



**LEBANON CONSERVATION COMMISSION
NOVEMBER 9, 2023 - 6:30 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. October 12, 2023
 - 3. Open to the Public**
 - 4. Permit Review**
 - A. None
 - 5. Study Items**
 - A. CRC Update on Wilder Dam
 - B. Ethics training with the City Manager
 - C. Zoning Amendments Review and Discussion
 - D. Edwards Properties, LLC rezoning request
 - 6. Committee Reports**
 - A. Biodiversity Group (Invasives)
 - B. Stewardship
 - Ranger
 - Trail Coordinator
 - Monitors and Stewards
 - C. Wild about Lebanon
 - D. Amphibian Crossings
 - E. LUCT/Current Use
 - F. Other Subcommittees
 - 7. Other Business**
 - A. FYIs
 - B. Follow Up
 - C. Workshops and Educational Opportunities
 - 8. Future Agenda Items**
 - 9. Adjournment**

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note:

Lebanon Conservation Commission Agenda
November 9, 2023

Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

DRAFT

**LEBANON CONSERVATION COMMISSION
CITY COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
6:30PM THURSDAY OCTOBER 12, 2023**

MEMBERS PRESENT: Sarah Riley (Chair), Erling Heistad (City Council Rep.), Donald Lacey, Susan Almy, Ernst Oidtmann, Bruce James (Vice Chair), Chris Johnson, Barbara Hirai (Alt.)

MEMBERS ABSENT: Sean Dittrich (Alt.)

STAFF PRESENT: Mark Goodwin (GIS Coordinator), Shaun Mulholland (City Manager), Brian Vincent (Lebanon City Engineer)

OTHERS PRESENT: Weston & Sampson Engineering Services:
- Jeffrey Santacruce, PE, PTOE (REMOTE)
GM2:
- Jennifer Reardon, Environmental Permitting Specialist (REMOTE)

1. CALL TO ORDER

Chair Riley called the meeting to order at 6:31pm.

2. APPROVAL OF MINUTES September 13, 2023 Site Walk
September 14, 2023 Public Hearing
September 14, 2023 Meeting

Amendments:

Public Hearing Minutes – Heading: Change “WEDNESDAY” to “THURSDAY”
Page 2, Line 6&7: Change “Upper Valley News” to “Valley News”
Regular Meeting - Heading: Change “WEDNESDAY” to “THURSDAY”
Page 2 Line 26: Add “approve” after “must”
Page 3, Line 10: Change “mitigation area would have to be within a five-mile perimeter” to “mitigation area could not be within a five-mile perimeter”
Page 6, Line 33: Remove “Greenway”

A MOTION was made by Susan Almy to approve the September 13, 2023 Site Walk minutes, September 14, 2023 Public Hearing Minutes, and the September 14, 2023 Meeting Minutes as amended. The Motion was seconded by Erling Heistad.

** The Vote on the MOTION was approved (7-0).*

3. OPEN TO THE PUBLIC

No members of the public were present.

4. PERMIT REVIEW

A. Review and Comment to NH DES and the Lebanon Zoning Board of Adjustment: City right-of-way at the intersection of Lahaye Drive and Mt. Support Road: Review and Comment on NHDES Wetland Permit application (major impact) for improvements to the intersection of Mt. Support Road and Lahaye Drive. Proposed work includes the construction of a roundabout, drainage infrastructure improvements, reconstruction/extension of a paved pedestrian/bike path along Mt. Support Road, and relocation of overhead utilities. The improvements result in approx. 16,665 sq ft of wetland impact. (DES No 2023-02602) CC2023-04.

City Engineer Brian Vincent gave an overview of the project (using presentation materials included in the Meeting Agenda materials). He said the wetland application has been submitted to NH DES and it is currently under technical review. He said after the DES reviews it, it will go to the Army Corps of Engineers for review.

He said the intersection is considered failing (Level of Service F) and improvements need to be made for all modes of transportation (vehicular and pedestrian/bicycle). He said there is projected growth in population in the area, which will result in an increase in use of the intersection. He said the roundabout design was deemed to be the best solution.

Impacts to Wetlands and Minimization Efforts

Mr. Vincent outlined the plan's proposed impacts to wetlands:

- 8,306 sq ft for the roundabout and roadway
- 8,359 sq ft for tree maintenance in the utilities' areas
- 400-500 rare plants will be affected

He said the design team made changes to minimize the impact to more wetlands:

- Introduction of steeper side slopes
- Guardrail with 2:1 slopes
- Reduced lane and shoulder widths
- Removal of superelevation on Lahaye Drive

Mr. Vincent discussed the mitigation options for the permanent wetland impacts and said the team determined that the ARM Fund payment option was the best and preferred option by the City and the Army Corps of Engineers.

Chair Riley explained that ARM fund payments are not made directly to Lebanon. She said the City only receives these funds if it submits an application for a project and is awarded the funding. She said it is a very competitive process.

Types of Wetlands Impacted

Ms. Jennifer Reardon explained that the types of wetlands impacted are mostly scrub shrub / forested areas. She said no streams are located in the area. She said the rare plants affected are the Appalachian Barren Strawberry. She said the Natural Heritage Bureau reviewed the plan and determined that transplanting the Barren Strawberry plants is not required.

Ms. Reardon said the NHB recommended the team use compost socks instead of silt vents, which need to be buried. She said the NHB also suggested that tree clearing be done under frozen conditions; if that were not possible, then timber mats should be used.

Proposed Drainage Plans

Ms. Almy asked, if the proposed drainage solutions are adequate for 25-year event storms, will the drainage for this project have to be rebuilt soon after it is completed. Mr. Jeff Santacruce said the design meets the City's requirements and the requirements of the NH DOT. He said drainage solutions include a major culvert that directs roadside rainwater toward a forested area and not toward a flat area (like a parking lot) where the water might cause flooding.

Mr. Heistad asked about the capacity of the 30" drainage pipe under the roadway. Mr. Santacruce said the capacity of the pipe is adequate and does not need to be increased. Chair Riley noted that the City's requirements for 25-year storms may not be adequate for today's storms. Mr. Goodwin suggested the Commission include in its motion a suggestion to encourage the DES to pay attention to the proposed design to ensure the drainage solutions are adequate. Ms. Hirai asked if there was any way to ensure the forested area would not become a flat area, such as a parking lot.

Project Scope Appropriateness

Chair Riley said she questions whether a project of this scope is truly needed. She said the City has many initiatives that should result in less typical vehicle traffic: more EVs, encouraging ridesharing, bicycle and pedestrian opportunities. Dr. Oidtmann said the traffic study is conjecture and does not consider that less traffic may be experienced because of trends such as working from home, telemedicine, and more use of public transport.

Mr. Santacruce said his team reviewed a DHMC 2021 study that showed a projected increase in traffic. He said the regional and statewide trend over the next 10 years is that lanes will need to be added to existing roadways to accommodate increased traffic.

He said the roundabout solution results in:

- No need to add lanes, which increases the area covered in impervious surface
- During peak traffic times, a decrease in the need to stop, which decreases idling, which is better for the environment

- During off-peak traffic times, a decrease the need to stop when no crossing traffic is actually present
- Roundabout construction can last much longer than roadways and the City should not have to rebuild soon

Mr. James asked whether the TAP project (which involves the pedestrian/bicycle path) could be expanded to connect from Mount Support Road to DHMC, so employees living in the area could walk or bike to work. Mr. Vincent said the plan does include an extension of the path from Centerra to DHMC so employees can walk or bike to work.

Mr. James noted that the area of wetlands being impacted by this project is small by comparison to the acres of wetlands still in that area. Ms. Hirai a lot of projects that impact “small” wetlands areas can add up to a lot of wetlands lost. Mr. James said it is the Commission’s job to make sure that does not happen. Chair Riley said she has realized that the Commission is the only group advocating for the wetlands and natural resources.

Mr. Heistad said if lanes were added to the road (instead of the roundabout), the impact would be much greater. He said, historically, engineers’ projections that traffic will increase have borne out over the years, so he said he feels the Commission should accept the roundabout.

Chair Riley said a lot can be done with signalization to help navigate through the existing intersection for cars and bikes. Dr. Oidtmann said the next thing will be a roundabout at Centerra Parkway and more wetlands will be lost. He said the City needs to encourage residents to use different options that result in less traffic, such as staggered work shifts or ride share situations. Mr. James said there have been some amazing changes with EVs and people using other modes of transportation. He said that will be projection over the next 20 years. He said the proposed roundabout plan will accommodate that kind of change in modes of transportation.

No Streams Impacted

Chair Riley asked Ms. Reardon to confirm that no streams are present on the site. She said the USGS Steam Stats map, and the DES Aquatic Resource map show water flowing through the central wetland between Rte 120 and Mt. Support Rd and another along the west side of the northern section of Mt. Support Rd. Ms. Reardon said, after she reviewed the whole project area, she did not find any streams in the project area. She said the bodies of water on the maps may be the drainage swale. Mr. Goodwin said the state data is not very detailed and that’s why the City requires a certified wetland scientist to review the area in person.

Plans for Center and Medians of Roundabout

Dr. Oidtmann asked what is planned for the center of the roundabout and medians. Mr. Vincent said landscaping and planting will be done. He said they are also designing a sign and a decorative block wall.

Alternatives to Rip Rap

Chair Riley asked whether rip rap would be used. Mr. Santacruce said it would be used on one area of steep slope to maintain the slope. Chair Riley asked if wildlife friendly fabric could be used instead.

Power Lines and Mowing Plans

Dr. Oidtmann asked what is planned to deal with light pollution and if the power lines are going to be buried. Mr. Vincent said they will use the lighting that is currently installed and follow the Dark Sky requirements. He said it is very expensive to bury power lines. Chair Riley said the recommendation in the Wetlands Best Practices handbook is about horizontal drilling to bury power lines.

Chair Riley also asked whether the team considered alternatives to mowing around the power lines. Mr. Vincent said mowing activity is driven by the PUC and not the City. Chair Riley said the Wetland Best Practices handbook suggests that low-growing shrubs be maintained. She said mowing leads to the spread of invasive species. Ms. Reardon noted that glossy buckthorn is already growing in the area and Mr. Lacey said there is also Autumn Olive growing there.

Barren Strawberry Transplanting

Mr. Lacey said the Barren Strawberry grows well in shaded areas, so clearing the area will reduce the shade and affect the plants. Mr. Heistad asked if the plants could be moved, and Mr. Lacey said the NHB would have to be consulted. He said Barren Strawberry seems to grow very well in Lebanon.

Impaired Waters

Chair Riley said the northern part of the project is located in the Mink Brook watershed, which is considered impaired waters by the Army Corps of Engineers. Ms. Reardon the impairments are not driven by roadway runoff. She said all waterways in NH are considered impaired for Mercury and E Coli due to atmospheric deposition. She said any changes in runoff from the roadway will not affect the mercury or E Coli in the watershed.

Mitigation \$\$ Not Being Used in Lebanon

Ms. Hirai said it has been an issue that mitigation funds in the form of ARM payments wind up lost to the City. She asked if there is a list of projects elsewhere in the City where these funds can be used. Mr. Vincent said he was not aware of such a list of projects. He said the City does not track potential mitigation projects.

Chair Riley said the 2016 Wildlife Corridor study recommended that the City secure development rights to some parcels, including a parcel near the SW quadrant of project area (which is owned by Dartmouth College). Ms. Almy said the Army Corps of Engineers has specific kinds of mitigation that they want, and it makes the process a lot harder. Mr. James said there are Dartmouth College landmark lands that have a lot of wetlands that are not preserved. He said preserving these lands could be a good use for mitigation funds.

Ms. Hirai suggested the City form a committee of stakeholders to find ways to better take advantage of funds that arise from mitigation for wetlands lost.

Pedestrian Safety

Mr. James asked about pedestrian safety in and near the roundabout site. Mr. Santacrucce said the plan follows the NHDOT's policies for pedestrian hybrid beacons, which are triangle-shaped signal patterns that use a series of light flashes to warn drivers and ensure pedestrians can cross safely.

A MOTION was made by Erling Heistad that,

For the NHDES Wetland Permit application (major impact) for improvements to the intersection of Mt. Support Road and Lahaye Drive. Proposed work includes the construction of a roundabout, drainage infrastructure improvements, reconstruction/extension of a paved pedestrian/bike path along Mt. Support Road, and relocation of overhead utilities. The improvements result in approx. 16,665 sq ft of wetland impact. (DES No 2023-02602) CC2023-04;

The Conservation Commission asks that the following be considered:

1. Pay particular attention to the drainage and stormwater sizing. Culverts should be sized for future storm events to avoid future flooding and to minimize wetland impacts.

2. Don't leave bare riprap – cover with fabric with the goal of a vegetated slope.

3. Pay close attention to controlling the spread of invasives – follow Best Management Practices (BMPs) for upland plants, wetland plants, and jumping worms.

*4. Act on the recommendations of the NHB with respect to the Appalachian Barren Strawberry (*Geum fragarioides*).*

5. Minimize impervious surfaces in the center of the roundabout and in the medians. Plant with natives.

The Motion was seconded by Don Lacey.

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2 * *The Vote on the MOTION was approved (7-0).*

3 City Manager Mulholland, City Engineer Vincent, Mr. Santacruce, and Ms. Reardon left the
4 meeting at 8:45pm.
5

6 **5. STUDY ITEMS**
7

8 **A. Boston Lot Management Plan**

9 Chair Riley said this discussion will be postponed to a future meeting.
10

11 **B. Public GIS MapGeo Tool – Web Training**

12 Chair Riley said this training will be rescheduled to a future meeting.
13

14 *A MOTION was made by Sarah Riley to extend the meeting to 9:15pm. The Motion was*
15 *seconded by Chris Johnson.*
16

17 * *The Vote on the MOTION was approved (7-0).*
18

19 **6. COMMITTEE REPORTS**

20 **A. Biodiversity Group (Invasives)**

21 The group discussed the issue of jumping worms, which are often tracked from one place
22 to another on people's shoes. Ms. Hirai said boot brushes were left near the Connecticut
23 River to protect the trails from jumping worms. Ms. Almy said a list of best practices to
24 protect trails could be posted on the Internet. Chair Riley agreed they could be added to
25 listserv and other sites.
26

27 **B. Stewardship**

28 Mr. James said Ranger John is still patrolling conservation areas, even though school has
29 started again. He said he, Ranger John, and Mr. Goodwin are working together as a team
30 to collect field data. Ms. Hirai said the new signs Ranger John has put up are nice.
31

32 Mr. James said Boston Lot experienced catastrophic storm damage on the north part of
33 the lot where huge trees came down and piled on top of each other. He said Hypertherm
34 volunteers with chainsaw experience are going to tackle the mess next week. He said the
35 lakeside trail is still closed because of downed trees.
36

37 Mr. James said an Eagle Scout candidate is working on a historic identification/ memorial
38 project at the cellar hole on the Ticknor property. He said City Historian Nicole Ford
39 Burley has been providing the human history of the area to add to the project. He said the
40 project involves the installation of a mini kiosk and plaque.
41

42 Mr. Goodwin said he was notified that the Nature Conservancy is ready for its annual
43 Elm Tree Assessment.

1
2 Mr. Lacey said trail mowing at 2 Rivers is more difficult in late summer when the trails
3 experience extensive vegetative growth. He said a volunteer needs to commit to going
4 onto the trails frequently and remove the vegetation. Dr. Oidtmann said he could ask the
5 Rotarians to volunteer for trail maintenance.

6
7 Mr. Johnson said he went to 2 Rivers and cut down some vegetation, but he said there is
8 more work to do in that area. He also said he went to Boston Lot this week and some
9 residents did not know the trail was closed. He said he saw the signs that are posted, but
10 perhaps more or others are needed. He also noted that he found and destroyed a large fire
11 pit on the path near the dam. Chair Riley suggested the Commission have a monthly
12 workday to tackle some of these simpler projects.

13
14 Ms. Almy said near the old timber trail on the north side of Boston Lot, there is only one
15 sign about where the roads are that is very hard to interpret. She said there probably
16 needs to be more guidance about the trails for hikers in that area.

17
18 **C. Wild About Lebanon**

19 No update

20
21 **D. Amphibian Crossings**

22 No update

23
24 **E. LUCT/Current Use**

25 No update

26
27 **F. Other Subcommittees**

28
29 **7. OTHER BUSINESS**

30 **A. FYIs**

31 None

32
33 **B. Follow Ups**

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35 **C. Workshops and Educational Opportunities**

36 Dr. Oidtmann said the NH Association of Conservation Commissions (NHACC)'s
37 Annual Meeting is November 4.

38
39 Chair Riley said the American Chestnut Society is having a meeting at Salt hill Pub in
40 Lebanon on Saturday, October 14.

41
42 Chair Riley alerted the group to a future agenda item about the proposed zoning amendments,
43 one of which will change the zoning for the Campion property (Lot 26-17).

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8. ADJOURNMENT

The meeting adjourned at 9:15pm.

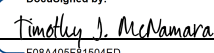
Respectfully submitted,
Paula Roux
Recording Secretary



City of Lebanon
New Hampshire

CITY COUNCIL POLICY

ETHICS AND CONFLICT-OF-INTEREST FOR ELECTED AND APPOINTED CITY OFFICIALS

<i>Policy Number</i>	<i>Effective Date</i>	<i>Last Revision</i>	<i>Page No.</i>
CC-108 <i>Formally 12-02-C</i>	05/02/2012	08/04/2021	Page 1 of 6
<i>Approved by:</i>	City Council DocuSigned by:  F08A405F81504ED...		

Section 1.0: PURPOSE

This policy is to set forth standards of ethical conduct to assist elected and appointed City officials when they are in the performance of their duties, so as to maintain and enhance a tradition of responsible and effective public service. As such, the City of Lebanon expects our elected and appointed City officials to:

- Act in the best interest of the City and not for any private or personal gain.
- Disclose any potential conflicts of interest— personal or pecuniary—in City matters that come before them for action.
- Recuse themselves from decision-making if they have a conflict of interest.
- Be honest, independent, impartial, and responsible in their actions.
- Make decisions and policies through the proper channels and procedures of government.
- Openly conduct the public's business, unless legally confidential under New Hampshire statute (RSA 91-A:3), in a respectful and civil atmosphere with due care, competence, and diligence.

Section 2.0: SCOPE

This policy applies to all City officials elected by the voters or appointed by the City Council.

Section 3.0: DEFINITIONS

Elected and Appointed City Official – City Councilors and Members of City Boards, Committees, and Commissions, when acting in a position other than as a member of the general public.

Body - A formal group of elected or appointed municipal officials, such as the City Council and any City Board, Committee, or Commission.



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Conflict of Interest – A situation or circumstance in which one’s personal or pecuniary interest has the potential to interfere with the proper exercise of one’s public duty, particularly when deliberating or voting as a member of the City Council or any City Board, Committee or Commission. That interest must be “immediate, definite and capable of demonstration; not remote, uncertain, contingent or speculative” (*Atherton v. Concord*, 109 N.H. 164 (1968)).

Pecuniary Interest – Any private financial advantage (whether in the form of money, property, commercial or other interest), the primary significance of which is economic gain from the outcome of one’s official actions. Financial advantage applicable to the public at large, such as reduced taxes or increased general prosperity, does not constitute a pecuniary interest, for the purpose of this Ethics and Conflict-of-Interest Policy.

Personal Interest – Any direct benefit or non-financial interest in the outcome of a matter, when such benefit or interest could influence one’s official actions. Examples of direct personal benefit include family (by blood or marriage), employment, and/or business relationships that would bias one’s official decision-making against the public interest. Official interest as a function of one’s elected or appointed position does not constitute a personal interest, for the purpose of this Ethics and Conflict-of-Interest Policy.

Recuse – To remove or excuse oneself from participating in an official action due to an actual or potential conflict of interest. Recusal means removing oneself completely from all further participation as a public official in the matter in question. Elected or appointed City officials who are recused shall immediately leave the table of deliberation and sit in the audience with the other members of the general public. Recused officials shall not participate in further discussions unless they clearly state for the record that they are doing so only as a member of the general public.

Section 4.0: POLICY DETAIL



City of Lebanon
New Hampshire

CITY COUNCIL POLICY

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The proper operation of democratic government requires that elected and appointed public officials be independent, impartial, and responsible to the people; that government decisions and public policy be made through the proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government officials to perform their duties free from private influence upon the public interest.

Section 5.0: PROCEDURES

1. Elected and appointed City officials shall avoid conflicts of interest and shall strive to recognize them.
2. When an elected or appointed City official recognizes a conflict of interest, he or she shall publicly disclose the reason(s) for the conflict at the earliest possible opportunity and shall recuse himself or herself from any and all official activity on the matter to which the conflict pertains.

When an uncertainty arises as to whether an elected or appointed City official has a conflict of interest in a particular circumstance, the body shall, at the request of that official or of another member of that body, vote on the question. Such vote shall be advisory and non-binding. Any member of the public may voice an objection to a body officials' participation, setting forth specific reasons, and may also request such a vote, but such a request shall be non-binding. Any such request or objection shall be made either prior to or at the commencement of the body's discussion or public hearing on that matter, or at such later time as the facts claimed to warrant disqualification first become known. No vote on disqualification shall be taken if the body's official steps down voluntarily.

