



**LEBANON CITY COUNCIL
JULY 19, 2023 - 6:00 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: 471 725 049#). If you have trouble accessing this meeting, please [email Shaun Mulholland](#).

The July 19, 2023 Lebanon City Council Meeting is hereby called to order.

2. Pledge of Allegiance

3. Boards and Committees Reports (2nd Quarter 2023)

4. 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.)**

5. Open to the Public

6. Recognitions: None

7. Approval of Minutes

A. MOTION TO approve the minutes as presented in the July 19, 2023 agenda packet.

8. Appointments

A.

- Conservation Commission, Ernst Oidtmann (Reappointment Regular Member)
- Conservation Commission, Donald Lacey (Reappointment Regular Member)
- Library Board of Trustees, Yuli Volentino (Regular Member)
- Lebanon Energy Advisory Committee, Henry Bromberg (Regular Member)

9. Public Hearing Items

- A. 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.
 - 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. 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.
 - i. Presentation:
 - ii. Opening of the Public Hearing:
 - iii. Questions & Comments by the Public:
 - iv. Closing of the Public Hearing:
 - v. Council Deliberation & Action:
- 10. Old Business: None**
- 11. New Business**
- A. Discussion & Set Public Hearing for August 2, 2023: Acceptance of Dedication of Commerce Avenue and Technology Drive
 - B. Discussion and Set Public Hearing for August 16, 2023: Consideration of Provisional Dedication and Acceptance of an alternate Barden Hill Road (Public Highway per NH RSA 229:1 or Class A Trail per NH RSA 231-A:5)
 - C. Discussion and Set Public Hearing for August 16, 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)
- 12. City Manager Report**
- 13. Council Representatives to Other Bodies Report**
- 14. Future Agenda Items**
- 15. Non-Public Session**
- 16. 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 - No future board/committee/commission appointments are pending at this time.

Proposed Future Agenda Items: Dates may be tentative, and this list is not considered all-inclusive.

Lebanon City Council Agenda
July 19, 2023

August 2, 2023

Public Hearing Items:

A. ACCEPTANCE OF DEDICATION OF COMMERCE AVENUE AND TECHNOLOGY DRIVE – A public hearing for the purpose of receiving public input and taking action to accept a dedication of Commerce Avenue and Technology Drive originally dedicated in 1987 and constructed in the 1980s.

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)

B. Discussion of Provisional Dedication and Acceptance of an alternate Barden Hill Road (Public Highway per NH RSA 229:1 or Class A Trail per NH RSA 231-A:5)

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

August 16, 2023

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 (Public Highway per NH RSA 229:1 or Class A Trail per NH RSA 231-A:5).

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).

New Business:

A. Discussion & Set Public Hearing for September 6, 2023: Ordinance #2023-XX to amend City Code Chapter 136, Sewer Service, §136-78, Collection

B. Discussion and Presentation of Phase 3 Solar Project – Supplemental Appropriation

**Agenda
Lebanon City Council
July 19, 2023**

6. Acceptance Of Minutes:

Minutes To Be Accepted

- July 5, 2023 (Regular Meeting)

MOVED, to approve the minutes as presented in the July 19, 2023 agenda packet.

DRAFT

**LEBANON CITY COUNCIL
REGULAR SESSION MINUTES
Wednesday, July 5, 2023, 7:00 p.m.
Council Chambers**

Remote Via Microsoft Teams: [LebanonNH.gov/Live](https://lebanonnh.gov/Live)

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

MEMBERS ABSENT:

STAFF PRESENT: City Manager Shaun Mulholland, Deputy City Manager David Brooks, Deputy Director of Planning & Development Tim Corwin, Finance Director Vicki Lee, Deputy Finance Director Alesia Williams, Solid Waste Manager Erica Douglas, DPW Administrative Services Manager Kelly Crate, Planning Department Administrative Assistant Crystal Taplin

1. CALL TO ORDER: Mayor McNamara called the meeting to order at 7:00 p.m.
• City Manager Shaun Mulholland announced the meeting criteria for the public.

2. PLEDGE OF ALLEGIANCE: Councilor Simon led the Council in the Pledge.

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

4. OPEN TO PUBLIC: No one came forth.

5. RECOGNITIONS: NONE

6. ACCEPTANCE OF MINUTES: June 21, 2023 (Regular Meeting)
Amendments: For clarification purposes: Page 19, Lines 25-26 (agenda packet) should read as follows:
“Councilor Whittlesey pointed out that the acquisition cost of \$400K equates to the equivalent of only four (4) years of emergency shelter funds that was provided in the budget for 2023.”

*Councilor Whittlesey MOVED to approve the June 21, 2023 minutes as amended and presented in the July 5, 2023 City Council agenda packet.
Seconded by Councilor Liot Hill.*

**The Vote on the Motion was approved (9-0)*

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. (*Pages 23-25, Council agenda Packet*)

Deputy City Manager David Brooks reviewed the background.

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), which is for the purpose of paying property taxes, which are due because the properties are being used for a private purpose. It also covers utilities, maintenance, trash removal, etc., as shown in chart below.

ESTIMATED ANNUAL BUDGET FOR 14, 28, & 30 MAIN STREET

	14 MAIN ST	28 MAIN ST	30 MAIN ST	Notes	Remaining FY23
ANNUAL PROPERTY TAXES	\$ 10,513.00	\$ 12,276.00	\$ 10,557.00		
ANNUAL HAZARD INSURANCE					
ANNUAL Winter Maint	\$ 5,000.00	\$ 12,000.00	\$ 12,000.00	Time & material \$212.X 26 storms	
CONTRACTED SERVICES (Plumbing/Elect)	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00		
ANNUAL HVAC	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$500.00 Per bldg for cleaning,	
ANNUAL VLS	\$ 500.00	\$ 500.00	\$ 500.00	Life Safety Inspections	
ANNUAL Summer Maint	\$ 500.00	\$ 500.00	\$ 1,000.00		
ANNUAL FUEL CONSUMPTION	\$ 5,900.00	\$ 6,700.00		Numbers from seller's information	
ANNUAL ELECTRIC COSTS	\$ 7,200.00	\$ 7,200.00	\$ 12,000.00		
ANNUAL TRASH REMOVAL	\$ 4,020.00	\$ 4,020.00		335.00 Per month	
ANNUAL WATER/SEWER	\$ 2,000.00	\$ 1,900.00	\$ 900.00	(added 16% for W&S)	
OTHER MAINT SUPPLIES (cleaning,painting,locks)	\$ 7,500.00	\$ 7,500.00	\$ 2,000.00		
Drainage issue			\$ 5,000.00	30 Main Street, culvert out back	
Other					
TOTAL EXPENSES	\$ 48,633.00	\$ 58,096.00	\$ 49,457.00	\$156,186.00	\$78,093.00
Annual debt service payment-Mascoma Bank		\$76,500.00			\$38,250.00
					\$116,343.00
MONTHLY RENTAL INCOME	\$ 4,000.00	\$ 3,000.00	\$ -	\$ 84,000.00	\$48,050.00
SECURITY DEPOSIT AMOUNT	\$ 1,250.00	\$ 475.00	\$ -		

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.

Mayor McNamara opened the Public Hearing. Hearing no comments from the public, the Public Hearing was closed.

Council Discussions: None

ACTION:

Councilor Whittlesey MOVED, the following:

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.

Seconded by Councilor Sykes.

****The Vote on the Motion was approved (9-0)***

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

Included in the agenda packet: ***(Pages 26-32 , Council agenda Packet)***

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

Deputy City Manager David Brooks reviewed the background behind this amendment.

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. (See Charts Below)

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

1 the two parcels accessed from the extended Airpark Road (see the attached plan of the UVTP Planned Unit
2 Development). In addition, the City is planning for the development of an Early Childhood Learning Center
3 facility on the City's parcel.

4
5 The owners of the UVTP parcel have also received interest for a potential development on the westerly side
6 of their property (the third lot of the 3-lot PUD), which would be accessed from Technology Drive within
7 the Phase 1A Airport Business Park. However, the constructed portion of Technology Drive and the
8 associated water and sewer infrastructure do not extend the full length of the public right-of-way and stop
9 short of the UVTP parcel boundary. Since the Technology Drive right-of-way is already publicly owned, it
10 is expected that any further extension of the roadway and utility infrastructure within the right-of-way will
11 become the City's responsibility for ownership and maintenance.

12
13 By statute, tax increment funds generated within the TIF District can only be expended within the District.
14 Since the portion of Technology Drive leading to the UVTP parcel is not within the existing District, the
15 incremental revenues generated by the development of the UVTP parcel cannot be used to pay for, or repay,
16 the costs of extending the public infrastructure to the property boundary.

17
18 The City Manager, as the TIF District Administrator, is recommending that the TIF District Boundary be
19 expanded to include the southernmost +/-220 feet of the Technology Drive right-of-way. The area of the
20 right-of-way will not have any fiscal impact on the district itself since the area is non-taxable, but will allow
21 for TIF revenues to be used for the construction and maintenance of the new segments of roadway and
22 utility infrastructure within the right-of-way.

23
24 As required by RSA 162-K:9, the Grafton County Commissioners and the Lebanon School Board have
25 been provided with notice of the public hearing on July 5, 2023 in order to be informed of the fiscal and
26 economic implications of the proposed TIF District.



28
29
30 The right-of-way is depicted in yellow below.

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.

The proposal before the Council was to extend the TIF District Boundary by approximately 220' within the right of way of Technology Drive so that the improvements that are ultimately made to extend the road and the sewer/water utilities can be paid for with the TIF District increment that is generated from the development of this property.

Mayor McNamara opened the Public Hearing. Hearing no comments from the public, the Public Hearing was closed.

Mr. Brooks reminded the Council that this is a Public Hearing 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 because the Statute requires that the hearing be held at least 15 days prior to any action being taken.***

ACTION: *Action will be scheduled for August 2, 2023.*

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

Included in the agenda packet: *(Pages 33-40 , Council agenda packet).*

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

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.

Proposed amendments to Ordinance #2023-03, Chapter 97, outlining the amendments, are listed below 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).

(NOTE: Complete Ordinance #2023 (with amendments depicted in **red**) can be found on *pages 35-39, in the July 5, 2023 City Council agenda packet.*

ACTION:

Councilor Whittlesey 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.

Seconded by Councilor Wilkie.

1
2 **The Vote on the Motion was approved (9-0)*
3

4 **B. Discussion and Set Public Hearing for July 19, 2023: Consideration of Provisional Dedication**
5 **and Acceptance of an alternate Barden Hill Road (Highway or Class A Trail)**
6

7 Included in the agenda packet: *(Pages 41, Council agenda packet.)*
8

9 City Manager Mulholland reviewed the background for the topic listed above. This is a petition requested
10 by Patch Forest, LLC to discontinue the road and to layout a different path for what the City has listed as
11 Barden Hill Road. Barden Hill Road is not actually a Class A Trail, it has a different designation and we
12 need more clarity on this. We do not have a lot of the information that we would normally have at this
13 particular stage (i.e., exact layout; survey; details on what they are asking for, etc.), and no member(s) of
14 Patch Forest, LLC or their (legal) representative were present at this meeting. An option for the Council
15 to consider is to not schedule a public hearing until all the information the Council would normally have
16 has been received.
17

18 **BACKGROUND:**

19 Patch Forest, LLC has submitted a new proposal to discontinue several Class VI roads passing through the
20 Patch Forest property, including a section of Class VI Road #14 (Barden Hill Road); a section of Class VI
21 Road #19 (Durkee Road); Class VI Road #20 (Atherton Road); and Class VI Road #21 (McCallister Road).
22

23 In conjunction with the proposed discontinuances, Patch Forest proposes to identify and create an alternate
24 Barden Hill Road (Highway or Class A Trail) for consideration of dedication and acceptance by the City.
25

26 The City Council was asked to schedule a public hearing for July 19, 2023, at which time presentations and
27 information from Patch Forest, LLC and from the City will be provided in relation to the proposed
28 provisional dedication and acceptance.
29

30 **Council Discussions:**
31

32 The Council discussed their reasons why they did not feel comfortable holding or scheduling a Public
33 Hearing at this time without the appropriate information that has been provided for every other Public
34 Hearing we have set in the past.
35

36 City Manager Mulholland noted we expected to have all the information because Patch Forest, LLC was
37 asked to provide this information for this hearing back in June.
38

39 **ACTION: NO ACTION TAKEN BY THE COUNCIL**
40

41 **C. Discussion and Set Public Hearing for July 19, 2023: Discontinuance of a section of Class VI**
42 **Road #14 (Barden Hill Road); Discontinuance of a section of Class VI Road #19 (Durkee**
43 **Road); Discontinuance of Class VI Road #20 (Atherton Road); and Discontinuance of Class VI**
44 **Road #21 (McCallister Road)**
45

46 Included in the agenda packet: *(Pages 42 , Council agenda packet.)*
47

48 **BACKGROUND**

49 Patch Forest, LLC has submitted a new proposal to discontinue several Class VI roads passing through
50 the Patch Forest property, including a section of Class VI Road #14 (Barden Hill Road); a section of

1 Class VI Road #19 (Durkee Road); Class VI Road #20 (Atherton Road); and Class VI Road #21
2 (McCallister Road).

3
4 The City Council was asked to schedule a public hearing for July 19, 2023, at which time presentations
5 and information from Patch Forest, LLC and from the City will be provided in relation to the proposed
6 discontinuances.

7
8 City Manager Mulholland noted that for the record this particular item does not have an adequate amount
9 of information and there is not enough time to provide that information for the general public's review
10 before a Public Hearing.

11
12 Council Discussions:

13
14 The Council concurred with the City Manager and discussed their reasons why they did not feel
15 comfortable holding or scheduling a Public Hearing at this time without the appropriate information that
16 has been provided for every other Public Hearing we have set in the past.

17
18 **ACTION: NO ACTION TAKEN BY THE COUNCIL**

19
20 **D. Authorization for City Manager to sign a Declaration of Restrictive Covenants for Upper**
21 **Valley Tech Park LLC Planned Unit Development.**

22
23 Included in the agenda packet: *(Pages 43-53 , Council agenda packet).*

24 1. June 22, 2023 Memorandum from Deputy Planning & Development Director Tim Corwin
25 re: Upper Valley Technology Park, LLC, M/L 131-3 – Restrictive Covenants for Upper
26 Valley Technology Park, LLC Planned Unit Development (PUD), including the following
27 attachments:

- 28 ○ May 8, 2023 Planning Board Notice of Action (PB2023-16-CUPMIN)
- 29 ○ Plat titled, "Subdivision Plat for Upper Valley Tech Park LLC Planned Unit
30 Development," prepared by Latitudes Land Surveying, dated April 6, 2023, Project #
31 22015
- 32 ○ Draft Declaration of Restrictive Covenant

33
34 **BACKGROUND**

35 On May 8, 2023, the Planning Board approved Upper Valley Technology Park, LLC's request for a
36 Conditional Use Permit and Minor Subdivision to develop Tax Map 131, Lot 3 as a 3-lot Planned Unit
37 Development (PUD). As required by the PUD regulations in Section 501 of the Zoning Ordinance, the
38 Upper Valley Technology Park, LLC Planned Unit Development (UVTP PUD) has set aside 3.8 acres
39 (10.4%) of the total PUD lot area as open space.

40
41 The applicant has proposed a Declaration of Restrictive Covenant to establish the restrictions on how the
42 open space can be utilized and maintained. As written, the Declaration grants the City the ability, but not
43 the obligation, to enforce the restrictions.

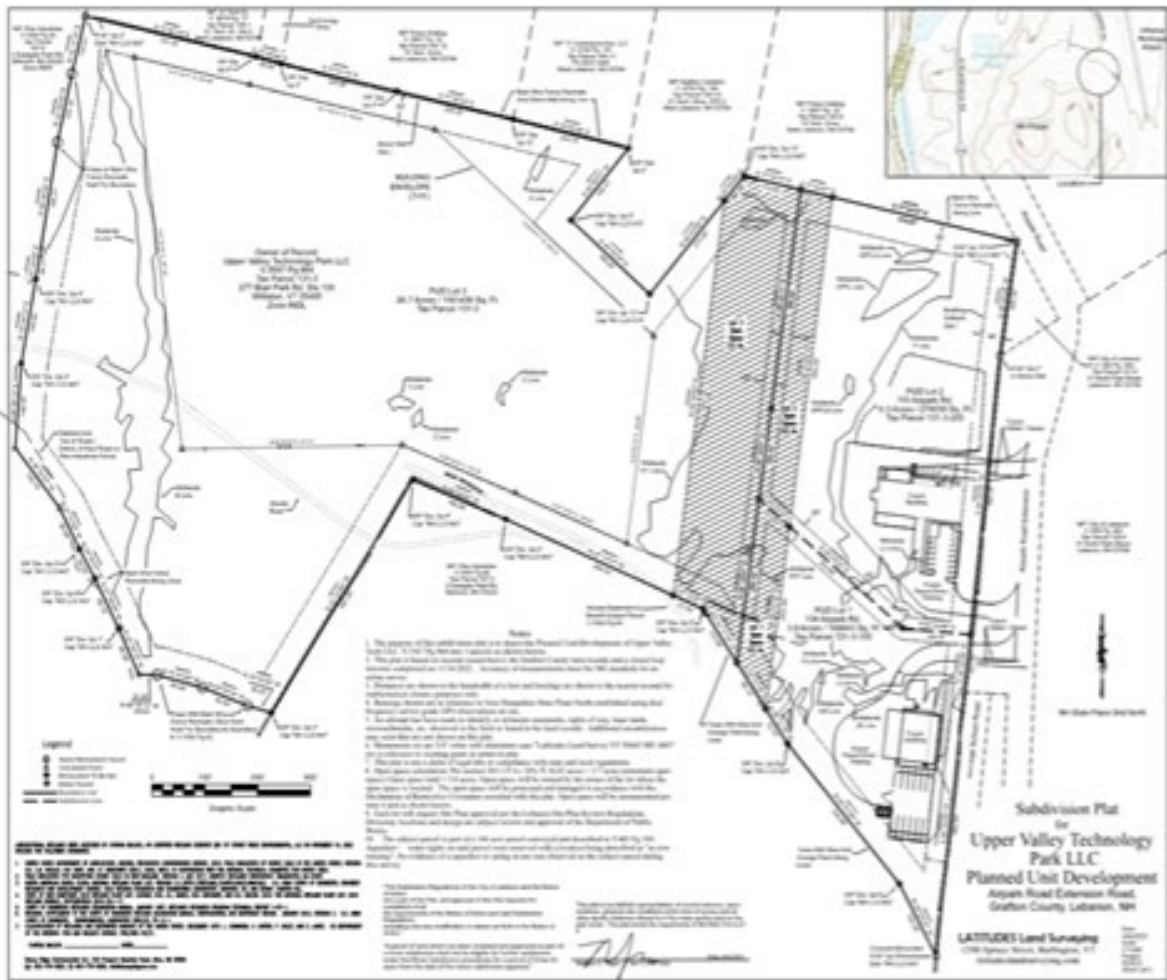
44
45 As required by the Planning Board's condition of approval #4 and Section 501.1.F.7.a of the Zoning
46 Ordinance, the City's legal counsel has reviewed the proposed Declaration of Restrictive Covenant and
47 recommended edits to ensure that it meets the PUD open space ownership and protection requirements of
48 Section 501.1.F.5 and 6. Those edits have been accepted by the applicant and are reflected in the attached
49 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.

NOTE: All the detailed supporting documents can be found in the Council agenda packet as listed above.

Planning & Development Deputy Director Tim Corwin reviewed the background and his memo to the Council dated June 22, 2023 behind this request.

Site Plan Map for the Upper Valley Technical Park, LLS's Planned Unit Development.



Mr. Corwin noted that if the Council chooses to accept the Declaration of Restrictive Covenants for Upper Valley Tech Park LLC's Planned Unit Development, it does not impose an obligation on the City to do anything with that easement but it does give us the right to enforce those open space restrictions and would be enforced in the same way as any other violation of a Zoning Ordinance. The plan for the open space covenant is to provide protection in perpetuity.

