



**LEBANON PLANNING BOARD
JANUARY 13, 2025 - 6:30 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

1. Call to Order

- A. To participate in this meeting, please [join live via Microsoft Teams](#) or call 929-229-5356 (access code: 709 849 274#). If you have trouble accessing this meeting, please [email tim.corwin@lebanonnh.gov](mailto:tim.corwin@lebanonnh.gov).

2. Notice of Regional Impact

3. Public Hearing Items

- A. **Grafton County Senior Citizens Council, Inc. and City of Lebanon, 10-12 Campbell Street (Tax Map 92, Lot 23), 0 Flynn Street (Tax Map 92, Lot 17), and 0 Flynn Street (Tax Map 91, Lot 245), zoned L-D:** Request for approval of a Boundary Line Adjustment between Lot 92-23 and Lot 92-17 and a Voluntary Lot Merger of Lot 92-17 and Lot 91-245. **PB2024-46-BLA - Postponed from December 9, 2024**
- B. **Cicotte Holdings, LLC, 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), zoned R-O-1:** Request for a Conditional Use Permit pursuant to Section 311A.2 of the Lebanon Zoning Ordinance and for Site Plan Review per Section 3.1.D of the Site Plan Review Regulations to expand the outdoor vehicular storage area for an existing vehicular sales use together with associated site improvements including landscaping and lighting. **PB2024-48-SPRCUP - Postponed from December 9, 2024**
- C. **Robert & Brenda Owens and Dustin & Tong Fei Meltzer, 163 Meriden Road (Tax Map 121, Lot 6) and 0 School Street (Tax Map 121, Lot 5), zoned R-3:** Request for a Boundary Line Adjustment. **PB2025-01-BLA**
- D. **CWM All Waste, LLC, 40 N Labombard Road (Tax Map 51, Lot 10), zoned IND-L:** Request for Minor Subdivision approval to create a legal roadway for the proposed Signal Hill Planned Business Park. **PB2025-02-PMAJ - To be postponed to February 10, 2025 and renoticed as a proposed major subdivision.**
- E. **Choice Storage, LLC, 0 Etna Rd (Tax Map 26, Lot 17), CWM All Waste, LLC, 40 N Labombard Rd (Tax Map 51, Lot 10), Chaloux Properties, LLC, 32 Labombard Rd (Tax Map 51, Lot 11), Route 120 Hotel, LLC, 35 Labombard Rd (Tax Map 64, Lot 21), Chaloux Properties, LLC, 25 Labombard Rd (Tax Map 64, Lot 25), Klubio, LLC, 39 Labombard Rd (Tax Map 51, Lot 14), TLL Realty, LLC, 41 Labombard Rd (Tax Map 51, Lot 1) & Notch Climbing Real Estate, LLC, 33 Labombard Rd (Tax Map 51, Lot 15), zoned IND-L and RL-3:** Request for a Conditional Use Permit pursuant to Section 508 of the Lebanon Zoning Ordinance for a proposed Planned Business Park and for Preliminary Major Subdivision approval of a proposed 4-lot subdivision of 0 Etna Road (Tax Map 26, Lot 17). **PB2025-03-PMAJCUP – Completeness review only on January 13, 2025; public hearing to commence at the February 10, 2025 meeting.**
- F. **City of Lebanon, 0 Barrows Street, Tax Map (Tax Map 77, Lot 106), zoned R-3:** Request for Site Plan Review, Major Subdivision approval, and a Conditional Use

Permit per Sections 310.2 and 509 of the Zoning Ordinance for a proposed 5-unit cottage development. **2025-04-FMAJSPRCUP**

4. Other Business

- A. Lyme Properties Request for an Extension of PB2018-34-SPA

5. Approval of Minutes

- A. November 12, 2024
- B. November 25, 2024
- C. December 9, 2024

6. Election of Officers

- A. Chair and Vice Chair

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



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

January 13, 2025 Meeting

Staff Memorandum – PB2024-46-BLAVLM – *postponed from 12/9/24*

APPLICATION INFORMATION

Agenda Item: 3.A

Application ID:
PB2024-46-BLAVLM

Application Type:
Boundary Line Adjustment &
Voluntary Lot Merger

Property Location & Tax Map:

- 10-12 Campbell St (Tax Map 92, Lot 23)
- 0 Flynn St (Tax Map 92, Lot 17)
- 0 Flynn St (Tax Map 91, Lot 245)

Applicants/Property Owners:
Grafton County Senior Citizens Council, Inc. and City of Lebanon

Property Sizes (existing):

- 10-12 Campbell St (Tax Map 92, Lot 23): +/-1.18 acres
- 0 Flynn St (Tax Map 92, Lot 17): +/-0.22 acres
- 0 Flynn St (Tax Map 91, Lot 245): +/-0.9 acres

Property Sizes (proposed):

- 10-12 Campbell St (Tax Map 92, Lot 23): +/-1.13 acres
- 0 Flynn St (Tax Map 91, Lot 245): +/-1.17 acres *following merger with Tax Map 92, Lot 17*

Zoning District:
Lebanon Downtown (LD)

LEGAL NOTICE

Grafton County Senior Citizens Council, Inc. and City of Lebanon, 10-12 Campbell Street (Tax Map 92, Lot 23), 0 Flynn Street (Tax Map 92, Lot 17), and 0 Flynn Street (Tax Map 91, Lot 245), zoned LD: Request for approval of a Boundary Line Adjustment between Lot 92-23 and Lot 92-17 and a Voluntary Lot Merger of Lot 92-17 and Lot 91-245. PB2024-46-BLAVLM

PLANS AND APPLICATION MATERIALS

- ▶ Application form (1 page)
- ▶ Memo dated October 21, 2024 from David Brooks, Deputy City Manager (project description; 1 page)
- ▶ List of abutters
- ▶ Plat titled "Boundary Line Adjustment & Merger Plan," prepared by Paton Land Surveying, dated September 12, 2024, revised November 26, 2024

COMPLETENESS REVIEW

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

APPLICATION OVERVIEW

This is a request for a Boundary Line Adjustment between lands located at 10-12 Campbell Street (M/L 92-23) (owned by Grafton County Senior Citizens Council, Inc. (GCSCC) and improved with a senior citizen's center) and 0 Flynn Street (M/L 92-17) and 0 Flynn Street (M/L 91-245) (both owned by the City of Lebanon and improved with the municipal parking lot located behind City Hall).

The applicants propose to adjust the boundaries between the subject properties to (a) annex a +/-0.05 acre portion of M/L 92-23 to M/L 91-245, and to (b) merge M/L 92-17 into M/L 91-245. The +/- 0.05 acre portion of M/L 92-23 that is proposed to be annexed to the merged M/L 91-245 and M/L 92-17 lot is approximately outlined in yellow in Figure 1 below.

