings, he has asked that River Park Drive be designated as a public street. He said he has incorporated \$130,000 in changes. He said he is slightly frustrated that the city has 100 miles of public streets, but a 0.34-mile street is not worthy of being considered of public benefit. He noted that Centerra's streets are four times as long. He said his company has offered to pay all maintenance costs. He said the road provides a public purpose because it will provide safe, convenient public access to the Connecticut River; they are negotiating with Advance Transit for an improved park-and-ride and bus transfer station; the project will expand the tax base; the project will increase the demand for downtown services, as sought by the Master Plan; job opportunities will be increased as part of mixed-use development; traffic safety on Route 10 will be improved as a result of his company's change in curb cuts; the residential character of Crafts Avenue will be protected, as it will not be used as a primary access; and traffic flow on Route 10 will be improved.

Mr. Clem said the options introduced to him are different from what they were previously. He said he does not think he can meet the hardship test to obtain a variance, and he does not think he wants to expose himself to that. He said he can ask the Planning Board to ignore the advice of their attorney. He said he has been asked to maintain a private road and build it to public standards. He said this is an opportunity for the Council to vote in favor of something that will make River Park happen.

Nicole Cormen, Ward 3, speaking from the audience, said she is in overall agreement with Mr. Clem regarding public benefits of the road. She said she supports the points that were made during the water and sewer extension discussion regarding the effect of this development on the tax burden, which has fallen disproportionately to residents. She said the City has been consistent recently in asking that private roads be built to public standards. She said there is a high degree of public support for this project.

Attorney Bernie Waugh, representing the City of Lebanon, said Mascoma Savings Bank was not allowed to have a parking lot in a residential area. He said a private road through a residential area serving only a commercial/industrial area is a violation of the Zoning Ordinance. He said River Park Drive could be a public highway, and thus not subject to the Zoning Ordinance; the developer could get a variance; or the Planning Board could find that specific factual aspects distinguish this situation from the black and white of the Zoning Ordinance. He said the City Council could agree to make it a public road, subject to conditions, including requiring the developer to maintain the road. In that case, he advised the Council to defer that decision until a later date so a coherent list of conditions can be developed.

Attorney John Sokul of Hinckley Allen & Snyder, representing XYZ Dairy, LLC, said he believes the Code Enforcement Director's decision is incorrect. He said the Zoning Ordinance distinguishes between streets and driveways but not between public and private streets. He said a street is defined as a "public right-of-way or right-of-way shown on a subdivision plat approved by the Planning Board." He said this constitutes a continuing offer of dedication of the street as a public street. He said one line of thought is that once a street is offered for dedication as a public street, that gives the public the right of passage, unless that is negated on the plan. The developer has said that the public may use the streets while the developer maintains them. He said a road of any length that crosses multiple zoning districts is a conundrum; the purpose of a street is to get people from one place to another. This is not a public road only because the developer will maintain it, and the developer wants control of the road during the construction process.

Geoff Bronner, Ward 1, stated that he is not related to Councilor Bronner. He said the main public benefit of this road is that it keeps faith with Crafts Avenue. He said the Mascoma Bank issue cited by Mr. Waugh led Mascoma to build in another town. He encouraged the Council not to send the applicant to the Zoning Board. Derek Tsakiris of Crafts Avenue said residents expressed a concern that his street not be used as a through-way, and Mr. Clem proposed a cul-de-sac. He asked that if this decision bears on access, that it be made to work. If this is a deal-breaker for this project, it will be a sad case study of killing a deal that has overwhelming public support.

Tom Hoyt, Ward 1, said there are now 30-40 buses per day that load in front of the Kilton Library directly across from the fire station. This is an opportunity to move them. He said this is the Connecticut River valley, but there is no good place to access the river. He said a few years from now, the city will look back on this as an opportunity to do something, and people often regret what they do not do.