In response to Mayor McNamara's questions, City Manager Mulholland noted this open space was not designed for recreational activity, it was designed to be preserved for conservation purposes.

1
2 Attorney Pamela Moreau (Counsel for the Upper Valley Technology Park, LLC) clarified the Declaration
3 of Restrictive Covenants is intended to be a Conservation Easement because of the wetlands area, which
4 are excellent for wildlife corridors and reiterated that the intent was to just have it be a wildlife corridor in
5 the area where the wetlands are located.
6

7 Council Discussions:

8 The Council discussed the boundary lines for the easement, the permanent separation between PUD Lot
9 #3 and the other lots, how the Conservation Restriction would preclude any physical infrastructure in
10 between lots #1, #2 & #3, how the only access to lot #3 would be via Technology Drive, and, the
11 wetlands boundaries.
12

13 **ACTION:**

14 ***Councilor Liot Hill MOVED that the Lebanon City Council hereby authorizes the City Manager to***
15 ***accept a Declaration of Restrictive Covenant, pursuant to NH RSA 477:47, from the Upper Valley***
16 ***Technology Park, LLC to the City of Lebanon, with respect to portions of land as shown on a plan titled,***
17 ***“Subdivision Plat for Upper Valley Technology Park, LLC, Planned Unit Development,” prepared by***
18 ***Latitudes Land Surveying, dated April 6, 2023, which was approved by the Lebanon Planning Board on***
19 ***May 8, 2023. The Declaration of Restrictive Covenant has been reviewed and approved by the City’s***
20 ***legal counsel as sufficiently providing for the permanent preservation of the Open Space as required by***
21 ***Section 501 of the Lebanon Zoning Ordinance, Section 12 of the Lebanon Subdivision Regulations, and***
22 ***Condition #4 of the Planning Board’s Notice of Action dated May 8, 2023.***
23 ***Seconded by Councilor Whittlesey.***
24

25 ****The Vote on the Motion was approved (9-0).***
26

27 In response to Councilor Simon’s request to have a road overlay on maps, Deputy City Manager Brooks
28 provided and described the following Map which depicts the road overlay in green area.
29



30
31
32 E. Request by Lyme Properties, LLC to have City Council reconsider acceptance of River Park
33 Drive and Lyman Street
34

35 Included in the agenda packet: *(All supportive documents/map layouts as listed below can be found on*
36 ***Pages 54-108, of the July 5, 2023 Council agenda packet)***

37 1. Letter dated June 13, 2023 from Chet Clem of Lyme Properties, LLC, with Proposal for Acceptance of

- 1 River Park Drive & Lyman Street
- 2 2. Agenda Packet from May 18, 2011 City Council meeting re: Request by XYZ Dairy, LLC for
- 3 Conditional Acceptance of River Park Drive
- 4 3. Excerpt of City Council meeting minutes from May 18, 2011
- 5 4. Overview / Index Plan (Lot Layout) of River Park, prepared by TF Moran, Sheet 2 or 53, dated March
- 6 9, 2015, last revised April 27, 2015
- 7 5. Overview / Index Plan (Lot Layout with Buildings) of River Park, prepared by TF Moran, Sheet 1 of
- 8 72, dated March 9, 2015
- 9 6. River Park – Proposed Phasing Plan, approved by Planning Board on September 9, 2019.

11 BACKGROUND

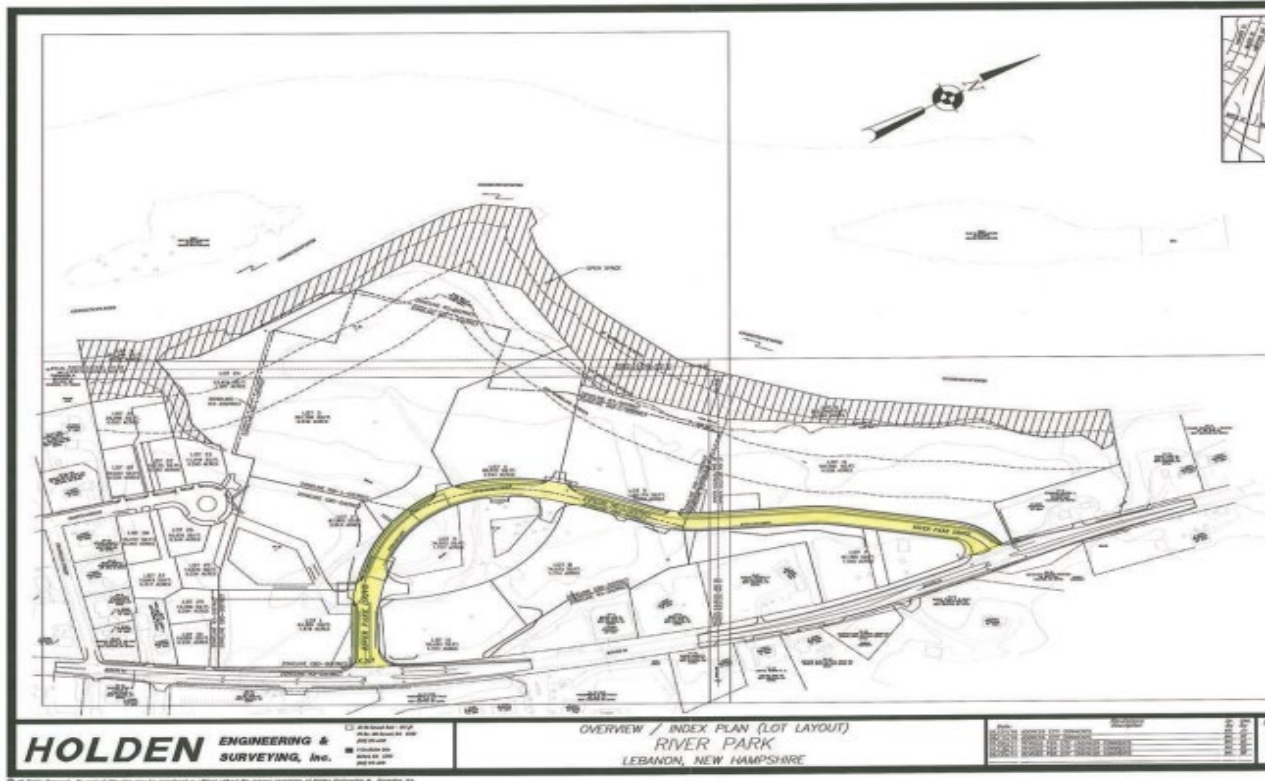
12 By letter dated June 13, 2023, Chet Clem of Lyne Properties, LLC, acting as development agent for XYZ
13 Dairy, LLC, submitted a proposal to have the City Council reconsider a prior decision concerning the
14 acceptance of River Park Drive and Lyman Street as public streets.

15
16 On May 18, 2011, the City Council voted to decline the previous request of XYZ Dairy, LLC to
17 conditionally accept River Park Drive as a public highway for reasons outlined in a May 3, 2011 memo
18 from then-City Manager Greg Lewis. The May 18, 2011 agenda packet and an excerpt of the Council's
19 minutes from the meeting are attached.

20
21 Included in the Council agenda packet are the approved subdivision lot layout plan for River Park recorded
22 in the Grafton County Registry of Deeds on January 2, 2018 as Plan #15441; the Overview/Index Plan with
23 approved building layouts; and the revised development phasing plan approved on September 9, 2019.

24
25 Highlights of the proposed site plans, as presented in the agenda packet, are included below.
26





Mr. Chet Clem of Lyme Properties, LLC, acting as development agent for XYZ Dairy, LLC reviewed the background of his request and asked the Council to reconsider a prior decision (2022) concerning the acceptance of River Park Drive and Lyman Street as public streets. He provided handouts of his presentation to the Council for their review. During the prior approval process, approval of the site plans subdivision was approved. In the course of the past 12 years, we have continued working with Advance Transit to facilitate a four (4)-line transportation hub at River Park, and in the course of pursuing various funding opportunities available, the issue of ownership of the roads has become the issue. Because of this, we are back before the Council requesting a Conditional Acceptance of roads, which would allow us to pursue grant opportunities at the State and Federal level.

As noted above: *All supportive documents can be found on Pages 54-108, of the July 5, 2023 Council agenda packet)*

Council Discussions:

Mayor McNamara pointed out that in the intervening 12 years it has been amply demonstrated the potential benefits of River Park to the community. While he respects the decisions made 12 years ago from former Councils and City Staff to not consider these (roads) for Conditional Acceptance, he felt today is a very different day. This development could be a huge boom not to just West Lebanon but for the entire Upper Valley. The potential to access Federal funding associated with mass transit should also be considered, noting this (project) is not miles of road. He did not feel the (City's) costs would be significant compared to the benefits.

Councilor Whittlesey spoke about the land that was set aside for the Friends of River Park for access trails, etc. along the waterfront and asked Mr. Clem, or the Friends of River Park, if they would be open to a Restrictive Covenant that would provide for permanent usage (to this land) to ensure access remains

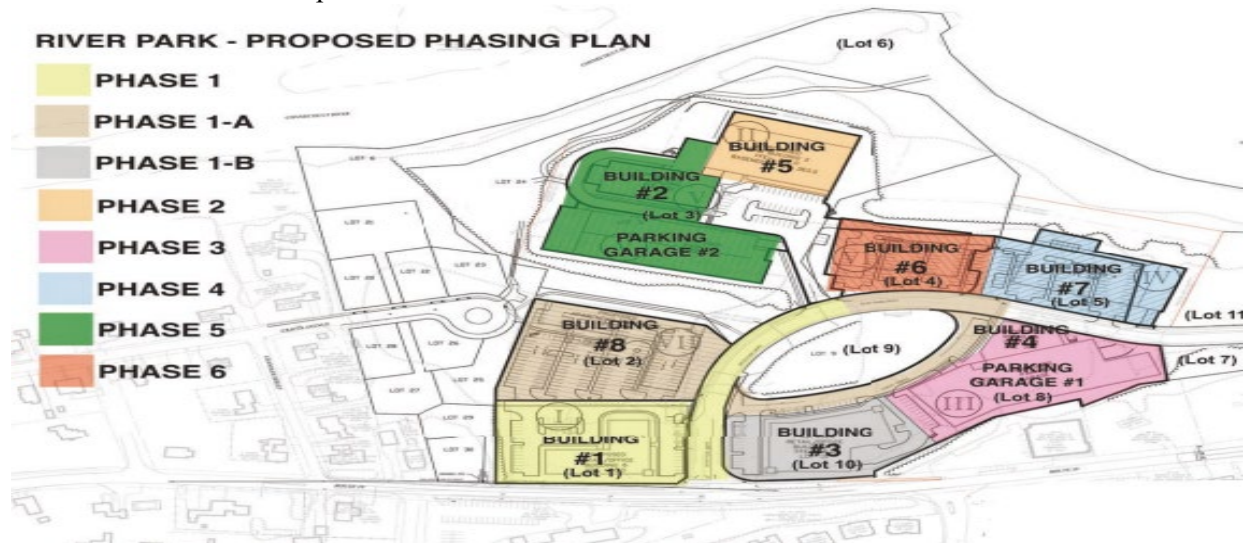
1 available. Mr. Clem said this was already taken care of in 2018. The (land) is protected in perpetuity
2 with a Deed Restriction that does not allow development of the waterfront.

3
4 Councilor Whittlesey's other concern was the (transportation) hub in front of the (Kilton) Library, noting
5 this hub is within walking distance to all of West Lebanon and provides access to a lot of our Downtown
6 areas facilities and noted River Park is on the outside of West Lebanon. He questioned how this would be
7 addressed so people will have easy access to West Lebanon and the surrounding community. He was also
8 concerned about the non-logistical losses that would incur.

9
10 Mayor McNamara noted that the buses can still stop at Kilton, and explained how this project was
11 designed, how it provides options that are not currently available now, and how it would be maintaining
12 the existing bus service.

13
14 Councilor Whittlesey also spoke about his concern regarding the vast majority of people who use the
15 Kilton Library who do not have access to vehicles. Mr. Clem explained that moving the hub to River
16 Park would allow people to be dropped off there where they can connect to whatever line they need to go
17 places. They would still have their Main Street stop, but there just would not be the confluence of six
18 buses all at the same time clogging up Main Street, noting that with the new Streetscape Plans coming
19 forward there would be even less space for the buses to park (in front of Kilton Library).

20
21 Councilor Simon (Chair, West Lebanon Revitalization Advisory Commission), noted this is a topic that
22 has been discussed with all parties for a couple of years, including Library Director Sean Fleming. He
23 wanted to be clear they have been offered this property as an intermediate station, noting the Kilton
24 Library is the bottleneck (for Advance Transit) and they cannot add additional service due to queuing
25 issues. Our role here is to provide a solution down the road, but this is the key issue that needs to be
26 addressed before we can proceed. He also addressed Councilor Sykes' question regarding River Park
27 Drive and the Lyman Street loop, which is part of the initial phase, noting the roads will be built to City
28 standards and verified despite the initial 2011 decision.



29
30
31 In response to Councilor Whittlesey's questions about the phasing of this project, Councilor Simon
32 explained the minimum requires us to build River Park Drive up to the access to what is shown as
33 building #2 & #5 and parking. The logical, efficient and enabling solution would be to go ahead and
34 complete the loop to allow for that Advance Transit hub to proceed as soon as possible.

Assistant Mayor Below concurred with the Mayor that this is an opportunity with a clear public benefit with the Transit hub. In response to Assistant Mayor Below's question regarding access to the 6 acres along the river, Mr. Clem stated that for Phase I, it would be a continuation of the existent access to the existing 2 miles of current trails, and those trails will continue to evolve as the additional phases of the project come online and explained (using the phasing map) where this access would be provided. Mr. Clem also explained the 2019 Phasing updates laying out the parking requirements phase by phase, including the temporary parking that will be handled at different lots.

Councilor Liot Hill spoke about her reasons in support of this project.

City Manager Mulholland noted the next step would be a Development Agreement and, if the Council agrees, they can come back to the Council for further discussions once this has been done.

The Council agreed to have City Manager Mulholland proceed, and were willing to do a Conditional Acceptance of the roads. No Motion was needed at this time. City Manager Mulholland will work on the Development Agreement and will send it to the Council for their review before a vote on the Conditional Acceptance is taken.

Mr. Clem was in agreement with the plan but noted there are timely grant items in motion, so time is of the essence.

ACTION: No action was needed at this time.

F. Discuss Revised Membership Composition for Lebanon Energy Advisory Committee

Included in the agenda packet: *(Page 109, Council agenda packet.)*

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:

1 *Councilor Wilkie MOVED that the Lebanon City Council hereby amends the membership composition*
2 *of the Lebanon Energy Advisory Committee to change the designated Lebanon High School Student*
3 *Representative seat to a Regular Citizen Representative seat. The committee membership will now be*
4 *comprised of five regular citizen members, two alternate citizen members, one Planning Board*
5 *representative, one City Council representative, and one alternate Council representative.*
6 *Seconded by Councilor Whittlesey .*

7
8 **The Vote on the Motion was approved (9-0).*
9

10 **11. City Manager Report:**

11 City Manager Shaun Mulholland updated the Council on the following:

- 12 • Upcoming Proposed Training:
 - 13 ○ Bias Training in 2024: All City Supervisors and Managers will be requested to attend these
 - 14 three (3), 1 hr. virtual training sessions. He also requested that all Board, Commission,
 - 15 Committee members attend the training, including City Council.
 - 16 ○ Ethics Training in 2024: This will be a refresher for all Boards/Commission/Committees and
 - 17 consist of four (4) hrs. of training. This can be done at the individual Board level.
- 18 • Implementation of new software City-wide.
- 19 • 2023 Budget Issues: Unexpected Expenditures that were not initially budgeted for:
 - 20 ○ Stevens Road: If there is a disaster declaration, we will apply for that.
 - 21 ○ School Street Cemetery: +/- \$75K in engineering costs. Some funds have already been
 - 22 spent to restore the previous landslide that occurred. We still do not have mitigation
 - 23 measures in place.
 - 24 ○ Human Services Operations: We need another \$60K to get us through the rest of the
 - 25 year, noting the ERAP funds have ended.
 - 26 ○ We are uncertain about the costs of a shelter yet.

27 28 **12. COUNCIL REPRESENTATIVES TO OTHER BODIES:**

- 29 • Council Liot Hill spoke about the visit from NH Executive Councilor Cinde Warmington.
- 30 • Mayor McNamara spoke about the Governor & the NH Executive Council Road Shows. Their
- 31 August 2, 2023 meeting will be held at Hypertherm starting at 10:00 AM. NH Executive
- 32 Councilor Cinde Warmington will be sending out more information shortly. One thing they
- 33 would like to do is recognize (non-political) citizens who are either retiring from a position of
- 34 long-time public service or who have done something exemplary in terms of public service. The
- 35 Council was asked to let the Mayor know about anyone they thought might be eligible.

36 37 **13. FUTURE AGENDA ITEMS:**

- 38 • Discussion/acceptance of Development Agreement/Conditional Acceptance for River
- 39 Park Drive and Lyman Street. Time is of the essence due to timely grant applications that Mr. Clem
- 40 has applied for.

41 42 **14. NON-PUBLIC SESSION: NONE**

43 44 **15. ADJOURNMENT:**

45
46 *Whittlesey MOVED for adjournment.*

47 *Seconded by Councilor Heistad*
48

1 **The Vote on the MOTION was unanimously approved (9-0)*

2

3 **The meeting was adjourned at 8:19 PM.**

4

5 Respectfully submitted,

6 Dona E. Gibson

7 Recording Secretary

Agenda
Lebanon City Council
July 19, 2023

7. Appointments:

Appointments

Board/Committee Appointments as presented by City Clerk Jaseya Ewing

- Conservation Commission, Ernst Oidtmann (Reappointment Regular Member)
- Conservation Commission, Donald Lacey (Reappointment Regular Member)
- Library Board of Trustees, Yuli Volentino (Regular Member)
- Lebanon Energy Advisory Committee, Henry Bromberg (Regular Member)

Included in this Section:

1. Memo from City Clerk Jaseya Ewing dated July 19, 2023



Office of the City Clerk & Tax Collector
51 N. Park Street
Lebanon, NH 03766

MEMORANDUM

DATE: July 19, 2023
TO: The Honorable Mayor & City Council
FROM: Jaseya Ewing, City Clerk & Tax Collector
RE: **Appointments Proposed for Council Discussion/Action:**

If the Council wishes to proceed with action on the appointments below, a nomination should be made and voted on for each appointment.

Note: nominations do not need to be seconded.

Conservation Commission

- **Ernst Oidtman** – Reappointment as a member of the Conservation Commission for a 3-year term.

Term: 7/23-7/26

- **Donald Lacey** – Reappointment as a member of the Conservation Commission for a 3-year term.

Term: 7/23 - 7/26

Library Board of Trustees

- **Yuli Volentino** – Appointment as a member of the Library Board of Trustees with a term expiring in March 2024 as the position will be up for election. Yuli may choose to run for Library Trustee during the filing period, which will be announced once the period is determined by the Secretary of State.

Interview By: Councilor Whittlesey

Term: 7/23-3/24

Lebanon Energy Advisory Committee

- **Henry Bromberg** – Appointment as a member of the Lebanon Energy Advisory Committee (LEAC) for a two-year term.

Interview By: Councilor Wilkie

Term: 7/23-7/25

Board Member Application - Submission #7584

Date Submitted: 6/28/2023

Application Process

After submitting this application, you will be contacted and interviewed by one of our City Councilors. Your application will then go before the full Council at one of their regular meetings for consideration of appointment. If you have questions, please contact the City Clerk's Office at 603-448-3054 or cityclerk@lebanonnh.gov.