The changes resulting from the proposed Boundary Line Adjustment and Voluntary Lot Merger are as follows:

- ▶ Map/Lot 92-23 (the GCSCC property) will decrease by a net of +/-0.05 acres, from +/-1.18 acres to +/-1.13 acres.
- ▶ Map/Lot 91-245 will increase by a net of +/-0.05 acres as a result of the boundary line adjustment with the GCSCC property and will increased by an additional +/-0.22 acres following the merger with Map/Lot 92-17.

Note that ordinarily, voluntary lot mergers are approved administratively by staff, but here the plat shows both the proposed boundary line adjustment and voluntary merger which will allow the Planning Board to approve both at once rather than requiring two separate applications (one to the Planning Board for the boundary line adjustment and one to the Planning & Development Department for the voluntary lot merger).

Figure 1. Bird's eye view of subject parcel (looking north).



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

STAFF COMMENTS

ASSESSING

No comment provided.

BUILDING INSPECTION

No comment provided.

FIRE

No comment provided.

POLICE

No comment provided.

PUBLIC WORKS/CITY ENGINEER

No comment.

PLANNING & ZONING

Both lots currently conform to the applicable minimum lot sizes and dimensional requirements as set forth in the Zoning Ordinance and will continue to after reconfiguration. Recommended conditions of approval are set forth below under staff recommendations.

STAFF RECOMMENDATIONS

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

A. General Conditions

1. This approval shall be considered void unless all conditions precedent are met and the plat is recorded in the Registry of Deeds within two (2) years from the date of the Notice of Action (Section 7.12.B). The plat shall be recorded by the Planning & Development Department in accordance with Planning & Development Department recording procedures.
2. This approval shall automatically expire and be considered void upon failure to meet any of the conditions of approval set forth herein within the timeframes specified.

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

1. The applicants shall provide to the City draft copies of the deeds of the land transfer for review to ensure the transfer will be completed properly for Assessing and recording purposes.
2. The applicant shall submit two (2) mylars of the approved plat and applicable recording fees to the Planning & Development Department in accordance with Planning & Development Department recording procedures. (8.1.D & 7.11)
3. The applicant shall submit the executed deeds of the land transfer together with applicable recording fees to the Planning & Development Department to be recorded contemporaneously with the plat.

Attachments

cc (via e-mail): David Brooks, Deputy City Manager, City of Lebanon
Kathleen Vasconcelos, Executive Director, GCSSC
File

CITY OF LEBANON APPLICATION FOR

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

☐ OTHER _____
PROPERTY OWNER (APPLICANT):

NAME: City of Lebanon TEL.#: 603-448-4220

MAILING ADDRESS: 51 North Park Street, Lebanon, NH 03766

E-MAIL ADDRESS: David.Brooks@LebanonNH.gov

CO-APPLICANT, AGENT, OR LESSEE:NAME: Grafton County Senior Citizens Council, Inc.
Kathleen Vasconcelos, Executive Director TEL.#: 603-448-4897

MAILING ADDRESS: 10-12 Campbell Street, PO Box 433, Lebanon, NH 03766

E-MAIL ADDRESS: kvasconcelos@gcsc.org

PROJECT LOCATION:

TAX MAP #: 91; 92 LOT#: 245; 17, 23 PLOT #: ZONE: LD

STREET ADDRESS OF PROJECT: 0 Flynn St; 0 Flynn St; 10-12 Campbell Street;

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO**SCOPE OF PROJECT:**Transfer 2,220 SF (0.05 Ac.) from GCSCC parcel, M/L 92-23, to City of Lebanon parcels
M/L 91-245 and 92-17, which will be merged together at the same time.**TYPE OF OCCUPANCY:**EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIALIF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**USE: City of Lebanon parcels are currently improved as public parking lots.**SIGNATURE BLOCK:****FOR PLANNING BOARD APPLICATIONS ONLY:** I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on December 9, 2024, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.PROPERTY Kathleen Vasconcelos Shaun Mulholland
OWNER: Kathleen Vasconcelos (Oct 24, 2024 10:09 EDT) Shaun Mulholland (Oct 24, 2024 10:34 EDT) DATE: 10/24/2024**NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW:** I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.PROPERTY
OWNER: _____ DATE: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #



CITY MANAGER'S OFFICE

City of Lebanon, NH

51 North Park Street

Lebanon, NH 03766

ph: (603) 448-4220; fax: (603) 966-3122

TO: City of Lebanon Planning Board

FROM: David Brooks, Deputy City Manager

DATE: October 21, 2024

RE: Proposed Boundary Line Adjustment between City of Lebanon parcels (M/L 91-245 and 92-17) and Grafton County Senior Citizens Council, Inc. (M/L 92-23)

To the Lebanon Planning Board:

Over the last several years, the City has been evaluating the potential for redevelopment of the downtown parking lots situated between City Hall and the Mascoma River, as one of the opportunities identified in the 2016 Downtown Visioning Study. During the evaluation process, it has been noted that a portion of the Grafton County Senior Citizens Council (GCSCC) property at 10-12 Campbell Street (M/L 92-23) extends into the existing public parking area.

For several months, the City has been communicating with GCSCC about potentially conveying a portion of its property to the City in order to address the property boundary and title issues. GCSCC has agreed to convey the portion of its property to the City at no cost in exchange for the City preparing the survey and the applicable deeds for recording.

The City has contracted with a surveyor to prepare the boundary line adjustment plan, which has been agreed to by GCSCC. As depicted on the plan, the City would acquire approximately 2,220 SF (0.05 Ac.) of land from GCSCC, which would be merged with the City's parking lot parcels. For clarification, the City will also be merging two separate parking lot parcels, M/L 91-245 and 92-17, at the same time so all of the "upper" parking lot will be contained within a single contiguous parcel.

On October 2, 2024, the Lebanon City Council authorized the City Manager to pursue acquisition of a portion of the GCSCC parcel and to take all actions necessary to complete the transaction.