Councilor Bronner said XYZ has made a compelling argument, and he will not support the motion. He said he would support a motion that would allow the applicant and the City attorney to work this out. Mayor Tuttle said she will support the motion. Just because the road is not a public road, that does not mean that the public cannot use it. She said Mr. Clem has offered to maintain the road, but the City has had situations in which a developer has gone bankrupt and the taxpayers have been required to maintain roads. She said there is a liability issue. She said there will be access to the Connecticut River via the new park off Bridge Street. She said the previous Council took flak for making an effort to resolve the issue of a street crossing a residential district into a commercial area by changing the zoning, and they have supported the public desire for River Park. She said there are other ways to resolve this issue, and citizens should not take on a future risk with this road.

Assistant Mayor Pauls said he is concerned about the cost of adding more City roads; that has been allayed somewhat by Mr. Clem's offer to maintain the road, but he does not know how that will work. He said when the Council discussed the petitioned zoning change, the Zoning Administrator provided options, so this is not a new problem, and acceptance of the road may create a poor precedent. There needs to be legal language so not every road will become a public road. Councilor Hill said several of the City Manager's concerns have been addressed, and Mr. Clem's justifications of public benefit are persuasive. She said the maintenance concern is valid, but the developer is willing to take on that cost. She said other concerns can be addressed. She agreed with Councilor Bronner that the City and the developer should continue to work together to reach an agreement. Regarding a precedent, she said they are unlikely to see exactly the same situation again.