Basic Requirements

- Lebanon/West Lebanon resident (except for those boards whose membership makeup includes non-resident)
- Willingness to learn
- Commitment to attend meetings
- Treat people fairly
- Consider the best interest of the community as a whole when making decisions
- Must have attended one meeting of the board that you wish to apply to within the last six months to observe the process and function of the board.

First Name*

Ernst

Last Name*

Oidtmann

Physical Address*

69 Foilage View Road

City*

Lebanon

State*

NH

Zip Code*

03766

Is this your mailing address?*

☒ Yes

☐ No

Mailing Address*

City*

State*

Zip Code*

Home Phone Number*

603 448 5115

Work Number

Email Address*

ernstmoidtmann@gmail.com

How long have you resided in Lebanon?

44 years

This will not necessarily reflect on your possible appointment.



Is this an application for re-appointment?*

- ☒

This application is for re-appointment.
- ☐

This application is not for re-appointment.

For which board, committee, or commission are you applying?*

Please note that City Council positions are elected positions. Those interested in serving on the City Council must file with the City Clerk's office during the designated filing period prior to the March election of each year. The filing period information will be listed on our [Election Information](#) page.

- ☐ Arts and Culture Commission
- ☐ Board of Assessors
- ☐ Board of Cemetery Trustees
- ☐ Class VI Roads Advisory Committee
- ☒ Conservation Commission
- ☐ Diversity, Equity, and Inclusion Commission
- ☐ Downtown Lebanon TIF Advisory Board
- ☐ Economic Development Commission
- ☐ Heritage Committee
- ☐ Lebanon Airport-Tech Park TIF Advisory Committee
- ☐ Lebanon Energy Advisory Committee
- ☐ Library Board of Trustees
- ☐ Pedestrian and Bicycle Advisory Committee
- ☐ Planning Board
- ☐ Steering Committee for Implementation of Master Plan
- ☐ Tree Advisory Board
- ☐ West Lebanon Revitalization Advisory Committee
- ☐ Zoning Board of Adjustment
- ☐ Other (please fill in blank)

Other Committee

Qualifications for City Council*

Per City Charter Sections [C419:16](#) and [C419:18](#), the following are mandatory qualifications to serve as a member of Lebanon City Council.

- ☐ I certify that I have been a Lebanon resident for 2 or more years AND that I am a registered Lebanon voter.

In which ward do you reside?*

Unless you are applying for a councilor at-large seat, you must reside in the ward boundary of the council seat for which you are applying. You can use our [Find Your Ward](#) tool to find your ward.

- ☐ Ward 1
- ☐ Ward 2
- ☐ Ward 3

Why would you like to serve?*

Interested in protection/conservation of woodland, farmland, wetlands etc. In view of worsening climate change I feel it has become extremely important to protect same. The survival of the human race will be at stake within the next 1000.

State a few of what you feel your qualifications are or why you wish to be appointed to this board / committee.*

I have been on the commission for many years (since ~ 2008) and served as chair for 2 years. My historical experience should serve the Commission well.

Certification*

- ☒ I hereby certify that I meet the basic requirements for applying to a Lebanon board / committee.

Board Member Application - Submission #7602

Date Submitted: 7/6/2023

Application Process

After submitting this application, you will be contacted and interviewed by one of our City Councilors. Your application will then go before the full Council at one of their regular meetings for consideration of appointment. If you have questions, please contact the City Clerk's Office at 603-448-3054 or cityclerk@lebanonnh.gov.

Basic Requirements

- Lebanon/West Lebanon resident (except for those boards whose membership makeup includes non-resident)
- Willingness to learn
- Commitment to attend meetings
- Treat people fairly
- Consider the best interest of the community as a whole when making decisions
- Must have attended one meeting of the board that you wish to apply to within the last six months to observe the process and function of the board.

First Name*

Donald

Last Name*

Lacey

Physical Address*

40 NH Route 4A

City*

Lebsnon

State*

NH

Zip Code*

03766

Is this your mailing address?*

☒ Yes

☐ No

Mailing Address*

City*

State*

Zip Code*

Home Phone Number*

6037296149

Work Number

Email Address*

dlacey1942@gmail.com

How long have you resided in Lebanon?

29 yrs

This will not necessarily reflect on your possible appointment.



Is this an application for re-appointment?*

- ☒

This application is for re-appointment.
- ☐

This application is not for re-appointment.

For which board, committee, or commission are you applying?*

Please note that City Council positions are elected positions. Those interested in serving on the City Council must file with the City Clerk's office during the designated filing period prior to the March election of each year. The filing period information will be listed on our [Election Information](#) page.

- ☐ Arts and Culture Commission
- ☐ Board of Assessors
- ☐ Board of Cemetery Trustees
- ☐ Class VI Roads Advisory Committee
- ☒ Conservation Commission
- ☐ Diversity, Equity, and Inclusion Commission
- ☐ Downtown Lebanon TIF Advisory Board
- ☐ Economic Development Commission
- ☐ Heritage Committee
- ☐ Lebanon Airport-Tech Park TIF Advisory Committee
- ☐ Lebanon Energy Advisory Committee
- ☐ Library Board of Trustees
- ☐ Pedestrian and Bicycle Advisory Committee
- ☐ Planning Board
- ☐ Steering Committee for Implementation of Master Plan
- ☐ Tree Advisory Board
- ☐ West Lebanon Revitalization Advisory Committee
- ☐ Zoning Board of Adjustment
- ☐ Other (please fill in blank)

Other Committee

Qualifications for City Council*

Per City Charter Sections [C419:16](#) and [C419:18](#), the following are mandatory qualifications to serve as a member of Lebanon City Council.

- ☐ I certify that I have been a Lebanon resident for 2 or more years AND that I am a registered Lebanon voter.

In which ward do you reside?*

Unless you are applying for a councilor at-large seat, you must reside in the ward boundary of the council seat for which you are applying. You can use our [Find Your Ward](#) tool to find your ward.

- ☐ Ward 1
- ☐ Ward 2
- ☐ Ward 3

Why would you like to serve?*

I would like to continue my efforts to protect Lebanon's natural resources in a way that is balanced

State a few of what you feel your qualifications are or why you wish to be appointed to this board / committee.*

Long experience serving as a Cons Comm member. Knowledge of invasive plants.

Certification*

- ☒ I hereby certify that I meet the basic requirements for applying to a Lebanon board / committee.

Board Member Application - Submission #7401

Date Submitted: 6/2/2023

Application Process

After submitting this application, you will be contacted and interviewed by one of our City Councilors. Your application will then go before the full Council at one of their regular meetings for consideration of appointment. If you have questions, please contact the City Clerk's Office at 603-448-3054 or cityclerk@lebanonnh.gov.

Basic Requirements

- Lebanon/West Lebanon resident (except for those boards whose membership makeup includes non-resident)
- Willingness to learn
- Commitment to attend meetings
- Treat people fairly
- Consider the best interest of the community as a whole when making decisions
- Must have attended one meeting of the board that you wish to apply to within the last six months to observe the process and function of the board.

First Name*

Yuli

Last Name*

Volentino

Physical Address*

7 Church st West

City*

West Lebanon

State*

NH

Zip Code*

03784

Is this your mailing address?*

☒ Yes

☐ No

Mailing Address*

City*

State*

Zip Code*

Home Phone Number*

929 302 0528

Work Number

Email Address*

yulilin84@gmail.com

How long have you resided in Lebanon?

4 years

This will not necessarily reflect on your possible appointment.



Is this an application for re-appointment?*

- ☐

This application is for re-appointment.
- ☒

This application is not for re-appointment.

For which board, committee, or commission are you applying?*

Please note that City Council positions are elected positions. Those interested in serving on the City Council must file with the City Clerk's office during the designated filing period prior to the March election of each year. The filing period information will be listed on our [Election Information](#) page.

- ☐ Arts and Culture Commission
- ☐ Board of Assessors
- ☐ Board of Cemetery Trustees
- ☐ Class VI Roads Advisory Committee
- ☐ Conservation Commission
- ☐ Diversity, Equity, and Inclusion Commission
- ☐ Downtown Lebanon TIF Advisory Board
- ☐ Economic Development Commission
- ☐ Heritage Committee
- ☐ Lebanon Airport-Tech Park TIF Advisory Committee
- ☐ Lebanon Energy Advisory Committee
- ☒ Library Board of Trustees
- ☐ Pedestrian and Bicycle Advisory Committee
- ☐ Planning Board
- ☐ Steering Committee for Implementation of Master Plan
- ☐ Tree Advisory Board
- ☐ West Lebanon Revitalization Advisory Committee
- ☐ Zoning Board of Adjustment
- ☐ Other (please fill in blank)

Other Committee

Qualifications for City Council*

Per City Charter Sections [C419:16](#) and [C419:18](#), the following are mandatory qualifications to serve as a member of Lebanon City Council.

- ☐ I certify that I have been a Lebanon resident for 2 or more years AND that I am a registered Lebanon voter.

In which ward do you reside?*

Unless you are applying for a councilor at-large seat, you must reside in the ward boundary of the council seat for which you are applying. You can use our [Find Your Ward](#) tool to find your ward.

- ☐ Ward 1
- ☐ Ward 2
- ☐ Ward 3

Why would you like to serve?*

The library is important to me and my family. My 4 year old daughter was helped with socializing during story time and she also loves to borrow books. My 10 year old son also enjoys spending time in the library and borrows many books. Because the library is so important to my family, I would like to give back.

State a few of what you feel your qualifications are or why you wish to be appointed to this board / committee.*

Because I never used a public library in my country, I think I can help other people who are new to using a library. And because I'm a mother who has young children, I can invite other parents to use the library.

Certification*

- ☒ I hereby certify that I meet the basic requirements for applying to a Lebanon board / committee.

Board Member Application - Submission #7326

Date Submitted: 5/24/2023

Application Process

After submitting this application, you will be contacted and interviewed by one of our City Councilors. Your application will then go before the full Council at one of their regular meetings for consideration of appointment. If you have questions, please contact the City Clerk's Office at 603-448-3054 or cityclerk@lebanonnh.gov.

Basic Requirements

- Lebanon/West Lebanon resident (except for those boards whose membership makeup includes non-resident)
- Willingness to learn
- Commitment to attend meetings
- Treat people fairly
- Consider the best interest of the community as a whole when making decisions
- Must have attended one meeting of the board that you wish to apply to within the last six months to observe the process and function of the board.

First Name*

Henry

Last Name*

Bromberg

Physical Address*

19 Farman Ave.

City*

W. Lebanon

State*

New Hampshire

Zip Code*

03784

Is this your mailing address?*

☒ Yes

☐ No

Mailing Address*

City*

State*

Zip Code*

Home Phone Number*

(505)239-4969

Work Number

Email Address*

hank181@msn.com

How long have you resided in Lebanon?

3.5 years

This will not necessarily reflect on your possible appointment.

Is this an application for re-appointment?*

☐ This application is for re-appointment.

☒ This application is not for re-appointment.

For which board, committee, or commission are you applying?*

Please note that City Council positions are elected positions. Those interested in serving on the City Council must file with the City Clerk's office during the designated filing period prior to the March election of each year. The filing period information will be listed on our [Election Information](#) page.

- ☐ Arts and Culture Commission
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- ☐ Board of Cemetery Trustees
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- ☐ Conservation Commission
- ☐ Diversity, Equity, and Inclusion Commission
- ☐ Downtown Lebanon TIF Advisory Board
- ☐ Economic Development Commission
- ☐ Heritage Committee
- ☐ Lebanon Airport-Tech Park TIF Advisory Committee
- ☒ Lebanon Energy Advisory Committee
- ☐ Library Board of Trustees
- ☐ Pedestrian and Bicycle Advisory Committee
- ☐ Planning Board
- ☐ Steering Committee for Implementation of Master Plan
- ☐ Tree Advisory Board
- ☐ West Lebanon Revitalization Advisory Committee
- ☐ Zoning Board of Adjustment
- ☐ Other (please fill in blank)

Other Committee

Qualifications for City Council*

Per City Charter Sections [C419:16](#) and [C419:18](#), the following are mandatory qualifications to serve as a member of Lebanon City Council.

- ☐ I certify that I have been a Lebanon resident for 2 or more years AND that I am a registered Lebanon voter.

In which ward do you reside?*

Unless you are applying for a councilor at-large seat, you must reside in the ward boundary of the council seat for which you are applying. You can use our [Find Your Ward](#) tool to find your ward.

- ☐ Ward 1
- ☐ Ward 2
- ☐ Ward 3

Why would you like to serve?*

I want to help with the City's Principles for Sustainability.
Having attended a LEAC board meeting, it's clear that there is much work to be accomplished.

State a few of what you feel your qualifications are or why you wish to be appointed to this board / committee.*

I have some working knowledge regarding the built environment, having managed projects to successful LEED (commercial) and Build Green New Mexico (residential) certifications. I have the time and desire to learn more about what LEAC has already accomplished and to assist in ongoing projects.

Certification*

- ☒ I hereby certify that I meet the basic requirements for applying to a Lebanon board / committee.

Councilor Name: Doug Whittlesey

Applicant Name: Yuli Volentino

Board: Library Board

Date of Interview: 7/7/23

1. Why are you interested in serving on the Library Board?
 - a. Yuli uses the library a lot with her family, really enjoys what the library offers and the programming, wants to be more involved in the library.
2. What is your background and/or experience with the local library?
 - a. Public – patron of the library
3. Do you have any expertise to bring to the board?
 - a. Brings an outside perspective as a new, and now regular, patron of the library.
4. Can you commit to attendance at regular meetings and on occasion, other scheduled meetings?
 - a. Yes

Councilor Interview Report Form

Councilor Name: Devin R. Wilkie

Date of Interview: 11 July 2023

Applicant Name: Henry Bromberg

Board(s) to Which Applied: Lebanon Energy Advisory Committee

☒ Regular Seat ☐ Alternate Seat

Has Applicant Attended Meeting of Board to Which Applying? ☒ Yes ☐ No

(If yes, indicate date of meeting.) Date: Two recent meetings

Recommend Appointment: ☒ Yes ☐ No

☒ Regular Seat ☐ Alternate Seat

General Comments: Henry is enthusiastic about the Committee's work and highly motivated to do what he can to participate. He has already spoken to two LEAC members who encouraged him to apply for this seat. He will be a great addition to LEAC and I am happy to recommend his appointment.

(PLEASE NOTE: THIS FORM WILL BE INCLUDED IN THE AGENDA MATERIALS WHEN APPLICANT IS SCHEDULED TO APPEAR BEFORE THE CITY COUNCIL.)

Standard Questions for All Applicants:

1) What do you believe is the purpose of this Board/Committee?

Identify areas where the City can address needed corrections and future opportunities in energy and sustainability matters.

2) Are you familiar with the meeting dates and time commitments of this Board/Committee? Would you be available for additional meetings, site visits, or other official events when necessary?

Yes and yes.

3) Do you have any previous experience working with this type of Board/Committee, or in a related field, in this community or any other community?

Many years ago, in Montana — Northern Plains Resource Council — community organizing in response to energy matters.

Construction — experience with building efficient and award-winning homes in NM.

4) Do you have any interest in attending educational presentations and seminars in order to further educate yourself relative to the work of this Board/Committee?

Yes.

5) Do you anticipate that you would have to recuse yourself from more than an occasional meeting due to a conflict of interest (perceived or real) relating to your past or present employment, organizational membership, real estate holdings, family ties, or other reasons?

No.

6) What do you think are the key challenges for this Board/Committee?

We are inundated with all the possibilities and opportunities to explore. Getting enough people power to address everything is a challenge.

7) What do you think are the key opportunities for this Board/Committee?

Members are keying in on tightening up buildings – weatherization efforts – this is a great opportunity. Want to figure out how to implement these steps most effectively.

8) What would you like to see this Board/Committee accomplish in the next year?

The Committee has already done so much and has great momentum. Keep going.

Agenda

Lebanon City Council

July 19, 2023

9. Public Hearing Items:

9.A – Ordinance #2023-03 to Amend City Code Chapter 97, Landfill Regulations

A public hearing 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.

The City Council scheduled this public hearing at its July 5, 2023 regular meeting. The public hearing was properly noticed in the *Valley News* on July 8, 2023 in accordance with City Code and State Law.

Background

Proposed changes to the City's Pay-As-You-Throw (PAYT) Program at the Landfill were presented to the Council at its meeting on June 7, 2023. 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
- Clarifies the distinction between invoices issued upon use of the facility and monthly reminder statements which summarize prior invoices

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).

Action

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

MOVED, that the Lebanon City Council hereby adopts 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 as presented in the July 19, 2023 City Council agenda packet.

Included in this Section:

1. Proposed Ordinance #2023-03
2. June 28, 2023 Legal Opinion by Attorney Christine Johnston
3. Notice of Public Hearing as Published in the July 8, 2023 Edition of the *Valley News*

**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 provided with an invoice when exiting the landfill for all each time solid waste is brought to the facility in the previous month. In addition, the City will mail a reminder statement with a summary of the invoice(s) in the previous month. Payment is due in full within 30 days of the date of the original invoice, not the statement date. 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, 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 – \$150.00 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
Manchester, NH 03101-1188
603.716.2895 Main
603.716.2899 Fax

July 11, 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: 07/11/2023

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 and July 11, 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 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

July 11, 2023



LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARINGS
Wednesday, July 19, 2023 - 6:00pm
Council Chambers, City Hall or
REMOTE VIA VIRTUAL PLATFORM
LebanonNH.gov/LIVE

The Lebanon City Council will hold public hearings on July 19, 2023, beginning at 6:00pm for the following:

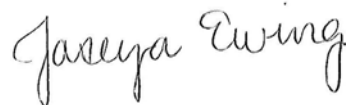
- A. Ordinance #2023-03** – A public hearing for the purpose of receiving public input and taking action on Ordinance #2023-03 to amend City Code Chapter 97, relative to changes in Landfill Operations.
- B. Supplemental Appropriation** - A public hearing for the purpose of receiving public input and taking action on a request for a Supplemental Appropriation in the amount of \$425,000 for the purchase of 160 Mechanic Street, Lebanon, and authorization to issue bonds or notes.

The July 19, 2023 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning July 14, 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-422109

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, July 8, 2023, and Tuesday, July 11, 2023.



Jaseya Ewing, City Clerk

**Agenda
Lebanon City Council
July 19, 2023**

9. Public Hearing Items:

**9.B – 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**

A public hearing for the purpose of receiving public input and taking action to appropriate the sum of \$425,000 for the purchase of 160 Mechanic Street, Lebanon, and to authorize the issuance of bonds or notes in accordance with Municipal Finance Act (NH RSA 33).

The City Council scheduled this public hearing at its June 21, 2023 regular meeting. The public hearing was properly noticed in the *Valley News* on July 8, 2023 and July 11, 2023 in accordance with City Code and State Law.

Background

On June 21, 2023 the City Council voted, pursuant to its authority under NH RSA 47:5, to authorize the purchase of property located at 160 Mechanic Street, Lebanon (Tax Map 105, Lot 27) for a purchase price of \$400,000 (Four Hundred Thousand Dollars). As part of its motion, the Council designated and authorized the City Manager to act on behalf of the City Council to undertake all actions and execute all documents as may be required to enter into a Purchase & Sale Agreement (P&S) for the acquisition of the properties and to perform all obligations of the City under the P&S.

Based on the City Council's action, the Administration has initiated due diligence efforts, including deed and title research and an environmental review. It is estimated that Phase 1 and Phase 2 Environmental Site Assessments may cost approximately \$20,000 and that legal costs for the title research and closing may cost approximately \$5,000, bringing the total cost of acquiring the property to \$425,000.

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 completing environmental assessment and funding the purchase of 160 Mechanic Street, Lebanon, in the amount of \$425,000.