CITY OF LEBANON
51 NORTH PARK ST
LEBANON, NH 03766
91-230/91-245

CITY OF LEBANON
51 NORTH PARK STREET
LEBANON, NH 03766
91-237/92-17

LEDYARD CHARTER SCHOOL
PO BOX 327
LEBANON, NH 03766
91-239

LEDYARD CHARTER SCHOOL
PO BOX 327
LEBANON, NH 03766
91-239-E

DRAKE, WILLIAM E +
%HOSKIN PROPERTY MNGMT
ETNA, NH 03750
91-241

COMMUNITY COLLEGE SYST OF NH
26 COLLEGE DR
CONCORD, NH 03301
91-242

HSD, LLC
2 BUCK RD, STE 8
HANOVER, NH 03755
91-243

ONE COURT STREET ASSOC
1 COURT ST, STE 300
LEBANON, NH 03766
91-244

CITY OF LEBANON
51 NORTH PARK ST
LEBANON, NH 03766
91-246

Grafton Cty Senior Citizens
PO Box 433
Lebanon, NH 03766
92-23

LEBANON HOUSING AUTHORITY
31 ROMANO CIR
WEST LEBANON, NH 03784
92-12

NBKS, LLC
21 SCHOOL ST
LEBANON, NH 03766
92-19

MARTIN, TIMOTHY E
11 FLYNN ST
LEBANON, NH 03766
92-20

TEOMOR LLC
2 CAMPBELL ST
LEBANON, NH 03766
92-22

CARTER COMM BLDG ASSOC
1 TAYLOR ST
LEBANON, NH 03766
92-25

UPPER VALLEY SUPPORTIVE
226 HOLIDAY DR, STE 20
WHITE RIVER JCT, VT 05001
92-34

TWIN PINES HOUSING TRUST
226 HOLIDAY DR, STE 20
WHITE RIVER JCT, VT 05001
92-36

PARKHURST COMM HOUSING INC
226 HOLIDAY DR, STE 20
WHITE RIVER JCT, VT 05001
92-63

OFFICER, THOMAS F
13 FLYNN ST
LEBANON, NH 03766

NH DOT
Rail Trail
PO Box 483
Concord, NH 03302

CARTER COMM BLDG ASSOC
1 TAYLOR ST
LEBANON, NH 03766
92-64

MASCOMA SAVINGS BANK
PO BOX 4399
WHITE RIVER JCT, VT 05001
91-246-100

Paton Land Surveying
150 Southridge St
Springfield, VT 05156

CITY OF LEBANON
APPLICATION FOR

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

PROPERTY OWNER (APPLICANT):

NAME: Robert & Brenda Owens

TEL.#:

MAILING ADDRESS: 163 Meriden Road, Lebanon

E-MAIL ADDRESS:

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Dustin & Tong Fei Meltzer

TEL.#:

MAILING ADDRESS: 161 Meriden Road, Lebanon

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 121

LOT#: 5 & 6

PLOT #:

ZONE: R-3

STREET ADDRESS OF PROJECT: 161 and 163 Meriden Road

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

SCOPE OF PROJECT:

boundary line adjustments

TYPE OF OCCUPANCY:

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

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER: Robert Owens Brenda Owens DATE: 12/03/24

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

PROPERTY

OWNER: [Signature] [Signature] DATE: 12/8/24

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

December 4, 2024

Mr. Timothy Corwin
Lebanon Planning Office
51 N. Park St.
Lebanon, NH 03766

Re: Boundary Line Adjustment

Dear Mr. Corwin:

Thank you for meeting with us this week to review the boundary line changes between us and our neighbors, Dustin and Tong Fei Meltzer. Since 1999, we have lived at 163 Meriden Road (Lot 121-6) in a house that was built in the late 1950's. When it was constructed, the septic system was installed at the northerly end of what was believed to be our property. A few years ago our neighbors, Dustin and Tong Fei Meltzer, who live at 161 Meriden Road (Lot 107-213) purchased the Lot 121-5 which is between our two homes. During the course of reviewing the boundaries for that lot, we learned that our northerly boundary line was not as far from our house as we thought and that our septic system was actually on Lot 121-5 now owned by the Meltzers.

As we all discussed this condition, we came to the conclusion that a swap of land would make sense. Since the driveway to the Meltzers' home was a right of way on our property, we have agreed to convey to them the land for the right of way and driveway in exchange for the land where our septic system is located. As the plan shows, the swap of land is an exact exchange of land in area. This way, the Meltzers own their driveway land and we will own our septic system land.

We request that the Planning Board approve this change in land and boundary lines.

Sincerely,

Robert and Brenda Owens

cc: Dustin and Tong Fei Meltzer

CITY OF LEBANON, NH	
SUBDIVISION REGULATIONS – TECHNICAL CHECKLIST	
MINOR LOT LINE ADJUSTMENT / BOUNDARY LINE AGREEMENT	
PROJECT NAME: <i>Boundary Adjustment</i>	
APPLICANT: <i>OWENS / Meltzer</i>	DATE: <i>12/11/24</i>
GENERAL SUBMISSION REQUIREMENTS:	

All applications to the Planning Board for Subdivision Review must be submitted by 12:00 Noon on the day of the filing cutoff. [§7.7.C] Submissions must be accompanied by the following information or review of the application may be delayed:

- ☒ A properly completed and signed Application Form. [§7.7.A(1)]
- ☒ The appropriate filing fees. [§7.7.A(2)]
- ☒ A written project description. [§7.7.A(3)]
- ☒ A list of the names and mailing addresses of all persons to be notified, by certified mail, of the public hearing. [§7.7.A(4)]
- ☒ A completed and signed Technical Checklist. [§7.7.B]
[Applicants must complete the entire checklist to ensure that all necessary information and materials have been provided with the application or that written requests for waivers have been properly provided in accordance with Section 7.15 of the Subdivision Regulations, as appropriate.]
- ☒ Eight (8) sets of project plans to be distributed for Staff Review. [§8.2.A]
[A Staff Review meeting is held at City Hall one (1) week following the cutoff date. Staff Review meetings begin at 2:00PM, unless otherwise noted. All revised and/or additional information or materials must be submitted within one (1) week following the Staff Review meeting.]
- ☒ A digital copy of Subdivision plan in .PDF format. [§8.2.B]

NOTE: Applications shall contain sufficient information to enable the City Staff and the Planning Board to evaluate the proposed development for compliance with the Zoning Ordinance, the Planning Board's Regulations, and other applicable City Codes, and for the Planning Board to make an informed decision.

All required application materials shall be submitted as a single inclusive package, including any appropriate waiver requests as permitted by the Regulations. Submission of a complete application package ensures that the review process by City Staff is as efficient and effective as possible.

The purpose of the filing deadline is to provide adequate time for City review of the proposal. Submission of any altered, additional, or substitute application materials required by the Regulations, subsequent to the filing deadline, other than as directed by City Staff, shall cause the application to be deemed untimely filed, and such application shall not be heard until a subsequent month.

CITY OF LEBANON, NH
SUBDIVISION REGULATIONS - TECHNICAL CHECKLIST
MINOR LOT LINE ADJUSTMENT / BOUNDARY LINE AGREEMENT

PLAN SUBMITTAL TECHNICAL CHECKLIST:

NOTE: Minor Lot Line Adjustment / Boundary Line Agreement plans shall include the information described below pursuant to Section 8 of the Lebanon Subdivision Regulations. Plans shall be submitted on sheets no larger than 24" x 36". Plan sets with multiple sheets shall include sheets of uniform size and be bound on the left edge. When more than three (3) sheets are required, an additional cover sheet shall be attached including a table of contents. The scale of the plans shall be appropriate to the size of the overall development. All lettering shall be of a size and type that is legible.

In order to facilitate the use of the City's Geographic Information System (GIS) for planning purposes, all surveys and engineered plans submitted for Subdivision Review shall utilize the NH State Plane Coordinate system and shall reference the North American Vertical Datum of 1988 (NAVD 88), unless prior approval to use an alternate coordinate system and/or vertical datum is granted by the Planning Office.