The mayor, chair or presiding officer of the meeting shall ensure that the reason(s) for recusal are clearly stated (as stated by the member in person) and are recorded into the minutes of the meeting. Members of the Planning Board, Zoning Board of Adjustment, Building



City of Lebanon
New Hampshire

CITY COUNCIL POLICY

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Code Board of Appeals, and Heritage Commission are further bound by the provisions of New Hampshire RSA 673:14.

3. Elected and appointed City officials shall not directly or indirectly solicit gifts, nor accept or receive any gift (whether money, services, loans, travel, entertainment, hospitality, equipment, premises or in some other form), under circumstances in which it could be reasonably inferred that the gift was intended to influence them in the performance of their duties or was intended as a reward for any recommendation or decision on their part.
4. Elected and appointed City officials shall not disclose nor improperly use confidential information obtained in the course of their official duties.
5. Elected and appointed City officials shall not use City letterhead or stationery for any purpose other than official City business. Under the City Charter, official City business is determined by formal action of the City Council and not by individual City Councilors. Members of Boards, Committees, and Commissions may use City letterhead only for purposes approved by their respective Board, Committee, or Commission.
6. Elected and appointed City officials shall not speak on behalf of their respective Council, Board, Committee, or Commission unless authorized to do so by said Council, Board, Committee, or Commission. Individual members speaking publicly shall clearly state that they are speaking only as an individual and not on behalf of the Council, Board, Committee, or Commission.
7. No member of the City Council, nor any member of a Board, Committee, or Commission, shall appear before his or her own public body on behalf of the private interests of third parties.

5.1 Distribution



City of Lebanon
New Hampshire

CITY COUNCIL POLICY

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The City Clerk shall be responsible for providing a copy of this Ethics and Conflict-of-Interest Policy to all elected and appointed City officials, as defined in this Policy, upon its issuance and upon the subsequent appointment or re-appointment of any said official. The City Clerk shall have each elected and appointed City official sign a statement that he or she has read this Policy and shall comply with all requirements set forth in this Policy. This signed statement shall be available for public review.

5.2 Complaints

Complaints shall be addressed by the City Council in a manner to be determined by the body in accordance with the provisions of ADM-126.1. Boards, Committees, and Commissions are expected to govern themselves. If the complaint cannot be resolved at that level, it may be brought to the City Council for resolution.

The City Council shall consider compliance with this Ethics and Conflict-of-Interest Policy during the reappointment process for members of Boards, Committees, and Commissions.

Section 6.0: REFERENCES

1. ADM-126.1 Complaints & Investigations Policy
2. NH RSA 673:14 Disqualification of Member
3. NH RSA 95:1 Public Officials barred from certain private dealings
4. NH RSA 640:2 Bribery in official and political matters
5. NH RSA 640:3 Improper Influence
6. NH RSA 640:4 Compensation for Past Action
7. NH RSA 640:5 Gifts to Public Servants
8. NH RSA 640:6 Compensation for Services
9. NH RSA 640:7 Purchase of Public Office
10. City of Lebanon, Charter C419:20 Dealings of Council with City.
11. City of Lebanon, Charter C419:29 Non-Interference by the Council.
12. City of Lebanon, Charter C419:62 Disqualification of Councilor, Board Member or Employee.
13. City of Lebanon, Charter C419:63 Private Use of Public Property.



City of Lebanon
New Hampshire

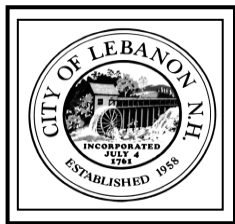
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14. NH RSA 49-C:33 Optional Provisions: Limitations, Section I(c).

Section 7.0: POLICY & PROCEDURE REVISION HISTORY

	Section	Revisions	Date
Original Adoption		Initially adopted 12-02-C	5/2/2012
Amendment		Reformatted, references added, renumbered	8/4/2021



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Conservation Commission

FROM: Planning and Development Department Staff

RE: 2023-2024 Proposed Zoning Amendments

DATE: November 2, 2023

On October 4, 2023, Planning and Development Department staff presented to the City Council a set of proposed Zoning Ordinance amendments for initial consideration. Following the presentation, the City Council agreed to move the proposed amendments forward for further review. Section 1000.3 ("Amendment Procedures"), subsection C requires review and comment by the Planning Board regarding any proposed zoning amendment:

All proposed [zoning] amendments shall be forwarded to the Planning Board and Conservation Commission. Planning Board and Conservation Commission shall place the proposed amendment on their agenda for discussion and comment at least thirty (30) days prior to the City Council public hearing. The Planning Board and Conservation Commission shall forward their comments and recommendations to the City Council at least seven (7) days prior to City Council public hearing.

The Conservation Commission's comments should be limited to the potential impact of the amendments on matters or concerns within the Commission's purview. However, Commission members are welcome to and should feel free to provide general comments or suggestions on any of the amendments in the members' individual capacity as a City resident. Comments may be provided to staff and/or to the City Council at the public hearing on the proposed amendments, to be scheduled in January.

For the Board's reference and review, please find attached the following:

- A legal opinion from Christine Fillmore, Esq., dated October 20, 2023.
- A redline of the current Zoning Ordinance (redline last revised October 10, 2023).
- A staff memo to the City Council, dated September 26, 2023, providing a description of the proposed amendments.
- A plat titled, "Draft Site Master Plan – Signal Park," dated October 2023, provided by Choice Storage, LLC, owner of Tax Map 26, Lot 17, which is the subject of the proposed zoning map amendment discussed on page 5 of the 9/26/23 staff memo (amendment B.7).
- Existing and proposed zoning maps for Tax Map 26, Lot 17, prepared by Choice Storage, LLC, and submitted to staff on November 1, 2023. These are updates to the graphics that are attached to the 9/26/23 staff memo (which were also provided by Choice Storage, LLC).

Please note that staff has updated the redline in response to the City Council's comments made at their October 4th meeting and in response to an initial review by the City's legal counsel. Consequently, the page references in the 9/26/23 staff memo may no longer match the updated redline that is attached to this memo.

Once review has been completed by the Planning Board and the other land use boards, the City Council will hold a public hearing in January followed by a vote on whether to adopt the amendments.

October 20, 2023

Nathan Reichert
Director of Planning & Development
City of Lebanon
51 N. Park Street
Lebanon, NH 03766

RE: Proposed Zoning Amendments

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a set of proposed text and map amendments. I have reviewed a staff memorandum dated September 26, 2023, a draft of these amendments dated October 5, 2023 and a revised draft dated October 10, 2023, and now provide this preliminary opinion based on the latest revised draft.

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

In this case, other than the items noted specifically below, the answer to these three questions is “yes” and I discern no legal or administrative issues of concern.

1. Text Amendment to Section 408.4(C):

This section lists some of the activities which require a Certificate of Approval from the Heritage Commission. Two small changes are proposed (I believe for clarification), as follows:

- “Replacement of doors and windows if it involves fenestration changes in the size, location, or number of openings in the exterior of a façade....”
- “Replacement or enclosure of porches, decks, and patios if it involves an architectural change in size, location, design, and/or materials....”

While these changes are within the City’s authority and in proper form, I have reservations from an administration standpoint about whether they would be easier to understand if phrased in a less technical way. The average person may not understand what counts as a “fenestration” change. Does this involve only a new opening for a door or window? Moving an opening? What about slightly increasing or decreasing the opening size for a door or window? Similarly, it is not clear from the draft what would constitute an “architectural” change of the size, location, design or materials of a porch, deck, or patio. Is there such a thing as a non-architectural change

in size or location? What would constitute an architectural change in materials? For purposes of administration, it may make sense to phrase these two requirements in ways that minimize the chances of confusion, challenge by applicants, and inconsistent application. The City has a legal obligation to assist citizens with the process of land use planning and permitting (see *Richmond Co. v. City of Concord*, 149 N.H. 312 (2003)), and in furtherance of that obligation it may make sense to ensure that the language of the ordinance is user-friendly where practical.

2. Proposed Zoning Map Change, 0 Etna Rd., Parcel 26-17:

This proposal would affect one lot consisting of approx. 182 acres, currently split zoned between the IND-L and RL-3 districts. The property owner has asked for this change, which would change the zoning of approximately 50 acres from IND-L to RL-3, and another roughly 50 acres from RL-3 to IND-L. It is my understanding that some of this lot abuts the City's existing Signal Hill Conservation Area but I do not know the locations of the proposed lot areas to be rezoned. (Please note as well that I have not received or reviewed any of the attachments to the Staff Memo of 9/26/023 and thus have no information about that other than the explanation in the memo itself.)

It is of course within the City's authority to change its zoning map and to change the zoning district designation of land. A hallmark of zoning is that regulation is by district and not by individual lots, so whenever a proposed change would affect a relatively limited area, it is important to consider whether that change meets the legal standard for zoning.

A change to a zoning map may be problematic "spot zoning" if it is singled out for treatment different from that of surrounding land which cannot be justified on the basis of health, safety, morals, or general welfare of the community and if the change is not in accordance with a comprehensive plan. See *Miller v. Town of Tilton*, 139 N.H. 429 (1995). The mere fact that an area is small, is rezoned at the request of a single owner, and is of greater benefit to that owner than to others does **not** necessarily constitute spot zoning if there is a public need for it or a compelling reason for it. *Id.*

In considering whether rezoning constitutes spot zoning, courts may consider whether the change is made in response to some public need. See *Shadlick v. Concord*, 108 N.H. 319 (1967) (zoning change was made in response to growing need for multi-family housing which already existed in proximity to the rezoned area, and thus was part of a comprehensive plan rather than spot zoning). Also relevant is whether there are sufficient opportunities for the targeted use elsewhere in the community, particularly if those other areas aren't being used. See *Bosse v. Portsmouth*, 107 N.H. 523 (1967) (rezoning of one parcel for industrial use when it was surrounded by residential uses was spot zoning because many other areas in the city were available for industrial use but weren't being used that way). The common thread in the case law is that a court will consider whether there is a reason or combination of reasons for the change that is in the public interest and consistent with the community's development goals.

In this case, while only one lot is involved, it is my understanding from discussions with the Planning Department there may be planning-related reasons for this change that go beyond any benefit that may result for the land owner. It is my understanding from Planning staff that the

October 20, 2023

Page 3

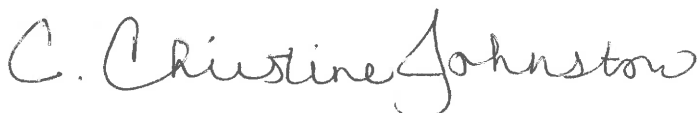
original district boundary for the IND-L portion of this lot was based upon a flat 1,000-foot measurement to create a buffer between industrial land uses allowed in the IND-L district and the residential and other rural uses in the RL-3 district. This 1,000 foot measurement did not take into account the particular topography or other physical features of the specific land involved which would make industrial uses impractical or impossible in certain areas and thus render the 1,000 foot buffer unnecessary. As it was explained to me, the topography of the property involved in this request and the condition of the land means that the across-the-board 1,000 foot buffer is not actually necessary to prevent industrial uses from encroaching upon RL-3 uses. If this is true, then it would seem that subjecting these areas to the IND-L designation would unnecessarily restrict the possible future use of the land without providing the benefit that was originally intended by the district boundary.

If my understanding of the facts is correct, the potential for any spot zoning problem should be quite small. My recommendation is that these facts and the relationship between the condition of the land and the City's land use goals for the area be spelled out clearly in documentation **prior to** any vote to approve this change.

Finally, I note that the property owner has said they intend to give to the City some of the land that would be rezoned as RL-3 for use as recreational playing fields. Please note that this proposed gift should play absolutely no part in the City's decision regarding rezoning, and any change to zoning cannot be made conditional upon the gift. The zoning change must, **on its own**, further the developmental goals of the City, providing some kind of public benefit.

Please do not hesitate to contact me about any aspect of this matter.

Sincerely,

A handwritten signature in cursive script that reads "C. Christine Johnston". The signature is written in dark ink and is positioned above the printed name.

C. Christine (Fillmore) Johnston

DRAFT AMENDMENTS TO THE CITY OF LEBANON ZONING ORDINANCE

ARTICLE II GENERAL PROVISIONS

[...]

SECTION 213 IMPACT FEES.

[...]

213.3 Definitions.

[...]

E. New development means an activity that results in:

- (1) The creation of a new ***dwelling unit*** or units or new ***manufactured housing***; or
- (2) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of ***dwelling units***; or
- (3) Construction resulting in a new non-residential ***building*** or a net increase in the ***gross floor area*** of any non-residential ***building***; or
- (4) The conversion of a lawful existing use to another use if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment.

(5) A net increase in a residential building's gross floor area greater than 500 square feet.

Notwithstanding the above, new development shall not include:

- a. The creation of any new-studio or one-bedroom ***accessory dwelling unit*** with a ***gross living area*** of 500 sq. ft. or less;
- b. The replacement of an existing ***manufactured housing*** unit or any existing ***dwelling unit***; or
- c. The reconstruction of a ***structure*** that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

[...]

213.8 Waivers.

- A. The ~~Planning Board~~ Zoning Administrator ~~may~~ may administratively grant full or partial waivers of impact fees to an assessed property where the ~~Administrator~~ Board based on credible evidence presented by the applicant, finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

~~1. A.~~ — An assessed property may apply for a full or partial waiver of public-school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The ~~Planning Board~~ Administrator may waive school impact fee assessments on restricted-occupancy units where it finds that the ***dwelling unit*** will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years.

~~2. B.~~ — 2. An assessed property may apply for a full or partial waiver of public-school impact fees for those studio or one-bedroom residential units that have a ***gross living*** _____ ***area*** of 500 sq. ft. or less.

- B. The Planning Board may grant full or partial waivers of impact fees to an assessed property where the Board based on credible evidence presented by the applicant finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

1. a. C. — An assessed property may apply to the Planning Board for a full or partial waiver of impact fee assessments imposed by this Ordinance on the basis of other contributions toward public capital facilities. The amount of such a waiver shall not exceed the value of land, facilities construction, or other contributions for public capital facilities. The value of on-site and off-site improvements which are required by the Planning Board as a result of subdivision or site plan review, and which would have to be completed by the developer, regardless of the impact fee provisions, shall not be considered eligible for waiver under this Ordinance. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. All costs incurred by the City for the review of a proposed waiver, including consultant and counsel fees, shall be paid by the applicant.

1.2. D. — The Planning Board may waive an impact fee, in whole or in part where, in the opinion of the Board, such fee would: due to interference with constitutionally-vested rights, pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of this Ordinance.

[...]

ARTICLE III USE DISTRICTS

SECTION 305A GENERAL COMMERCIAL ONE DISTRICT (GC-1).

305A.1 Purpose.

The purpose of the GC-1 District is to provide opportunities for a mix of commercial and **multi-family** residential uses within close proximity to regional employers, public transportation routes, and pedestrian and biking trails. The GC-1 District is intended to provide for uses that are compatible with the limited access design of Route 120, and which would tend to retain and enhance the existing character of the area. New **multi-family** housing is encouraged to provide convenient access to major centers of employment, to facilitate future economic growth along the Route 120 corridor, and to complement the existing array of services and amenities within walking or biking distance of the GC-1 District.

305A.2 Table of Uses.

<u>Permitted Uses</u>	<u>Uses by Conditional Use Permit (see Section 302.4)</u>
<u>Residential</u> 1. Multi-family dwelling (see Section 305A.4) <u>Commercial/Non-Residential</u> 2. Dwelling unit(s) above first floor 3. Essential service 4. Financial institution 5. Group day care facility per Section 604 6. Office 7. Personal service 8. Renewable energy system per Section 612	<u>Commercial/Non-Residential</u> 1. Alternative treatment center per Section 613 2. Drycleaning pick-up station 3. Educational facility, college/university 4. Inpatient rehabilitation facility 5. Light industry 6. Research laboratory 7. Restaurant , sandwich shop 8. Retail store <u>Planned Developments</u> 9. Commercial PUD per Section 501 10. <u>Manufactured Housing PURD per Section 504</u>

[...]

ARTICLE IV OVERLAY DISTRICTS

[...]

SECTION 408 HISTORIC DISTRICT.

[...]

408.4 Certificate of Approval Required.

A Certificate of Approval shall be obtained from the Heritage Commission in the manner set forth herein prior to the commencement of any of the following activities within any Historic District:

- A. The construction of any new **building**;
- B. The addition to, alteration, or repair of any existing **building** which would require the issuance of a building permit pursuant to the provisions of the Lebanon Building Code, unless such addition, alteration, or repair does not, ~~in any way,~~ materially alter the exterior of such **building**;
- C. The following activities, whether or not a building permit is required for such activities:
 - 1. Roofing or re-roofing if the roof plane is changed;
 - 2. Siding, including new and re-siding, if it involves a change of design or materials;
 - 3. Replacement of doors and windows if it involves fenestration changes in the size, location, or number of openings in the exterior or facade of a **building**.
 - 4. Replacement or enclosure of porches, decks, and patios if it involves an architectural change in size, location, design, and/or materials;
 - 5. Replacement of exterior stairs, landings, and overhangs if it involves a change in size, location, design, and/or materials;
 - 6. Demolition or moving of a **building** or **accessory building**.

No building permit (when applicable) shall be issued prior to the receipt of a Certificate of Approval for the above-described activities.

[...]

SECTION 410 RIVERBANK PROTECTION DISTRICT.

[...]

410.2 Authority.

This section of the Zoning Ordinance is adopted pursuant to the authority granted by RSA 483-B:8, Shoreland Water Quality Protection Act: Municipal Authority; and RSA 674:16, Grant of Power to Zone; ~~and RSA 674:21, I(j), Innovative Land Use Controls: environmental characteristics zoning.~~

410.3 Description of the Riverbank Protection District.

The Riverbank Protection District includes all areas in the City that are located within an area beginning at the **ordinary high water mark** of the following designated **public rivers**, streams, and lakes:

- (1) Connecticut River

- (2) Mascoma River, [except for lots subject to an Urbanized Shoreland Exemption granted by the NH Department of Environmental Services pursuant to RSA 483-B:12.](#)
- (3) Stoney Brook
- (4) Blodgett Brook
- [...]

as identified by the United States Geological Survey, and depicted on the official Lebanon Riverbank Protection District Overlay Map, and extending inland to fifty (50) horizontal feet, with septic waste systems and fuel storage restrictions extending to one hundred and twenty-five (125) horizontal feet, as set forth in 410.7.F and 410.7.H.

[...]

ARTICLE V SUBDIVISIONS AND PLANNED DEVELOPMENTS

SECTION 500 GENERAL.

[...]

- B. [...] Planned developments shall be permitted in accordance with the following table:

District	PURD per Section 501.2	PRec per Section 501.3	Industrial PUD per Section 501.4	Commercial PUD per Section 501.4	<i>Manufactured Housing PURD</i> per Section 501.24 / <i>Manufactured Housing Park</i> per Section 503	Recreational Camping Parks per Section 505	<i>Medical Center Complexes</i> per Section 506	<i>Planned Business Park</i> per Section 508	<i>Cottage Development</i>
IND-L			CUP					CUP	
IND-RA			CUP					CUP	
GC				CUP					
GC-1				CUP	CUP <i>(Manufactured Housing PURD per Section 501.4 only)</i>				
CB				CUP					
LD									
R-1	CUP				CUP / P				CUP
R-2	CUP								CUP
R-3	CUP*								CUP
R-O	CUP								CUP
R-O-1	CUP								CUP
PB						SE			
RL-1	CUP *	CUP			CUP / P	SE			
RL-2	CUP *	CUP			CUP / P	SE			
RL-3	CUP *	CUP							
MC				CUP			P		

P = permitted

SE = **special exception** required

CUP = **conditional use** permit required

*Subject to Section 501.2.B.1.

SECTION 501 PLANNED UNIT DEVELOPMENT (PUD).

501.1 General Requirements.

[...]

F. Open Space.

[...]

2. Minimum Required Open Space.

[...]

- a. Commercial or Industrial PUD. At least ~~ten (10)~~ 15% percent of the property utilized for a Commercial or Industrial PUD shall be preserved as Open Space. None of the **curtilage** of a **principal building** shall be used to meet the ~~10 percent~~ 15% criteria.

[...]

ARTICLE VI ADDITIONAL STANDARDS FOR SPECIFIC USES

[...]

SECTION 607 PARKING.

[...]

607.5 Off-Lot Parking.

Parking shall be provided on the same **lot** as the use for which the parking is accessory, except as follows:

- A. In the IND-L, IND-H, IND-RA, GC, GC-1, CB, LD, RO, RO-1, PB, and MC Districts, the Planning Board may approve private off-lot parking as a **conditional use** permit. Instead of the findings required by Section 302.4, the Board shall determine that:

[...]

4. Such parking arrangements are either permanently deeded and recorded or conveyed by an irrevocable 99-year lease or some other legal instrument, acceptable to an attorney representing the City, and submitted with the Conditional Use Permit application for approval by the Planning Board. Such legal agreement shall ~~that will~~ ensure that such parking arrangement will remain as long as the need exists.

[...]

- B. For conversions of **one-** or **two-family dwellings** to **multi-family dwellings** or where adding additional **dwelling units** to an existing **multi-family dwelling**, the

Planning Board may approve private off-lot parking, as a **conditional use** permit. Instead of the findings required by Section 302.4, the Board shall determine that:

[...]

5. Such parking arrangements are permanently and irrevocably deeded and recorded or conveyed by an irrevocable 99-year lease or some other legal instrument, acceptable to an attorney representing the City, and submitted with the Conditional Use Permit application for approval by the Planning Board. Such legal agreement shall~~that will~~ ensure that such parking arrangement will remain as long as the need exists.