NOW THEREFORE BE IT RESOLVED, by the City of Lebanon, that funds be appropriated for expenditure in the General Fund in the amount of \$425,000 (Four Hundred Twenty-Five Thousand Dollars) for the purchase of 160 Mechanic Street, Lebanon, and for the completion of environmental assessment associated with the property transaction; and

BE IT FURTHER RESOLVED, that the City Treasurer, with the approval of the City Manager, is authorized to issue, in accordance with the Municipal Finance Act (NH RSA 33), a bond issue or bond issues in an amount not to exceed \$425,000, and that, except as herein otherwise provided, discretion to fix the dates, maturities, denomination, interest rate, form, and other details of said issue(s) is hereby delegated to the City Treasurer, with the approval of the City Manager.

This resolution shall be effective upon passage.

Included in this Section:

1. Notice of Public Hearing as Published in the July 8, 2023 and July 11, 2023 Editions of the *Valley News*

July 11, 2023



LEBANON CITY COUNCIL
NOTICE OF PUBLIC HEARINGS
Wednesday, July 19, 2023 - 6:00pm
Council Chambers, City Hall or
REMOTE VIA VIRTUAL PLATFORM
LebanonNH.gov/LIVE

The Lebanon City Council will hold public hearings on July 19, 2023, beginning at 6:00pm for the following:

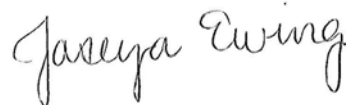
- A. Ordinance #2023-03** – A public hearing for the purpose of receiving public input and taking action on Ordinance #2023-03 to amend City Code Chapter 97, relative to changes in Landfill Operations.
- B. Supplemental Appropriation** - A public hearing for the purpose of receiving public input and taking action on a request for a Supplemental Appropriation in the amount of \$425,000 for the purchase of 160 Mechanic Street, Lebanon, and authorization to issue bonds or notes.

The July 19, 2023 City Council agenda packet and documents pertaining to the above-described public hearings will be available on the City's website beginning July 14, 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-422109

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, July 8, 2023, and Tuesday, July 11, 2023.



Jaseya Ewing, City Clerk

**Agenda
Lebanon City Council
July 19, 2023**

11. New Business:

**11.A – Discussion & Set Public Hearing for August 2, 2023:
Acceptance of Dedication of Commerce Avenue and Technology Drive**

Background:

The City Council is requested to formally accept the dedication of the existing road rights-of-way for Commerce Avenue and Technology Drive located within the Airport Business Park.

The road rights-of-way were dedicated with the Re-subdivision of the Lebanon Airport Industrial Park, Phase 1-A plan, which was recorded in the Grafton County Registry of Deeds as Plan #4745 on December 9, 1987. The Council subsequently acted in April 1989 to rename the original “Executive Avenue” as “Technology Drive”.

Since the City itself was the landowner and sponsor of the Airport Business Park development, the City has always assumed ownership and maintenance responsibility for the roads within the Business Park, which were built in the late 1980s. The quitclaim deed language used by the City to convey the earliest Business Park lots included “a right-of-access” over Technology Drive and Commerce Avenue, which would lapse upon acceptance of the roads as “fully recognized public streets”. However, there is no evidence that the City Council has ever formally accepted the road rights-of-way to give them legal status as public streets pursuant to NH RSA 674:40

Since the subdivision plan depicting the road rights-of-way has already been approved by the Planning Board, the Council only needs to accept, by simple majority vote, the dedications that occurred with the recording of the plat in 1987.

Action:

If the City Council wishes to move forward with this request, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, August 2, 2023, beginning at 7:00p.m. in Council Chambers, City Hall, and remote via City’s Virtual Platform, for the purpose of receiving public input and taking action to accept the dedication of the rights-of-way for Commerce Avenue and Technology Drive, constructed in approximately 1987, and shown on a plan titled “Resubdivision of Lebanon Airport Industrial Park, Phase 1-A”, prepared by T&M Associates, dated July 1987, project #235787, and recorded in the Grafton County Registry of Deeds on December 9, 1987 as Plan #4745.

Included in this Section:

1. Resubdivision of Lebanon Airport Industrial Park, Phase 1-A, prepared by T&M Associates, dated July 1987, project #235787; recorded in GCRD as Plan #4745



**Agenda
Lebanon City Council
July 19, 2023**

11. New Business:

**11.B – Discussion and Set Public Hearing for August 16, 2023: Consideration
of Provisional Dedication and Acceptance of an Alternate Barden Hill Road
(Public Highway per NH RSA 229:1 or Class A Trail per NH RSA231-A:5)**

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 for consideration of dedication and acceptance by the City.

The attached proposal stems from litigation between Patch Forest, LLC and the City, which has been temporarily suspended to allow the parties to mediate a potential resolution concerning the Class VI roads on the Patch Forest property. The current proposal from Patch Forest would make both the pending litigation and the ongoing mediation moot.

Legal counsel will be present on July 19th to provide an overview of the current settlement proposal from Patch Forest, LLC and a discussion of the distinctions between dedication and acceptance as a Public Highway per NH RSA 229:1 or as a Class A Trail per NH RSA 231-A:5. In addition, it is expected that City staff will be walking the alternate Barden Hill alignment within the coming weeks to collect GPS coordinates, photos, and videos for presentation to the City Council on August 2nd.

The City Council is asked to schedule a public hearing for August 16, 2023, at which time a presentation from Patch Forest, LLC will be provided in relation to the provisional dedication and acceptance of a proposed alternate Barden Hill alignment.

Action

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

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, August 16, 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 on a proposal from Patch Forest, LLC for provisional dedication and acceptance of an alternate Barden Hill Road (Highway or Class A Trail).

Included in this Section:

1. Proposed Terms of Compromise from Patch Forest, LLC, received July 11, 2023
2. Memorandum from Attorney Matthew C. Decker RE: Public Highways, dated December 29, 2020

The proposed terms of compromise are as follow:

1. In replacement of the existing historical Barden Hill Road, the course of which is at times difficult to ascertain, follow, is overgrown with trees, and does not follow an optimally scenic course across the land, Patch Forest will dedicate, and the City Council will accept, as a Class A Trail pursuant to RSA 231-A:5, a new and improved Barden Hill Trail from the intersection of Downer Road at its west end to Methodist Hill Road at its east end.
 - a. The new Barden Hill Trail may deviate from the course of the historical road at certain points in preference for a course where modern snowmobile trails and/or logging skid trails on private property provide a more favorable, scenic and enjoyable course for recreational uses.
 - b. The new Barden Hill Trail will be established at a width of one rod (16.5 feet) in order to accommodate public recreational uses as may be permitted by the Council by its authority under RSA 231-A:4.
 - c. Pursuant to RSA 231-A:5, Class A trails may be dedicated and accepted subject to trail use restrictions as may be imposed by the grantor. Consistent with the Council's prior action with regard to the current Barden Hill Road/Class A Trail, permitted means of travel along the proposed new Barden Hill Trail will be:
 - i. Feet, skis, snowshoes, and horses;
 - ii. Bicycles, ridden appropriately for a multipurpose trail, when the City deems that the conditions of the trail warrant their use; and
 - iii. Snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use.

All other wheeled or motorized vehicles, on- or off-road, shall be prohibited, except, pursuant to RSA 231-A:1, Patch Forest, Patch Orchards, and their assigns shall retain the right to use the Trail for vehicular access to abutting lands for such nondevelopment uses as agriculture and forestry, or for access to any existing building or structure.
 - d. Patch Forest and the City will jointly hire and share the cost of a professional surveyor to draw the boundaries of the public right of way, selecting the most favorable east-west course in the reasonable near vicinity of the existing historical road while avoiding interference with Patch Forest/Patch Orchard's existing active use of its private property (e.g. existing tapped maple trees or sap lines). The proposed course will be informally flagged and GPS-charted by the City's GIS coordinator. The course of the Trail's eastern end along the northern boundary of the Kimball property (Lot 169-3) shall remain unchanged so as not to interfere with an existing private driveway on Lot 169-5.

- e. The City will erect gates at the eastern and western ends of the Barden Hill Trail to prevent unpermitted access by motorized vehicles, along with appropriate signage to inform the public of use restrictions.
 - f. Patch Forest/Patch Orchards and their assigns may apply for a license from the City Manager to run maple sap lines within and across the new Barden Hill Trail at a suitable height so as not to interfere with public use of the trail, and such license will not be unreasonably withheld.
 - g. Patch Forest/Patch Orchards and their assigns will have the authority to maintain and use private roads that cross the new Barden Hill Trail. Pursuant to RSA 231-A:1, the City will bear no responsibility for maintaining the Trail for use by Patch Forest/Patch Orchards and their assigns. The City may grant permission for Patch Forest/Patch Orchards and their assigns to maintain the Trail for Patch Forest's access uses, such permission will not be unreasonably withheld.
2. To facilitate public access to the new Barden Hill Trail, Patch Forest will grant the City of Lebanon an easement to the so-called "chicken coop" area next to Methodist Hill Road for the construction and maintenance of a small public parking area of a size to accommodate at least 2 vehicles. Patch Forest will execute an easement deed prepared by the City to permit the City's removal of the chicken coop and the installation of parking following the City's preparation of a suitable survey of the parking area.
 3. The City Council will formally discontinue the historical Barden Hill Road to the extent the historical road does not overlap with the newly dedicated Trail.
 4. In compromise for the location of the new Barden Hill Trail and to the granting by Patch Forest of an easement at the easterly end of the new Barden Hill Trail for parking, the City Council is asked to formally discontinue the sections of historical roads that abut Patch Forest land, to wit: Durkee Road (from GPS coordinate 838170.1-402236.7 to the intersection with McCallister Road); McCallister Road (from the intersection with Atherton Road to the Enfield town line); and Atherton Road (from Route 120 to the Enfield town line). **(Note: McCallister Road and Atherton Road would be completely discontinued in Lebanon; sections of Durkee Road and Barden Hill Road abutting non-Patch Forest lands would not be discontinued.)** Following the formal discontinuance, these roads would revert to private property.

TO: Lebanon City Council
FROM: Matthew C. Decker
DATE: December 29, 2020
RE: Public Highways

FOR PUBLIC REFERENCE

The following summary of relevant statutes and case law is intended to assist the Lebanon City Council and the residents of Lebanon in their review of reports and recommendations from the Class VI Roads Advisory Committee as well as petitions to discontinue public highways. This is a general summary of basic law, and does not discuss possible exceptions to the basic law.

Definition of “Public Highway”

- A public highway is an easement held in trust by government for the use of the public. The underlying land is usually, although not always, owned by abutting landowners. *See* New Hampshire Municipal Association, *A Hard Road to Travel: New Hampshire Law of Local Highways, Streets, and Trails*, Chapter 1, p. 17, 2015 Ed.
- The law limits the public to “viatic use” of a highway. “Viatic use” means any use reasonably incidental to the purpose of traveling. *Lydston v. Rockingham Cty. Light & Power Co.*, 75 N.H. 23 (1908).

Creation of Public Highways

- RSA 229:1 lists four ways a public highway may be created:
 - (1) Layout (“laid out in the mode prescribed therefor by statute”)
 - The layout process is defined at RSA 231:8 *et seq.* and includes a petition to the town select board or city council, a public hearing, a written “return” containing a description of the highway, and a payment of damages to the landowner(s) over whose land the highway passes.
 - (2) Deeded ownership (“roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest”)
 - (3) Dedication and acceptance (“roads which have been dedicated to the public use and accepted by the city or town in which such roads are located”)
 - (4) Prescription (“roads which have been used as such for public travel... for 20 years prior to January 1, 1968”)

Creation by Prescription

- “To establish a highway by prescription, it must appear that the general public used the way continuously without interruption for a period of twenty years prior to 1968, under a claim of right without the owner’s permission.” *Gill v. Gerrato*, 156 N.H. 595, 596 (2007) (citations omitted).
- Evidence supporting prescription has been held to include, but is not limited to:
 - Photographs and testimony from community residents;
 - References to the road as a public highway in historical documents;
 - Historic maps;
 - The existence of cellar holes along the road;

- Stone walls lining the road;
 - Use of the road to access a commercial entity; and
 - Municipal maintenance. *See Hard Road to Travel* at Ch. 2, pp. 46-47.
- “[A] highway established by prescription is not as a matter of law restricted in width to the track of actual travel. In a case of prescription, the easement is not necessarily limited to the travelled path and the ditches on each side, but where the road has been fenced out for many years about the usual width, and there is nothing to control it, a jury would be justified in finding the whole space between the fences to be a public highway. The space between the wrought road and its exterior limits may be needed for various purposes, as for furnishing earth and other materials for making the road, constructing culverts and watercourses, making changes in the travelled path, and avoiding obstructions by snow... and for these and other reasons the space given to highways is very generally much more than what is occupied by the travelled path, and... it is competent for a jury to find, from ancient fences and other circumstances, that the true limits of a highway extend beyond the wrought road.” *Hoban v. Bucklin*, 88 N.H. 73 (1936) (citations and quotations omitted).

Conversion of Public Highways to Trails

- RSA 231-A allows municipalities to reclassify Class V or VI public highways into municipal trails. Trails remain full public rights-of-way, but subject to public trail use restrictions.
- Reclassification of highways to trails allows municipalities to restrict development on abutting parcels and restrict public uses (e.g. prohibitions of motor vehicles, wheeled vehicles, or OHRVs, or restrictions to specified modes of travel such as horse, bicycle or foot). RSA 231-A:4.
 - With “Class A” trails, abutting landowners can continue to use the trail for vehicular access for “such nondevelopment uses as agriculture and forestry, or for access to any building or structure existing prior to its designation as a trail” and the owner’s access “shall be exempt from applicable public trail use restrictions”. RSA 231-A:1, I.
 - With “Class B” trails, abutting landowners have no special rights and must obey any trail use restrictions imposed on the public. RSA 231-A:1, II.

Discontinuance

- Once a public highway is established, the rights last indefinitely, unless a formal public decision is made to discontinue them. *Blagbrough Family Realty Trust v. A&T Forest Products, Inc.*, 155 N.H. 29 (2007).
- “Highway discontinuance is not favored in the law... and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence.” *Davenhall v. Cameron*, 116 N.H. 695, 697 (1976); *see also Town of Goshen v. Casagrande*, 170 N.H. 548, 551 (2018).
- Public highways cannot be lost by adverse possession. *See RSA 236:30; Windham v. Jubinville*, 92 N.H. 102 (1942).
- “For all the same reasons that highway continuance is favored in the law, it is probably best to avoid complete discontinuances of highways unless absolutely necessary. It is often the case that the public right of way will be useful in the future. The only time complete discontinuance should be considered is when there is some specific alternative use in mind for the land... If the only goal is to save on town maintenance costs, consider discontinuing the highway subject to gates and bars instead. That is the purpose of the Class VI classification, and the right of way will be preserved for future use, if necessary.” *Hard Road to Travel*, Ch.4, at p. 76.

Revised Statutes Annotated of the State of New Hampshire
Title XX. Transportation (Ch. 228 to 242) (Refs & Annos)
Chapter 229. Highway System in the State (Refs & Annos)

N.H. Rev. Stat. § 229:1

229:1 Highways Defined.

Effective: July 1, 2017

[Currentness](#)

Highways are only such as are laid out in the mode prescribed therefor by statute, or roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest, or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located, or roads which have been used as such for public travel, other than travel to and from a toll bridge or ferry, for 20 years prior to January 1, 1968, and shall include the bridges thereon. Highway does not include any bridge, trail, or path intended for use by off highway recreational vehicles, as defined in [RSA 215-A:1](#), or snowmobiles, as defined in [RSA 215-C:1](#).

Credits

Source. [RS 53:7](#). CS 57:7. GS 68:8. GL 74:8. PS 67:1. PL 74:1. RL 90:1. 1943, 57:1. 1945, 188:1, part 1:1. [RSA 230:1](#). 1967, 283:1. 1981, 87:1, eff. April 20, 1981. [2017, 156:123](#), eff. July 1, 2017.

[Notes of Decisions \(75\)](#)

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N.H. Rev. Stat. § 229:1, NH ST § 229:1

Current through 2020 Reg. Sess. of the General Court

End of Document

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[Revised Statutes Annotated of the State of New Hampshire](#)

[Title XX. Transportation \(Ch. 228 to 242\) \(Refs & Annos\)](#)

[Chapter 231-a. Municipal Trails \(Refs & Annos\)](#)

N.H. Rev. Stat. § 231-A:5

231-A:5 Acquisition of New Trails.

[Currentness](#)

I. Municipalities shall not use the power of eminent domain to establish trails.

II. A class A or B trail may be established by the local legislative body or its designee over any land previously acquired by the municipality, including land acquired by the conservation commission pursuant to [RSA 36-A:4](#), or town forests established pursuant to [RSA 31:110](#), unless the establishment of such trail would violate any right or interest reserved or retained by a prior grantor or held by a third party.

III. The local legislative body or its designee may acquire, by dedication and acceptance or by gift, purchase, grant or devise:

(a) Any class A or B trail, subject to such public trail use restrictions as may be imposed by deed by the owner or grantor;
or

(b) Any lesser interest in land for trail purposes, including but not limited to a revocable easement, revocable license, lease or easement of finite duration, or conservation restriction, subject to such public trail use restrictions and such reserved rights as may be imposed by or agreed upon with the owner or grantor.

IV. A properly established conservation commission may utilize [RSA 36-A:4](#) for the acquisition of trails.

Credits

Source. [1993, 60:2](#), eff. Jan. 1, 1994.

173 N.H. 1
Supreme Court of New Hampshire.
TOWN OF DUNBARTON

v.
Michael GUINEY & A.

No. 2018-0591

|
Argued: September 25, 2019

|
Opinion Issued: February 5, 2020

Synopsis

Background: Town brought action against landowner and owners of adjoining lots, seeking declaratory judgment as to whether disputed area was public road by prescription. Landowner cross-claimed against adjoining lot owners, disputing boundary lines and existence of right-of-way over his property. The Superior Court, [John C. Kissinger, J.](#), [2018 WL 7286166](#), entered judgment, declaring that road between landowner's house and barn had become a public highway by prescription, that boundary lines were established by acquiescence, and that landowner was estopped from denying existence of the right-of-way. Landowner appealed.

Holdings: The Supreme Court, [Hantz Marconi, J.](#), held that:

[1] disputed area was not a public highway by prescription;

[2] parties acquiesced to boundaries between their lots; and

[3] landowner was judicially estopped from denying existence of right-of-way providing adjoining lot access to public road.

Reversed in part, vacated in part, and affirmed in part.

West Headnotes (15)

[1] **Highways**—Establishment by Prescription, User, or Recognition

Whether a highway is created by prescription is a finding of fact.

[2] **Appeal and Error**—Review for correctness or error in general
Appeal and Error—Sufficiency of Evidence

Findings of fact by a trial court are binding on the Supreme Court unless they are not supported by the evidence or are erroneous as a matter of law.

[3] **Highways**—Duration and Continuity of Use

To establish a highway by prescription, it must appear that the general public used the way continuously without interruption for a period of 20 years prior to 1968, and the public use must be shown to have been adverse.

[4] **Highways**—Evidence as to existence of highway

The burden of proof on the issue of adversity of public use, as required to establish a highway by prescription, at least initially, lies with the party claiming the prescriptive easement.

[5] **Easements**—Questions for jury

Whether a use of property is adverse, as required for prescriptive easement, is an issue of fact.

[6] **Highways**🔑Evidence as to existence of highway

Evidence of continuous and uninterrupted public use of the premises for the statutory period, though uncontradicted, is insufficient alone to establish that premises became a public highway by prescription as a matter of law.

[7] **Highways**🔑Adverse Character of Use in General

Where the adverse public use of a property, as required to establish the property has become a public highway by prescription, is left to be implied solely from the public use, it must appear that such use was of a character calculated to apprise the owner that it was had under a claim of right; the nature of the use must be such as to show that the owner knew, or ought to have known, that the right was being exercised, not in reliance upon his toleration or permission, but without regard to his consent.