Councilor Prentiss said she respects the City Manager's and Mayor's points, but she cannot support the motion, and she agrees with Councilor Bronner. Councilor Wood said he will support the motion. He said declining to accept the road does not preclude future negotiations and provides that opportunity, as requested by other Councilors. He said the fact that Mr. Clem cannot prove hardship is of no concern. He said Mr. Clem suggests that the City take an eternal promise to maintain the road, but there will be a cost to the City if XYZ falls on hard times, and that is something that cannot be promised. Councilor Heistad said he agrees with Councilor Wood. Councilor Dustin said she will support the motion and agrees with Mayor Tuttle about the liability issue.

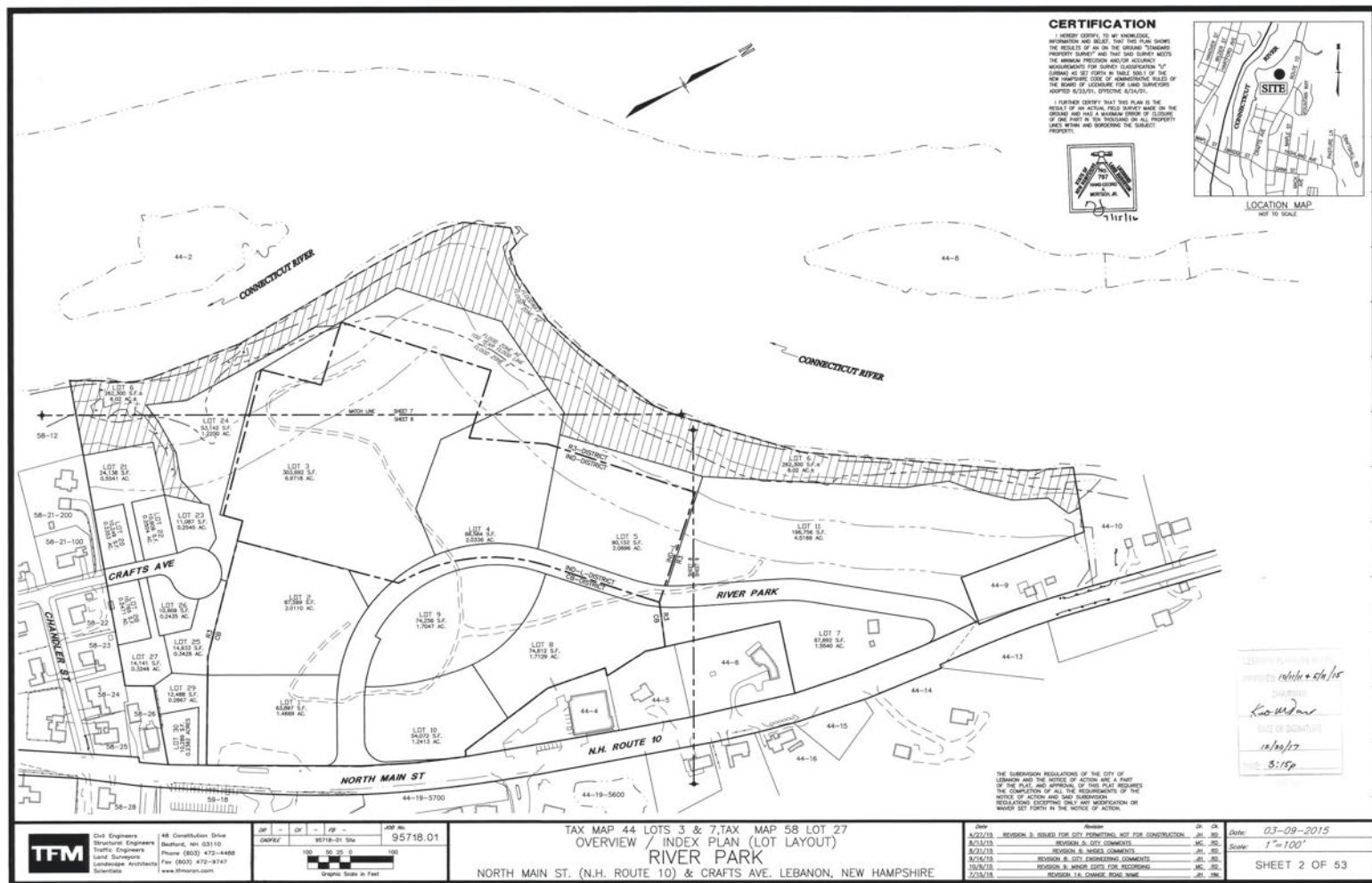
Assistant Mayor Pauls said he will support the motion and agrees with Councilor Wood. He said he hopes other avenues will be pursued. He said he hopes the Planning Board can determine how to proceed at its May 19 meeting while discussions are ongoing. Councilor Hill asked why a motion is necessary at this meeting. She suggested tabling this until a future meeting and keeping options open. She said she is sympathetic to the perception that City Hall does not want this project to proceed, and a vote on this motion could be seen as another roadblock. Councilor Wood said he is less interested in appearance than he is in the effect, and no one could reasonably think that the Council is trying to block this project.