A written request for waiver shall be required, pursuant to Section 7.15 of the Subdivision Regulations, for any submission requirement for which the information or data is not provided by the applicant. [§8.2.C]

Plan Requirements	Info. Provided	Waiver Sought
8.2.A(1) - - Name of the City and County in which the subdivision is proposed; - A Locus map; - North arrow; - Scale of the plat; - Date of the plat and of any revisions to the plat; (NOTE: The date on the plat at the time of initial submission for application review shall be included on all subsequent submissions to the City. Any subsequent change(s) to the plat shall include a revision date and description of the revision(s).)	☒ ☒ ☒ ☒ ☒	☐ ☐ ☐ ☐ ☐
8.2.A(2) - Names and mailing addresses of Applicant(s); Owner(s) of Record of subject properties; Owners of abutting properties, including tax map and lot references; and Holders of any easements, rights-of-way, or other restrictions.	☒	☐
8.2.A(3) - Names and business addresses of the surveyor, including license number and seal, and of every engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board.	☒	☐
8.2.A(4) - Zoning District in which the subject lots are located, including district boundaries if in more than one district.	☒	☐
8.2.A(5) - Location of all existing structures on the subject lots.	☐	☐
8.2.A(6) - Site location map showing the original boundaries of the subject lots and adjacent lots.	☒	☐
8.2.A(7) - The new surveyed property line(s) as a result of the application, including bearings and distances, as determined by an actual field survey by a licensed land surveyor, including the date of the completion of the survey. All dimensions shall be shown in feet and decimals, and the area of the altered lots shall be shown in square feet and acres.	☒	☐

CITY OF LEBANON, NH
SUBDIVISION REGULATIONS - TECHNICAL CHECKLIST
MINOR LOT LINE ADJUSTMENT / BOUNDARY LINE AGREEMENT

Plan Requirements (cont.)	Info. Provided	Waiver Sought
8.2.A(8) - The plat shall be titled to include the names of the owners of all lots altered by the application.	☒	☐
8.2.A(9) - A statement shall be placed on the plat as follows: "This plan shows Minor Lot Line Adjustments / Boundary Line Agreements and does not require the approval of the Lebanon Planning Board as a subdivision."	☒	☐

NOTE: THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE REQUIRED INFORMATION PURSUANT TO SECTION 8 OF THE SUBDIVISION REGULATIONS. PLEASE BE AWARE THAT THIS CHECKLIST IS FOR INFORMATION AND GUIDANCE ONLY AND DOES NOT REPRESENT THE LAW DICTATING SUBMITTAL REQUIREMENTS NOR IS IT COMPLETE AND INCLUSIVE THEREOF.

Completed By: 

Planning office Use Only:

Date Received ___/___/___ Checklist Complete YES or NO Checked by: _____

(Last Revised 05/22/13)

WARRANTY DEED

Know All by These Presents That we, **ROBERT E. OWENS** and **BRENDA L. OWENS**, husband and wife, of Lebanon, in the County of Grafton and State of New Hampshire, for consideration paid, grant to **DUSTIN MELTZER** and **TONG FEI MELTZER**, whose mailing address is 161 Meriden Road, Lebanon, New Hampshire 03766, as joint tenants with rights of survivorship, with WARRANTY covenants,

A certain tract of land, with the buildings thereon, situate in Lebanon, in the County of Grafton and State of New Hampshire, on the easterly side of Meriden Road as shown on a plan entitled "Lot Line Adjustment Plan prepared for Dustin Meltzer & Tong Fei Meltzer and Robert E. Owens and Brenda L. Owens in Lebanon, Grafton County, New Hampshire" as drawn by Ronald D. Taber, Vive Libre Geomatics, dated 11/12/24, Drawing 24035-bo, and recorded as Plan # ___, in the Grafton County Registry of Deeds, being more particularly bounded and described as follows:

Beginning at a 3/4" capped rebar in the easterly line of Meriden Road at the northwest corner of property of Amanda J. Feno;

Thence proceeding North 35°08' 40" East along the northerly line of said Feno property a distance of 34.95 feet to 3/4" capped rebar;;

Thence proceeding North 04°18' 50" East along the northerly line of said Feno property a distance of 107.00 feet to a point;

Thence turning and proceeding North 50°20' 00" West along the northerly line of other land of the grantees a distance of 69.90 feet to 3/4" capped rebar;

Thence turning and proceeding South 06°37' 10" West distance of 28.95 feet to 3/4" capped rebar;

Thence proceeding South 02°12' 40" East distance of 121.00 feet to 3/4" capped rebar at the east line of Meriden Road;

Thence turning and proceeding South 39°00' 20" East along the easterly line of Meriden Road a distance of 38.75 feet to the point of beginning;

Reserving and excepting, however, for the benefit of the grantors, their successors and assigns, a right of way over the existing driveway for all purposes of access from Meriden Road to the grantors' premises for a distance of and proceeding along said driveway a distance of 121 feet from Meriden Road.

The above premises shall become a part of and annexed to City of Lebanon Lot 121-5, being the adjoining premises of the grantees, and is subject to the terms and conditions of the Boundary Line Adjustment approved by the City of Lebanon Planning Board as stated in the Notice of Action dated _____.

We the grantors release all rights of homestead and other interests therein.

Meaning and intending hereby to convey a portion of the premises as conveyed to the grantors herein by warranty deed of from Anna Mae Mayer and Gina L. Sonne, which deed is dated June 1, 1999, and recorded at Book 2396, Page 502 in the Grafton County Registry of Deeds.

DATED this ____ day of _____, 202_.

Robert E. Owens

Brenda L. Owens

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON:

On this ____ day of _____, 202_, before me personally appeared Robert E. Owens and Brenda L. Owens, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed same for the purposes therein contained.

Seal:

Justice of the Peace/Notary Public
My commission expires:

WARRANTY DEED

Know All by These Presents That we, **DUSTIN MELTZER** and **TONG FEI MELTZER**, husband and wife, of Lebanon, New Hampshire, consideration paid, grant to **ROBERT E. OWENS** and **BRENDA L. OWENS**, husband and wife as joint tenants with the right of survivorship, with a mailing address of 163 Meriden Road, Lebanon, New Hampshire 03766, with WARRANTY COVENANTS,

A certain tract of land, with the buildings thereon, situate in Lebanon, in the County of Grafton and State of New Hampshire, on the easterly side of Meriden Road as shown on a plan entitled "Lot Line Adjustment Plan prepared for Dustin Meltzer & Tong Fei Meltzer and Robert E. Owens and Brenda L. Owens in Lebanon, Grafton County, New Hampshire" as drawn by Ronald D. Taber, Vive Libre Geomatics, dated 11/12/24, Drawing 24035-bo, and recorded as Plan # ___, in the Grafton County Registry of Deeds, being more particularly bounded and described as follows:

Beginning at a 1 $\frac{3}{4}$ " iron pipe in the easterly line of Meriden Road, also known as School Street, said point being the southwesterly corner of land formerly owned by Michael M. Morris and Heather M. Baker Morris and the northwesterly corner of the premise here conveyed;