[8] **Highways**🔑Adverse Character of Use in General

Town employees' plowing of disputed area between house and barn on landowner's property was not evidence of adverse public use, as necessary to establish that area had become part of a public highway by prescription; landowner would not have understood town to be making claim of right to his property by such conduct, since town asserted that plowing and maintenance done on the area was simply to reach an area where the plow trucks on the public highway could safely turn around. [N.H. Rev. Stat. Ann. § 229:1](#).

[9] **Boundaries**🔑Conclusiveness and effect of acquiescence in general

Boundary established by acquiescence will prevail even over the description in the deeds and is conclusive upon successors in title.

[10] **Boundaries**🔑Recognition and Acquiescence

To establish a boundary by acquiescence, a party generally must prove that: (1) the parties are adjoining land owners; (2) who have occupied their respective lots up to a certain boundary; (3) which they have recognized as the true boundary separating the lots; and (4) have done so for at least 20 years.

[11] **Appeal and Error**🔑De novo review

Supreme Court reviews trial court's legal rulings de novo.

[12] **Boundaries**🔑Conclusiveness and effect of agreement

Adjoining property owners acquiesced to boundaries between their lots as established in boundary line agreement, which differed from boundary line descriptions in deeds conveying the lots to initial title holders, where parties and their predecessors in title treated boundaries described in the agreement as true ones for period of almost 30 years, there were five officially recorded affirmations of the boundary lines as they appeared in the agreement, and

there was acquiescence of one party's actual occupation on land that he would not have owned had title been quieted to the disputed acreage.

[13] Boundaries ➡ Recognition and Acquiescence
Boundaries ➡ Time of acquiescence

The doctrine of boundary by acquiescence is grounded upon principles of public policy that preclude a party from setting up or insisting upon a boundary line in opposition to one which has been steadily adhered to, upon both sides, for more than 20 years.

[14] Estoppel ➡ Claim inconsistent with previous claim or position in general

Landowner was judicially estopped from denying existence of 50-foot right-of-way providing adjoining lot access to public road, appearing in his deed and a boundary line agreement executed by predecessors in title to both lots, given the position taken by landowner in prior quiet title action against adjoining lot owner, in which trial court had determined that driveway that adjoining lot owner had constructed over his property was not an easement by implication and was distinct from existing right-of-way, referred to as a "cart road," which landowner did not appeal.

[15] Estoppel ➡ Claim inconsistent with previous claim or position in general

Under the judicial estoppel doctrine, a litigant may not take an adverse position to one taken in a prior judicial proceeding.

****861** Merrimack

Attorneys and Law Firms

Mitchell Municipal Group, P.A., of Laconia ([Steven M. Whitley](#) on the memorandum of law and orally), for the Town.

Wadleigh, Starr & Peters, P.L.L.C., of Manchester ([Michael J. Tierney](#) on the brief and orally), for the appellees

Panciocco Law, LLC, of Bedford ([Patricia M. Panciocco](#) on the brief and orally), for appellant.

Opinion

[HANTZ MARCONI, J.](#)

****862 *2** The appellant, Michael Guiney, appeals a declaratory judgment of the Superior Court ([Kissinger, J.](#)) ruling that the road between Guiney's house and barn has become a public highway by prescription. Guiney also appeals the trial court's decision on his cross-claim against the appellees, David Nault, Joshua Nault, and Leigh Nault *3 (the Naults), which upheld boundary lines and a 50-foot wide right-of-way (50-foot ROW) that appear in a 1988 boundary line agreement under the doctrines of boundary by acquiescence and estoppel by recitals in instruments. We reverse in part, vacate in part, and affirm in part.

The trial court found, or the record supports, the following facts. The relevant properties and Kelsea Road are located in Dunbarton. Guiney acquired his property (Lot 5) by deed dated March 30, 1999. David Nault purchased three lots (Lots 7, 8, and 9) to the west and north of Lot 5 between 1990 and 1998, and has a home on Lot 7. Nault later transferred Lot 8 to his son and daughter-in-law, and has retained Lot 9 with the intent of giving it to another one of his children. None of the Naults' Lots have frontage on a Class V road, including Kelsea Road, and the Naults access Kelsea Road via a right-of-way across Lot 5.

Kelsea Road is a Class V gravel road that exits west off of Montelona Road and continues in a southwesterly direction. As Kelsea Road reaches Lot 5, a traveled way spurs off to the west and continues between Guiney's

house and barn. This westerly spur between Guiney's house and barn is referred to by the parties and throughout this opinion as the "disputed area."

In 1873, the original owners of the entire tract of land containing the properties relevant to this appeal conveyed a parcel, including what is now Lot 7, to Alfred Colby and kept Lot 5 for themselves. In the deed to that transfer, the owners granted Colby "the right forever to cross [Lot 5] in any manner and at all times in the old cart road." The cart road runs between the house and barn on Lot 5 and is approximately 13'-15' wide.

On June 24, 1988, Jean Gildersleeve (Gildersleeve), then the owner of Lot 5, entered into a "common boundary line and right-of-way-agreement" (BLA) with Abraham Braverman, who was the owner of Lot 7. This agreement was recorded in the Merrimack County Registry of Deeds on August 24, 1988, and re-recorded on January 27, 1989. The BLA provides, in part, that "a right-of-way exists over [Lot 5] for the benefit of [Lot 7]" and that the agreement "shall be a covenant running with the land, and shall be binding on all future owners of [Lot 5] and [Lot 7]." To help facilitate the agreement, a local land surveyor prepared a plan, which is referenced in the BLA and also recorded in the Merrimack County Registry of Deeds. The agreed-upon boundary lines and a 50-foot ROW shown at the end of the traveled way between Guiney's house and barn are detailed on the plan. This agreement was reaffirmed by a "confirmatory common boundary line and right-of-way agreement" (Confirmatory Agreement) entered into on June 26, 1998, by Gildersleeve and the executrix of Mrs. Braverman's estate. The Confirmatory Agreement is recorded in the Merrimack County Registry of Deeds.

*4 When Guiney purchased Lot 5 from the Jean O. Gildersleeve Inter Vivos Trust in **863 1999, the deed described the boundaries of the property using the language that appears in the BLA, including the 50-foot ROW in favor of Lot 7. Guiney testified that he received a copy of the BLA prior to purchasing Lot 5, and he did not question the agreement; rather, he was pleased that a survey of his property had been done. Shortly after moving in, Guiney had a discussion with Nault in which he acknowledged the existence of the right-of-way and Nault's right to use it. In 2015, Guiney recorded a plan in the Merrimack County Registry of Deeds which illustrates the boundary lines of his property as they are described in the BLA. Nault was also aware of the BLA prior to purchasing Lot 7 and understood it to be binding upon him and all future owners of the affected pieces of property.

Guiney moved into the house on Lot 5 almost immediately after purchasing it in 1999. Although he observed very little traffic near his house, Guiney observed plow trucks for the Town of Dunbarton (Town) plowing the disputed area during the winter and using space next to his barn to turn around and go back down Kelsea Road. Guiney also saw Town trucks grade Kelsea Road once or twice a year. Although the Town trucks never graded the disputed area between Guiney's house and barn, they used the space next to the barn to turn their trucks around when grading Kelsea Road.

At trial, the Naults introduced maps depicting Kelsea Road and had a number of witnesses testify to the Town's history of maintaining the road, but only two of them offered testimony speaking to that history prior to 1968.¹ One of those witnesses began working for the Town during adolescence in the 1950s or 1960s, and by the 1970s the Town assigned him his own plow route, which included Kelsea Road. He testified to plowing Kelsea Road up to the Guiney property travel-way and turning around next to the barn.

The second witness began working for the Town around 1958 while his father was the Town road agent. That employee testified to childhood memories of riding with his father while he plowed Kelsea Road up to the disputed area, plowed the disputed area, and turned around next to the barn. When the witness was hired by the Town, he continued to plow this route in the same manner as his father; and he did not make any changes to that practice when he became the Town road agent himself. Further, the witness testified to grading, sanding, and removing brush from Kelsea *5 Road during his tenure with the Town, and that he understood the disputed area to be part of Kelsea Road. Although there was testimony that residents of Lot 5 had granted the Town permission to turn their trucks around next to the barn, the trial court found that the Town was never given, nor asked for, permission to plow or otherwise maintain the disputed area.

In 2006, Guiney filed a petition against Nault to quiet title to a "driveway" Nault had constructed over Lot 5, and outside of the disputed area, to access Lots 8 and 9. The trial court in that case explained that the "driveway" Nault had constructed was distinct from the right-of-way running east to west over Lot 5 to Lot 7, which was referred to by the court as the "cart road." The court concluded that, in light of the existing right-of-way, Nault did not have an easement by implication, necessity, or prescription to utilize the driveway he had constructed across Guiney's property. In the present case, the trial court took the outcome of that 2006 litigation into account

****864** when ruling on the Naults' motion for summary judgment and ruled that Guiney was judicially estopped from arguing that there was no right-of-way across Lot 5 that permits travel to and from Lot 7 and Kelsea Road.

In 2011, Guiney noticed the Town slowly widening the disputed area and, in an effort to protect his property from encroachment, he put up a post blocking the Town's access to the turnaround area next to his barn. The Town asked Guiney to take the post down as a gesture of good faith while an agreement was worked out between Guiney, the Town, and Nault, which he did. That exchange notwithstanding, the Town continued to widen the disputed area and told Guiney that the Town believed it had rights in the disputed area. In response, Guiney put new posts in the ground to block the turnaround area next to his barn.

In 2015, Guiney hired a surveyor to survey his property. The surveyor concluded that the boundary lines between Lot 5 and Lot 7 as they appear in the 1988 BLA are not consistent with the boundaries described in the 1873 deed conveying Lot 7 out of Lot 5. In his view, the boundaries as set out in the 1873 deed were "clear as day," and the true intent of the parties entering the 1988 BLA must have been to establish a new common boundary between the two lots. The Naults also hired a surveyor to survey the property and determine the boundary lines between Lot 5 and Lot 7. Contrary to the position maintained by Guiney's surveyor, the Naults' surveyor concluded that the boundaries described in the 1988 BLA accurately reflect the common boundary established by the 1873 deed that created Lot 7.

After more than a decade of dispute, the Town filed an action against Guiney and the Naults, seeking a declaratory judgment as to whether the ***6** disputed area has become a public highway by prescription. In the same action, Guiney asserted a cross-claim seeking to have the BLA invalidated and quiet title against the Naults. Following a three-day bench trial, the trial court ruled that, based on the testimony of Town employees and maps presented at trial, the disputed area is part of Kelsea Road by prescription. Further, the court assumed, without deciding, that the BLA was invalid. Nonetheless, the court ruled that the boundary lines between Lot 5 and Lot 7 had been established by acquiescence as they appear in the 1988 BLA, and that the 50-foot ROW laid out in the BLA was established and enforceable under the doctrine of estoppel by recitals in instruments. The appellant filed a motion for reconsideration, which was denied, and this appeal followed.

^[1] ^[2]We first address whether the disputed area between

Guiney's house and barn has become part of Kelsea Road, a public highway, by prescription. We have construed the "public use" provision of [RSA 229:1](#) as describing the establishment of a public highway through prescription. [Blagbrough v. Town of Wilton](#), 145 N.H. 118, 122, 755 A.2d 1141 (2000); see [RSA 229:1](#). Whether a highway is created by prescription is a finding of fact. [Mahoney v. Town of Canterbury](#), 150 N.H. 148, 150, 834 A.2d 227 (2003). Findings of fact by a trial court are binding unless they are not supported by the evidence or are erroneous as a matter of law. [Id.](#)

^[3] ^[4] ^[5]To establish a highway by prescription, it must appear that the general public used the way continuously without interruption for a period of twenty years prior to 1968. [Id.](#) In addition, the public use must be shown to have been adverse. [Catalano v. Town of Windham](#), 133 N.H. 504, 509, 578 A.2d 858 (1990). The burden of proof on the issue of adversity, at least initially, lies with the party claiming the prescriptive easement. ****865** [Mahoney](#), 150 N.H. at 151, 834 A.2d 227. Whether a use of property is adverse is an issue of fact. [Id.](#) at 152, 834 A.2d 227. Accordingly, in this case, the Town² has the burden of proving by a "balance of the probabilities" that the public used the disputed area for twenty years prior to 1968, under a claim of right without the owner's permission. See [Catalano](#), 133 N.H. at 510, 578 A.2d 858.

The Naults argue, and the trial court found, that the disputed area has become a public highway by prescription. In their brief, the Naults point to testimony from Town employees and ancient maps introduced at trial, which were relied upon by the trial court, as evidence to support the trial court's finding of a public highway by prescription. The maps relied upon by ***7** the trial court included: the 1925 State of New Hampshire Highway Department Geological Survey; the 1925 United States Geological Survey Map and 1949 revision thereof; the Atlas Map; the 1941 Property Ownership of the Town of Dunbarton; "the 1969 USUS Map and 1985 revision thereof"; and the 1969 N.H. Department of Resources and Economic Development Map of Dunbarton Early Landmarks and Highways. The trial court found that these maps provide evidence that Kelsea Road has been documented to include the disputed area for decades prior to 1968 and, taken together with the testimony of Town employees, they establish that the public used the road under a claim of right for a period of 20 years prior to 1968.

This court has held that "the inclusion of a road on a map is competent evidence to support the inference of use of the road." [Blagbrough Family Realty Trust v. A & T Forest Prods.](#), 155 N.H. 29, 36, 917 A.2d 1221 (2007)

(quotation omitted); see Gill v. Gerrato, 156 N.H. 595, 597, 940 A.2d 233 (2007); Mahoney, 150 N.H. at 151, 834 A.2d 227; Williams v. Babcock, 116 N.H. 819, 822, 368 A.2d 1166 (1976). However, we have not addressed whether the appearance of a road on ancient maps, without more, can be sufficient to establish a public highway by prescription. See Blagbrough Family Realty Trust, 155 N.H. at 36, 917 A.2d 1221 (relying on maps and stone walls lining both sides of the road to uphold a finding of highway by prescription); Williams, 116 N.H. at 822-23, 368 A.2d 1166 (indicating that maps, cellar holes along the road, and a 1795 deed would support a finding of highway by prescription).

For example, in Mahoney, the trial court's finding of a public road by prescription was supported, not only by a number of ancient maps, but also by three deeds from the mid-1800s that made specific reference to public use of the road in question, and testimonial evidence about the public's use of the road during the 1950s and 1960s. Mahoney, 150 N.H. at 151, 834 A.2d 227. We held that, viewed holistically, the evidence was sufficient to support a finding of adverse public use, and, in turn, a public highway by prescription. Id. Similarly, in Gill, the trial court relied on deeds pre-dating the Revolutionary War and ancient maps to support a finding of public use of a road. Gill, 156 N.H. at 596-97, 940 A.2d 233. In finding said public use to be adverse, the trial court pointed to the fact that the road in question led to the Weeks Mill, an "oft-mentioned commercial enterprise," which permitted the inference that the public used the road to travel to that business without permission from anyone. Id. at 597, 940 A.2d 233. Taking the evidence of public use and adversity together, we affirmed **866 the trial court's finding of a public highway by prescription. Id.

^[6]In the case now before us, the maps presented to the trial court that predate 1968 are undoubtedly competent evidence to support an inference of public use. However, "[e]vidence of continuous and uninterrupted public *8 use of the premises for the statutory period, though uncontradicted, is insufficient alone to establish prescriptive title as a matter of law." Wason v. Nashua, 85 N.H. 192, 198, 155 A. 681 (1931). It still must be established that the public use was adverse; that is, the public used the road under a claim of right and without permission from the owner. Catalano, 133 N.H. at 509, 578 A.2d 858. Thus, the maps alone cannot establish that the disputed area became a public highway by prescription as early as 1939, contrary to the argument offered by the Naults.

^[7]Unlike the cases previously cited wherein the court relied primarily on maps, this case has no secondary

indicia, such as stone walls lining the road, cellar holes,³ or commercial enterprises, from which we can infer adverse use of the road under a claim of right without the owner's permission. Rather, the evidence of adverse use by the public prior to 1968 is limited to the testimony of two witnesses who were employed by the Town and plowed the disputed area.⁴ "Where, as here, this essential element is left to be implied solely from the public use, it must appear that such use was of a character calculated to apprise the owner that it was had under a claim of right." Wason, 85 N.H. at 198, 155 A. 681. "The nature of the use must be such as to show that the owner knew, or ought to have known, that the right was being exercised, not in reliance upon his toleration or permission, but without regard to his consent." Id.

At the time the Town filed its petition for declaratory judgment, it did not believe the disputed area had become a part of Kelsea Road by prescription. Indeed, the Town asserted in its petition that "any plowing or town maintenance that may have occurred during the prescriptive period was not performed under a claim of right, but simply to reach an area where the plow truck would be able to safely turn around." Further, Town employees incidentally plowing a small piece of property for the purpose of reaching a safe place to turn around is not the sort of public use that is "calculated to apprise the owner that it was had under a claim of right." Wason, 85 N.H. at 198, 155 A. 681. A reasonable person would not understand the Town to be making a claim of right to their property by such conduct.

^[8]Although the evidence presented to the trial court may support a finding of public use, it does not support a finding of adverse public use, and *9 was, therefore, insufficient to support a finding of a public highway by prescription. Accordingly, we reverse the decision of the trial court and hold that the disputed area has not become a public highway by prescription. Because we have held that the disputed area did not become a public highway by prescription, any question as to the width of the public way has been rendered moot. See Londonderry Sch. Dist. v. State, 157 N.H. 734, 736, 958 A.2d 930 (2008).

**867 Guiney has also raised a question as to whether the trial court erred in deciding that Kelsea Road turns to the west toward the disputed area rather than finding that it travels in a southerly direction to the Goffstown border in accordance with the Town's 1821 layout of the road. As the Naults correctly point out, however, the 1821 layout of Kelsea Road is irrelevant to our prescription analysis. Moreover, the trial court did not rely on it or incorporate it into its analysis. While the trial court stated that Kelsea Road travels in a westerly direction (*i.e.*, along the

disputed area) rather than in a southerly direction beyond the Guiney property, we understand that conclusion to flow from its immediately preceding determination that the disputed area had become part of Kelsea Road by prescription. Because we have reversed that ruling, the result that would have followed from it cannot be given effect. However, having determined that the disputed area is not part of Kelsea Road by prescription, we decline to undertake the unnecessary task of identifying the extent of Kelsea Road, and vacate the trial court's finding on that issue.

Next, we address the trial court's order regarding the boundary lines between Lots 5 and 7 as established by the 1988 BLA. We note at the outset that the trial court assumed, without deciding, that the BLA is invalid. Nevertheless, the trial court upheld the boundary lines as they appear in the BLA pursuant to the doctrine of boundary by acquiescence. In his notice of appeal, and in his motion for reconsideration to the trial court, Guiney asserts that the trial court erred by sua sponte applying the doctrine of boundary by acquiescence. However, Guiney's brief provides no support for this proposition; nor does it articulate what evidence he would have offered to rebut the doctrine or how he was prejudiced by its application. Thus, we conclude that the trial court did not unsustainably exercise its discretion by sua sponte applying the doctrine of boundary by acquiescence. See generally [Exeter Hospital v. Hall](#), 137 N.H. 397, 629 A.2d 88 (1993).⁵

^{*10} ^[9] ^[10] ^[11] In light of the trial court's decision, we need not, and do not, pass upon the validity of the BLA; as the trial court did, we assume, without deciding, that the BLA is invalid. Boundaries may be established by acquiescence where the parties have recognized a certain boundary as being the true one and have occupied their respective lots accordingly for twenty years or more. [O'Hearne v. McClammer](#), 163 N.H. 430, 435, 42 A.3d 834 (2012). "The bound thus acquiesced in will prevail even over the description in the deeds" and "[a] boundary established by acquiescence is conclusive upon successors in title." *Id.* (quotation and citation omitted). To establish a boundary by acquiescence, a party generally must prove that: (1) the parties are adjoining land owners; (2) who have occupied their respective lots up to a certain boundary; (3) which they have recognized as the true boundary separating the lots; and (4) have done so for at least twenty years. *Id.* In reviewing the trial court's decision, we review its legal rulings de novo, but defer to its findings of fact if supported by the record. *Id.* at 436, 42 A.3d 834.