[...]

SECTION 610 ACCESSORY DWELLING UNIT (ADU).

Accessory dwelling units are intended as an option for homeowners to offer separate and independent living space for their extended families, or to offer small **dwelling units** as rentals to offset the expense of maintaining the **dwelling**.

An **accessory dwelling unit** shall comply with the following criteria:

- A. An **ADU** is allowed on any **lot** in any zoning district with a **one-family dwelling**. For lots in any zoning district with a **two-family dwelling**, a detached or attached ADU is allowed. Only one such **ADU** is permitted per **lot**. The dwelling unit density requirements of the underlying zoning district shall not apply to ADUs.
- B. ~~The~~If attached, the appearance and character of the existing or proposed **ADU** shall remain single family in nature if converting a one-family dwelling to a one-family dwelling with an ADU, and shall remain two-family in nature if converting a two-family dwelling to a two-family dwelling with an ADU. If detached, the ADU shall maintain the primary building's architectural style, proportional mass, size, and height to ensure it is not taller than the principal building on the lot. A detached ADU may be permitted to be taller than the principal building by special exception.
- C. The property owner must occupy one of the **dwelling units** as their permanent residence. A temporary leave of absence of no more than one (1) year by the property owner is allowed, provided the owner-occupied unit is not rented or occupied by anyone other than the property owner during the temporary leave or absence.

Prior to the issuance of a zoning/~~building~~-permit, the owner shall record in the Grafton County Registry of Deeds an ~~acknowledgment of the above owner-occupancy requirement~~ Accessory Dwelling Unit Owner Occupancy Restriction, in a form satisfactory to the Zoning Administrator, in order to put prospective buyers on notice of the prohibition against renting out both units. All recording fees shall be the responsibility of the applicant.

- D. The **ADU** must be located in the same **building** as the principal **dwelling unit(s)** unless the **lot** meets or exceeds the minimum required lot size for the respective zoning district. If the **lot** meets or exceeds the required minimum lot size, the **ADU** may be located in a separate detached accessory **structure** such as a garage or

barn, provided the existing accessory **structure** conforms with the minimum required **yard** requirements for the respective zoning district. An **ADU** may also be in a new **structure**. By **special exception**, the Zoning Board of Adjustment may allow an **ADU** to be located in a detached **structure** on a **lot** that is non-conforming to the minimum lot size and/or to be allowed in an existing accessory **structure** that is legally non-conforming to the applicable minimum yard requirements.

- E. If the **ADU** is located within or by an addition to the existing **principal building**, an interior door shall be provided between the **ADU** and the principal **dwelling unit** or between the **ADU** and one of the principal **dwelling units** if the principal building is a **two-family dwelling**.
- F. If applicable, the owner must seek a permit from the State of NH Dept. of Environmental Services Subsurface Systems Bureau, in accordance with NH RSA 485-A:38, for any increased load on an existing sewage disposal system as a result of the addition of an **ADU** to the **lot**.

G. Size of ADU.

- 1. ~~O~~Conversion of one-family dwellings: If the **gross living area** of the principal **dwelling unit** is 1,500 square feet or less, the **gross living area** of the **ADU** may be no greater than ~~65~~50% of the **gross living area** of the principal **dwelling unit**. If the **gross living area** of the principal **dwelling unit** is greater than 1,500 square feet, but less than 3,000 square feet, the **gross living area** of the **ADU** shall not exceed ~~960~~750 square feet. If the principal **dwelling unit** is greater than 3,000 square feet, the **gross living area** of the **ADU** can exceed ~~960~~750 square feet provided the **ADU** is no greater than ~~33~~25% of the **gross living area** of the principal **dwelling unit**. If the ADU is located on a parcel of land greater than 4 acres a detached ADU can exceed 960 square feet provided that the detached ADU is no greater than 50% of the gross living area of the principal dwelling unit.
- 2. ~~I~~TConversion of two-family dwellings: If the **gross living area** of the smaller of the two principal **dwelling units** is 1,500 square feet or less, the **gross living area** of the **ADU** may be no greater than ~~65~~50% of the **gross living area** of the smaller of the two principal **dwelling units**. If the **gross living area** of the smaller of the two principal **dwelling units** is greater than 1,500 square feet, but less than 3,000 square feet, the **gross living area** of the **ADU** shall not exceed ~~960~~750 square feet. If the smaller of the two principal **dwelling units** is greater than 3,000 square feet, the **gross living area** of the **ADU** can exceed ~~960~~750 square feet provided the **ADU** is no greater than ~~33~~25% of the **gross living area** of the smaller of the two principal **dwelling units**.

~~H. A detached ADU, if permitted under paragraph B above, shall maintain a proportional mass, size, and height to ensure it is not taller than the principal building on the lot. An ADU may be permitted to be taller than the principal building by special exception.~~

~~H.~~H. Any necessary additional entrances or exits to the **principal building**, to serve the **ADU**, shall be located to the side or rear of the **building**. All new or altered **structures**, intended to be used as an **ADU**, must be located behind the **front building line** of the existing **principal building** except by **special exception** if the

Zoning Board finds that the placement of the **ADU** on the **lot** will not adversely affect the character of the neighborhood; traffic on roads and highways; safety of pedestrians, and will not create a hazard or nuisance to abutting property owners.

J. In addition to the two (2) parking spaces required for each principal **dwelling unit**, one (1) additional parking space for the **ADU** must be provided.

K. An **ADU** located within the **principal building** shall have interconnected smoke and carbon monoxide alarms.

K. An ADU Permit application submission shall include a minimum of the following materials and exhibits demonstrating compliance with the applicable Zoning Ordinance requirements:

1. Existing and proposed site conditions and parking plan.

2. Existing and proposed floor plans for all dwelling units and structures.

A. If applicable this floor plan shall show compliance with ADU entrance, interconnection and smoke and carbon monoxide alarm plan requirements.

3. A gross living area square footage calculation which includes existing and proposed floor plans, and a square footage calculation for both the primary dwelling and ADU demonstrating adherence with 610.G ADU Size pursuant to the definition of gross living area within Appendix A Definitions.

4. A signed, recordable "Accessory Dwelling Unit Owner Occupancy Restriction"

5. A bank or business check or money order for all recording fees made payable to the Grafton County Registry of Deeds.

6. If applicable a copy of the State of NH Dept. of Environmental Services Subsurface Systems Bureau Approval and plans.

7. If applicable a Water Connection Permit Application.

8. If applicable a Sewer Connection Permit Application.

9. Impact Fee Invoice Acknowledgment.

[...]

ARTICLE VIII BOARD OF ADJUSTMENT

[...]

SECTION 801 POWERS AND DUTIES.

The powers and duties of the Board shall be as prescribed by NH RSA 674:33, as amended. The powers and duties are:

801.1 Administrative Appeals.

~~To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as~~ As set forth in RSA 676:5, I, appeals to the Board concerning any matter within the Board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination

appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

For the purposes of this section:

(a) The "administrative officer" shall mean the Zoning Administrator.

(b) As set forth in RSA 676:5, II, a "decision of the administrative officer" includes any decision involving construction, interpretation or application of the terms of the Zoning Ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation or application of the terms of the Zoning Ordinance which is implicated in such enforcement proceedings.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6.

[...]

SECTION 802 BOARD PROCEDURES.

802.1 Applications.

Applications to the Board for an administrative appeal, **variance**, **special exception** or equitable waiver shall be made on forms provided by the Board in compliance with procedures established by the Board.

- A. Fees: The application shall be accompanied by whatever fees are required by ~~the Board to defray the costs.~~ Chapter 68 of the City Code.
- B. Plans and Information: The application shall be accompanied by whatever plans and other information are required by the Board including but not limited a scaled plan of the subject property identifying existing and proposed conditions and improvements, and a business operations plan, if applicable.

[...]

802.3 Hearing Procedure.

[...]

- D. Conflicts of Interest: Conflicts of interest are governed by RSA 673:14, the City of Lebanon Ethics policy (ADM-108, as amended), and the Board's Rules of Procedure. No member of the Board shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualifications do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the

member's official duties. If a member is disqualified or unable to act in any particular case pending before the Board, the chairman shall designate an alternate to act in his place.

[...]

802.4 Decisions of the Board.

~~In exercising its powers the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.~~

[...]

APPENDIX A DEFINITIONS

[...]

DWELLING: A building, or space within a building, designed for and used primarily by one or more families for living quarters including permanent provisions for sleeping, eating, cooking and sanitation, but not including recreational vehicles (RVs), **manufactured housing**, trailers of any kind, **hotels, motels, group residences, lodging houses**, institutional homes, residential clubs, or other commercial accommodations offered for occupancy.

[...]

EDUCATIONAL FACILITY, PRIMARY/SECONDARY: A public or private school offering instruction at the primary and/or secondary school levels in the branches of learning and study required to be taught in the public schools of the state of New Hampshire. This term shall include preparatory schools and progressive schools and shall not include group day care facilities.

[...]

GROSS LIVING AREA: The total area of above-grade residential space ~~of a~~ within a dwelling unit as measured using exterior building dimensions, with a ceiling height of 7 ft. or greater, excluding unheated areas such garages, as enclosed or open porches, covered or open decks, outside stairs, and balconies, garages, or and other unenclosed areas. ~~Gross living area does not include the area within a garage, deck or other unenclosed area.~~ The floor area of a walk-out basement with a ceiling height of 7 feet or greater shall be included.

[...]

A. **CHILD DAY CARE FACILITY:** A day care center, a day nursery, a private nursery school or kindergarten, a child development center, a play group, a head start center, ~~progressive school~~ or any other facility which cares for seven (7) or more children under the age of 16 for a part but not all of a 24 hour day. This term shall not include primary/secondary educational facilities.

Such facilities may be privately operated or sponsored by a house of worship, social agency, cooperative group or a community or by a public agency other than public schools.

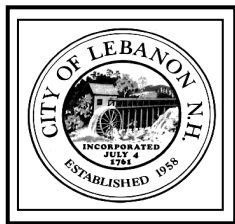
[...]

HEALTH CLUB: An establishment that provides indoor and/or outdoor exercise facilities, programs, instruction and/or training related to fitness, wellness, aerobics, weight lifting, court sports, and/or swimming, ~~as well as~~ and which may also include locker rooms, showers, massage rooms, saunas, and/or related ***accessory uses***. This term shall not include any ***local government use***.

[...]

STRUCTURE: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. The term includes, but is not limited to, buildings, swimming pools, tennis courts, manufactured homes, wind and solar energy facilities, satellite dishes and antenna. The term does not include bus stops and minor installations such as fences less than three and a half feet high, agricultural and safety fences, mail boxes, flagpoles and children's play equipment, nor does it include subsurface waste disposal systems.

[...]



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning and Development Department Staff

RE: 2023-2024 Proposed Zoning Amendments

DATE: September 26, 2023

Honorable Mayor and City Councilors,

The Planning and Development Department has prepared draft amendments to the Zoning Ordinance for consideration by the City Council, and requests that the proposed amendments be placed on the October 4, 2023 meeting agenda for discussion.

It is staff's practice to present a set of proposed zoning amendments to the Council each fall for review and consideration. Presenting in the fall allows the amendments to move through the required review process in time for placement on the ballot the following March, when necessary.

The current set of proposed amendments are summarized below and are highlighted in the attached redlined excerpt of the Zoning Ordinance. The new or revised text is blue and underlined. The text to be deleted is shown as ~~red with a strike-out~~.

If the Council chooses to move forward with staff's proposal, the draft amendments will be sent to the City's legal counsel and land use boards for further review. Once the review process is complete, the amendments will be scheduled for a public hearing before the City Council.

OVERVIEW OF AMENDMENTS

A. Text Amendments

1. Amend Section 213 ("Impact Fee") (see p. 1-3 of the redline) to:

- **500 square foot additions:** Collect impact fees for residential additions larger than 500 sq. ft. The proposal is intended to address a "loophole" whereby once a dwelling is completed, any future additions are exempt from impact fees regardless of the size of the addition and regardless of the size of the addition compared to the size of the original home. For example, a 1,000 sq. ft. addition to a 500 sq. ft. home would be wholly exempt from impact fees. The typical case scenario is that an applicant will show the smallest number of square feet for a project on a plan to minimize impact fee costs. Then, when finished they will finish all habitable space in the home. In one case an impact fee was based on an application of 1200 square feet, two years later the same applicant has another application for a related use and claims the home's living area exceeds 5000 square feet including

area finished in the attic, walk out basement, and above the connected garage. Closing this loophole will allow the Department to accomplish two tasks. The 1st will be closing a loophole in the code and making the impact fees fairer for all homeowners in Lebanon. 2nd when discovering unpermitted finished work in a home that exceeds 500 square feet an impact fee can be required, thereby bringing equality to the system. Closing this loophole will help build a culture of compliance with permit requirements within the community as it will encourage applicants to permit all square footage upfront and avoid having to pay the impact fee when the work is discovered.

- **Amend the waiver and appeals provisions.** The Planning Board recently had its first case where an applicant brought forward an appeal to waive school impact fees for apartments under 500 square feet that were included in the project's previous approval. After the hearing the Planning Board recommended that staff make the process of appeal easier for the applicant as there are no articulated standards that the Board had in the Zoning Ordinance to make the decision. Based upon the recommendation of the Planning Board's experience with the existing regulations, staff has brought forward several proposed reforms to the process:
 - Administrative approvals for waiver of impact fees. If the waiver is based upon easily verifiable standards such as 500 square feet or smaller, or a deed restriction then the Zoning Administrator is empowered to waive the school impact fee administratively. The standard of review is rather simple: it either meets the criteria or it does not. If the standard is met, then the waiver is granted.
 - The second classification of review contains a more subjective standard of "hardship" and as such is best left to a Board to interpret. Removing a judgement of hardship from an administrative determination leaves the Applicant a pathway to a waiver but a slightly higher bar to prove to the Board that a hardship exists and therefore a waiver should be granted.
 - The Review Board is shifted from the Planning Board to the Zoning Board. The Planning Board writes the policy and sets the impact fees, as they are the author of the impact fees the interpretation of the written policy should then shift to the Zoning Board. Hardship is a Zoning Board standard that is used in all variance cases. As such the Zoning Board is more familiar with the standard. Removing the ability for one Board to write and interpret the standard avoids ethical conflicts and makes the system more resilient. Ultimately the standard is; the Planning Board writes the impact fee policy, the Zoning Board interprets and enforces the policy.

2. **Amend Section 305A.2 ("GC-1 District Table of Uses") and Section 500 (planned developments table)** (see p. 4 and 6 of the redline) to allow Manufactured Housing Planned Unit Residential Developments (PURDs) in the GC-1 District by Conditional Use Permit from the Planning Board per Section 504 of the Zoning Ordinance. This amendment is in furtherance of a concept recently presented by DHMC to Planning staff for a single-family development utilizing a "CrossMod" product at DHMC's property on the east side of Route 120 (between Jesse's restaurant and Centerra). The "CrossMod" product (pictured below) constitutes "manufactured housing" as defined in the City of Lebanon Zoning Ordinance. The GC-1 District already allows multi-family development with density to be determined by the Planning Board through Site Plan Review. As such, Manufactured Housing PURDs is a less intensive use than those already permitted in the GC-1 and will allow for much needed affordable single unit detached home ownership opportunities to serve the City's workforce. The development remains subject to the

extensive regulatory framework for PURDs, including the requirement to provide a minimum of 50% open space, and per Section 504, a maximum permitted density of 1 unit per 5,000 sq. ft. It is the staff's understanding that DHMC will be submitting a letter to the Council in support of this amendment request.



Example of a "CrossMod" single family residence where a portion of the home is stick-built on site which meets the State Building Code, and a portion of the house is built at an off-site facility which meets HUD housing code.

3. **Amend Section 410.3 ("Description of Riverbank Protection District")** (see p. 5 of the redline) to remove properties within the Lebanon Downtown (LD) District from the Riverbank Protection District. This amendment is in tandem with an application that the City is preparing to the NH Department of Environmental Services requesting an exemption for downtown Lebanon from the provisions of the state's Shoreland Water Quality Protection Act (SWQPA). The vast majority of New Hampshire's historic downtowns in cities and towns of comparable size to Lebanon have already requested and been approved for such an exemption, which has been available since the original passage of the SWQPA's predecessor in 1991 (the Comprehensive Shoreland Protection Act). The exemption allowed by the SWQPA recognizes that New Hampshire's historic downtowns were typically built up to and around a river (or other water body) – for example, the Cocheco River in Dover, the Merrimack River in Manchester, the Nashua River in Nashua, the Androscoggin River in Berlin, and in Lebanon, the Mascoma River. What the SWQPA is intended to protect or prevent is no longer attainable in these areas and only serves as an unnecessary impediment to much needed downtown redevelopment. Likewise, the Riverbank Protection District regulations – which substantially mirror the requirements of the SWQPA – also create a regulatory barrier to downtown redevelopment without any significant benefit to the community. Please note that FEMA Flood Zone building requirements remain in effect within this area.
4. **Amend Section 610 ("Accessory Dwelling Unit (ADU)")** (see p. 7-9 of the redline). Staff brings forward several ADU reforms based upon our lived experience with the ADU regulations over the last year. The ADU standards have begun to catch on and we are seeing more homeowners seek to permit ADUs.
 - *"FHA only requires that a home be marketable in the area and have adequate space necessary to assure suitable living, sleeping, cooking and dining accommodations and sanitary facilities."* Traditionally, FHA underwriting has used 960 square feet as a minimum number of square feet for a house to meet the articulated standard. Thus, there is not an interpretive question about the size of the dwelling unit if 960 square feet standard is made. Based upon this 960 sq ft FHA standard staff recommends amending the size ratios for ADU calculations as the present 750 square foot standard is too small to meet a traditional FHA habitability standard. Thus, the number is proposed to be changed to allow a larger ADU to be constructed.

- Square footage calculation has been a major concern with several ADU cases currently seeking permits that are running up against the smaller ratio standards. The definition of “gross living area” in Appendix A is proposed to be amended to make the calculation clearer.
- Further, square footage ratios are increased to allow for a larger ratio-based home with a by right standard of 960 square feet, thereby resolving permitting log jams by making meeting the ratios easier for many applicants and not adversely impacting surrounding neighborhoods.
- The large 4-acre lot provision was added to ease ratio concerns and permit mass and proportionality continuity. We have several cases currently seeking approval for a larger ADU on a very large lot. The 4 acres number allows for ample room for septic and well configuration for both lots. The larger ratio of 50% of the main house creates a scenario where the Large House and Small house remain more proportional to the scale of the neighborhood and house/lot configuration. The large lot standard allows for a significant second dwelling unit to be created, often in a configuration where the primary house and the ADU appear more as neighboring houses as opposed to a Primary/ADU relationship. Consequently, allowing the larger ADU will maintain mass, proportionality and not adversely impact a neighborhood with pre-existing large lots. Additionally, if configured correctly a larger ratio may underwrite the ease of sub-dividing a lot in the future and creating a stand-alone home on its own lot that meets all the regulatory standards while fitting the character of the neighborhood.
- A clear checklist of items needed for the ADU is included to inform an applicant of the necessary submissions at the time of application. Informing the applicant before an application is made helps develop a clear understanding of timelines and necessary obligations to achieve a favorable permit outcome and generate a successful project.

5. Amend Appendix A (“Definitions”) (see p. 11-12 of the redline) to:

- “Gross Living Area” For purposes of calculating impact fees and the size of accessory dwelling units, amend the definition of “gross living area” to specify more clearly those areas of a dwelling unit – including walk out basements - that are included as part of the “gross living area”.

6. Miscellaneous minor amendments:

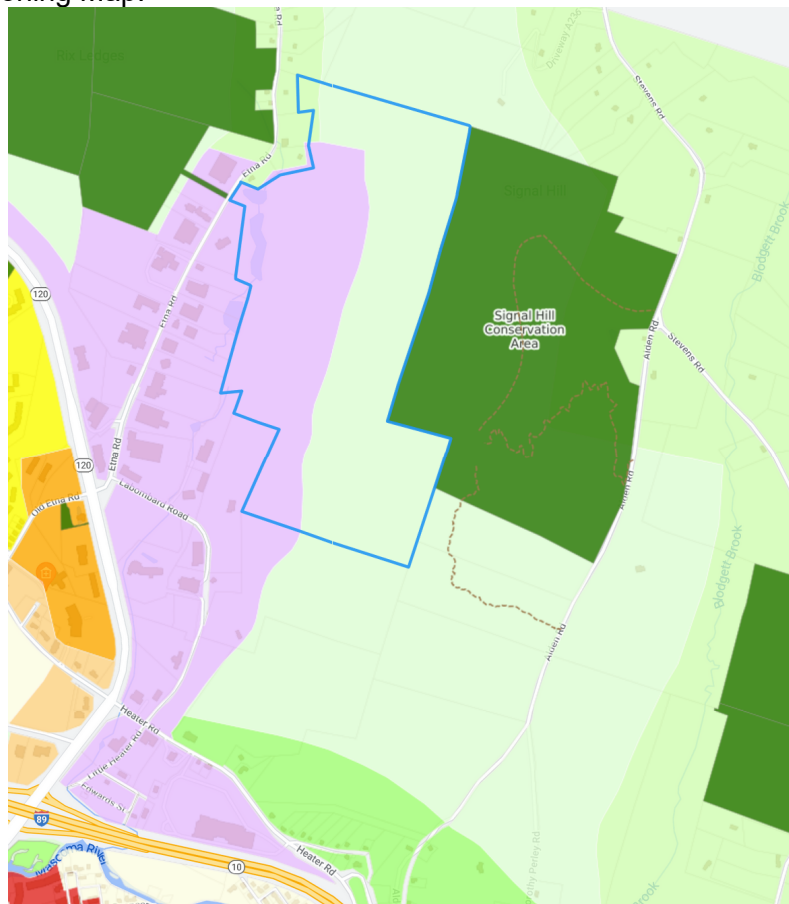
- **Amend Section 408.4 (Historic District Certificate of Approval requirements)** (see p. 4 of the redline) to clarify the activities within the Historic District that require a Certificate of Approval from the Heritage Commission.
- **Amend Section 410.2 (Riverbank Protection District enabling authority)** (see p. 5 of the redline) to remove the reference to RSA 674:21 (innovative land use controls) which implicates the cumbersome procedural requirements for innovative land use controls, and which are not currently followed by City staff in the administration of the Riverbank Protection District.
- **Amend Section 501.1.F.2.a (commercial and industrial PUD open space requirements)** (see p. 6 of the redline) to make the minimum open space requirements consistent with the minimum open space requirements of the Lebanon Subdivision Regulations (which require a minimum of 15% whereas the commercial and industrial PUD regulations only require 10%).