Thence North 45° 36' 40" East along the southerly line of said Morris land a distance of 83.70 feet to a 3/4" VLG Capped Rebar LLS 943 (Set 6" Reveal);

Thence turning and proceeding South 38° 10' 30" East a distance of 89.75 feet to 3/4" iron pipe found;

Thence turning and proceeding South 47° 32' 20" West along other land of the grantees a distance of 82.40 feet to a 3/4" VLG Capped Rebar LLS 943 (Set 6" Reveal) at the easterly line of Meriden Road;

Thence turning and proceeding North 38° 57' 00" West along the easterly line of Meriden Road a distance of 86.8 feet to the point of beginning;

Excepting and reserving to the grantors, their successors and assigns, an easement for the placement of underground utilities within an area twenty (20) feet in width extending from the southerly boundary of the adjacent premises of Michael M. and Heather Morris shown on said plan, and running easterly from Meriden Road to Lot 121-5, being the other premises of the grantors. The grantors may install such underground utilities within said 20 foot area, restoring the premises as reasonably as possible upon the completion of any such installation.

The above premises shall become a part of and annexed to City of Lebanon Lot 121-6, being the adjoining premises of the grantees and is subject to the terms and conditions of the Boundary Line Adjustment approved by the City of Lebanon Planning Board as stated in the Notice of Action dated _____.

We the grantors release all rights of homestead and other interests therein.

Meaning and intending to convey a portion of the premises as conveyed to the grantors herein by Fiduciary Deed of Bar Harbor Wealth Management and Anthony J. Galdieri, as Co-Trustees of the Stephen C. Cole Revocable Trust, which deed is dated February 13, 2023, and recorded in Book 4784, Page 991, in the Grafton County Registry of Deed.

IN WITNESS WHEREOF, We have here set our signatures this _____ day of _____, 2024.

Dustin Meltzer

Tong Fei Meltzer

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

_____, 2024

Personally appeared Dustin Meltzer and Tong Fei Meltzer, known or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged the same to be their voluntary act and deed.

Before me,

seal:

Justice of the Peace/Notary Public
My commission expires:

CERTIFIED NOTIFICATION LIST

Notice shall be sent by certified mail to the Owner; Applicant, if different from Owner; Abutters; Holders of conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property; the holders of easements, rights-of-way, and other restrictions; and every engineer, architect, land surveyor, or soil or wetlands scientist whose seal appears on any plan submitted to the Board; and any other persons required by RSA 676:4, I(d). The names and mailing addresses shall be furnished by the Applicant.

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

Map & Lot Number: 161-6	Map & Lot Number: 161-5
Property Owner: Robert & Brenda Owens 163 Meriden Road Lebanon, NH 03766	Applicant, Co-Applicant, Agent, or Lessee: Dustin & Tong Fei Meltzer 161 Meriden Roa Lebanon, NH 03766
Map & Lot Number: 121-3	Map & Lot Number: 121-4
Arnold Patch 9 Reservoir Road Framington, CT 06032	Joanne Stone 160 Meriden Road Lebanon, NH 03766
Map & Lot Number: 121-8-100	Map & Lot Number: 121-9
Christian Avery 167 Meriden Road Lebanon, NH 03766	Robert Kerin-Herrick 169 Meriden Road Lebanon, NH 03766

Map & Lot Number: 107-212	Map & Lot Number: 121-8
Michael Morris 131 School Street Lebanon, NH 03766	Amanda Feno 165 Meriden Road Lebanon, NH 03766
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:

(Revised 2/8/2024)

FEE SCHEDULE LEBANON PLANNING BOARD

Adopted January 24, 2022

LOT LINE ADJUSTMENT (Boundary Line Adjustment)		
	TOTALS	
FILING FEE	\$25.00	\$25.00
ADVERTISING FEE	\$100	\$100
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) @ \$1.73 X 8 notices	\$5.00 \$ 45.84 (abutter certified)
TOTAL DUE		\$ 170.84

MINOR SUBDIVISION		
	TOTALS	
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE AT TIME OF FILING		\$

**Engineering Review fees may also be required. See note on page 2.

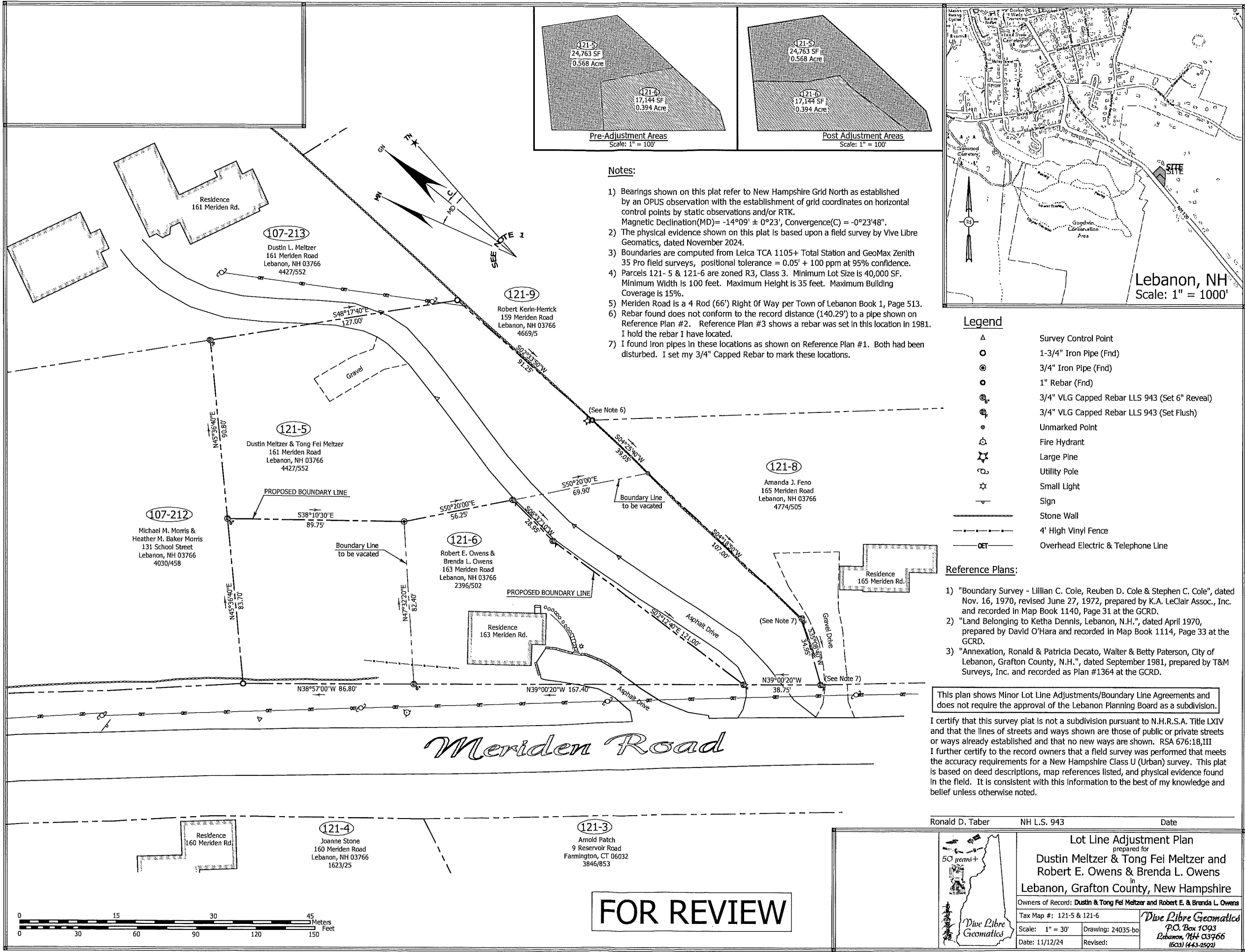
PRELIMINARY REVIEW OF A MAJOR SUBDIVISION		
	TOTALS	
FILING FEE	\$200.00	\$200.00
NUMBER OF LOTS* _____	\$30.00 per lot*	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE AT TIME OF FILING		\$