The trial court found that the parties and their predecessors in title treated the boundaries described in

the 1988 BLA as ****868** the true ones for a period of almost 30 years. Additionally, the parties to the BLA had been neighbors for 20 years before entering that agreement, and therefore the court found it conceivable that they treated the boundaries contained therein as the true boundaries since 1967. The BLA, which describes the boundaries between the two Lots and was recorded in the Merrimack County Registry of Deeds on August 24, 1988, is not the only evidence of acquiescence in the described boundaries. After 1988, the same boundaries, described or depicted in the same way, were reaffirmed four different times in plans recorded either by the parties or their predecessors in title: first, by the BLA, which was re-recorded on January 27, 1989; second, by a "confirmatory common boundary line and right-of-way agreement," recorded August 19, 1998; third, by Guiney's deed, recorded April 8, 1999; and fourth, by a plan, recorded by Guiney on September 17, 2015.

Guiney argues that the BLA shifted 7 acres from Lot 5 to Lot 7, and that there is no evidence of actual occupation up to the boundary line effectuating that shift because it runs through the woods located between the two Lots. We disagree.

There is undisputed evidence in the record that Nault built roadways to Lots 8 and 9, without objection from Guiney, on land he would not own if Guiney were now allowed to quiet title to the disputed acreage. Guiney also argues that the parties never knew where the boundary lines were, but the evidence fails to support this assertion. Guiney testified at trial that he had an opportunity to review the BLA and knew he would be subject to it before purchasing Lot 5. He further testified that he believed the boundaries contained in the BLA and his deed to be the true boundaries and that he ***11** never made a claim to any portion of Lot 7. Similarly, Nault testified that he had discussed the boundaries with Gildersleeve, Guiney's predecessor in title, and she never took the position that she owned any property west of the lines described in the BLA, as Guiney does now. Further evidence of Guiney's acquiescence is exhibited by the fact that, when he was before the Town zoning board to oppose the grant of variances allowing Nault to build on Lots 8 and 9, he did not contest the boundary lines.

^[12] ^[13] The doctrine of "boundary by acquiescence is grounded upon principles of public policy, [that preclude a party] from setting up or insisting upon a boundary line in opposition to one which has been steadily adhered to, upon both sides, for more than twenty years." [O'Hearne](#), 163 N.H. at 436, 42 A.3d 834 (quotation and alteration omitted). Having been presented with testimony reflecting nearly 30 years of adherence, five officially recorded

affirmations of the boundary lines as they appear in the 1988 BLA, as well as evidence of Guiney's acquiescence and Nault's actual occupation, we affirm the trial court's finding that the boundaries between Lot 5 and Lot 7 have been established by acquiescence,⁶ as supported by sufficient evidence in the record.

Finally, we are tasked with deciding whether Guiney is estopped from denying the existence of a 50-foot ROW appearing in his deed and in the 1988 BLA. The trial court found that Guiney was estopped by the doctrine of recitals in instruments because he signed his deed with notice of the **869 right-of-way, and that both testimony at trial and Guiney's position in the 2006 litigation provided evidence of the Naults' detrimental reliance.

The concept of estoppel has engendered much confusion such that it is sometimes unclear to courts and parties what estoppel doctrine is being, or should be, applied in a particular case. See [Kellison v. McIsaac](#), 131 N.H. 675, 681-82, 559 A.2d 834 (1989). Here, the trial court applied the doctrine of estoppel by recitals in instruments with reference to the easement interest called out in Guiney's deed. Estoppel by recitals in instruments, however, requires a showing of detrimental reliance. See [Trachy v. LaFramboise](#), 146 N.H. 178, 183, 770 A.2d 1097 (2001) (2-1 decision). Although the trial court determined that Nault relied on there being a ROW to his property, there is no evidence in the record to support a finding that Nault relied on the ROW being 50 feet *12 wide. The record establishes only that Nault used a portion of the 50-foot ROW for access. Thus, the requirements for estoppel by recitals in instruments are not met. [Id.](#)

^[14] ^[15]In contrast, judicial estoppel stands on different footing. Under this doctrine, a litigant may not take an adverse position to one taken in a prior judicial proceeding. See [Alward v. Johnston](#), 171 N.H. 574, 584, 199 A.3d 1190 (2018). The Naults have argued that Guiney is judicially estopped from denying the validity of the 50-foot ROW. We agree. In its order on the motion for summary judgment, issued February 14, 2018, the trial court ruled that Guiney was judicially estopped from

denying the existence of a right-of-way over Lot 5 in favor of Lot 7 extending to the end of Kelsea Road by virtue of positions he took in the 2006 litigation. Guiney did not appeal that order and his brief is silent on the application of judicial estoppel.

However, we recognize that Guiney's position in the 2006 litigation relied primarily upon the BLA, which erroneously identified the terminus of Kelsea Road as the disputed area between Guiney's house and barn, and identified the 50-foot ROW as beginning at that terminus. Thus, Guiney is judicially estopped only from denying that Nault's right-of-way provides Lot 7 access to Kelsea Road and that the portion of the right-of-way depicted in the BLA is 50-feet wide. We express no opinion as to the width of the right-of-way through the disputed area to Kelsea Road.

For the reasons expressed above, we reverse the trial court's finding that the disputed area has become a public highway by prescription; vacate the trial court's finding that Kelsea Road spurs west between Guiney's house and barn; affirm the trial court's finding that the boundaries between Lot 5 and Lot 7 have been established by acquiescence; and affirm the trial court's finding that Guiney is judicially estopped from denying the existence of the 50-foot ROW outlined in the BLA from Lot 7 to the end of the disputed area. See [Handley v. Town of Hooksett](#), 147 N.H. 184, 189-90, 785 A.2d 399 (2001) ("This court will sustain the decision of the trial court if there are valid alternative grounds to support it.").

Reversed in part; vacated in part; and affirmed in part.

HICKS, BASSETT, and DONOVAN, JJ., concurred.

All Citations

173 N.H. 1, 236 A.3d 860

Footnotes

¹ To establish a public highway by prescription, [RSA 229:1](#) requires evidence of public use of the road for 20 years prior to January 1, 1968. See [RSA 229:1 \(Supp. 2019\)](#). After 1968 a public highway no longer could be established by prescription. See [id.](#)

² By virtue of its having filed the action, the Town was the plaintiff for purposes of the prescription claim, and therefore had the burden of proof. However, it was the Naults, rather than the Town, who presented evidence at trial and now argue on appeal in favor of finding a highway by prescription.

³ Nault testified to two cellar holes existing on Lot 7 when he purchased it. However, the 1873 deed to Alfred Colby creating Lot 7 granted him a right-of-way over Lot 5 to access his property that has run with the land since that time, thereby negating any

inference of adverse public use.

- 4 More than two witnesses testified to plowing the disputed area and the Town's maintenance of Kelsea Road. However, all but two of them offered testimony regarding maintenance after 1968, which is irrelevant to our prescription analysis. See Blagbrough, 145 N.H. at 124, 755 A.2d 1141; RSA 229:1.
- 5 Similarly, in Guiney's notice of appeal, he asserts that the trial court erred by assuming, without deciding, that the BLA is invalid. However, in his brief, he fails to develop this argument or cite any authority, and therefore we decline to address it. See White v. Auger, 171 N.H. 660, 665, 201 A.3d 670 (2019); Douglas v. Douglas, 143 N.H. 419, 429, 728 A.2d 215 (1999).
- 6 To be clear, neither the trial court's finding of boundary by acquiescence nor our upholding of that finding "saves" the BLA as is suggested by Guiney in his brief. The validity of a boundary line agreement has no bearing on whether boundaries have been established by acquiescence and vice versa. Whether the BLA is valid remains unresolved, as neither we nor the trial court ruled upon its validity.

**Agenda
Lebanon City Council
July 19, 2023**

11. New Business:

11.C – Discussion and Set Public Hearing for August 16, 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),
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 attached proposal stems from litigation between Patch Forest, LLC and the City, which has been temporarily suspended to allow the parties to mediate a potential resolution concerning the Class VI roads on the Patch Forest property. The current proposal from Patch Forest would make both the pending litigation and the ongoing mediation moot.

City staff and legal counsel will be present on July 19th to provide an overview of the current settlement proposal from Patch Forest, LLC and to review the Class VI road information and materials.

The City Council is asked to schedule a public hearing for August 16, 2023, at which time a presentation from Patch Forest, LLC 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, August 16, 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 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).

Included in this Section:

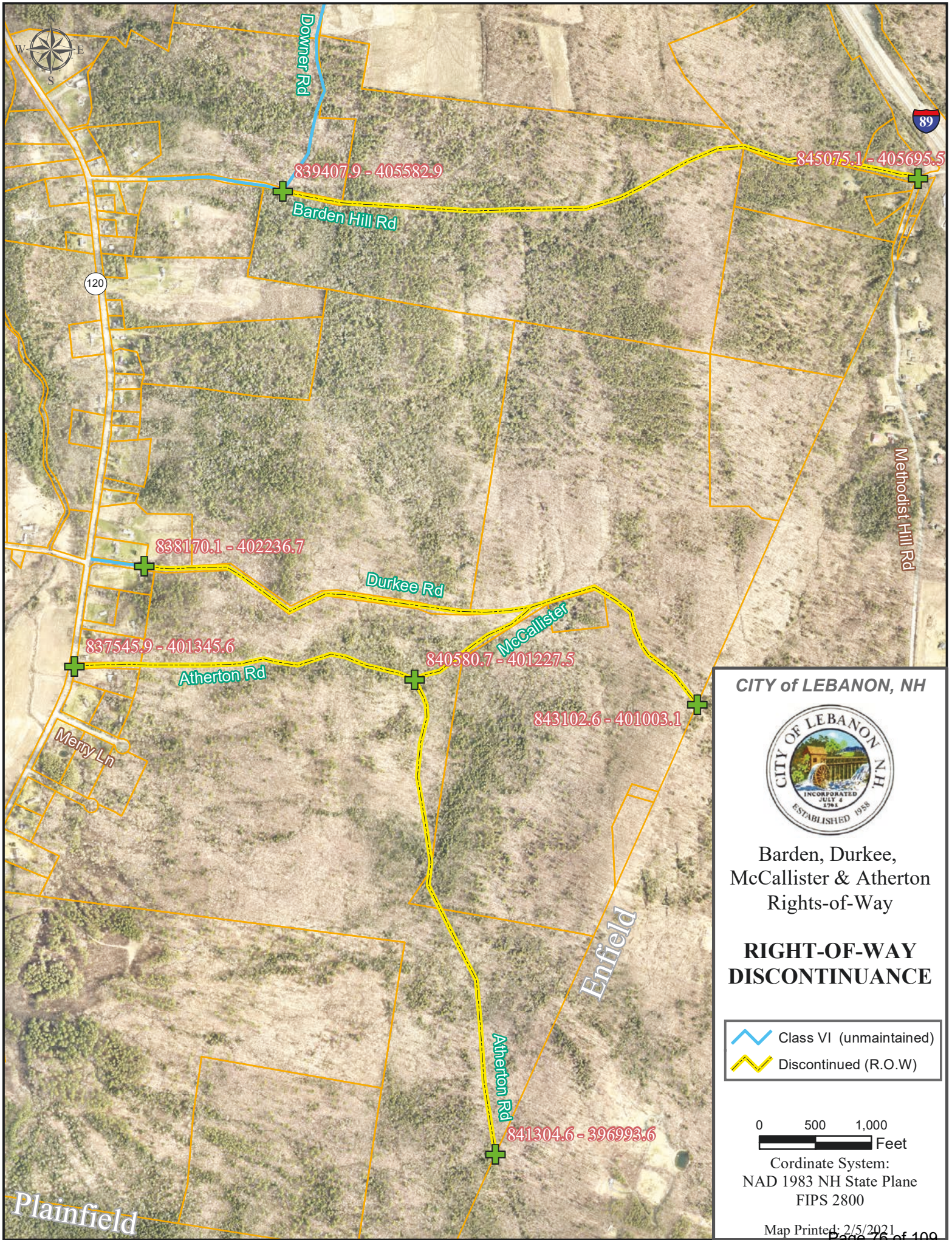
1. Proposed Terms of Compromise from Patch Forest, LLC, received July 11, 2023
2. Class VI Road – Maps and Graphics
3. Planning Department memorandum of Class VI Road Committee Review of Barden Hill Road, dated January 6, 2021, with supporting documentation.
4. Planning Department memorandum of Class VI Road Committee Review of Durkee Road, dated January 6, 2021, with supporting documentation.
5. Planning Department memorandum of Class VI Road Committee Review of Atherton Road, dated January 6, 2021, with supporting documentation.
6. Planning Department memorandum of Class VI Road Committee Review of McCallister Road, dated January 6, 2021, with supporting documentation.
7. Email communication from Rob Taylor, Town of Enfield Land Use and Community Development Administrator, dated July 11, 2023

The proposed terms of compromise are as follow:

1. In replacement of the existing historical Barden Hill Road, the course of which is at times difficult to ascertain, follow, is overgrown with trees, and does not follow an optimally scenic course across the land, Patch Forest will dedicate, and the City Council will accept, as a Class A Trail pursuant to RSA 231-A:5, a new and improved Barden Hill Trail from the intersection of Downer Road at its west end to Methodist Hill Road at its east end.
 - a. The new Barden Hill Trail may deviate from the course of the historical road at certain points in preference for a course where modern snowmobile trails and/or logging skid trails on private property provide a more favorable, scenic and enjoyable course for recreational uses.
 - b. The new Barden Hill Trail will be established at a width of one rod (16.5 feet) in order to accommodate public recreational uses as may be permitted by the Council by its authority under RSA 231-A:4.
 - c. Pursuant to RSA 231-A:5, Class A trails may be dedicated and accepted subject to trail use restrictions as may be imposed by the grantor. Consistent with the Council's prior action with regard to the current Barden Hill Road/Class A Trail, permitted means of travel along the proposed new Barden Hill Trail will be:
 - i. Feet, skis, snowshoes, and horses;
 - ii. Bicycles, ridden appropriately for a multipurpose trail, when the City deems that the conditions of the trail warrant their use; and
 - iii. Snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use.

All other wheeled or motorized vehicles, on- or off-road, shall be prohibited, except, pursuant to RSA 231-A:1, Patch Forest, Patch Orchards, and their assigns shall retain the right to use the Trail for vehicular access to abutting lands for such nondevelopment uses as agriculture and forestry, or for access to any existing building or structure.
 - d. Patch Forest and the City will jointly hire and share the cost of a professional surveyor to draw the boundaries of the public right of way, selecting the most favorable east-west course in the reasonable near vicinity of the existing historical road while avoiding interference with Patch Forest/Patch Orchard's existing active use of its private property (e.g. existing tapped maple trees or sap lines). The proposed course will be informally flagged and GPS-charted by the City's GIS coordinator. The course of the Trail's eastern end along the northern boundary of the Kimball property (Lot 169-3) shall remain unchanged so as not to interfere with an existing private driveway on Lot 169-5.

- e. The City will erect gates at the eastern and western ends of the Barden Hill Trail to prevent unpermitted access by motorized vehicles, along with appropriate signage to inform the public of use restrictions.
 - f. Patch Forest/Patch Orchards and their assigns may apply for a license from the City Manager to run maple sap lines within and across the new Barden Hill Trail at a suitable height so as not to interfere with public use of the trail, and such license will not be unreasonably withheld.
 - g. Patch Forest/Patch Orchards and their assigns will have the authority to maintain and use private roads that cross the new Barden Hill Trail. Pursuant to RSA 231-A:1, the City will bear no responsibility for maintaining the Trail for use by Patch Forest/Patch Orchards and their assigns. The City may grant permission for Patch Forest/Patch Orchards and their assigns to maintain the Trail for Patch Forest's access uses, such permission will not be unreasonably withheld.
2. To facilitate public access to the new Barden Hill Trail, Patch Forest will grant the City of Lebanon an easement to the so-called "chicken coop" area next to Methodist Hill Road for the construction and maintenance of a small public parking area of a size to accommodate at least 2 vehicles. Patch Forest will execute an easement deed prepared by the City to permit the City's removal of the chicken coop and the installation of parking following the City's preparation of a suitable survey of the parking area.
 3. The City Council will formally discontinue the historical Barden Hill Road to the extent the historical road does not overlap with the newly dedicated Trail.
 4. In compromise for the location of the new Barden Hill Trail and to the granting by Patch Forest of an easement at the easterly end of the new Barden Hill Trail for parking, the City Council is asked to formally discontinue the sections of historical roads that abut Patch Forest land, to wit: Durkee Road (from GPS coordinate 838170.1-402236.7 to the intersection with McCallister Road); McCallister Road (from the intersection with Atherton Road to the Enfield town line); and Atherton Road (from Route 120 to the Enfield town line). **(Note: McCallister Road and Atherton Road would be completely discontinued in Lebanon; sections of Durkee Road and Barden Hill Road abutting non-Patch Forest lands would not be discontinued.)** Following the formal discontinuance, these roads would revert to private property.