- **Amend Section 607.5 (off-lot parking requirements)** (see p. 7 of the redline) to require that the legal documentation securing the right to use the off-lot parking is provided as part of the Conditional Use Permit application.
- **Amend Section 801** (see p. 10 of the redline) to amend the ZBA administrative appeal procedures for consistency with state statutory requirements.
- **Amend Section 802** (see p. 10-11 of the redline) to amend the ZBA application and hearing procedures and to clarify that application fees are established pursuant to City Code Chapter 68.
- To clarify existing language and to make certain editorial changes to Section 213 (“Impact Fees”), Section 410 (“Riverbank Protection District”), Section 610 (“Accessory Dwelling Unit (ADU)”), and Appendix A (revise definitions of “child day care facility,” “dwelling,” “educational facility, primary/secondary,” and “health club”).

B. Map Amendment

7. **0 Etna Road (Tax Map 26, Lot 17) (see attachments provided by the property owner, Choice Storage, LLC, depicting the existing and proposed zoning):**

Current Zoning Map:



The subject property is a +/-182 acre lot (per City assessing records) that is split-zoned IND-L and RL-3, and abuts the City’s Signal Hill Conservation Area to the west (see image above). The use of the property is identified as “Rural” on the Future Land Use Map. The property owner has

requested that the Council rezone approximately 50 acres of the RL-3 portion of the property to IND-L in exchange for the rezoning of approximately 50 acres that is currently zoned IND-L to RL-3. It is the applicant's intent to transfer some of the land to be rezoned to RL-3 to the City of Lebanon for the development of recreational playing fields and has been working with the Recreation, Arts and Parks Department on preliminary concepts. Given the substantial need for recreational playing fields, staff are supportive of the applicant's request. However, it should be noted that the rezoning request cannot be made contingent on the City's acquisition of any portion of the property. The property owner has provided the attached exhibits depicting the existing and proposed zoning and will be present at the City Council's meeting on October 4th to describe the rezoning proposal in more detail as well as his current plans for the development of the property which, as staff understands it, includes a significant housing component. The proposed re-zone exchange will open an opportunity for possible development of City owned ball/soccer fields, housing options and mixed-use light industrial upon the parcel.

SCHEDULE

The procedure to adopt zoning amendments is set forth in Section 1000 of the Zoning Ordinance and is summarized below:

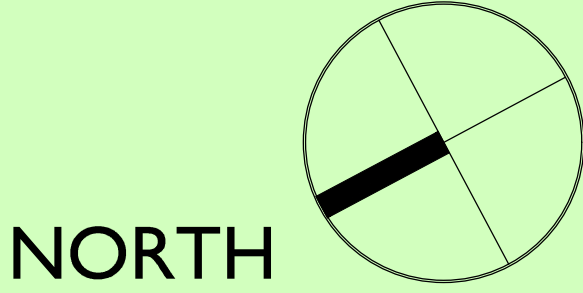
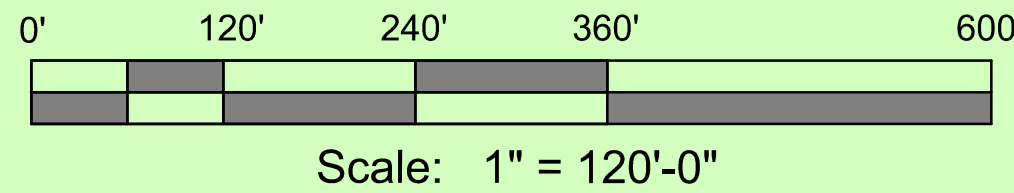
1. Staff presents amendments to City Council for initial consideration - *scheduled for the October 4, 2023 Council meeting*. Section 1000.2.A.
2. If Council decides to move forward with the amendments, they will set a tentative schedule including review by legal counsel, review before the City's land use boards, and a public hearing before the Council. Section 1000.3.A.
3. The amendments will be forwarded to the City's attorney for review. *Legal opinion expected to be received by the end of October*. Section 1000.3.B.2.
4. The amendments are forwarded to the City's land use boards for review. Sections 1000.3.B.1 and C.
 - a. Planning Board - *expected to be scheduled for the October 23, 2023 meeting*.
 - b. Zoning Board – *expected to be scheduled for the November 6, 2023 meeting*.
 - c. Conservation Commission – *expected to be scheduled for the November 9, 2023 meeting*.
5. The Council will then hold a work session to review the amendments as modified based on legal input and land use board feedback – *expected to be scheduled for the January 3, 2024 Council meeting*.
6. Finally, the Council will hold a public hearing followed by a vote on whether to adopt the amendments and/or to place amendments on the March ballot for voter consideration - *expected to be scheduled for January 17, 2024 Council meeting*. Section 1000.3.D.

Please note that the proposed amendments may be adopted by the City Council per Section 1000.4.B of the Zoning Ordinance, and do not require approval by referendum vote (subject to verification by the City's legal counsel). Per Section 1000.4, the Council does have the ability to voluntarily place any proposed amendment on the March ballot for voter approval.

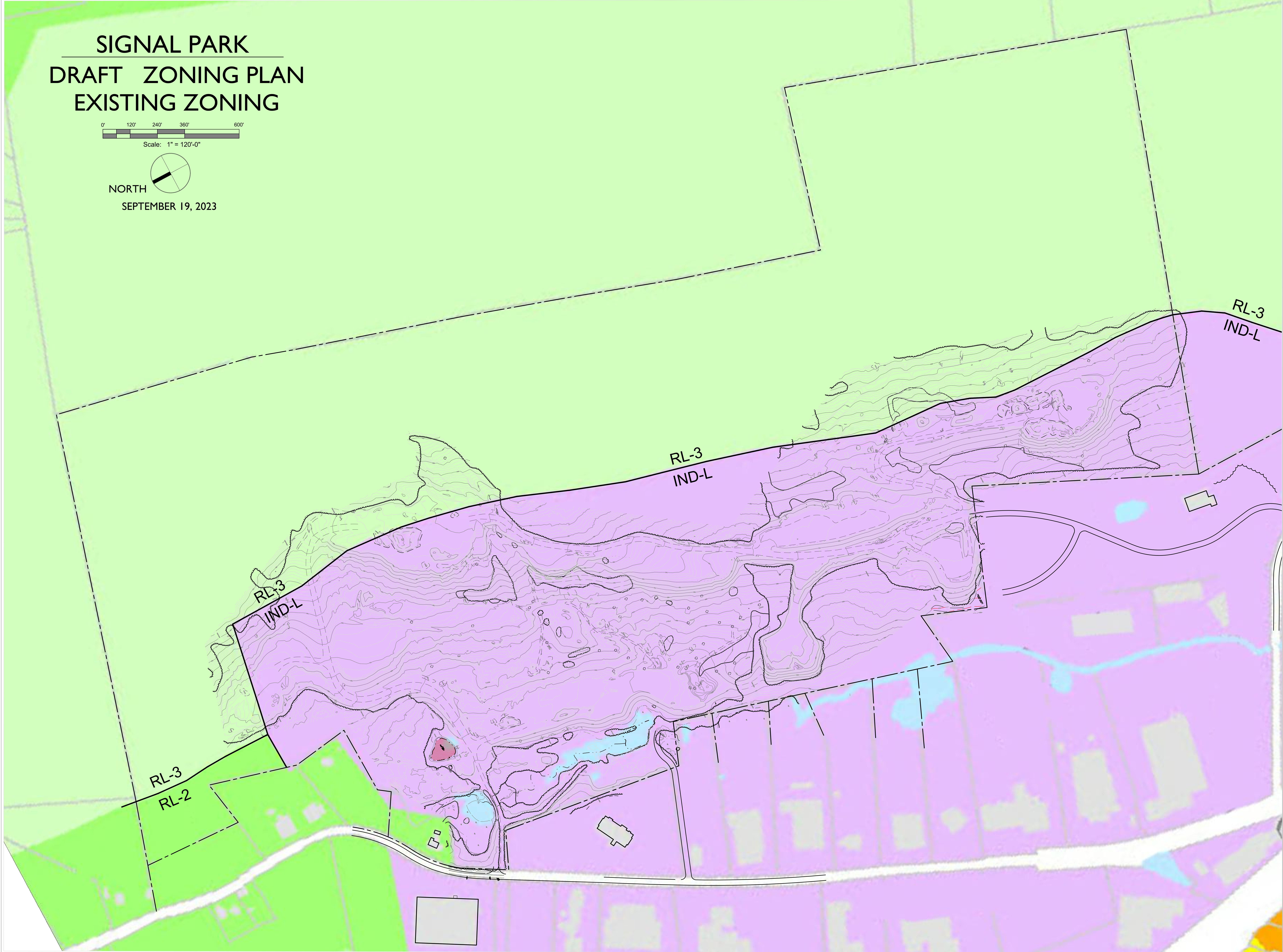
ATTACHMENTS

- 0 Etna Road (Tax Map 26, Lot 17) – existing zoning
- 0 Etna Road (Tax Map 26, Lot 17) – proposed zoning
- Redline excerpt of current Zoning Ordinance (redline last revised 9/26/23)

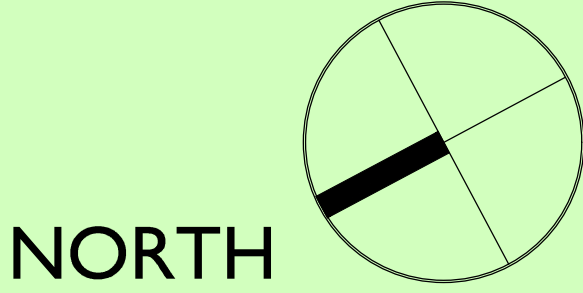
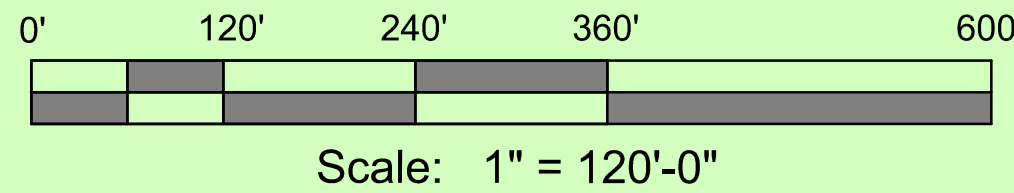
SIGNAL PARK
DRAFT ZONING PLAN
EXISTING ZONING



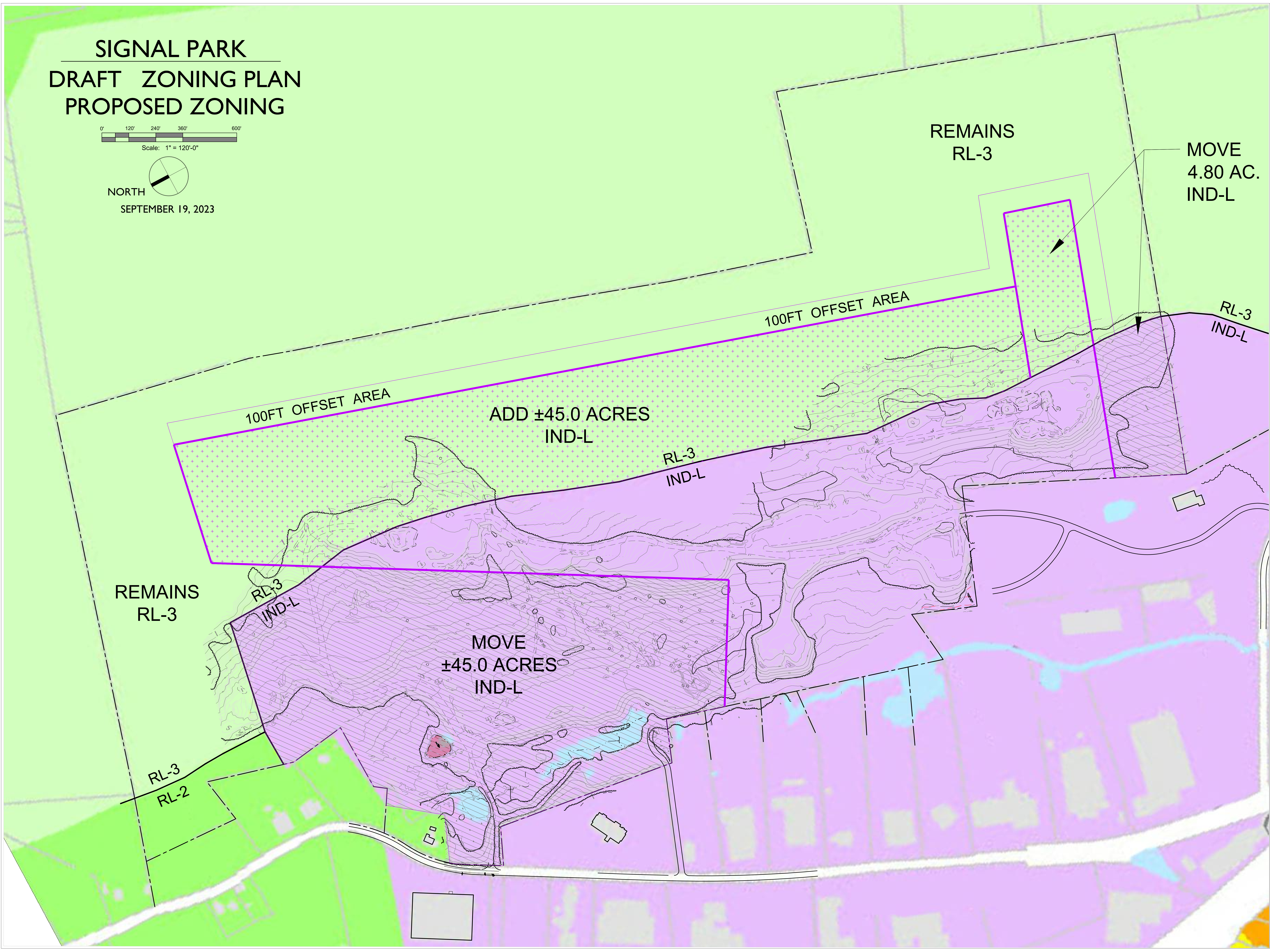
SEPTEMBER 19, 2023



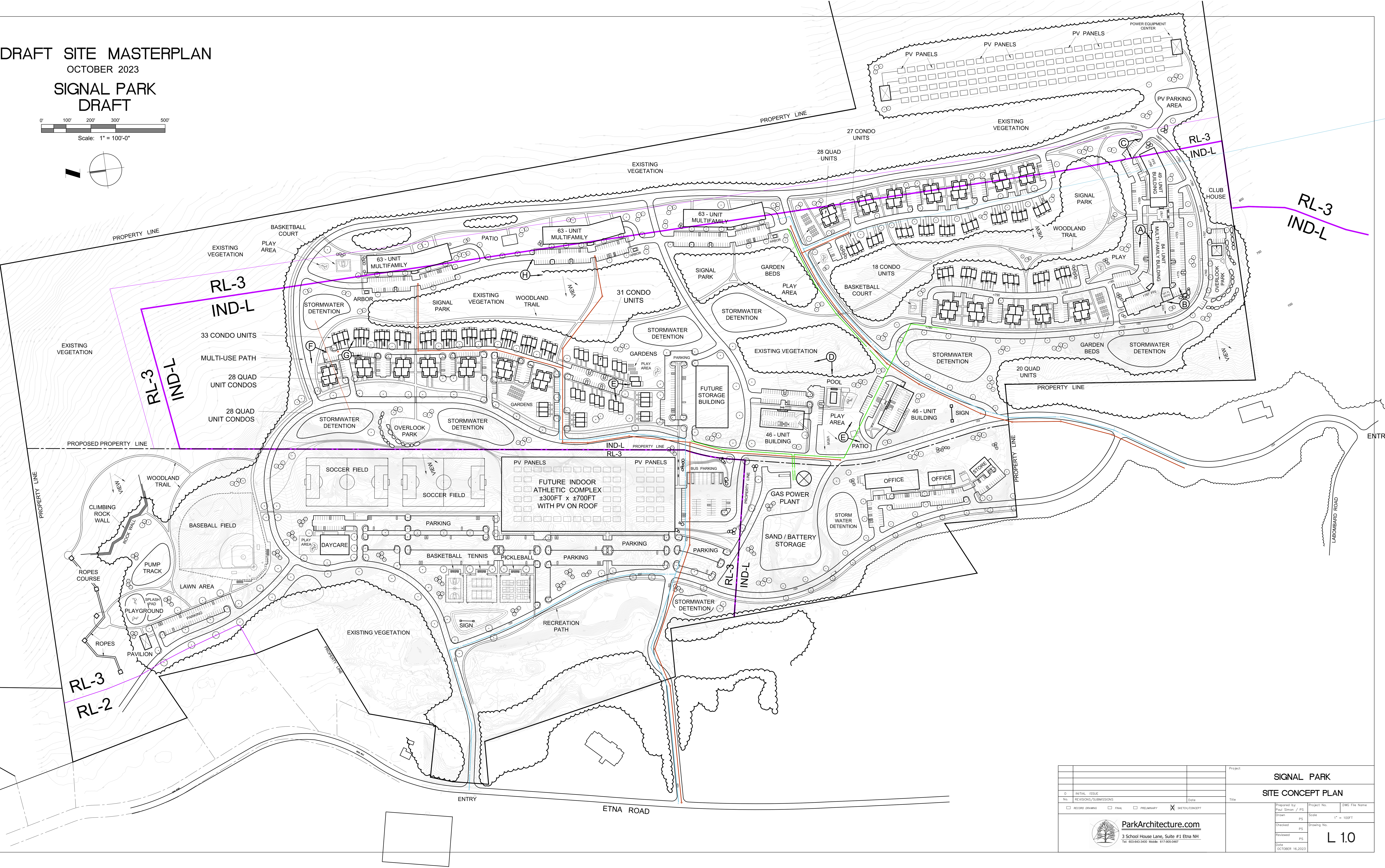
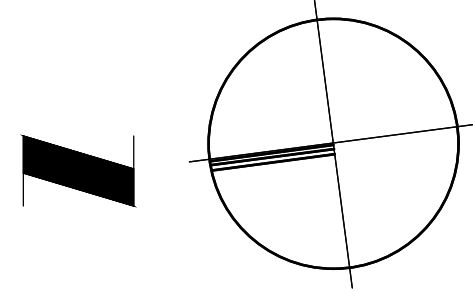
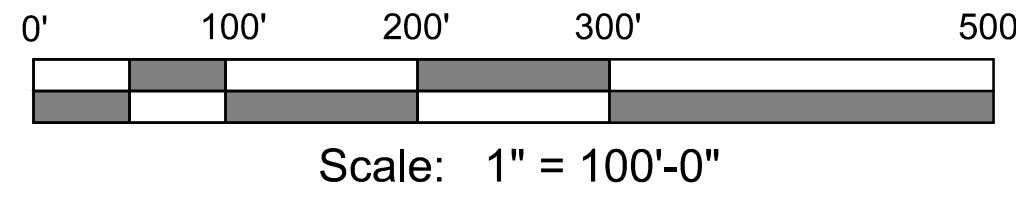
SIGNAL PARK
DRAFT ZONING PLAN
PROPOSED ZONING