*Or units when the subdivision does not create individual lots.
**Engineering Review fees will also be required. See note on page 2.

FINAL REVIEW OF A MAJOR SUBDIVISION		
	TOTALS	
FILING FEE	\$500.00	\$500.00
FIRST FIVE (5) LOTS*	\$75.00 per lot*	
NUMBER OF LOTS 6+*	\$150.00 per lot*	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE TIME OF FILING		\$

*Or units when the subdivision does not create individual lots.
**Engineering Review fees will also be required. See note on page 2.

SITE PLAN REVIEW		
	TOTALS	
FILING FEE	\$250.00	\$250.00
SQUARE FOOTAGE	\$75.00 per 1,000 sq. ft. (gross floor area)	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)



APPLICATION FOR

Agenda Item 3.F

January 13, 2025 Planning Board Meeting

Page 1 of 90

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

PROPERTY OWNER (APPLICANT):

NAME: City of Lebanon TEL.#: (603) 448-4220

MAILING ADDRESS: 51 North Park Street, Lebanon, New Hampshire 03766

E-MAIL ADDRESS: David.Brooks@lebanonnh.gov

CO-APPLICANT, AGENT, OR LESSEE:

NAME: TEL.#:

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 77 LOT#: 106 PLOT #: ZONE: R-3

STREET ADDRESS OF PROJECT: 0 Barrows Street

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

SCOPE OF PROJECT:

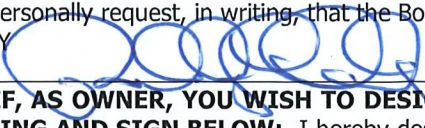
Phase II of a 5-unit cottage development.

TYPE OF OCCUPANCY:

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

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on January 13, 2025, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER:  DATE: 12/9/2024

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

PROPERTY OWNER: _____ DATE: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #



CITY MANAGER'S OFFICE
City of Lebanon, NH
51 North Park Street
Lebanon, NH 03766
(603) 448-4220 fax (603) 966-3122

TO: City of Lebanon Planning Board
FROM: David Brooks, Deputy City Manager
DATE: December 6, 2024
RE: Proposed Development of City-Owned Property situated at 0 Barrows Street,
Tax Map/Lot: 77-106

To the Lebanon Planning Board:

On April 21, 2022, the City Council unanimously adopted a "Resolution on Housing" directing the City Manager to take steps to enable, incentivize, and partner in the development of housing needs not currently being addressed by the market through a variety of actions. Since that time, zoning amendments have been adopted enabling the creation of "cottage cluster" housing developments, revising the manufactured home park regulations, and allowing the Planning Board to grant increased density bonuses for certain developments. Other zoning amendments related to Accessory Dwelling Units (ADUs) have been adopted to further streamline the regulations based on the City's ongoing experience with development of such units.

Among the additional steps outlined in the April 2022 housing resolution is to "partner with the Lebanon Housing Authority and other residential developers to utilize city-owned properties for the development of new housing units, including the possibility of a 'demonstration project' on a city-owned parcel with high visibility and an opportunity for a reasonable number of units to help overcome barriers to affordability."

In February 2024, the City Council determined, in accordance with City Council Policy, CC-102, Real Property Transactions, that several city-owned parcels, including two located along Barrows Street (Tax Parcels 77-106 and 77-107), have redevelopment potential and are suitable for redevelopment as part of designated Redevelopment Areas. In May, the Council voted to discontinue the portion of Barrows Street, which separated the two city-owned parcels. Following the discontinuance, the City merged the now-contiguous properties into a single parcel and the current boundary and topographical survey reflects the merger.

On August 12, 2024, the Lebanon Planning Board granted Site Plan Review approval allowing the City to complete preliminary site work including clearing, grading, and filling for a proposed future residential development. Subsequently, on August 22, 2024, the NH Department of Environmental Services issued a Wetlands and Non-Site Specific Permit to authorize impacts to a small (<950 sqft), isolated wetland in the south-central portion of the property. Work authorized by the Planning Board and NHDES approvals has been completed and the site is stabilized until further development is approved.

Working with Studio Nexus Architects and Park Architecture, the City has prepared a final Site Plan layout in compliance with the adopted Cottage Development regulations set forth in Section 509 of the Zoning Ordinance. Attached is a support statement of how the project complies with the Section 509 regulations and the general Conditional Use criteria of Section 302.4.D.

Since the development consists of multiple, individual units on a single parcel, the project also meets the definition of a subdivision under the City's regulations and state law. However, as proposed, there are no internal lot boundaries for the individual units and no new public roads or infrastructure on the site. As a result, many of the typical subdivision regulations may be inapplicable to the project. For this reason, we are requesting that the Planning Board waive the requirement for Design Review of a Preliminary Layout pursuant to Section 10.2.F of the Subdivision Regulations and allow this project to proceed directly to Final Plat Review pursuant to Section 10.3 of the Regulations.

It is anticipated that the development will be subject to a condominium form of ownership, and that responsibility for common improvements will be shared through an Owners Association, the details of which are still being worked out with the City's attorney.

A portion of the on-site parking is proposed to be covered with an open carport structure, but inclusion of the structure will be dependent on the final construction cost estimates. The site layout has been designed to comply with fire department requirements for access and circulation. Perimeter landscaping and screening are proposed based on regulatory requirements and include a segment of screening fence at the request of the adjacent property owner.