CITY of LEBANON, NH



Barden, Durkee,
McCallister & Atherton
Rights-of-Way

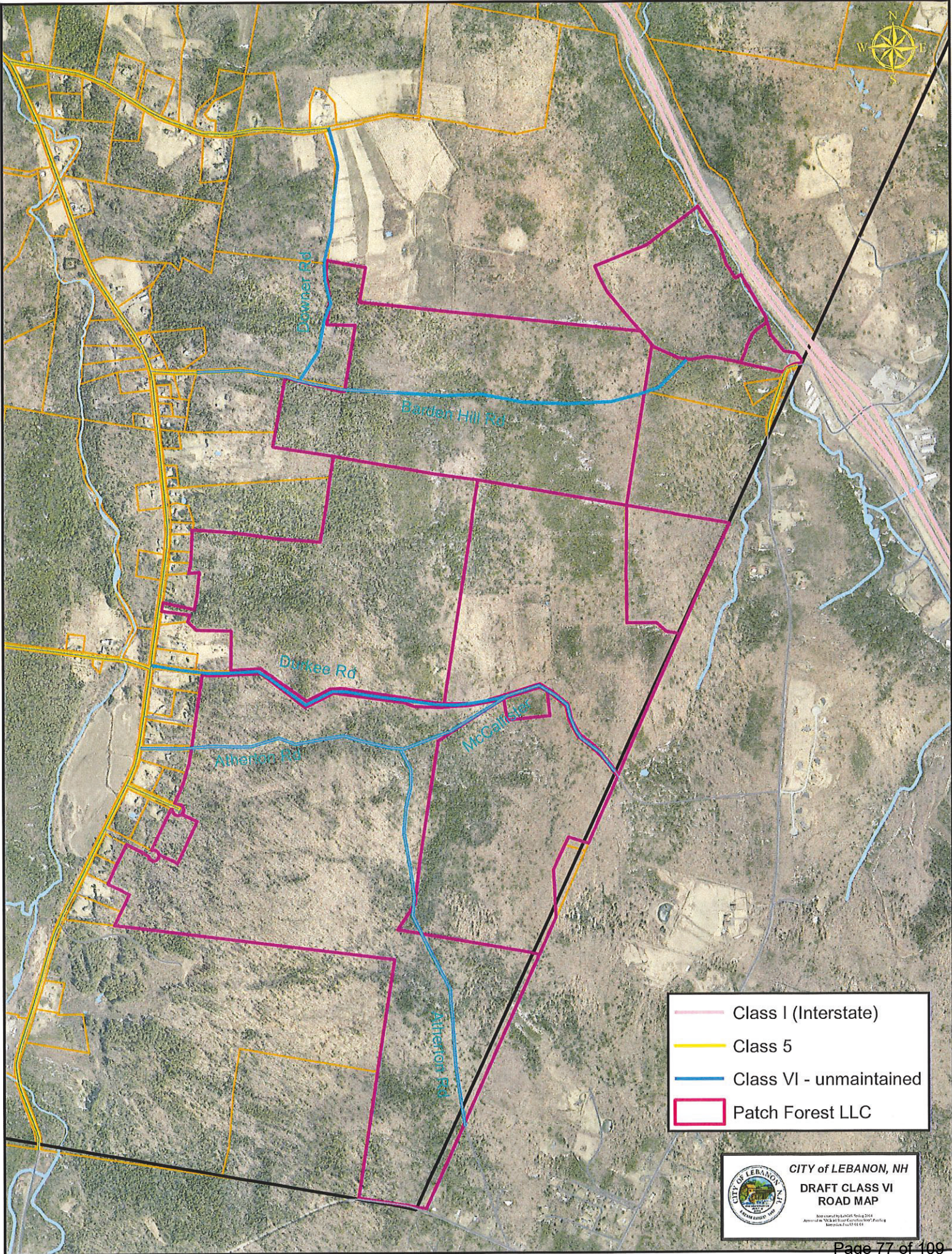
RIGHT-OF-WAY DISCONTINUANCE

-  Class VI (unmaintained)
-  Discontinued (R.O.W)

0 500 1,000
Feet

Coordinate System:
NAD 1983 NH State Plane
FIPS 2800

Map Printed: 2/5/2021



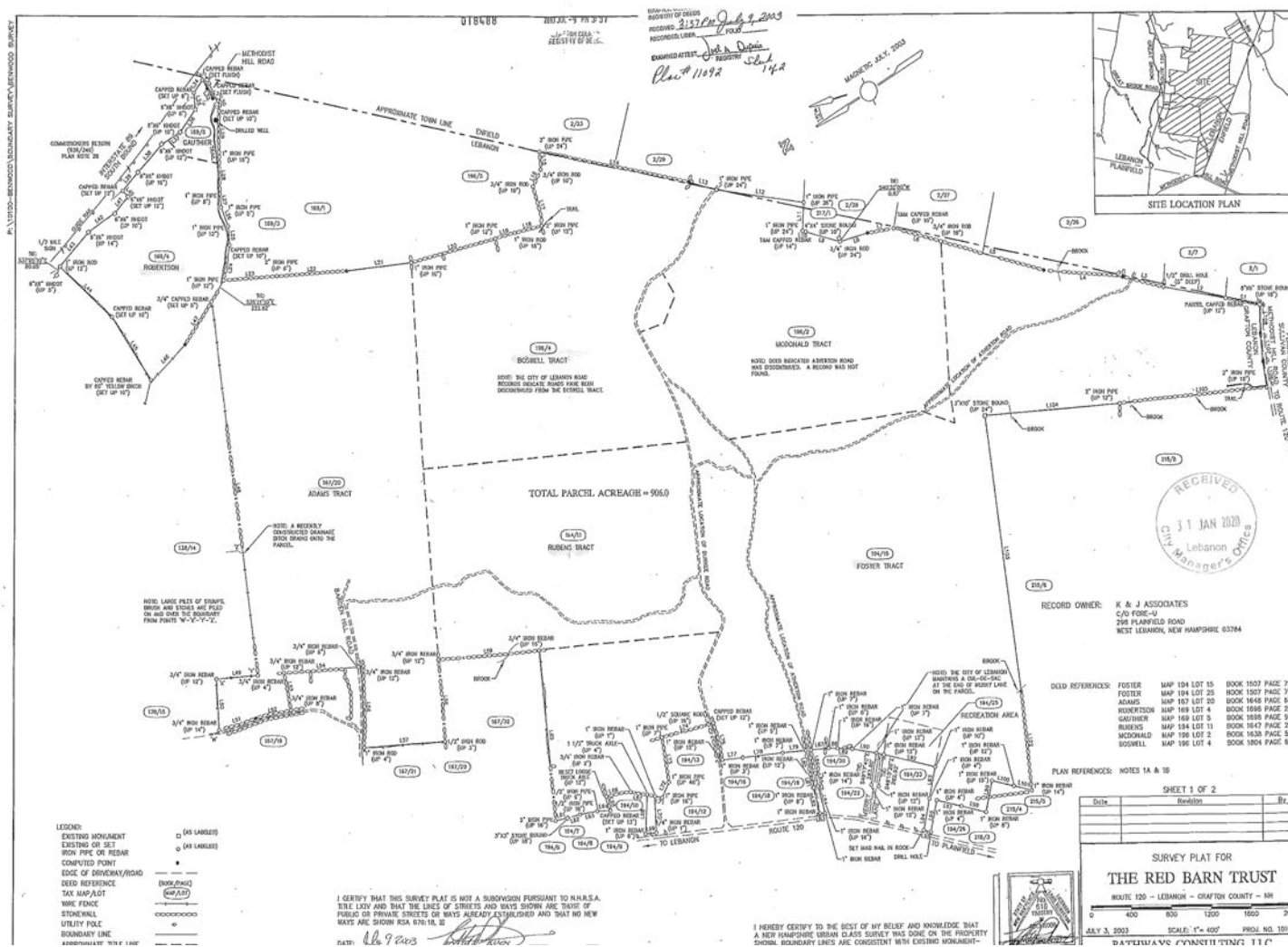
- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC

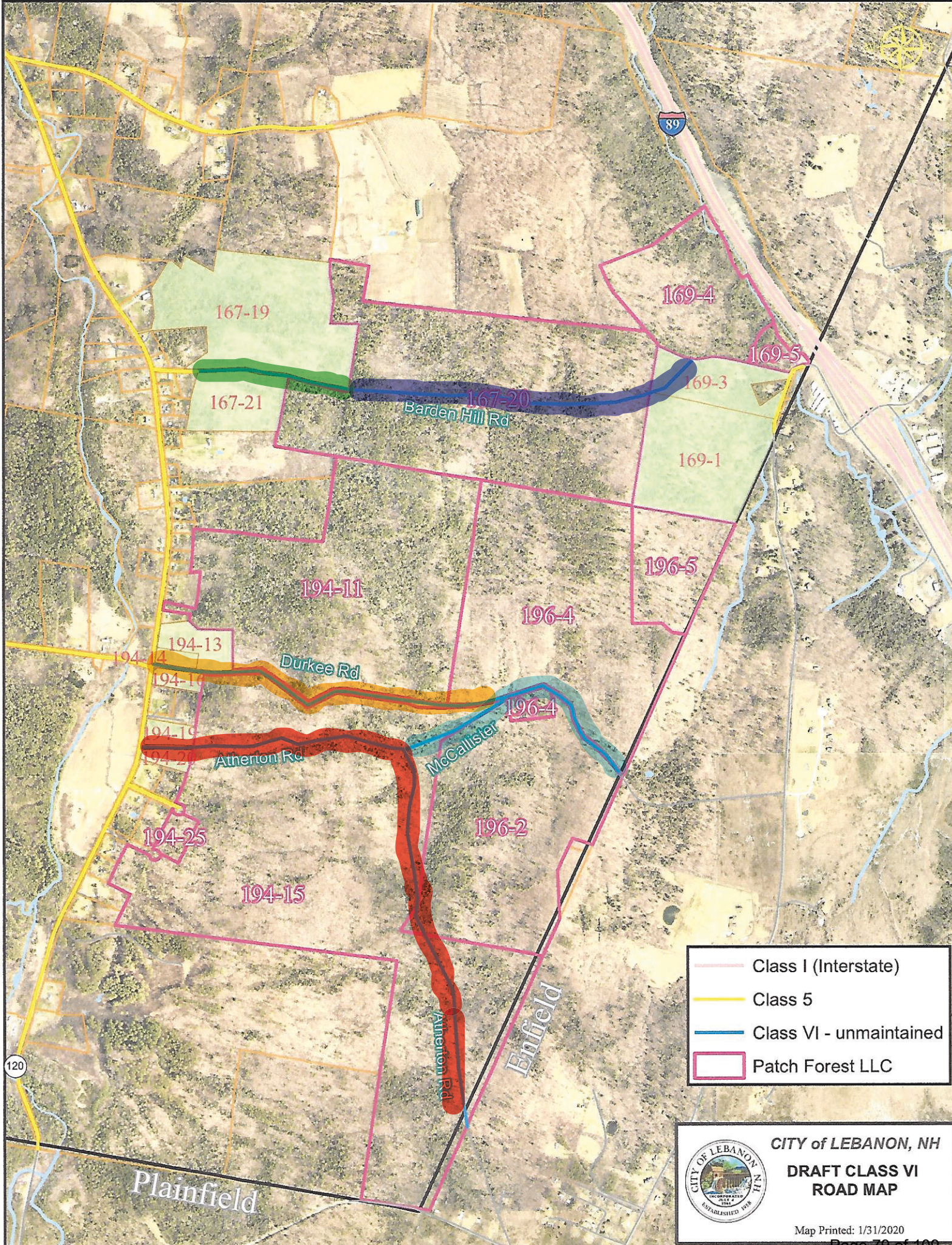


CITY of LEBANON, NH

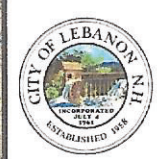
DRAFT CLASS VI
ROAD MAP

Map created by GIS/IT Staff 2014
Approved by NHC on 11/15/2014
Map printed 1/13/2015



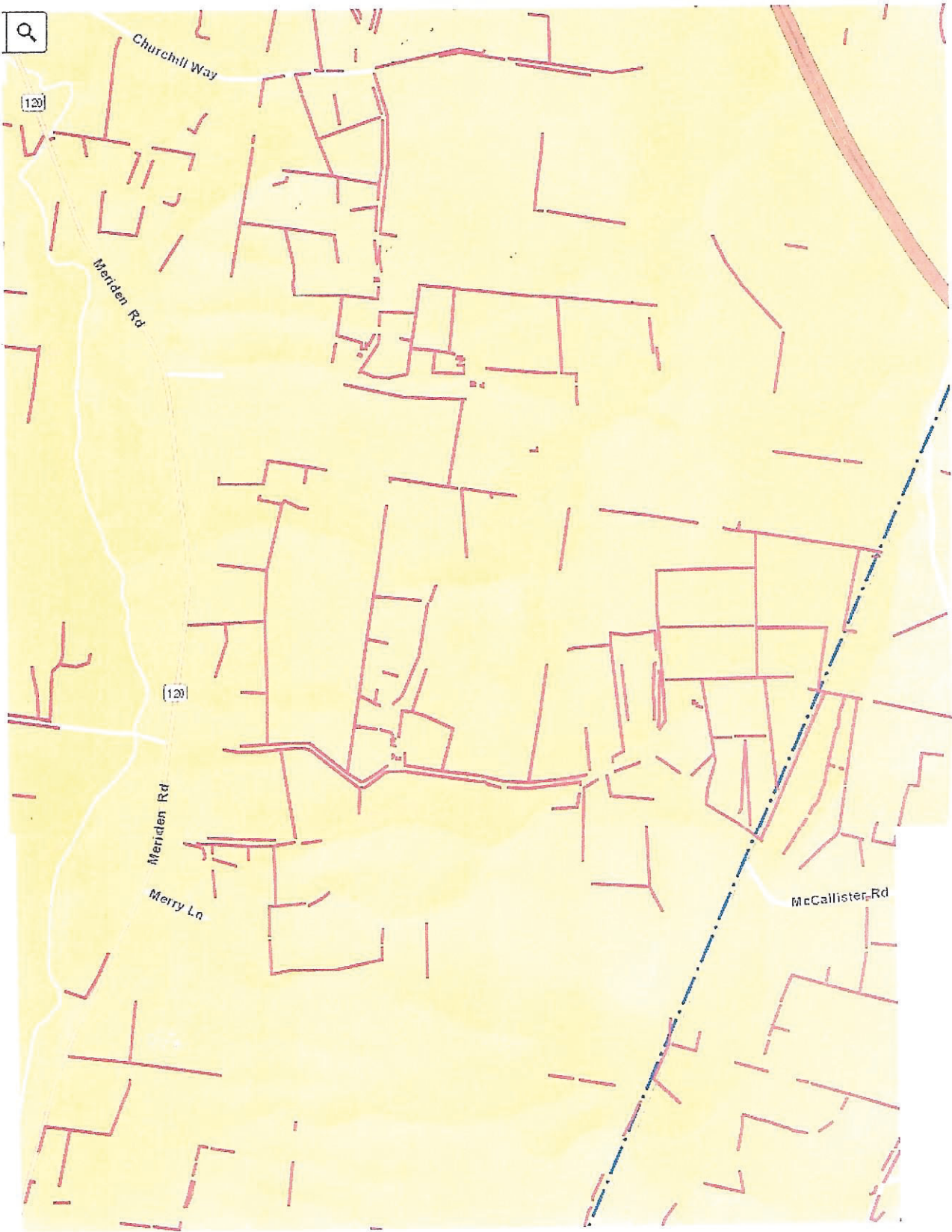


- Class I (Interstate)
- Class 5
- Class VI - unmaintained
- Patch Forest LLC

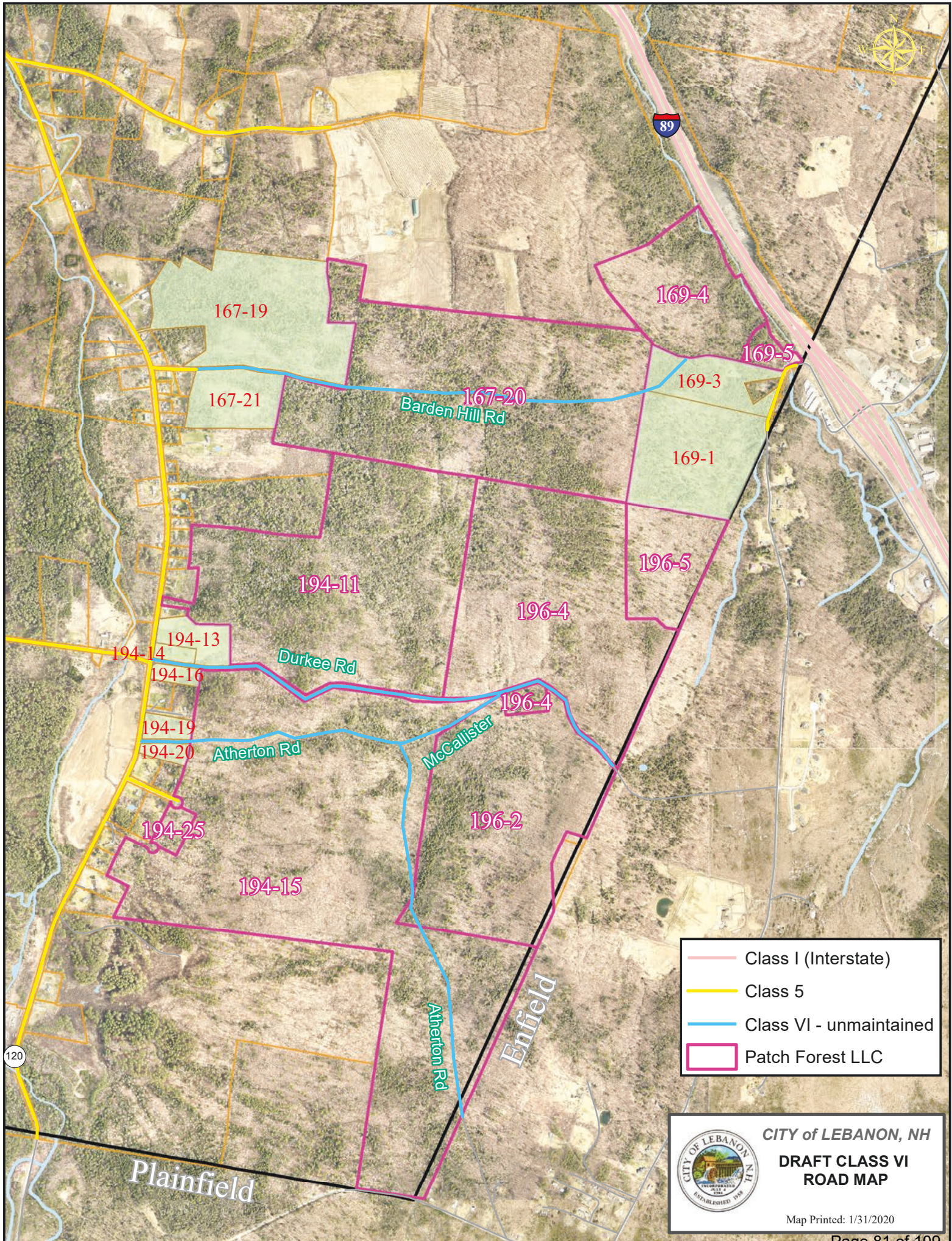


CITY of LEBANON, NH
DRAFT CLASS VI
ROAD MAP

Map Printed: 1/31/2020



New Hampshire Stonewall Mapper



BARDEN HILL ROAD



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the Barden Hill Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the unmaintained section of the Barden Hill right-of-way, including a determination that it is indeed a public right-of-way, extending from the Class V maintained section, eastwardly to the intersection with Methodist Hill Rd. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED*** that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify Barden Hill Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from the intersection of Barden Hill Road, Barden Road and Downer Road, easterly over the top of Methodist Hill to the Methodist Hill Road near Exit 16 off Interstate 89, and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that Barden Hill Road be subject to the following public trail use restrictions: Permitted means of travel shall be a) feet, skis, snowshoes, and horses, b) bicycles, ridden appropriately for a multipurpose trail, when the city deems that the conditions of the trail warrant their use, and c) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other

wheeled or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access to uses of their land as set forth in RSA 231-A:1(1). The Public Works Director shall cause to be posted legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

** The Vote on the MOTION passed (5-0)*

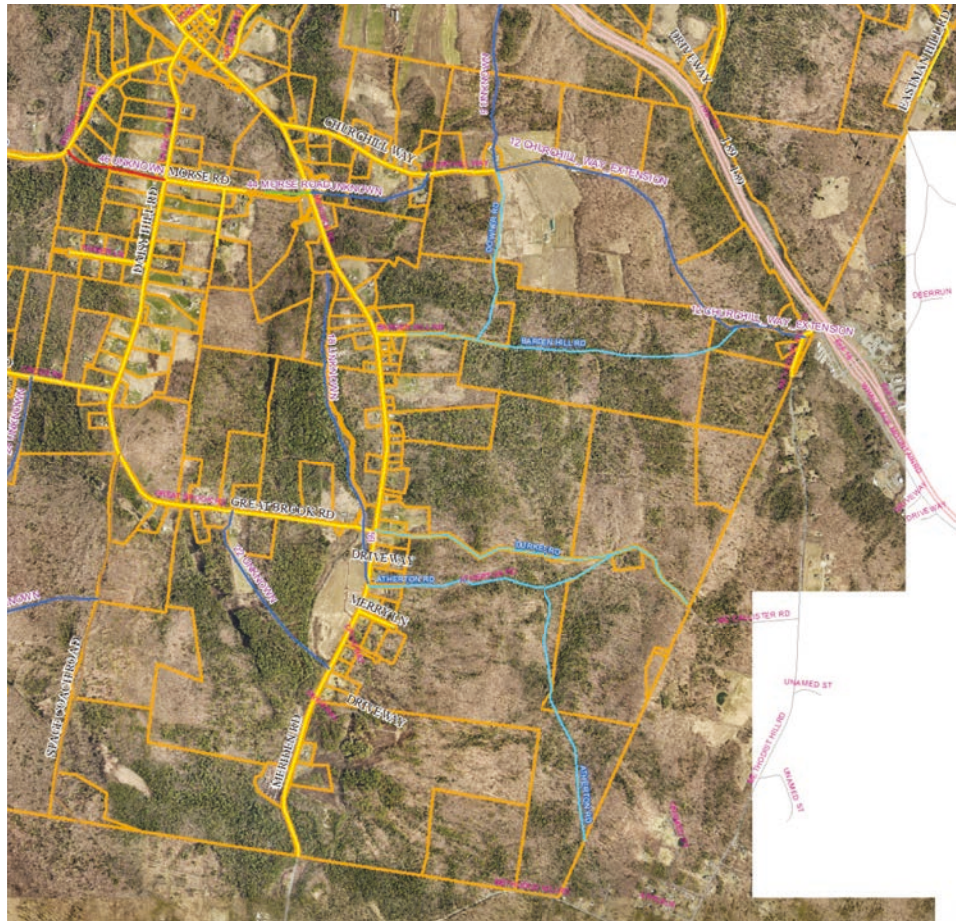
The C6 Committee review of Barden Hill occurred during the August 6th, August 20th, September 3rd, and September 17th, 2020 meetings. The agenda packet for those meetings, including photos, maps, resident letters of input, etc., can be found at the following links: [C6 August 6th](#), [C6 August 20th](#), [C6 September 3rd](#), and [C6 September 17th](#). A summary subset of the agenda packets is provided as attachments to this memo, including photos, maps and the assessment template. The motion generated during the September 17th meeting was reconsidered during the November 5th C6 meeting, including the generation of a modified motion containing specific use restriction language. The motion provided within the memo is from the November 5th meeting.