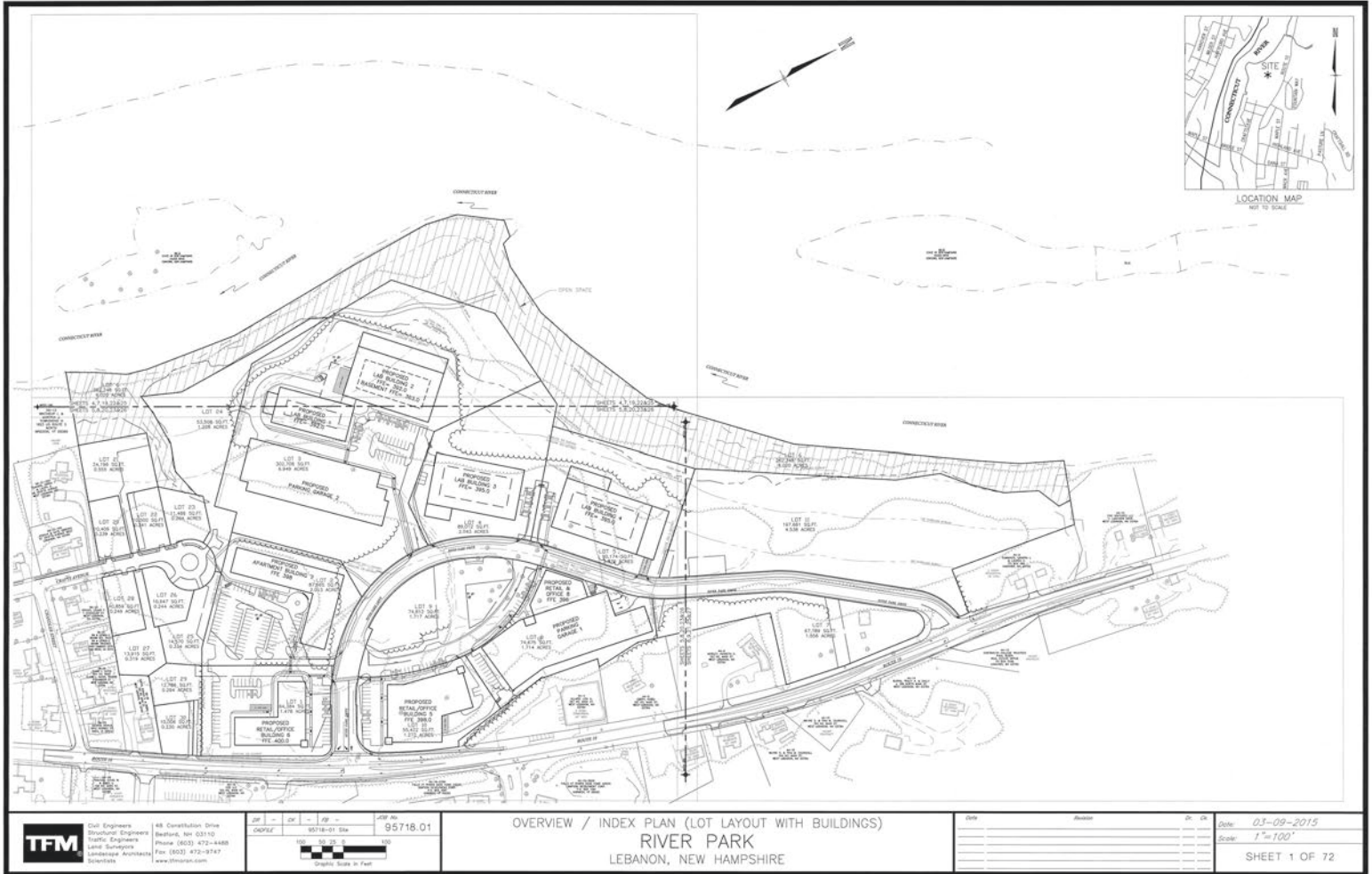
Joan Monroe, Ward 3, noted that there are four public access points to the Connecticut River in Lebanon.