SEPTEMBER 19, 2023



DRAFT SITE MASTERPLAN
OCTOBER 2023
SIGNAL PARK
DRAFT



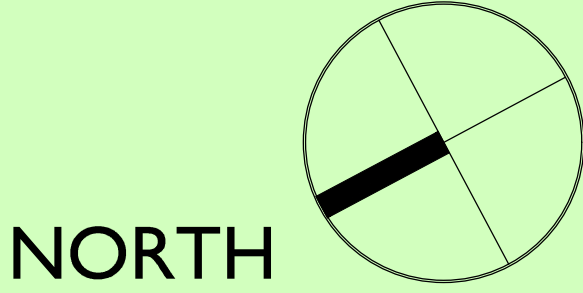
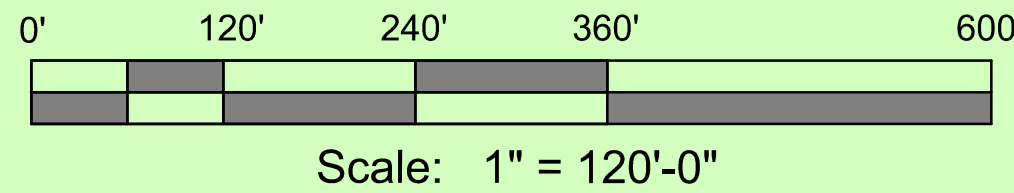
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1 REVISIONS/SUBMISSIONS		Date		SITE CONCEPT PLAN	
☐ RECORD DRAWING		☐ FINAL		☒ SKETCH/CONCEPT	
Prepared by: Paul Simon / PS		Project No.		DWG File Name	
Drawn PS		Scale		1" = 100FT	
Checked PS		Drawing No.		L 1.0	
Reviewed PS		Date		OCTOBER 16, 2023	

ParkArchitecture.com

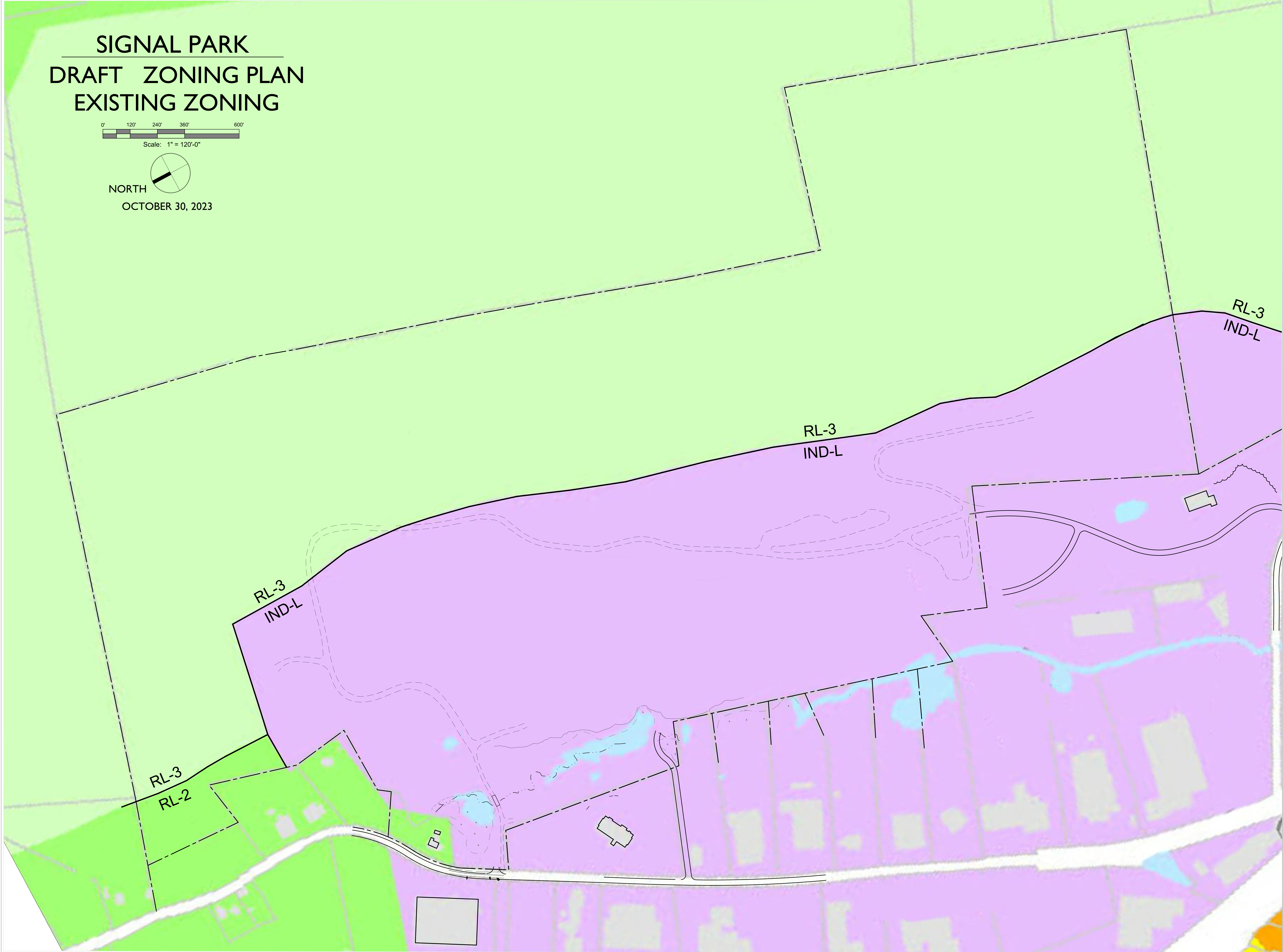
3 School House Lane, Suite #1 Etna NH

Tel: 603.463.3460 Email: 677.905.0467

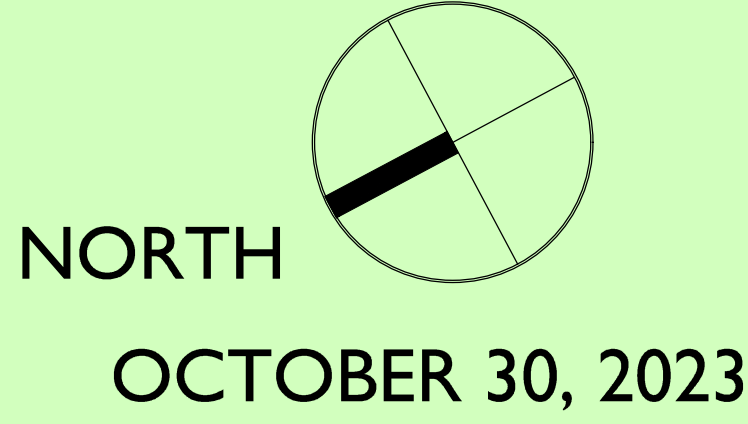
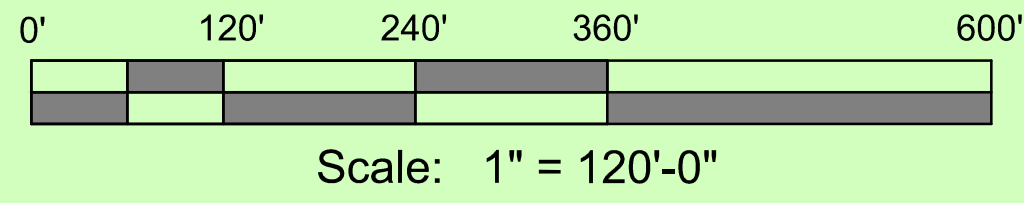
SIGNAL PARK
DRAFT ZONING PLAN
EXISTING ZONING



OCTOBER 30, 2023

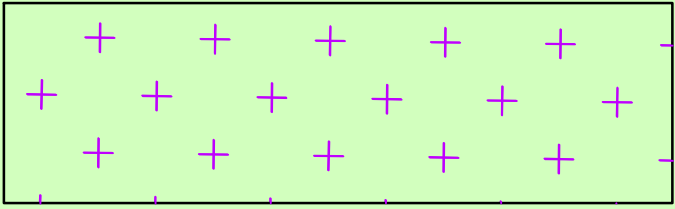


SIGNAL PARK
DRAFT ZONING PLAN
PROPOSED ZONING

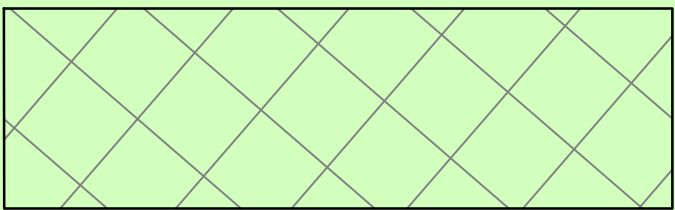


LEGEND

RL-3 Zoning
Area Removed
Changed to IND-L



IND-L Zoning
Area Removed
Changed to RL-3



(areas shown are approximately located)

MOVE
± 6.0 AC.
IND-L

REMAINS
RL-3

100FT OFFSET

100FT OFFSET AREA

100FT OFFSET AREA

ADD ±45.0 ACRES
IND-L

RL-3
IND-L

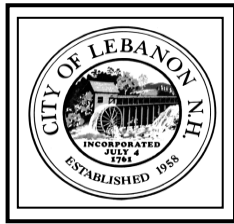
RL-3
IND-L

REMAINS
RL-3

RL-3
IND-L

MOVE
±45.0 ACRES
IND-L

RL-3
RL-2



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Conservation Commission

FROM: Planning and Development Department Staff

RE: Request by Cicotte Properties, LLC to Amend Section 311A.2 of the Zoning Ordinance – R-O-1 District Table of Uses

DATE: November 2, 2023

On September 28, 2023, the City received a request from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, pursuant to Section 1000.2.C of the Zoning Ordinance, for three Zoning Map amendments and an amendment to Section 311A.2 of the Zoning Ordinance to add several additional uses as permitted uses in the R-O-1 District. The proposed amendments are outlined in the attached staff memo dated October 10, 2023.

On October 18, 2023, the City Council voted to submit the petitioner's proposed amendments to the Zoning Board of Adjustment, Planning Board and Conservation Commission for review and comment, in accordance with Section 1000 of the Zoning Ordinance. Section 1000.3 ("Amendment Procedures"), subsection C requires review and comment by the Planning Board regarding any proposed zoning amendment:

All proposed [zoning] amendments shall be forwarded to the Planning Board and Conservation Commission. Planning Board and Conservation Commission shall place the proposed amendment on their agenda for discussion and comment at least thirty (30) days prior to the City Council public hearing. The Planning Board and Conservation Commission shall forward their comments and recommendations to the City Council at least seven (7) days prior to City Council public hearing.

The Conservation Commission's comments should be limited to the potential impact of the amendments on matters or concerns within the Commission's purview. However, Commission members are welcome to and should feel free to provide general comments or suggestions on any of the amendments in the members' individual capacity as a City resident. Comments may be provided to staff and/or to the City Council at the public hearing on the proposed amendments, to be scheduled in January.

For the Board's reference and review, please find attached the following:

- A legal opinion from Christine Fillmore, Esq., dated October 20, 2023.
- A staff memo to the City Council, dated September 10, 2023, providing a description of the proposed amendments.
- September 28, 2023 rezoning request letter from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, including attachments.
- Regarding Petitioner's Zoning Map Amendment Request #2:
 - Excerpt of 10/3/01 City Council Meeting Minutes (8 pages)
 - Excerpt of 12/5/01 City Council Meeting Minutes (9 pages)

Once review has been completed by the City's land use boards, the City Council will hold a public hearing in January followed by a vote on whether to adopt the proposed amendments.

Note that since preparation of the October 10th memo, staff conducted additional research regarding proposed zoning map amendments 1 and 2:

- Zoning Map Amendment Request #1: it appears that M/L 64-30 was rezoned in 1990 from "Industrial" (which allowed vehicular sales by SE) to the current Light Industrial (which does not allow vehicular sales).
- Zoning Map Amendment Request #2: M/Ls 78-40-1, 79-40-2, and 63-4 were rezoned from GC to R-O-1 on 12/5/01. For reference, the rezoning was extensively discussed at the 10/3/01 City Council meeting (see attached minutes) and again at the City Council public hearing on 12/5/01 (see attached minutes). Since the 12/5/01 rezoning, the zoning in the subject area has not changed, except that M/L 63-4 (which is also the subject of Zoning Map Amendment Request #3) was rezoned from R-O-1 to RL-3 in 2018.

October 20, 2023

Nathan Reichert
Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Petitioned Zoning Map and Text Amendments
Parcels 64-30, 78-61, 78-40-1, 78-40-2, 63-4, and
Uses in R-O-1 District**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a set of proposed map and text amendments. I have reviewed the following documents in connection with this opinion:

- Request letter dated September 28, 2023 on behalf of Cicotte Properties
- Staff Memo to City Council dated October 10, 2023 regarding the requested amendments
- Legal opinion and staff memo regarding 2017 zoning map amendments
- City Council meeting minutes from 2001 discussing zoning map amendments

The request includes four separate requests, 2-4 of which are requested in the alternative:

1. Rezone Parcels 64-30 and 78-61 from IND-L to GC
2. Rezone Parcels 78-40-1, 78-40-2, and 63-4 (currently R-O-1 and RL-3) to GC
3. As an alternative to #2, just rezone Parcel 63-4 from RL-3 to GC
4. As an alternative to both ##2-3, allow seven additional uses by special exception or conditional use permit in the R-O-1 district

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

With respect to request #4, I have not seen a formal draft of this amendment but my understanding is that it would simply change the table of uses for the R-O-1 District. The appropriateness of particular uses in that district is a policy question and, assuming the amendment itself were drafted properly, I would answer these three questions is “yes” and would discern no legal or administrative issues of concern with that request.

Turning to the three proposed map amendments, all would involve rezoning individual, relatively small parcels of land. In such a case, we must consider whether those changes would constitute impermissible “spot zoning.”

It is, of course, within the City’s legal authority to amend its zoning map. However, zoning map amendments must comply with the “rational basis” level of Due Process analysis. This means map amendments must not be arbitrary and they must be in reasonable furtherance of some valid public land use regulatory purpose. Amendments which do not meet this test are sometimes referred to as spot zoning.

Contrary to some lay opinions, spot zoning isn’t determined automatically by the size of the parcel being rezoned or the number of parcels affected. An area is spot zoned when it is singled out for treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals or general welfare of the community, and which is not in accordance with a comprehensive plan. E.g., Miller v. Town of Tilton, 139 N.H. 429, 432 (1995). The mere fact that an area is small, or that it is rezoned at the request of a single owner, or that it is of greater benefit to that owner than to others would not necessarily make it spot zoning so long as there is a public need for it or a compelling public reason for it. Id.

In considering whether rezoning constitutes spot zoning, courts may consider whether the change is made in response to some public need. See Shadlick v. Concord, 108 N.H. 319 (1967) (zoning change was made in response to growing need for multi-family housing which already existed in proximity to the rezoned area, and thus was part of a comprehensive plan rather than spot zoning). Also relevant is whether there are sufficient opportunities for the targeted use elsewhere in the community, particularly if those other areas aren’t being used. See Bosse v. Portsmouth, 107 N.H. 523 (1967) (rezoning of one parcel for industrial use when it was surrounded by residential uses was spot zoning because many other areas in the city were available for industrial use but weren’t being used that way). The common thread in the case law is that a court will consider whether there is a reason or combination of reasons for the change that is in the public interest and consistent with the community’s development goals.

Request #1: This request involves two lots of relatively small area (total approx. 9 acres) which would be rezoned from IND-L to GC. These lots are on the edge of the IND-L district, but they are next to other similarly-zoned properties. There are no GC lots directly abutting either of these lots currently. I note that if both Requests 1 and 2 were granted, there would then be five GC lots in a roughly contiguous layout.

The request notes that Parcel 78-61 was included in the proposal to “preclude a claim of spot zoning.” However, as noted above, when dealing with a small area and/or a small number of lots, the question is less about how many lots/acres are affected and more about “what is the public good or compelling land use reason for the change?” The request does not identify any public good that would result from the change. All of the justifications are related specifically to the business currently operating on Lot 64-30 (auto dealership which maxes out the usable area, has wetlands making it difficult to develop further, existing use is a legally non-conforming use and they’d like to be able to expand the business without having to get a variance). Those benefits which are specific to the owner aren’t relevant to the public good/compelling need

analysis. It is fine if there are also benefits to the owner, but there must be some public good or need that is consistent with the City's land use goals and comprehensive development plan, and as yet I don't see that.

What would be relevant is if there were legitimate planning-focused reasons for the change. Would it be consistent with the City's planning goals to change these lots to GC so that certain uses can be allowed/encouraged there? Does this line up with the City's anticipated future uses of this area? (The Future Land Use Map identifies this area as mixed use.) Are there specific reasons that IND-L uses of these properties don't make sense anymore? These are the kinds of questions that can be answered by looking at the future use map, master plan, topography, street configuration, traffic issues, etc.

Request #2: This request involves three lots and a total of about 20 acres. The smaller two lots are currently R-O-1 and the larger lot is RL-3; the request is to make all three of them GC. There are other R-O-1 lots in the area, and there is a lot across I-89 which is also RL-3. There are no GC lots abutting these three (but if Request 1 were granted, there would be 2 GC lots on the opposite side of Route 120).

The request letter claims that the current zoning designation of these three lots was spot zoning because there was no need or purpose for residential uses on these lots, and it argues the lots should be restored to their prior designations. I note that the request letter also doesn't identify any public good or compelling need underlying the current request (which is relevant to the question of whether a change now would constitute spot zoning).

Looking at the City Council minutes which include discussions about the 2001 change, it appears there were a variety of reasons for the change related to topography and the existence of wetlands. When Lot 63-4 was changed again in 2018 to RL-3, it seems to have been done for consistency with the City's Future Land Use Map (and there were other contiguous lots involved in that change). I'm not sure whether the reasons that existed in 2001 and 2018 are still relevant, or if circumstances in the area have changed so that the current zoning designations make less sense now than they did in the past. Even if the requested changes were consistent with the Future Land Use Map in the Master Plan (which they do not appear to be), that would not, by itself, provide an underlying public need/public good justification for the request. No such justification appears in either the request letter or the Staff Memo.

Request #3: This involves only one lot (the 14-acre lot involved in Request 2) and the request is to, essentially, reverse the change that was made in 2018 (going from R-O-1 to RL-3). This would bring it back into the same zoning designation as the lots on either side of it, but would leave undisturbed the other RL-3 lots from the 2018 change (on the other side of I-89).

The entire justification for this in the request letter is a claim that the 2018 change was spot zoning. The analysis, therefore, would be the same as for Request 2 – was there a legitimate zoning reason for changing this lot's designation to RL-3, and if so, is there a public good or compelling zoning reason to undo that change now? The request letter doesn't develop either of these issues.

October 20, 2023

Page 4

Recommendation: In light of the relatively small area involved and the targeted nature of these three requests (which are justified by the requestor mostly in terms of the benefit and burden of zoning designation on the owner's businesses), I recommend putting together a written public policy explanation for each of the proposed map amendments which explains the public need for these changes **and** how they would be consistent with or in furtherance of the City's comprehensive land use goals. This written explanation should be created prior to any final vote on the proposed amendments and not leave to guesswork the rationale for such changes. Please note that until I can evaluate the City's actual policy reasons for each of these proposed amendments, my opinion on the map amendments must remain somewhat incomplete.

Finally, it is my understanding that the Planning Department intends to study this area of the City in 2024 as part of either a neighborhood planning effort or as part of a wider Master Plan update, including a comprehensive look at current conditions and desired development goals. From that standpoint, then, rezoning these properties right now may be a bit premature.

Please do not hesitate to contact me about any aspect of this.

Sincerely,

A handwritten signature in cursive script that reads "C. Christine Johnston". The signature is written in dark ink and is positioned above the printed name.