The Patch Forest Trust, joined by Glen and Anita Kimball, owners of parcels that abut Barden Road have a pending request before the City Council for the Barden Hill right-of-way to be discontinued. Their original discontinuance request was to include the entire segment extending from the Class V section of Barden Hill Road, eastwardly to the historic intersection with Churchill Way. The request was amended to only include the section of right-of-way from the intersection of the Downer Road (C6), eastwardly to the historic intersection with Churchill Way.

The City Council was scheduled to consider the request during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust and Kimball family, or the reclassification of Barden Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.





Barden Hill Rd

Photo # 2-7

Description:

- Approx. 0.43 miles East from pavement section
- East of cellar hole & snowmobile junction - View East
- Snow machines travel east/west on this segment



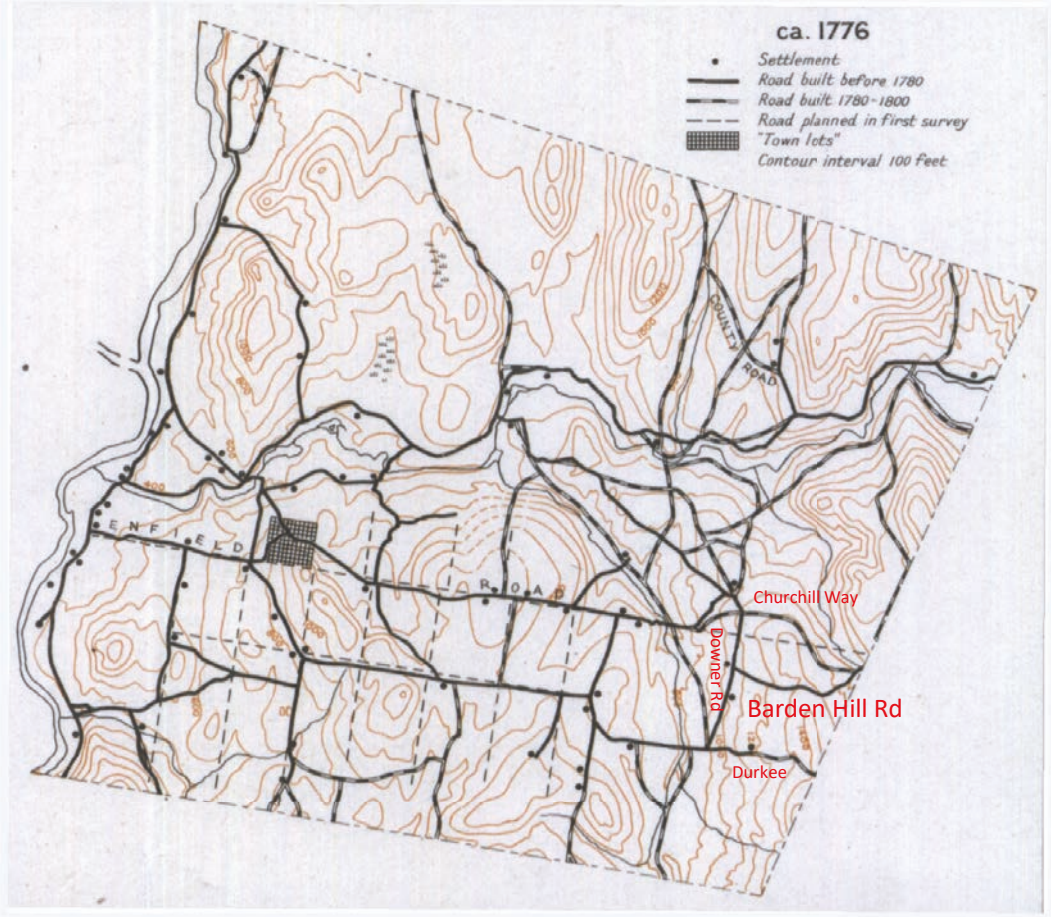
Barden Hill Rd

Photo # 2-6

Description:

- Intersection of Barden & Churchill Way
- View West up Barden Hill Rd
- Iron Pin on property boundary visible to left of large sugar maple (pink ribbon)
- Discontinued Churchill Way heading Northerly, out of photo view, off to right side

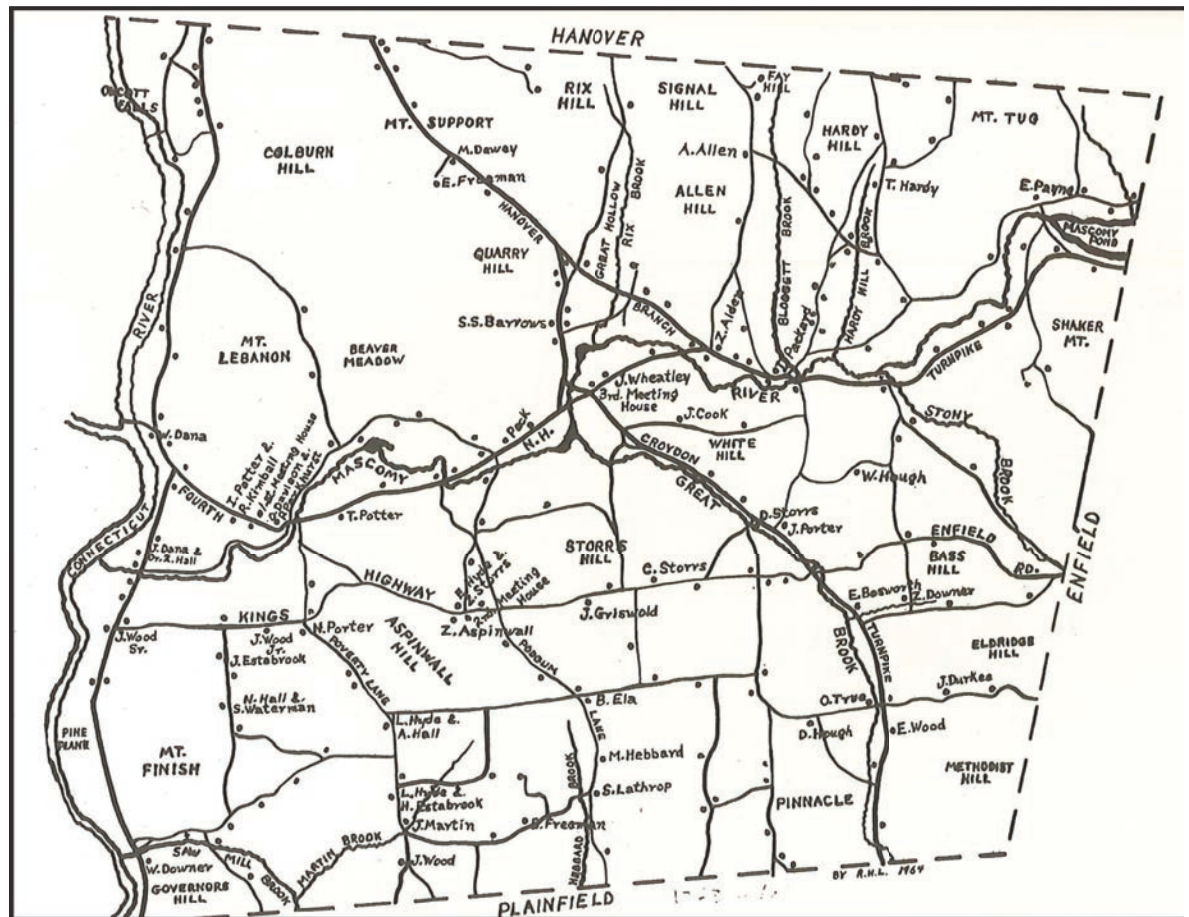
Torbet Map - 1776



Red Labels on map placed
for reference by LebGIS

Benton Book of
Early Settlers Map

By Robert Leavitt,
1964



DURKEE ROAD



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the Durkee Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the Durkee Road right-of-way, including a determination that it is indeed a public right-of-way. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify Durkee Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from the Meriden Road (Route 120) to McCallister Road in Enfield, at the Enfield town boundary, and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that Durkee Road be subject to the following public trail use restrictions: Permitted means of travel shall be a) feet, skis, snowshoes, and horses, b) bicycles, ridden appropriately for a multipurpose trail, when the city deems that the conditions of the trail warrant their use, and c) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other wheeled or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access to uses of their land as set forth in RSA 231-***

A:1(1). The Public Works Director shall cause to be posted legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

** The Vote on the MOTION passed (5-0)*

The C6 Committee review of Durkee Road occurred during the October 1st, 2020 meeting. The agenda packet for that discussion, including photos, maps, letters of input, etc., can be found at the following link: [C6 October 1st, 2020](#). A summary subset of the agenda packet is provided as attachments to this memo, including photos and map(s). The motion generated during the October 1st meeting was reconsidered during the November 5th C6 meeting, including the generation of a modified motion containing specific use restriction language. The motion provided within the memo is from the November 5th meeting.

The Patch Forest Trust, owners of several parcels that abut Durkee Road have a pending request before the City Council for the Durkee Rd right-of-way to be discontinued. The City Council was scheduled to consider such during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust, or the reclassification of Durkee Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.

ATTACHMENT

Attachment #1 = SE Quadrant Overview Map

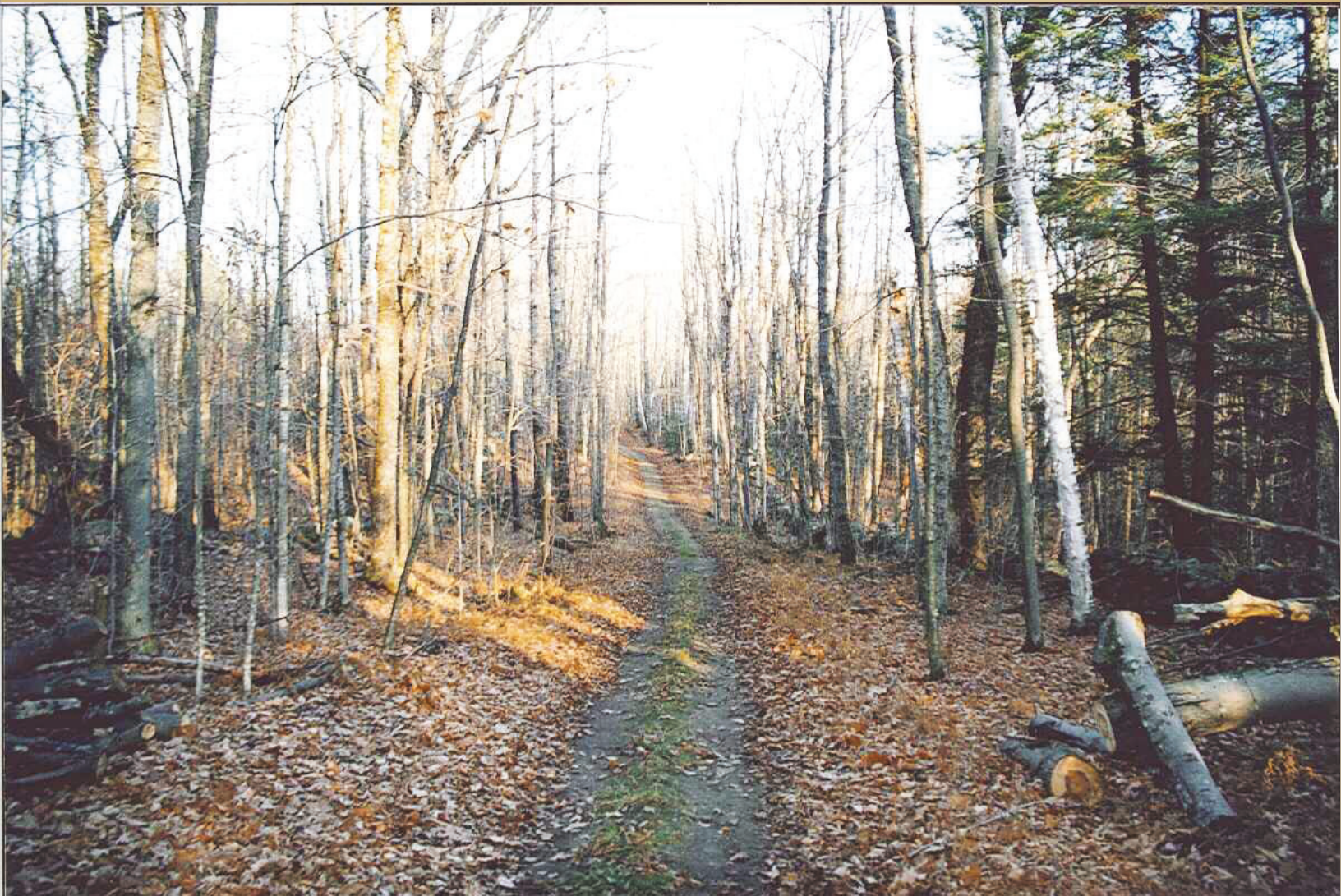
Attachment #2 = Photos

Attachment #3 = Historic Map(s)

Attachment #4 = C6 Right-of-Way Template

Attachment #5 = City Attorney Public Highway Summary





1855 Eaton Map



Red Labels on map placed for reference by LebGIS

1860 Walling Map



Red Labels on map placed for reference by LebGIS

ATHERTON ROAD



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the Atherton Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the Atherton Road right-of-way, including a determination that it is indeed a public right-of-way. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify Atherton Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from the Meriden Road (Route 120) to the Enfield town boundary, and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that Atherton Road be subject to the following public trail use restrictions: Permitted means of travel shall be a) feet, skis, snowshoes, and horses, b) bicycles, ridden appropriately for a multipurpose trail, when the city deems that the conditions of the trail warrant their use, and c) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other wheeled or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access to uses of their land as set forth in RSA 231-A:1(1). The Public Works Director shall cause***

to be posted legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

** The Vote on the MOTION passed (5-0)*

The C6 Committee review of Atherton occurred during the October 15th, 2020 and November 5th, 2020 meetings. The agenda packets for each meeting, including photos, maps, resident letters of input, etc., can be found at the following links: [C6 October 15th](#) & [C6 November 5th](#). A summary subset of the agenda packet is provided as attachments to this memo, including photos and map(s).

The Patch Forest Trust, owners of several parcels that abut Atherton Road have a pending request before the City Council for the Atherton Rd right-of-way to be discontinued. The City Council was scheduled to consider such during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust, or the reclassification of Atherton Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.

ATTACHMENT

Attachment #1 = SE Quadrant Overview Map

Attachment #2 = Photos

Attachment #3 = Historic Map(s)

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Attachment #5 = City Attorney Public Highway Summary



Photo 5-8
Lower Atherton- Looking west toward route 120



Photo 6-7
Atherton Looking east



Photo 6-6
Incised Section



Photo 9-15
Enfield end off Methodist Hill Rd

1860 Walling Map



Red Labels on map placed for reference by LebGIS

1892 Hurd Map



Red Labels on map placed
for reference by LebGIS

McCALLISTER ROAD



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council
CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning Staff
RE: Class 6 Road Committee Review of the McCallister Road

DATE: January 6, 2021

Honorable Mayor and City Councilors,

The Class 6 Committee (C6) has completed a review of the McCallister Road right-of-way, including a determination that it is indeed a public right-of-way. The review process involved the application of an assessment template, including the following components:

- Documenting evidence supporting the assertion of a public right-of-way.
- A review of any record of discontinuance
- Ascertaining the current physical condition of the right-of-way, as well as potential future uses.
- Generating a roadway classification recommendation for the City Council. The choices of roadway classifications include a discontinuance, or a designation of one of the following: Class B Trail, Class A Trail, Class VI Road, or Class V Road.

Following the template application, a review of additional relevant information, and inclusive of feedback from residents providing input during the review process, the C6 Committee generated the following motion to be provided to the City Council: ***Mr. Heistad MOVED that the Class VI Roads Advisory Committee recommend that the Lebanon City Council reclassify McCallister Road, a class VI Road, as a Class A Municipal Trail as defined in RSA 231-A:1(1), extending from Atherton Road to the Enfield town boundary, at McCallister Road in Enfield and as shown on the City of Lebanon Draft Class VI Roads Map, printed May, 2014. The Committee further recommends that McCallister Road be subject to the following public trail use restrictions: Permitted means of travel shall be A) by foot, skis, snowshoes, and horses, B) bicycles, ridden appropriately for a multipurpose trail, when and where the city deems that the conditions of the trail warrant their use, and C) snowmobiles, ridden appropriately for a multipurpose trail, when snow cover is adequate to warrant their use. Notwithstanding these permissions, none of these uses shall be allowed in a manner or in conditions that will encourage erosion or otherwise damage the trail. All other wheeled vehicles or motorized vehicles, on or off road, shall be prohibited, excepting the allowed vehicular uses of abutting landowners for access of their land as set forth in RSA 231-***

A:1(1). The Public Works Director shall cause to be placed legible signs at the entrance to the trail describing the restrictions contained herein, as provided by RSA 231-A:4.

**** The Vote on the MOTION passed (6-0***

The C6 Committee review of McCallister occurred during the December 3rd, 2020 meeting. The agenda packet for that discussion, including maps, residents letters of input, etc., can be found at the following link: [C6 December 3rd, 2020](#). A summary subset of the agenda packet is provided as attachments to this memo, including maps and the assessment template.

The Patch Forest Trust, owners of several parcels that abut McCallister Road have a pending request before the City Council for the McCallister Rd right-of-way to be discontinued. The City Council was scheduled to consider the request during the March 4th, 2020 meeting, but at the request of the attorney representing the Patch family, continued the discussion to a future date. In preparation for future discussion(s), the City Council during the April 15th, 2020 meeting requested the C6 Committee be restarted and complete their review of Lebanon Class VI roads, including the four associated with the Patch Forest Trust discontinuance request. The Class VI Committee initiated bi-weekly meetings in August, 2020, completing the review and specific recommendation as articulated within this memo.

ACTION ITEM

The City Council can choose between advancing the discontinuance process as requested by the Patch Forest Trust, or the reclassification of McCallister Rd from the current Class VI roadway designation, to a Class A Trail, as recommended by the Class VI Roads Committee. If the Council decides to pursue the request for a discontinuance, a public hearing is required to be set; a reclassification to a Class A Trail does not require a public hearing but has historically been the practice of the City Council. Feedback provided to City staff during the January 6th City Council meeting will inform the preparation of agenda materials for a public hearing event, if the City Council desires to move in that direction.

ATTACHMENT

Attachment #1 = SE Quadrant Overview Map

Attachment #2 = Historic Map(s)

Attachment #3 = C6 Right-of-Way Template

Attachment #4 = City Attorney Public Highway Summary

1860 Walling Map



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1892 Hurd Map



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