****The motion passed 5-3. Voting for the motion: Dustin, Heistad, Pauls, Tuttle, Wood. Voting against: Bronner, Hill, Prentiss.***

Mr. Lewis said he will work with the developer until the project is successful or all other means are exhausted, pursuant to the will of the Council and the public represented at this meeting.

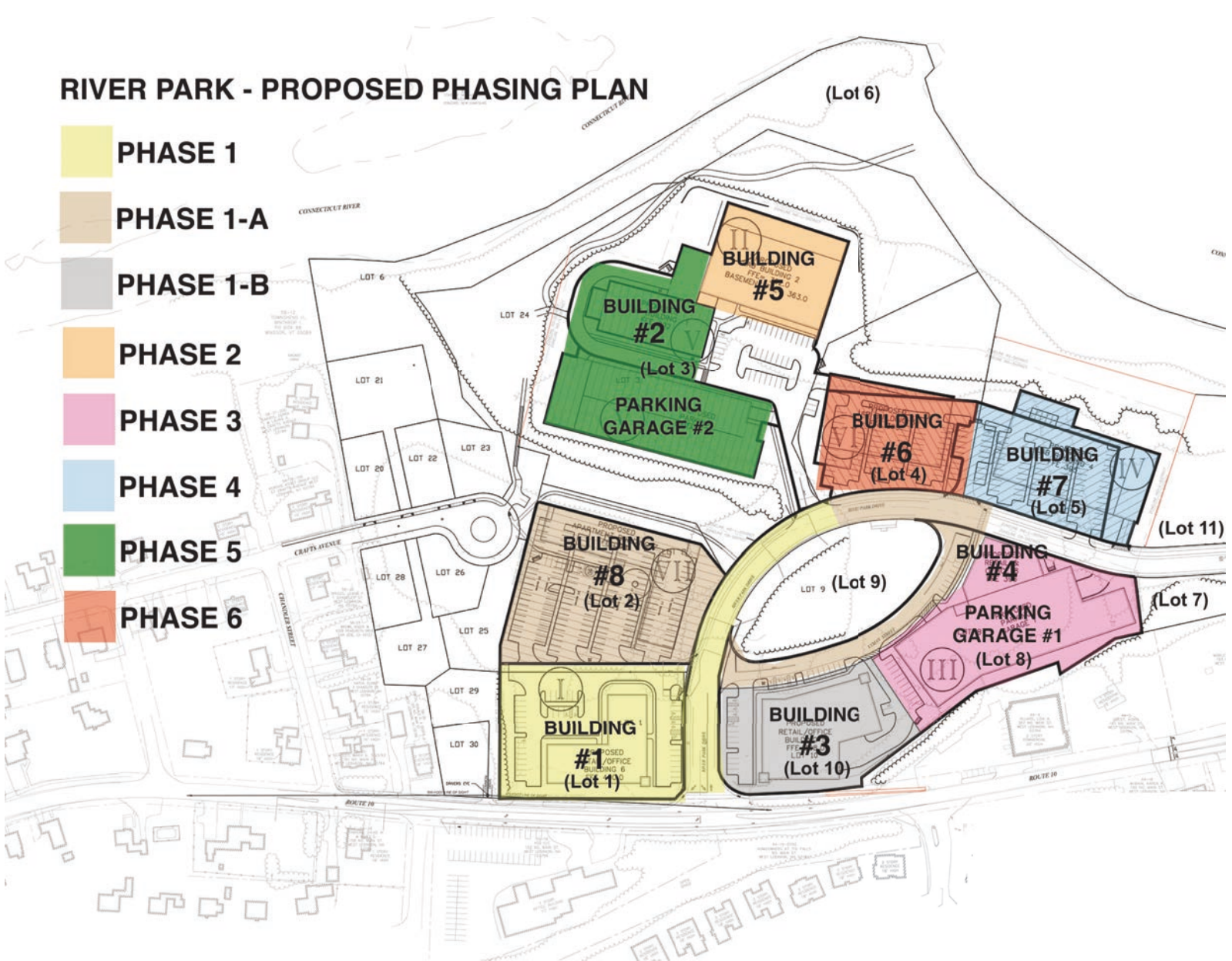
(The meeting was recessed from 8:47 – 8:52 p.m.)





RIVER PARK - PROPOSED PHASING PLAN

- PHASE 1
- PHASE 1-A
- PHASE 1-B
- PHASE 2
- PHASE 3
- PHASE 4
- PHASE 5
- PHASE 6



**Agenda
Lebanon City Council
July 05, 2023**

10. New Business:

**10.F – Discuss Revised Membership Composition For
Lebanon Energy Advisory Committee**

Background

The Lebanon Energy Advisory Committee (LEAC) was originally created in 2007 to identify opportunities and make recommendations to the City Council with regard to reducing energy use, increasing energy efficiency, exploring alternative energy usage, and reducing pollution to the environmental and fiscal benefit of the City. The charge was modified in 2009 to include promoting energy conservation measures for city residents and businesses, thereby cutting greenhouse gas emissions and reducing energy costs for taxpayers.

The composition of the committee has been changed several times since its inception, most recently in April 2017, when membership was set at seven (7) members, comprised of four regular members, two alternate members, one Planning Board representative, one Council representative, one alternate Council representative, and one Lebanon High School student representative.

At its meeting on June 15, 2023, LEAC voted in favor of requesting that the City Council modify the membership composition of the committee to change the position designated for a Lebanon High School Student Representative to a Regular Citizen Representative. LEAC members noted that the designated student seat has not been filled in recent memory despite mention of its existence to the Lebanon High School Guidance Department. Meanwhile, it was noted that there are citizens willing to apply for membership on LEAC if a position was available.

Action

Should the Council wish to approve the request, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby amends the membership composition of the Lebanon Energy Advisory Committee to change the designated Lebanon High School Student Representative seat to a Regular Citizen Representative seat. The committee membership will now be comprised of five regular citizen members, two alternate citizen members, one Planning Board representative, one City Council representative, and one alternate Council representative.