C. Christine (Fillmore) Johnston



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

CC: Shaun Mulholland, City Manager

FROM: Planning & Development Department Staff

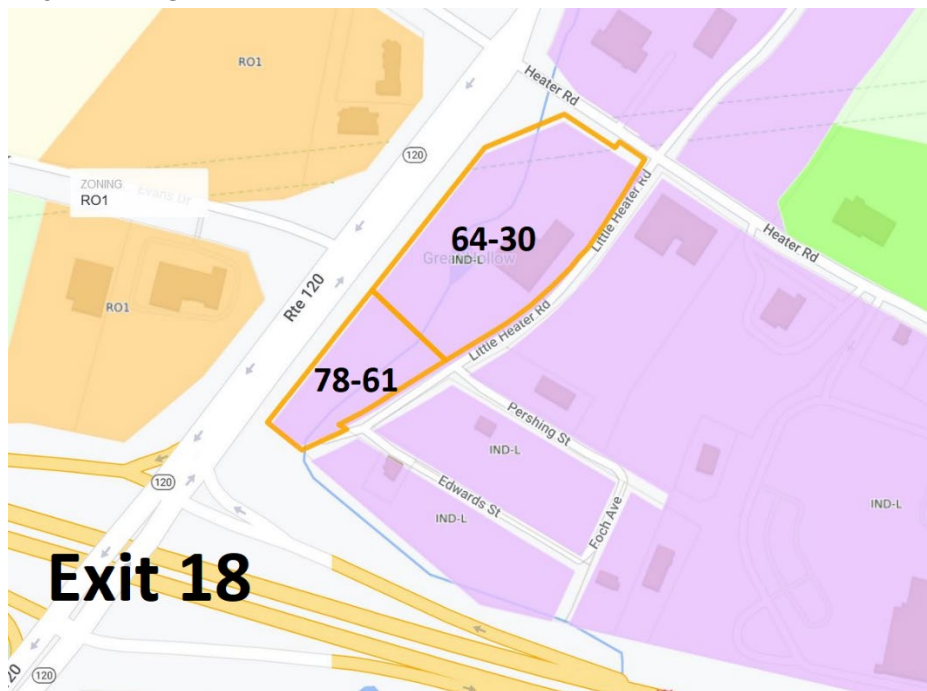
RE: Request for Zoning Map Amendments from Cicotte Properties, LLC;
Tax Map/Lot Numbers 64-30, 78-61, 78-40-200, 78-40-100, and 63-4

DATE: October 10, 2023

AMENDMENT REQUESTS

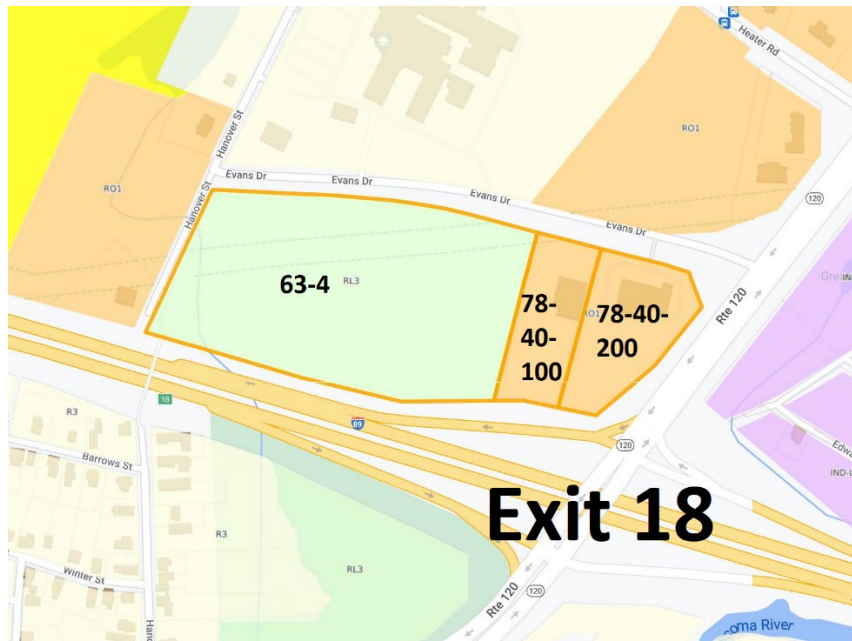
On September 28, 2023, the City received a request from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, pursuant to Section 1000.2.C of the Zoning Ordinance, for the following four (4) Zoning Map and Zoning Ordinance amendments:

1. Zoning Map amendment. Request to rezone the following properties from Light Industrial (IND-L) to General Commercial (GC):
 - a. 175 Heater Road (Tax Map 64, Lot 30), a +/-4.71 acre lot owned by Cicotte Properties, LLC, improved with a vehicular sales use (Volvo dealership).
 - b. 30 Little Heater Road (Tax Map 78, Lot 61), a vacant +/-2.15 acre¹ lot owned by Johanna Cicotte.

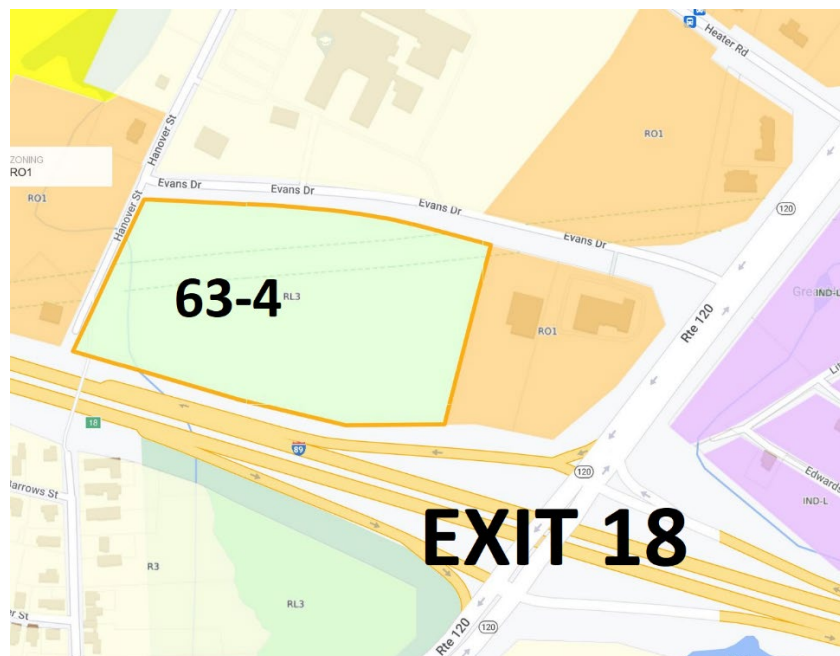


¹ Pursuant to a boundary line adjustment plat approved by the Planning Board on October 9, 2023 (PB2022-42-BLA)

2. Zoning Map amendment. Request to rezone the following properties to General Commercial (GC):
- a. 51 Evans Drive (Tax Map 78, Lot 40-200), a +/-3.32 acre lot owned by Cicotte Holdings, LLC, currently zoned Residential-Office-One (R-O-1) and improved with a vehicular sales use (Nissan dealership).
 - b. 63 Evans Drive (Tax Map 78, Lot 40-100), a +/-2.74acre lot owned by Evans Dr SPE, LLC, currently zoned Residential-Office-One (R-O-1) and improved with an animal hospital use.
 - c. 0 Evans Drive (Tax Map 63, Lot 4), a vacant +/-14.31 acre lot owned by Cicotte Properties, LLC, currently zoned Rural Lands Three (RL-3).



3. Zoning Map amendment. In the alternative to number 2, a request to rezone 0 Evans Drive (Tax Map 63, Lot 4), a vacant +/-14.31 acre lot owned by Cicotte Properties, LLC, from Rural Lands Three (RL-3) to Residential-Office-One (R-O-1).



4. Zoning Ordinance amendment. In the alternative to numbers 2 and 3, an amendment to Section 311A.2 of the Zoning Ordinance to allow the following uses in the R-O-1 District either by Special Exception or Conditional Use Permit:
- a. Renewable energy system per Section 612 (*already permissible in the R-O-1*)
 - b. Restaurant, sandwich shop
 - c. Retail product pickup
 - d. Retail store
 - e. Service station
 - f. Vehicular repair
 - g. Vehicular sales

A copy of the request and other materials from Mr. Nash are attached for the Council's review.

AMENDMENT PROCESS

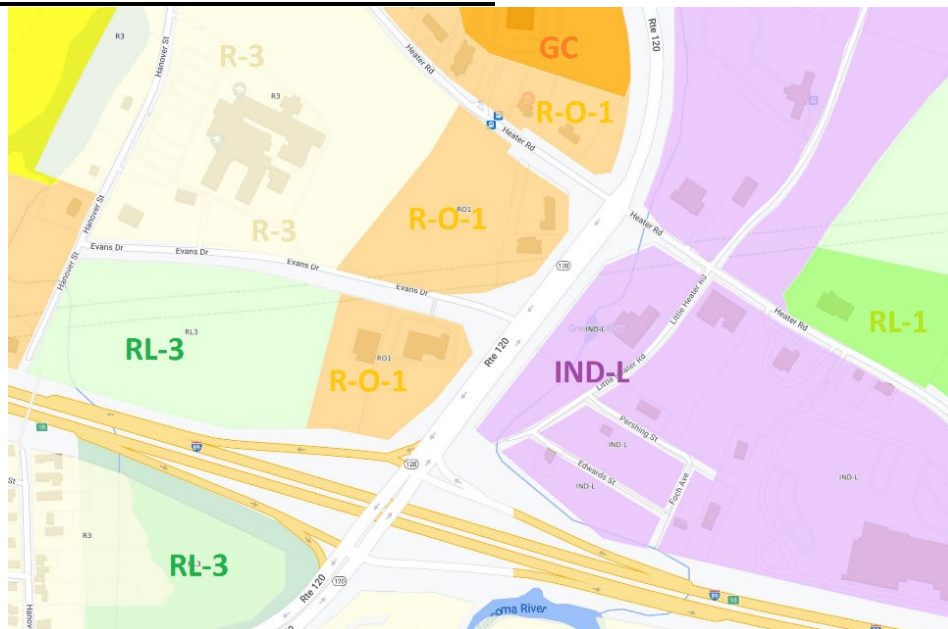
Section 1000.2.C states that zoning amendments may be proposed:

By petition of any number of voters, provided however, that unless the petition is submitted utilizing the "Citizens Binding Initiative" procedure contained in Section 419:23a of the Lebanon City Charter, it will be within the sole discretion of the City Council as to whether or not to proceed in any way with the requested amendment.

The petition received on September 28th was not submitted utilizing the Citizens Binding Initiative procedure. As a result, on October 18th, the City Council will discuss the requested map and text amendments for the purpose of determining whether or not to proceed with consideration of the amendments in accordance with Article X, Section 1000.3.A. If the Council elects to move the requests forward, a legal review is required pursuant to Section 1000.3.B(2) and a schedule for review and comment by the Planning Board and Conservation Commission must be established in accordance with Section 1000.3.C. Finally, a public hearing before the City Council must be tentatively scheduled in accordance with Section 1000.3.D. Review by the Zoning Board of Adjustment will only be required if the Council elects to move forward with request 4 (requests 1, 2, 3, are zoning map amendments which do not require Zoning Board review).

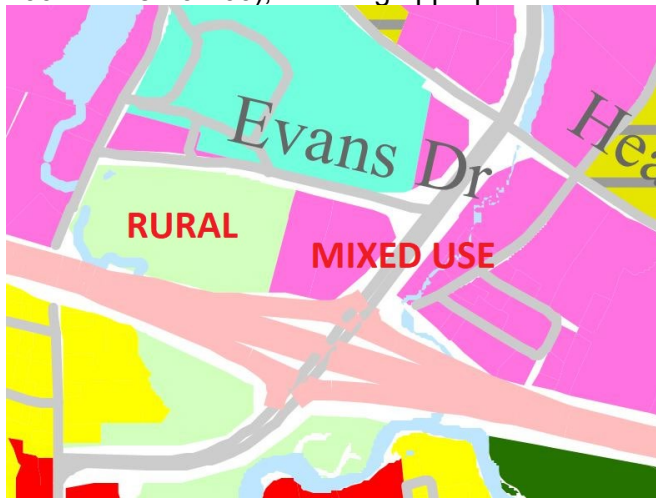
The proposed amendments do not automatically trigger a ballot referendum pursuant to Section 1000.4.A and the City Council may act on the request in accordance with Section 1000.4.B.

CURRENT ZONING OF SURROUNDING AREA



FUTURE LAND USE MAP

The Future Land Use Map identifies M/L 64-3 (requests 2 and 3) as “Rural” and identifies the other properties that are the subject of request 1 (M/L 64-30 and 78-61) and request 2 (78-40-200 and 78-40-100), as being appropriate for “Mixed Use” in the future.



MASTER PLAN

The City’s current Master Plan, adopted in March 2012, describes the current land use of the Exit 18 area as follows [Section 2|C-2b]:

- **Exit 18.** In the vicinity of Exit 18, there are several auto-related business (gas stations, convenience stores, auto dealerships, trucking facilities), as well as additional general commercial uses within close proximity (hotels, retail, etc.) In recent years, new construction and some redevelopment has been occurring in this area.

The Master Plan identifies the desired land uses north of Exit 18 as including “small-scale commercial, light industrial, office and residential uses”, but also recommends a study of the Route 120 corridor to address traffic patterns, land uses, and aesthetic concerns. See Section 2|D-2j:

- 2|D-2j) **Heater Road-Route 120-Evans Drive-Hanover Street.** For the Heater Road area, the general recommendation is to determine the appropriate level and type of future development. The area surrounding the Hanover Street School and Lebanon High School would be appropriate for mixed-use development, including small-scale commercial, light industrial, office, and residential uses. Because of the proximity to schools and residential areas, surrounding wetlands, and difficult access for traffic from Route 120 onto Evans Drive, development must meet well-defined performance standards for traffic, hours of operation, impervious surface, and parking. A study of the entire Route 120 corridor is needed to address traffic patterns, land uses, and aesthetic concerns. The City supports the NHDOT’s position that no further curb cuts should be granted on Route 120 north of Exit 18. The entry corridor from Exit 18 to Hanover Street should be landscaped by the state to reduce the current expanse of impervious pavement.

See also Action# 2.2.A6 (“Conduct a study of the Route 120 corridor to address traffic patterns, land uses & aesthetic concerns”); and Action# 2.3.A10 (“Determine the appropriate level and type of future development in the Heater Road area”).

STAFF NOTES

With respect to M/L 64-3 (requests 2 and 3), the property is almost entirely located within the Floodplain District and Wetlands Conservation District overlays. It was rezoned in 2018 from R-O-1 to RL-3 in order to align it with the desired “Rural” land use as set forth on the Future Land

Use Map (M/L 77-127, across from M/L 64-3 on the south side of I-89, was also rezoned to RL-3 at the same time and for the same reasons).

Finally, with respect to request 4 (to add certain uses to the R-O-1 District), the amendment would impact all areas zoned R-O-1, which are outlined in red below:



Parcel #78-40-200, 51 Evans Drive, is currently in violation of the Zoning Ordinance due to unpermitted development being done on the site and the unpermitted expansion of a non-conforming use. The parcel must receive a Zoning Amendment, map or use table, from the City Council or a Variance granted by the Zoning Board and Planning Board Site Plan approval to cure the exiting violations.

RECOMMENDATION / RATIONALE:

The Planning & Development Department recommends that the City Council keep in mind the statements and recommendations of the City's Master Plan in determining whether to move forward with consideration of the rezoning requests. Staff is bound by the confines of the Master Plan, its requirements and recommendations:

1. The Master Plan was written and approved in 2012.
2. The Master Plan calls for a study of the 120 corridor and action based upon said study.
3. The Master Plan Future Land Use Map calls for the M/L 63-4 parcel to remain Rural to protect against adverse wetlands and conservation area impacts.
4. The Master Plan Future Land Use Map calls for Mixed Use development for the remaining three parcels.
5. The neighborhood is contiguous with the Hanover Street Elementary School and Lebanon High School.

The Planning Board is currently working on updating the Master Plan one chapter at a time, and the Future Land Use chapter is currently set for consideration in 2025. In the meantime, the Exit 18/Route 120 corridor study recommended under the current Master Plan is expected to be undertaken in 2024.

Should City Council elect to proceed with consideration of the requested amendment, the Planning & Development Department offers the following tentative schedule for review and comment in accordance with Section 1000.3:

City Council decision to proceed:	October 18, 2023
Legal review:	by November 1, 2023
Zoning Board (request #4 only):	November 6, 2023
Conservation Commission:	November 12, 2023
Planning Board:	November 27, 2023
City Council public hearing:	January 17, 2024

=====

Supporting Materials:

- September 28, 2023 rezoning request letter from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, including attachments.



28 September 2023

Honorable Mayor and City Council
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Request for Zoning Changes

Dear Mayor and Councilors:

On behalf of Cicotte Properties, this letter is being written to request zoning changes to be part of the city's annual zoning review.

Request #1. Rezone parcels 64-30 and 78-61 on Little Heater Road to GC (see attached "Little Heater").

Parcel 64-30 is an auto dealership and has been since 1985. The existing operation essentially maxes out the usable property. As can be seen on the sketch, the parcel is divided by a drainage feature. The land on the west side of the drain feature is likely wetlands and difficult to permit for use. The inclusion of the vacant parcel to the south, 78-61, is to preclude a claim of "spot zoning". As discussed, there is little risk of this change promoting a project that has harmful impacts, as it is essentially fully developed. The need is to restore the use of this land as a "Permitted Use". This status was lost when the zoning was changed to IND-L some time ago. This change placed an unnecessary burden on the landowner to obtain either a zoning special exception or a variance to make any changes to the property. The city's recent change to the expansion of non-conforming properties required the applicant to obtain a Variance to expand a legitimate addition to an auto dealership. This property has been a responsible and productive business for the city. The property generates roughly \$90,000 of tax revenue each year.

Restoring the proper zoning to these parcels would be just, appropriate, and not cause the potential for harmful impacts from development.

Request #2. Rezone parcels 78-40-1, 78-40-2, and 63-4 on Evans Drive to GC (see attached "Evans Drive").

These parcels were GC before their conversion to RO-1. It is my opinion that this change was inappropriate for the parcels involved and should be undone. In particular, the zoning of parcel 64-3 to RL-3 was "Spot zoning" and should never have been allowed. Parcel 78-40-2 has been an auto dealership since the 1960's and it is unjust for it to lose its "Permitted Use" status for no legitimate public purpose. There is no need or purpose for residential uses on these properties.

Request #3. Rezone parcel 63-4 on Evans Drive to RO-1 (see attached “Evans Drive”).

If request #2 does not find favor with the city, we request Parcel 63-4 be converted to RO-1, to be zoned as the abutting parcels. The zoning of parcel 64-3 to RL-3 was “Spot zoning” and should never have been allowed.

Request #4. Add several uses allowed in GC to be allowed in RO-1 by Special Exception or Conditional Use (see attached “GC”).

If requests #2 or #3 do not find favor with the city, we request the city allow several uses, namely uses 25-31, be allowed in the RO-1 zone as Special Exceptions or Conditional Uses. These uses were permitted uses before the parcels were inappropriately converted to RO-1 from GC. By placement of the uses under Special Exception or Conditional Use, allows additional city review of proposed uses to prevent adverse impacts to the city from development of these uses.

Please let me know if you have any questions regarding this request.