The enclosed application materials include the following:

- Application for Site Plan Review, Subdivision Review, and Conditional Use Permit
- Certified Notification List
- Subdivision and Site Plan Review Technical Checklists
- List of written waiver requests pursuant to Section 7.1 of the Site Plan Review Regulations and Section 7.15 of the Subdivision Regulations
- Digital copy of the plan set in .PDF format
- Copy of the April 21, 2022 Resolution on Housing adopted by the City Council

Councilor Whittlesey MOVED the following:

RESOLVED, the Lebanon City Council hereby directs the City Manager to take steps to Enable, Incentivize, and Partner in the development of housing needs not currently being addressed by the market through the following actions:

- 1. Prepare amendments to the Zoning Ordinance to enable the creation of “cottage cluster” housing developments on appropriate parcels in the City.***
- 2. Prepare amendments to the Zoning Ordinance to revise the regulations for Manufactured Home Parks, Manufactured Home Subdivisions, and Manufactured Home Planned Unit Residential Developments (PURDs) to better reflect the existing Manufactured Home developments within the City and manufactured homes that are in production today.***
- 3. Prepare amendments to the Zoning Ordinance to complete the Increased Density Bonuses table set forth in Section 507.1 and to develop Criteria for the Award of Bonus set forth in Section 507.2.***
- 4. Develop regulations and guidance for the creation of Housing Opportunity Zones (pursuant to RSA 79-E:4-c) and/or Residential Housing Revitalization Zones (pursuant to RSA 79-E:4-b) to incentivize desirable forms of development.***
- 5. Partner with the Lebanon Housing Authority and other residential developers to utilize city-owned properties for the development of new housing units, including the possibility of a “demonstration project” on a city-owned parcel with high visibility and an opportunity for a reasonable number of units to help overcome barriers to affordability.***
- 6. Study and evaluate the benefits and impacts of Accessory Dwelling Units (ADUs) and potential barriers to ADU development and prepare guides, fact sheets, and educational materials to help reduce potential impacts and reduce regulatory and non-regulatory barriers.***
- 7. In each of the above actions, consider enabling, incentivizing, or demonstrating affordable net zero energy or zero energy-ready homes.***

Seconded by Councilor Wilkie. The vote on the motion was unanimously approved (9-0).

Section 509: Cottage Developments

§509.1 Purpose: The layout consists of five, one-story, detached residential units surrounding a central courtyard, each with approximately 930 square feet of gross living area. The proposed units are based on an Irene Cottage design developed by Studio Nexus, which has been modified to provide access to a full basement for additional storage or living space. The proposed units are comparable to, or slightly smaller than, most of the surrounding dwellings on Barrows Street and Winter Street.

§509.2 Applicable Use Districts: The subject property is a Class 1 lot (served by municipal water and sewerage) situated in the R-3 zoning district and Cottage Developments are allowed by Conditional Use permit.

§509.3 Number and Arrangements of Units: The proposed project consists of five (5) cottages in a single cluster with each unit fronting on a central courtyard area.

§509.4 Lot Size: The subject property is approximately 2.09 acres, or 91,125 square feet, in size, whereas a minimum lot area of 40,000 square feet is required.

§509.5 Density and Building Coverage: As proposed, five units on 91,125 square feet represents a density of approximately 1 unit per 18,225 square feet, well above the 1 unit per 2,500 square foot requirement. Building coverage for the five proposed units, including the potential carport structure, totals just under 6,000 square feet or about 6.59% of the lot area, whereas up to 35% building coverage is permitted.

§509.6 Design Standards:

- A. **Individual Cottage Spaces:** Including the fenced-in front garden area and approximately 5 feet of curtilage around each building, each unit is situated on a “building site” of at least 1,800 square feet, whereas a minimum of 1,500 square feet is required.
- B. **Detached Cottages:** One hundred percent (100%) of the units in the proposed Cottage development are detached units.
- C. **Interior Setbacks:** Each of the proposed units is separated by a minimum of 10 feet from all other structures as required.
- D. **Common Open Space:** As proposed, the central courtyard area, which includes a shared patio and barbeque grill station, measures approximately 2,868 square feet (excluding the surrounding shared walkways), which exceeds the minimum requirement of 2,000 square feet (400 square feet per cottage x 5 cottages).
- E. **Roofs and Porches:** The highest point of the roof on each of the one-story cottages will be less than 24 feet as measured from the front of each structure. In addition, each cottage will have a 78 square foot (6 feet x 13 feet) unenclosed, covered front porch/entry, which is oriented toward the common courtyard area.
- F. **Parking Location and Screening Requirements:** The subject property is situated directly off the end of Barrows Street. The parking area is located off the end of the paved roadway with landscape screening and/or fencing provided for each adjacent property to the maximum extent possible. The proposed cottage units and the central courtyard area are situated to the side of the parking and circulation areas, but still provide for the required fire department access to within 50 feet of each structure.

- G. Existing Dwellings: The subject property is currently vacant and there are no existing dwellings or structures on the property.
- H. Street Facing Facades: Each of the proposed cottage units is oriented to front on the central courtyard. The sides facing the parking area and the end of the adjacent public street will not include “blank walls”, but will have multiple windows appropriately sized and located based on the interior uses of each structure.

Section 302.4.D: Conditional Use Approval Standards

- 1. Site Suitability:
 - a. The subject property is situated at the end of Barrows Street right-of-way and vehicular access is provided directly from the end of the existing paved roadway. The project includes 11 parking spaces, including 2 accessible spaces, for the 5 dwelling units, with adequate circulation and maneuverability for emergency and service vehicles. There are no existing sidewalks along Barrows Street, which is a relatively low-volume, low-speed local street. Within the site, the paved walkways connect the parking area to the individual units and surround the central courtyard area to provide for internal connectivity and opportunities for social interaction and encounters.
 - b. The proposed project is situated immediately adjacent to other existing dwellings on Barrows Street and the adjacent Winter Street neighborhood, which are already adequately served by emergency services and other public facilities.
 - c. The proposed cottage development has been designed to avoid impacts to a large wetland complex that occupies the northerly half of the property between the development site and Interstate 89. That wetland, and the existing vegetation located there, will provide a buffer of 200 feet or more from the Interstate itself. The New Hampshire Department of Environmental Services approved impacts to a smaller (<950 square foot), hydrologically-isolated wetland on the property. There are no floodplain areas or steep slopes on the property.
 - d. The subject property is proximate to existing public services including municipal water and sewerage. A water main loop already passes through the property, which will be realigned slightly to permit the construction of the proposed cottage units. The nearest sewer manhole is located on Barrows Street approximately 75 feet from the parcel boundary. A new sewer manhole will be located just inside the property boundaries, with service connections from each of the cottage units. Storm drainage from the proposed project will be managed and treated on-site prior to release into the adjacent wetland.
- 2. External Impacts: The density of the proposed cottage development is approximately 1 unit per 18,225 square feet, which is similar to many of the individual properties in the immediate vicinity. In addition, the proposed cottage units are comparable to, or slightly smaller than, most of the surrounding structures on Barrows Street and Winter Street, which include a mix of one-story and two-story residences. The amount of storm drainage, traffic, noise, odors, vibrations, dust, fumes, and exterior lighting are expected to be comparable to or less than what is typical for an individual home in a primarily single-family neighborhood.