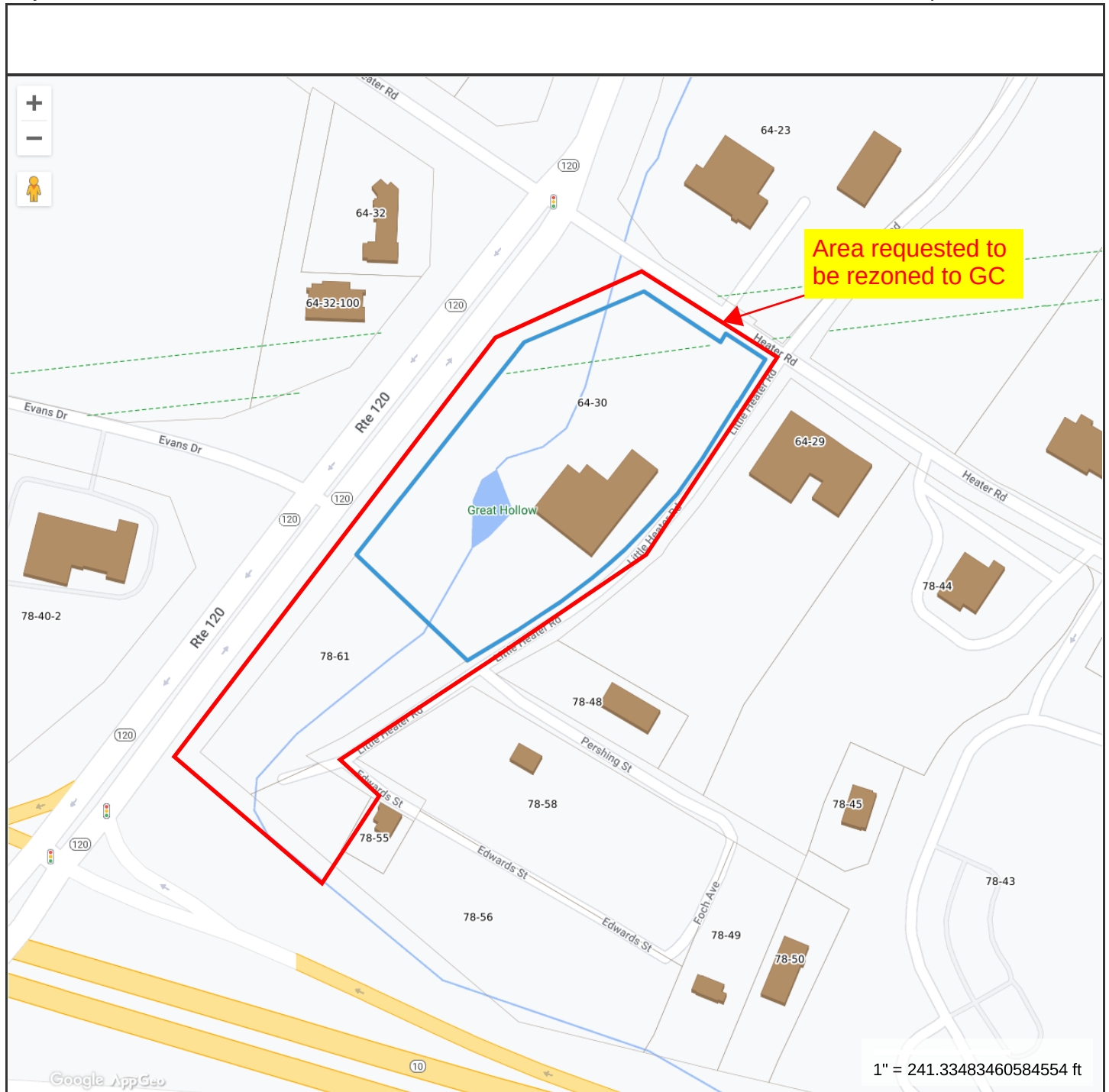
Sincerely,

Daniel A. Nash, PE
Principal

Attachments:
-Little Heater
-Evans Drive
-GC

CC: Johanna Cicotte

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**Property Information**

Property ID 64-30
Location 175 HEATER RD
Owner CICOTTE PROPERTIES LLC

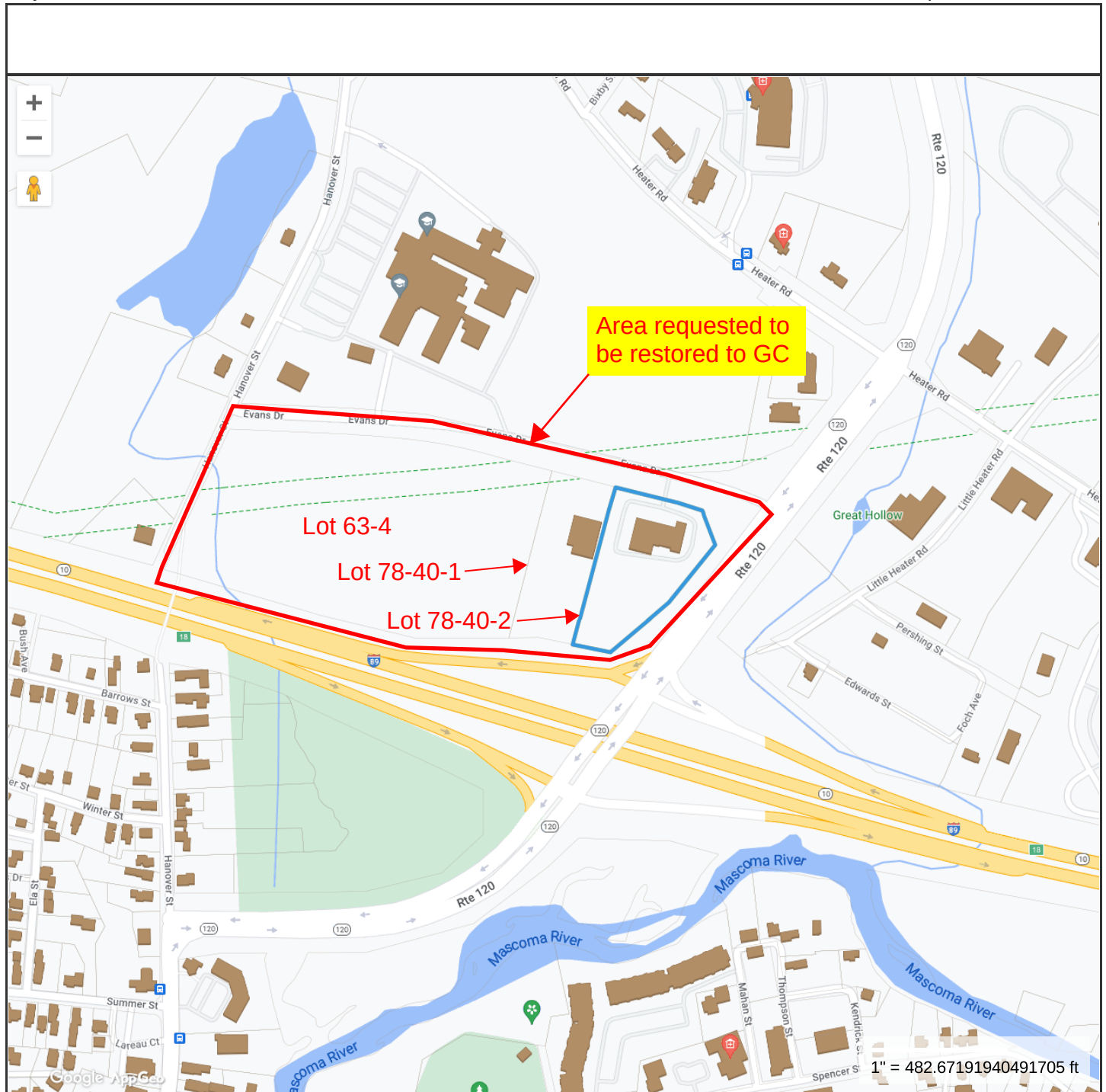


**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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 08/11/2023
 Data updated 11/18/2018

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



Property Information

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC



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 08/11/2023
 Data updated 11/18/2018

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

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
25. Renewable energy system per Section 612 26. Restaurant , sandwich shop 27. Retail product pickup 28. Retail store 29. Service station 30. Vehicular repair 31. Vehicular sales	
<u>Planned Developments</u> 32. Commercial PUD per Section 501	

305.3 Table of Area, Dimension and Coverage.

Minimum Lot Requirements					Maximum Limitations	
Area	Frontage	Front Yard	Side Yard	Rear Yard	Building Coverage	Height
50,000 square feet	150'	40'	20'	20'	30%	45' See Section 305.4

305.4 Special Height Restriction.

On **parcels** adjacent to residential districts the height limitation of the adjacent residential district shall apply; but, on such **parcels**, **building height** may be increased above the residential limitation by one (1) foot for each two (2) feet that the **building** is set back from the required set back line(s) on sides of the **lot** adjacent to the residential district. However, in no case shall the height exceed 45 feet.

305.5 Dwelling Unit Density.

Density determinations for **multi-family dwellings** and **mixed use buildings** shall be made by the Planning Board during the course of site review based on site specific conditions and factors such as the availability of parking and/or the ability to provide required parking, the availability of adequate water and sewer, and the ability to provide required site improvements and to meet all other requirements of the Site Plan Review Regulations and all other applicable City regulations.

Petition for Zoning Changes vicinity Exit 18

(Little Heater Road and Evans Drive)

29 September 2023

Members of the Lebanon City Council,

As voters of the City of Lebanon, we petition you to make changes to the zoning ordinance.

-Our request is under the provisions of the Zoning Ordinance, Section 1002.2.C..

-Our requests are outlined in AGD letter to the City Council dated 28Sep23

We, the voters, call on the City of Lebanon to make these changes to restore a fair and just zoning for these properties.

[illegible]

- B. To Consider Rezoning Certain Properties Located on Heater Road and Route 120, Lebanon, NH, from a General Commercial Zoning District to a Residential Office-One Zoning District. The following properties, identified by tax map and lot number, are included: A portion of Tax Map 64, Lot 32; Tax Map 64, Lot 17; Tax Map 64, Lot 16; Tax Map 64, Lot 15; Tax Map 64, Lot 14; Tax Map 64, Lot 9; and Tax Map 64, Lot 18.**

Councilor Balestra moved that the Lebanon City Council reject the motion on the table to change the zone of specified properties from General Commercial to Residential Office-One. Seconded by Councilor Wood.

Councilor Balestra said after public input and detailed deliberation, the Zoning Advisory Committee has unanimously endorsed an alternate proposal which they feel is more rational than the current motion. If the Council passes this motion, an alternative motion will be offered for consideration.

Councilor Hayes asked if a motion is required to take this proposal off the table. Mayor Akins said the previous motion was not tabled, but rather postponed to this date.

Councilor Grigsby said she does not feel comfortable voting on this motion until the Council hears the alternate proposal. Councilor Wood said the proposal is in the packet. Councilor Balestra said the previous proposal is relatively narrow in concept, relating to a somewhat confined geographic area without considering other issues.

Councilor Balestra withdrew the motion. Councilor Wood withdrew his second.

Councilor Wood moved to suspend the rules and consider Item 6B after Item 7A. Seconded by Assistant Mayor Solari.

Councilor Jescavage raised a point of order. He noted a Public Hearing was held on the previous proposal, but no motion was made. The Council does not have to take action on the previous proposal, as there was no motion on the floor. Councilor Wood said the Council can revisit the previous proposal if they want to.

There being no further discussion, a vote was held, and the motion to suspend the rules passed unanimously (9-0).

VII. NEW BUSINESS

A. Rezoning Proposal for the Heater Road/Route 120/Evans Drive/Hanover Street Extension and Lebanon High/Elementary School Area. (This proposal may or may not include Lebanon School District property.)

Councilor Wood referred to a map in the packet and said the Committee's recommendation was for the land shown on the map, including the R-3 land under and adjacent to the school, and the General Commercial land fronting on Old Heater Road, south of Old Heater Road fronting on Route 120, and west fronting on Evans Drive and Hanover Street, to be rezoned RO-1. After their final meeting, the Committee discovered that the Council cannot zone a residential area of this size without a referendum. If there is a referendum, it should be considered with any recommendations made for the residential land further north. They are now recommending that the R-3 land not be addressed until later. The Committee recommends setting a Public Hearing to rezone the GC land to RO-1. He said this proposal makes better sense than the original proposal, which did not treat the intersection of Evans Drive and Route 120 but recommended changing the GC zone behind the auto dealerships. The "character" of the neighborhood depends on where you stand.

Councilor Wood asked if Lake Sunapee Savings Bank has concerns. Ms. Hennessy said they were initially concerned, but they now know they can use the site indefinitely for their activities and can transfer the property to another bank. Councilor Wood said the only commercial use there will be unaffected by the change. The Committee tried to balance interests and look at the present use of the land. They determined that at the two difficult intersections—Heater Road and Route 120 and Evans Drive and Route 120—further commercial development should not be encouraged. Existing commercial uses, and their similar successors, are grandfathered. This change would prevent more intensive commercial development while preserving the commercial zone where commercial activity is.

Councilor Wood said toward the north, the Committee has discussed some residential use, with the possibility of a commercial use for which no zone currently exists, encouraging neighborhood services. The Committee feels this recommendation will dovetail with whatever they are likely to recommend to the north. They also need to look at the possibility of school expansion. The Committee was adamant that they remain blind to current land ownership. He recommended the same to the Council.

Councilor Desrosiers said he agrees with the zoning proposal. His concern was looking at the effect on existing properties.

Councilor Wood said additional commercial development to the north should go toward Old Etna Road or Route 120. The Committee considered changing the zoning of the McKerley property but decided it was not necessary, and they want to preserve the possibility of land to

access as-yet undeveloped commercial land. He said the Council should look hard at the intersection of Old Etna Road and Route 120. They should not intrude on the neighborhood or hurt the traffic on Route 120.

At Mayor Akins' request, Ms. Hennessy compared current to proposed zoning by area.

Councilor Wood moved that the Lebanon City Council hereby sets a Public Hearing for November 21, 2001 at 7:00 p.m. in the Council Chambers to change the cross-hatched area shown as "Existing GC" on the revised page 29 of the Council packet of October 3, 2001 from General Commercial to Residential Office-One. Seconded by Councilor Balestra.

Councilor Wood said nothing will affect the vested Hannaford Brothers application. Assuming the developer's appeal is not upheld, this proposal would prevent access to that land from Heater Road, as you cannot access GC land from a residential district. Councilor Grigsby asked where the access would be. Ms. Hennessy said the lot has frontage on Bixby Street, and zoning would allow access there.

Mayor Atkins said this proposal would also be reviewed by the Planning Board at a Public Hearing, by the Conservation Commission and by attorneys before coming back to the Council.

Councilor Hayes asked if the Committee considered the option of doing nothing. Councilor Desrosiers said there was discussion that something needed to be done. The Committee was established to look at the area, and doing nothing was not an option. Councilor Hayes asked what the driving force was behind this proposal. He has not heard about issues that need to be resolved. Councilor Balestra said there was a recommendation from the Conservation Commission to protect the Great Hollow wetlands.

Councilor Hayes asked how this proposal benefits the wetlands. Councilor Balestra said the proposal would prevent road construction in certain areas and obviate the need to widen existing roads. They also considered the build-out analysis under current zoning. He said there is also a perception of a lack of affordable housing and therefore a need for more residential land. The proposal would minimize the loss of GC land while creating more opportunity for housing. The vision of Lebanon's growth is along major road corridors and a connection between Lebanon and West Lebanon.

Councilor Hayes said he does not understand how this zoning proposal relates to those issues. This is an isolated piece of land.

Councilor Wood said the Committee looked at what would be the most appropriate use of the area, including doing nothing. The Committee does not believe this is an isolated solution because the Council asked the Committee to start with the Route 120 corridor, and they looked at this area first because that portion is under the most duress. The Committee asked what zone

would be most appropriate to attract the type of development that fits there. The School Board has told the Planning Board they would prefer lower-intensity development around the school. The Committee felt a need to work within the existing zones. In time they may suggest one or more new zones. If the Council waits until the Committee plans the entire city, they will lose an opportunity to deal with a pressured part of town.

Councilor Hayes complimented the Committee on their efforts. The issue is balancing the needs of the city versus private property rights. Even if properties are grandfathered, their marketability is negatively affected. He does not see how this proposal alleviates any overriding concerns.

Councilor Jescavage noted that the time and place of the Public Hearing need to be in the motion. He said he also has trouble finding a compelling public purpose for this change. If traffic is the concern, the Council can change provisions in the GC zoning regulations. He said he will support setting the Public Hearing to gain public input. The commercial businesses in that area chose to spend money to locate in Lebanon, and their rights will be affected. Even properties that are grandfathered will have their ability to expand affected.

Councilor Jescavage said the RO-1 zone was created in response to existing, old residential neighborhoods to upzone properties and improve their profitability. Now the zoning is being used where no residences exist.

Assistant Mayor Solari said he shares the concerns expressed by Councilors Jescavage and Hayes. He said according to Committee meeting minutes, Ms. Hennessy suggested that the Committee could amend the Zoning Ordinance, and the Committee said that should not be done at this time. Councilor Wood said they were talking only about dividing very large lots.

Assistant Mayor Solari said he appreciates the thoughts and experiences the Committee brought to their work. He does not see why they cannot wait longer and look at the northern part of the corridor. They need to see how this will affect the entire city. The Committee should consider bigger areas. He would like to have the necessary facts gathered and let the voters decide.

Councilor Wood raised a point of order. He said the motion on the floor deals only with GC land.

Councilor Grigsby said she does not know why the Committee is being faulted for not coming up with a plan in only two weeks. She would feel more comfortable if the whole area was considered. The property rights of business owners are in jeopardy. Multi-family housing units would bring in a lot of children.

Councilor Desrosiers said in the Hanover Street/Evans Drive/Heater Road area, there is a lot of congestion, and some control is needed. Any rezoning will have a negative impact on someone. The Committee tried to do what is fair for everyone. The Committee made a proposal; the

Council can accept it or not.

Dean Sorenson of Wellington Circle, a member of the Committee, said the original proposal came to the Planning Board, they discussed it, and they sent it back to the Council without comment for the Committee's review. The Committee recommends not enacting the original proposal. They had to decide if they should explain why. The Committee decided to offer a specific response to that proposal. The Council charge was to look at traffic and growth in the whole city, and he will offer a logical way to do this. The recommendation will fit in with that plan. The Committee did not want to offer something counterproductive. They had to distill what they wanted the community to look like.

Mr. Sorenson distributed a synopsis of relevant sections from the Master Plan. He said the RO-1 zone is for well-planned neighborhoods of offices and higher-density housing. GC land should be ample lots with good highway access. Off the highway, people should see neighborhoods. Mr. Sorenson said the Master Plan notes Route 120 feels pressure for growth, new housing is needed close to urban centers, and he reviewed the other points. Mr. Sorenson said according to the DHMC traffic study, if they do nothing, by 2005 the wait at Heater Road and Route 120 will be five minutes at peak morning time and nine minutes at peak afternoon time.

Councilor Lavigne said he applauds the Committee's work. This is a start, but they need a vision for the entire city. He is concerned about the rights of property owners. They will find out at the Public Hearing what the public wants.

Councilor Wood said he is less concerned about the effect of rezoning on undeveloped land than he is about existing businesses. They had to work within the existing Zoning Ordinance. He would like the Zoning Ordinance rewritten so as not to prohibit expansion by Smith Auto Sales. They want to prevent a fast food restaurant from opening there. This is the most the Committee could do in three meetings. They can't wait until the Committee looks at the entire city. He said they could not and should not consider the intent of the previous Council. They need to look at the zoning definitions as they are. They could rezone land then change the Zoning Ordinance to soften the blow to existing businesses. He does not think the zoning change would affect the wetlands, although it might discourage someone from applying for something intrusive.

Councilor Wood said the referendum is appropriate for big changes in residential areas, but the Council is responsible for commercial and industrial areas after getting as much public input as possible. Not many people vote, and the result of a referendum depends on how well informed voters are. A well-noticed meeting is as good a gauge. The Council should first look at areas that could change if the Council does nothing. He recommended voting for the Public Hearing. They should move ahead in an orderly way.

Councilor Balestra said they need to start somewhere. Part of the driving force is to prevent Route 120 from looking like Route 12A, especially with the effect on small retail businesses.

The traffic pattern on Route 12A is not conducive to the economy and reduces property rights.

Councilor Hayes said he does not think this is the right proposal to reach a goal. He would prefer to see a zoning change that would prohibit the specific types of businesses the Council would like to avoid. This proposal addresses other things. He urged a realistic vision of the area. He suggested the new proposal does not fit in with the proposed revised Master Plan. He will vote against the Public Hearing until there is a realistic proposal that will not overburden the Planning Board with more work.

Brian Goodwin, a member of the Committee, said there is a substantial ridge in the area. The land to the north is much higher. There is a great ravine that draws drainage toward the Mascoma River. He feels the City made a mistake when they zoned the area Industrial and General Commercial. They should make the entire area RL-3 or conservation land, but that would take away too much land value, so they need to find a way to conserve some of what is left of Great Hollow. They need to protect the wetlands. A lower intensity use will decrease destruction of wetlands. This proposal will not directly affect the wetlands. It doesn't make sense to have GC land wrapped around a school.

Dr. McKibbin said he is an abutter to the Hannaford property. He said holding a Public Hearing on the day before Thanksgiving is not a good idea. He asked Councilor Hayes if he recommended selling the school and moving it. Councilor Hayes said he did not. Dr. McKibbin said they need to protect the school where it is and think about expanding it. He felt the access to the supermarket hurt his rights. The fact that this land is next to the school has been a motivating factor for concerned citizens. The area could be safe and slow, like Bank Street. He said the GC land behind him has always been zoned wrong, as it is land-locked without Route 120 access.

Councilor Jescavage said there is an overlay wetlands zone in the city, so a change in zoning will not affect the Wetlands District regulations. He learned from Ms. Hennessy that a non-conforming use can be expanded by special exception. Ms. Hennessy said the applicant does not have to prove a hardship. It is subject to Zoning Board and Planning Board approval. If a business can justify a special exception, the Zoning Board is obligated to grant it.

David Loney said he owns 190 Hanover Street. He asked that this proposal be sent back to the Committee. He renovated the entire building, and this comes as a shock to him. No one on the Committee approached him for his opinion about traffic. He asked that the Committee get a professional involved. The alternative is going to court. He asked if the change will help the wetlands. Mr. Goodwin said in his opinion, less intensive development is less destructive. Mr. Loney said the biggest traffic problem results from DHMC and the high school, which let out at the same time. Only a few acres are involved in this proposal.

Dale Rowell said he owns Lebanon Motor Toys. When he bought the land, it was on the tax rolls for \$1,400. He paid \$500,000 for the land. The City was getting \$400 per year in taxes, and they

are now getting \$25,000-\$30,000 per year in taxes. His is a good, clean GC business, what the city needs. The wetlands are protected by an overlay and will not improve. Virtually all of the land in the area is developed. There is only one piece of developable land that is not developed.

Doug Smith of Smith Auto Sales said he sold the land to Mr. Rowell about one year ago. If this proposal goes ahead, there will be a cloud over Mr. Rowell's business. With the Hannaford issue pending, the idea is moot. His area is clearly commercial. If a fast food restaurant wanted to locate at the site, they would already be there. Traffic will be affected more by Dartmouth College and DHMC expansion.

Jim Ward said he is the broker for the owner of the Densmore Brickyard property. He said he requested a workshop session to get Planning Board input regarding development of the parcel, and he has written letters to the Master Plan Committee. Now, on one day of notice, there is a proposal to rezone the area without input from them. He does not know why the brickyard was included in this proposal, as it abuts commercial property, I-89 and Dartmouth College land. There are no significant neighborhoods in the area. There are other solutions besides downzoning. A different zone, a "no zone" should be established, giving the Planning Board complete creative control with the landowner. He asked that mixed use be considered. Centerra and DHMC will expand. The Densmore property is more isolated from residential areas. If they build a bridge to Hanover Street, that would be a great way to reduce traffic.

Councilor Balestra moved to limit discussion. Seconded by Councilor Hayes. A vote was held, and the motion to limit debate passed by a vote of 7-2. Voting for the motion to limit debate: Mayor Akins, Councilors Balestra, Desrosiers, Grigsby, Hayes, Lavigne, Wood. Voting against: Assistant Mayor Solari, Councilor Jescavage.

A vote was held on the main motion, which passed by a vote of 5-4. Voting for the main motion: Mayor Akins, Councilors Balestra, Desrosiers, Lavigne, Wood. Voting against: Assistant Mayor Solari, Councilors Grigsby, Hayes, Jescavage.

There was discussion about changing the date of the Public Hearing. Ms. Hennessy said the Public Hearing must be at least 30 days after Oct. 11.

Assistant Mayor Solari moved to reconsider the previous motion. Seconded by Councilor Wood. There being no further discussion, a vote was held, and the motion to reconsider passed unanimously (9-0).

Councilor Wood moved to amend the motion to change the Public Hearing date to December 5. Seconded by Councilor Balestra.

Mr. McSweeney said there is only one business meeting in December, as the second meeting is the budget hearing. He suggested that this Public Hearing be on a separate evening, not a

Wednesday. The Council has a minimum of nine meetings in November.

Councilor Wood said the reason they wanted the Public Hearing sooner is because there are properties that are affected by the first Public Hearing, and they should make a decision in a timely way.

There being no further discussion, a vote was held on the motion to amend, which passed by a vote of 6-3. Voting for the motion to amend: Mayor Akins, Councilors Balestra, Desrosiers, Jescavage, Lavigne, Wood. Voting against: Assistant Mayor Solari, Councilors Grigsby, Hayes.

There being no further discussion, a vote was held on the amended main motion, which passed by a vote of 7-2. Voting for the amended main motion: Mayor Akins, Assistant Mayor Solari, Councilors Balestra, Desrosiers, Jescavage, Lavigne, Wood. Voting against: Councilors Grigsby, Hayes.

VI. OLD BUSINESS

- B. To Consider Rezoning Certain Properties Located on Heater Road and Route 120, Lebanon, NH, from a General Commercial Zoning District to a Residential Office-One Zoning District. The following properties, identified by tax map and lot number, are included: A portion of Tax Map 64, Lot 32; Tax Map 64, Lot 17; Tax Map 64, Lot 16; Tax Map 64, Lot 15; Tax Map 64, Lot 14; Tax Map 64, Lot 9; and Tax Map 64, Lot 18.**

Councilor Balestra moved that the Lebanon City Council not adopt rezoning of the parcels listed under Item 6B. Seconded by Councilor Wood. There being no further discussion, a vote was held, and the motion passed unanimously (9-0).

VII. NEW BUSINESS

- B. Request for Guardrail on Stevens Road**

Mr. McSweeney said this is a scenic road that was rehabbed. They had discussed guardrails in different locations, but the Council motion did not include guardrails. If the Council wants guardrails, they must waive a portion of the Design, Construction and Maintenance Standards for Scenic Roads. Because of the soil, the posts must be aluminum.

Maxine Wallace of Stevens Road said it is dangerous, and guardrails are needed. She does not care if they are metal or wood.

Councilor Wood moved that the Lebanon City Council hereby authorizes the City

conforms with the intent of the draft Land Use chapter of the Master Plan.

Hearing no other public comment, Mayor Akins declared the Public Hearing closed.

3. TO CONSIDER APPROPRIATING THE SUM OF \$20,000 IN CONNECTION WITH REPAIRS TO A POMA LIFT TOWER AT STORRS HILL.

Mayor Akins read the item.

Mr. McSweeney said the Council has heard from the Recreation Department regarding a needed repair of a tower at the ski lift.

Frank Casale of the Lebanon Outing Club said they had moved the process along to get funding from this year's budget, and they did not receive a written estimate for the repair until after the process had begun. The actual estimate for the repair is \$24,000. He said the lift has been there since 1972 and was used at that time. The uppermost tower, which supports the cable and a counterweight, has gradually slid down by as much as 20 degrees. The State inspects the lift each year. The tower has not slipped since last year, but there was a new inspector, and he said the tower was no longer safe.

Mr. Casale said it was the Outing Club's intention to bring this problem to the Council next year as part of the CIP, but they have to comply with the State's request. One problem is that the State inspects the lifts in the fall, so that is why they found out so late that the repair must be done. The Outing Club was concerned about the weather, and they have events planned, so they wanted to get this project started before the ground freezes. The board of the Outing Club unanimously agreed to do the repair, even if the Council did not fund it. The engineering is done, the foundation is in place, and the lift should be operational by the week of December 10.

Hearing no other public comment, Mayor Akins declared the Public Hearing closed.

4. TO CONSIDER REZONING AN AREA OF LAND IN THE ROUTE 120/HEATER ROAD/EVANS DRIVE AREA FROM GENERAL COMMERCIAL (GC) TO RESIDENTIAL-OFFICE 1 (R-O-1)

The proposed zoning to R-O-1 involves 12 parcels of land, identified by Map, Lot and Plot Number on the City of Lebanon Assessor's Tax Maps, as follows: Map 64, Lots 14, 15, 16, 17 and 32; part of Map 63, Lot 33; Map 63, Lot 4; Map 78, Lot 40, Plots 1 and 2; Map 48, Lots 3, 4 and 5.

Ms. Hennessy showed a map of the involved properties. She said it involves properties on Heater Road, down Route 120, all of Evans Drive, to Hanover Street Extension, including Adelphia, the vacant Wilson property, and the Loney property. The Council can make this change. At one

point, the parcel included the R-3 area around the high school, but that was excluded from the Public Hearing because it requires a ballot vote. The change from GC to R-O-1 will eliminate all retail uses, including restaurants and vehicle sales.

David Loney, owner of the old Hanover Street Schoolhouse, said the Planning Board has been looking into this carefully. Their goals are similar, but they are taking a less radical approach. This proposal will lower the value of the high school property by millions of dollars. People have said housing is needed, which increases the school population and increases school costs. This property is near the interstate, which is where general commercial land belongs. He can see a future Council needing to find more commercial land further away from the interstate. He said the Planning Board is discussing a new mixed-use zone for this area.

Ms. Cormen read language from the most recent draft of the Land Use chapter of the Master Plan regarding Route 120: "Determine appropriate level of future light industrial development while minimizing commercial development and limiting impact upon traffic, the school complex, existing residential neighborhoods and wetlands."

Dale Rowell, owner of Lebanon Motor Toys on Evans Drive, said he supports the City's effort to direct their future. The 12 parcels included in this measure are mostly developed. He spent \$500,000 on one acre, and no one would pay that for housing. This will have significant tax impacts. This area is where development should be taking place. The businesses there do not generate traffic. The traffic is generated by the high school and the hospital. The Council should look at the bigger picture.

Doug Smith of Smith Auto Sales said to change the zoning to outlaw things that are already there with so little buildable land left makes no sense. He cannot imagine anyone wanting to live there with the sirens that are heard on that road. He has two parcels on Evans Drive, one where the dealership is located, and one that is less than an acre with an 80-foot diagonal power company right-of-way. These properties have been zoned commercial for the 35 years Smith has been there, and they have planned accordingly. It would be a shame to change the zoning but not change the nature of the area.

Linda Jasinski, Ward 1, said she supports this. She does not think the high school should be surrounded by commercial property, when there is such a wide range of students there. It would be good for the Council to be proactive and protect that site.

Nancy Archibald, Ward 1, urged the Council to make this zoning change. It is a very vulnerable area. The land use committee looked at all sides and made a fair recommendation. If nothing is done about this area now, they may lose the opportunity. She said not every entrance to the City should be commercial, and this area is close to the school. The change will do no harm to the landowners.

Mr. Brown said the Planning Board has heard different points of view regarding these parcels. The Planning Boards minutes of Oct. 10, 2001 reflect the Board's opinion that General Commercial may not be right for that area, but neither is Residential-Office. He urged patience.

Mary Maxfield, Ward 1, said she is a biology teacher at Lebanon High School, and she likes bringing her students outside, especially in the fall. She feels unsafe as students get closer to the periphery of the property. She said people should not assume that the high school will be rebuilt elsewhere. There seems to be a level number of students in Lebanon for some time. People are concerned about Lebanon being anti-business, but she would like to see it become more pro-school and pro-community. Protecting the school area will make the city better for everyone. Offices would be fine, but operations like fast-food restaurants would make that a very different type of place for a school.

Suellen Balestra, Ward 3, said she supports this change, and she encouraged the Council to support it. The proposal came from a committee formed by the Council. For many years, the Council felt they did not want Route 120 to look like Route 12A. The General Commercial property is not yet built out there. There is a proposal for a more intensive use of the Mosenthal lot, and the development on the McKibbin property could be much more intense. There is a large wetland nearby, and there have been proposals before the Conservation Commission to get parts of it filled in. Residential-Office will help decrease the intensity of the development in that area, as well as protecting the wetland and the school area.

Jared Duval said he fully supports this proposal. They need a more comprehensive Master Plan, but that process takes time. In the meantime, they need to be proactive to make sure appropriate development takes place. They need to reflect the values of Lebanon today. He does not think it is a given that the school will be moved. If the property values go down, it will make it cheaper to buy land to expand the school. Businesses in Lebanon are important, but the existing businesses will be grandfathered, so they will not be hurt. The Council needs to balance the business interests of the city with schools and neighborhoods.

Mayor Akins noted he has received letters from Bayne Stevenson, Dale Rowell and Doug Smith against the change, and letters from Clifford Cary, Faith Henricksen and Margaret Gibson favoring the change.

Ms. Hennessy said the bulk of the proposed Hannaford supermarket will remain General Commercial, but access would be via an R-O-1 lot, if this measure is approved. If Hannaford successfully overturns the Planning Board's denial, that project is vested, and this rezoning would not prevent that development. She also said one of the concerns of the committee was not development of vacant lots but rather the redevelopment of existing commercial lots.

Juliette Duval, a Lebanon High School student, said she supports the rezoning. The zoning has not been changed since the 1970s, and times have changed. They should make sure a big retailer

cannot come into the area and disrupt the learning environment.

Mr. Brown said the Planning Board had concerns about landlocking the remaining General Commercial property. Ms. Hennessy said a zoning change that was made a few years ago gave the Hannaford property frontage on Bixby Street, which could be used as access to the GC parcel if a new plan came forward. Mr. Brown said the Bixby Street access is unlikely to be approved, as the project was not granted access off Heater Road.

Ms. Cormen said the main focus of the Planning Board discussion on Oct. 10, 2001 was the issue of timing. Regarding the draft Land Use chapter, there has been a lot of public comment, and they are not moving as quickly as they had hoped.

Mayor Akins noted that he was the one who abstained on the vote on the motion under discussion, on page 19 of the Planning Board minutes of Oct. 10, 2001, not Dean Sorenson. He abstained because he would be voting on it as a member of the City Council.

Brian Goodwin, Ward 2, said he has two young daughters. Lebanon is in no danger of being considered anti-business; in fact, it is the business center. He said GC zoning does not belong around a school. The Council has an opportunity to correct this.

Joan Monroe, Ward 3, said she attended a discussion at which the Superintendent of Schools said that while there are weaknesses at the high school, the school is not at full capacity, and he is not looking into a new location for a school. The community has said they do not want to relocate the school. The focus is on improving the current facility. She agreed that if the land is less valuable, the school could better afford to buy more. Allowing GC zoning would be sending the wrong message to students.

Mr. Loney said the Council does not want to reduce the value of real estate. The landowners are local people running businesses, using their land as an asset to get loans. He rebuilt his building with a bank loan, and now the property will be worth less.

Georgia Loney, co-owner of the old Hanover Street schoolhouse, said the purpose of the R-O-1 zone is well-planned neighborhoods of offices and multi-family housing. That does not describe this neighborhood. She urged the Council to wait for the Planning Board.

Alice Blackmer said she is the mother of two Lebanon high school students. She agrees with Ms. Monroe. She said it is important to encourage students to be more involved with the environment, rather than surrounding them with corporate endeavors.

Andy McKibbin, Ward 1, is a property owner in the area. He said tonight people have been asking for money to preserve some of the gems in Lebanon. He asked if the schools are not worth protecting. In the long run, it will be less expensive to protect the high school where it is.

The proposal makes sense, as the businesses are grandfathered.

Nancy Davis, Ward 2, said she supports this proposal. She disagrees that this is not already a neighborhood, as she lives one block from Mt. Support Road and less than a mile from the school. Children should not go to school in a GC zone. She would hate to see more development in this area.

Ms. Cormen said the Planning Board motion involved developing something in between what now exists and what others would like to see. The motion asked the Zoning Advisory Committee to change the R-O zone to better reflect the discussions they have been having. The Planning Board's recommendation was to wait for the completion of the Land Use chapter and for the Zoning Advisory Committee to come up with a different transitional zone.

Mr. Perry said Hannaford was purchased by a European holding company.

Mr. Duval said if he were a homeowner, he would not want to buy a house in this area. He would like to make it undesirable for a large business to come into the area, adversely affecting property rates.

Bruce Waters, Lebanon businessman, said the Council is suggesting rezoning to R-O, which is residential and office, and no one will want to have a house there. There is not one piece of land being rezoned that would enhance the attraction of a large national chain. He sees it as more of a local neighborhood. The Planning Board has been discussing the concept of a "village center," which is an attractive concept. If there will be higher-density residential use on Mt. Support Road, the area in the proposal would be a perfect place for some commercial activity. It has the infrastructure and the access to the interstate, and it could help support the residential area.

Hearing no more public comment, Mayor Akins declared the Public Hearing closed.

The regular City Council meeting was called to order at 8:09 p.m.

I. PLEDGE OF ALLEGIANCE

Councilor Wood led the Council in the Pledge.

II. PUBLIC FORUM: Announcement by Mayor

Mayor Akins read the Public Forum announcement.

III. OPEN TO PUBLIC

No members of the public spoke at this time.

concrete was five feet deep, and it is unlikely that it would have ever tipped over. They maintain the lift each year.

Councilor Wood asked if they should set another Public Hearing for the additional \$4,000 needed to complete the repair. Mr. McSweeney suggested that be added to the 2002 budget. Councilor Wood said the Council should consider that.

Councilor Jescavage asked if there is any money left in the Recreation Department budget that can be used for this project. The money could be transferred. Mr. McSweeney said that would not be a transfer but rather an outside payment, and the Recreation Department budget rarely has much money left over.

There being no further discussion, a vote was held, and the motion passed unanimously (9-0).

D. To Consider Rezoning an Area of Land in the Route 120/Heater Road/Evans Drive Area from General Commercial (GC) to Residential-Office 1 (R-O-1)

Councilor Hayes said he is not convinced that this idea has any merit. It is bad policy, bad planning, too limited an approach, premature, discriminatory, against the advice of the Planning Board, against the advice of legal counsel, and it does achieve any articulable purpose for the public good. He has not heard overwhelming public support for this. He will not vote for it. He is willing to put this off until later.

Assistant Mayor Solari said the Zoning Advisory Committee is doing a good job. He wondered what is appropriate for this land. They need to think creatively. They do not have to wait for the Land Use chapter. He does not think R-O-1 solves any problems.

Councilor Jescavage said he appreciates the concern of the proponents, but he cannot support the motion. Using the R-O-1 zone to accomplish the stated goals does not fit. The Council and the committee should come up with a new commercial district that is less than what is allowed in the GC district but will allow the existing businesses as permitted uses. If they down zone, the land would be devalued, and the owners will have less collateral. No one has complained about the existing businesses. The Heater Road R-O-1 district was created because homeowners complained that they could not sell their properties, and they wanted to move. Housing in the area covered by this proposal would not work, as people will not like to live next to the interstate. The wetlands overlay protects the wetlands, regardless of the zoning.

Councilor Jescavage asked if there are any projects pending for this area. Ms. Hennessy said the only application is from a diner, and that was contingent on the zoning change.

Councilor Wood said the committee does not feel the proposal was perfect, but they felt they

needed to work within the existing Zoning Ordinance. This is an area the Council has seen as an area at risk. The GC zone would allow applications to the Planning Board for things that are inappropriate for that neighborhood. They should consider rewriting the Zoning Ordinance with a more appropriate zone for this area and others. They should look at areas that are likely to be developed if no action is taken. There is a strong interest in developing the property behind the car dealer, and there has been a restaurant proposed for the corner of Evans Drive and Route 120. There is nothing to prevent properties on Evans Drive and Hanover Street from attracting the kinds of commercial development they should be trying to avoid.

Councilor Wood said this is not anti-business. He has a business in Lebanon. Private property rights, and how they are affected by City actions, are important. Zoning is the place where the interests of private property owners meet the interests of citizens. Any zoning decision affects property values. The committee looked for the fairest zone within the existing Zoning Ordinance. The change will allow the same level of economic activity. No zoning regulations will affect the ability of an existing business to expand, sell the business or operate a related business. The only thing prohibited would be selling to a completely different business.

Ms. Hennessy said the regulations guarantee the current use indefinitely. Subject to Zoning Board review, they can obtain a change-of-use permit or can expand. Councilor Wood said the land being used commercially now is protected, and with it the underlying value. They cannot make everyone happy, but they need to show the same respect to schools and people as they do to business. GC uses are not appropriate around schools or abutting residential areas. R-O-1 is not the best solution, but there is a lot of economic pressure on the area, and if they wait until the Zoning Ordinance is rewritten, things they feared may come to pass.

Councilor Wood asked the effect of delaying a decision on pending applications. Ms. Hennessy said if an application affected by the zoning was filed after Nov. 24, it is in limbo until the Council takes action. She said some action should be taken fairly soon. The fairest thing to do is to vote the proposal up or down at this meeting.

Councilor Wood moved that the Lebanon City Council hereby acts to rezone the parcels described on pages 6 and 7 of the backup materials for the City Council Regular Session of December 5, 2001 from General Commercial to Residential-Office 1. Seconded by Councilor Balestra.

Councilor Balestra said he was a member of the committee that drafted this. They are getting questions regarding why there is a need to rezone in this area. The reason he has given is that he has heard about traffic complaints in the area. Business owners are concerned about the devaluation of their property if this proposal passes. He said devaluation is a possibility, and this concerns him. Very few people have spoken about the public safety issue, while the biggest piece of land in the area is school property, which is not affected by the current zoning or rezoning, according to the City attorney. That suggests the Council has no responsibility to guard

the safety of schoolchildren, which doesn't sound right. The attorney said there must be a "valid public purpose" for rezoning, and Councilor Balestra feels there is no more valid public purpose than protecting public safety. They should consider the possibility that additional traffic could cause an unsafe situation. According to Lebanon's build-out analysis, light industrial uses generate 7 trips per day 1000 square feet, and the highest use is a fast-food restaurant, which generates 632 trips per day per 1,000 square feet. Residential-Office uses would generate 24 trips per day per 1,000 square feet. Automobile sales generate 47 trips per day per 1,000 square feet. He agrees there is not a problem now, but one purpose of zoning is to anticipate the way things will be. They should educate students in a relatively safe environment.

Councilor Grigsby asked, if this measure passes, whether businesses will have a harder time expanding. Ms. Hennessy said expansion would be subject to approval by the Zoning Board. The business would have to justify the need to expand. Councilor Grigsby said she does not see how this would protect the wetlands. Traffic from the existing businesses is not a problem. The traffic comes from the hospital and from high school students. In some areas, only seniors or honor-roll students are allowed to drive cars. She asked how many students have been injured in the area.

Councilor Desrosiers said he was also on the committee. He said the R-O zone is the best they could do in that area. They have to start somewhere. Another zone may be created in the future. He would rather have Planning Board input, but things take a long time there. He does not think there should be GC land around the high school, and it is not too late to change that. The parking lot at the high school should be reconfigured. There has not been a lot of public input regarding this issue. They have only heard from 12-15 people.

Councilor Lavigne said he lauded the efforts of the committee. They should look at a compromise zone that satisfies the business owners and keeps out uses they do not want.

Councilor Hayes said they need to focus on what is before them. If traffic is the main issue, how does this motion ameliorate traffic problems?

Councilor Wood said they should focus on the future. There is no intention to change existing businesses or affect existing traffic, but this prevents proposed development that would now be permitted in the GC zone. This is the best solution for now. They should find new, more appropriate zones. The intent is not to encourage duplex housing but to change from the GC zone. When the rezoning is completed, the business owners will be pleased.

Councilor Hayes moved to suspend the rules and limit debate. Mayor Akins did not recognize the motion, as not all members had a chance to speak.

Mayor Akins said he will support the motion. He does not think the existing businesses will be harmed. The proposed DHMC expansion is huge. Property values will do nothing but increase. The Planning Board has been working on this for three years. The Council has enough

information to make a decision. Offices should be near residential areas. It was a mistake to zone this area GC. The draft of the Master Plan supports this type of zoning.

Councilor Hayes withdrew his motion to suspend the rules.

Councilor Jescavage said he does not agree that R-O-1 is the best solution. The Zoning Ordinance offers General Commercial and Neighborhood Commercial, and neither is satisfactory for this area. The City employs one of the finest land use attorneys in the state; he could draft a regulation for a midrange commercial district that excludes high intensity uses while respecting existing uses. If this motion is defeated, he will make a motion directing the administration to ask Bernie Waugh to draft a new district.

Councilor Hayes said he agrees with Councilor Jescavage. They should look at a different zone for the area. The attorney has said this proposal has legal problems and will be challenged, and the Planning Board has asked the Council to wait. He asked why they are rushing into this.

Councilor Balestra encouraged Councilors Hayes and Jescavage to explicate what the attorney should draft. He is not sure they see a problem with the current zoning.

Councilor Desrosiers said he does not want this to drag on. This will put a deadline on a resolution. The committee has asked for answers but has not been able to get them. He has heard no other solutions proposed.

Assistant Mayor Solari said he has a problem when this is referred to as “interim.” He does not find R-O-1 to be the solution even in the interim. If he thought doing this in the interim would be effective, he would support it.

Assistant Mayor Solari moved to suspend the rules and limit debate. A vote was held, and the motion passed by a vote of 7-2. Voting for the motion to limit debate: Mayor Akins, Assistant Mayor Solari, Councilors Balestra, Desrosiers, Grigsby, Hayes, Lavigne. Voting against: Councilors Jescavage, Wood.

A vote was held on the motion to rezone, and the motion passed by a vote of 5-4. Voting for the motion: Mayor Akins, Councilors Balestra, Desrosiers, Lavigne, Wood. Voting against: Assistant Mayor Solari, Councilors Grigsby, Hayes, Jescavage.

Mayor Akins declared a recess at 9:41 p.m. The meeting reconvened at 9:50 p.m.

VI. OLD BUSINESS

None