3. Character of the Site Development: As a new cottage development, the layout and design of the property is not incompatible with the surrounding neighborhood and what is allowed under the current zoning regulations. The layout and design are clearly residential in scale and character, and the site design includes vegetative screening and fencing to minimize impacts to adjacent properties. The proposed cottage units are situated a similar distance from the front property boundary as adjacent residences along Barrows Street, and adequate vehicular access to and pedestrian access within the site are provided.
4. Character of the Buildings and Structures: The design of the detached, one-story, one-family cottages is similar to or slightly smaller in size and massing than many of the surrounding residential properties along Barrows Street and Winter Street.
5. Preservation of Natural, Cultural, Historic, and Scenic Resources: The proposed cottage development has been designed to avoid impacts to a large wetland complex that occupies the northerly half of the subject property between the development site and Interstate 89. That wetland, and the existing vegetation located there, will provide a substantial buffer of 200 feet or more from the Interstate itself. The New Hampshire Department of Environmental Services approved impacts to a smaller (<950 square foot), hydrologically-isolated wetland on the property. There are no floodplain areas, steep slopes, or other significant natural resources on the property. There are no known historic or cultural resources on the property, likely due to past impacts from the construction of Interstate 89 and installation of a water main loop through the property.



City of Lebanon, New Hampshire APPLICATION FOR WAIVERS

Office Use Only

Date Received: _____

File No.: _____

PROJECT INFORMATION

Name of Applicant: City of LebanonProject Name: Barrows Street Cottage DevelopmentProject Address: 0 Barrows Street

WAIVER REGULATIONS

In order to grant a Waiver from a requirement of the City of Lebanon Site Plan Review or Subdivision Regulations, the Planning Board must find that the Waiver is justified under one of the following criteria (See Article VII of the Site Plan Review Regulations and Section 7.15 of the Subdivision Regulations):

Criteria A. Strict conformity would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulations;

OR

Criteria B. Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

WAIVER REQUEST(S)

I (we) hereby request a Waiver from:

[You can respond in the space provided, or attach a separate statement. Please be prepared to address each request during your public hearing. You must show that you have justified granting the Waiver(s).]

- Section ^{5.1.E(7)} of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because the shape, size, height, and location of all existing structures within 200 feet of the site are not relevant to the proposed cottage development.
- Section N/A of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because Preliminary subdivision review is not necessary because the proposed project is a cottage development. Section 10.2.F allows the Board to waive Design Review when it determines that specific circumstances do not require such review. In this case, no new lot lines, public streets, or public utilities are proposed as part of the project, so most subdivision criteria do not apply.

5.1.E.8 & 5.1.E.15

Partial

3. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because delineation of large wetland to the north of the cottage development will remain undisturbed.
-
-
-

5.1.E.16

Partial

4. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because the northern area of the lot is heavily wooded and will remain undisturbed.
-
-
-

5. Section 6.2.D.1 of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because the cottage development requires flexibility in site and design standards to achieve an affordable and compact design.
-
-
-

6. Section 6.5.C.1 of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because the cottage development is at the end of Barrows Street and is designed to face the common open space.
-
-
-

7. Section 6.5.C.2 of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because the cottage development is designed to have the primary entrance of each cottage face the common open space.
-
-
-

10.4.C.2(d)

8. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____
- The City is already engaged in discussions with its legal counsel concerning the development of these documents, which will be a requirement of the Attorney General's Office in connection with registering the condominium. However, because of the complexity of the intended conveyance of the units to "public employees" of the City, School District, and Housing Authority, and the inclusion of mechanisms to maintain long-term affordability, such documents may take longer than typical to be generated. Nevertheless, as is common in all other subdivision projects, the documents will be prepared and reviewed to the satisfaction of the City's attorney.

S:\PLN\FORMS - APPLICATION\Planning Board Applications\WAIVER\Waiver Application.docx

12.2.F & 12.8.A

9. ☒ Section ____ of the (circle one) ~~Site Plan Review~~ / ~~Subdivision Regulations~~. A Waiver of this Section meets (circle one) **Criteria A** / **Criteria B** because _____
- The City requests a waiver from the requirement to submit such documents as part of the final subdivision review. The City anticipates that the common open space as well as the undeveloped portions of the property will be owned and maintained by an owner's association, subject to appropriate C&Rs, and that such documents will be prepared and reviewed to the satisfaction of the City's attorney, as is typically the case with other subdivision

10. ☒ Section ^{12.3} ____ of the (circle one) ~~Site Plan Review~~ / ~~Subdivision Regulations~~. A Waiver of this Section meets (circle one) **Criteria A** / **Criteria B** because The proposed application for 5 detached cottages for owner occupancy complies with the definition of subdivision under the City's subdivision regulations and state statute. However, because individual lots or parcels are not proposed, and the project does not involve the creation of new streets or extension of existing streets, many of the most common subdivision submission and design requirements are not applicable to this project. To the extent that only 5 cottage units are proposed, the City requests a waiver from the requirement to provide fiscal, traffic and other impact statements for the project.

11. ☒ Section ^{10.4.C.2.b} ____ of the (circle one) ~~Site Plan Review~~ / ~~Subdivision Regulations~~. A Waiver of this Section meets (circle one) **Criteria A** / **Criteria B** because Upon receipt of all applicable approvals, the City expects to issue a Request for Proposals to identify a qualified and capable developer / builder to complete the construction phase of the project. Through the RFP process, the City will obtain a much more refined estimate of project costs for use in any required Performance Security Agreement. Depending on timing required to file condominium documents with the Attorney General's Office, and when the City expects to begin offering the units for sale to prospective purchasers, it may not be necessary to record the subdivision plat prior to the substantial completion of the on- and off-site improvements.

12. ☒ Section ^{6.7.C.1 & 6.7.B.2} ____ of the (circle one) ~~Site Plan Review~~ / ~~Subdivision Regulations~~. A Waiver of this Section meets (circle one) **Criteria A** / **Criteria B** because The lighting design generally meets the requirements with only minor discrepancies.

13. ☒ Section ____ of the (circle one) ~~Site Plan Review~~ / ~~Subdivision Regulations~~. A Waiver of this Section meets (circle one) **Criteria A** / **Criteria B** because _____

14. ☒ Section ____ of the (circle one) ~~Site Plan Review~~ / ~~Subdivision Regulations~~. A Waiver of this Section meets (circle one) **Criteria A** / **Criteria B** because _____

SIGNATURE

I (we) hereby submit this application to the Planning Board and attest that to the best of my (our) knowledge all of the information on this application form and in the accompanying application materials and documentation is true and accurate. As the applicant or as the agent of the applicant, I attest that I am duly authorized to act in this capacity.

Signature of Applicant: _____ Date: _____

CERTIFIED NOTIFICATION LIST

Notice shall be sent by certified mail to the Owner; Applicant, if different from Owner; Abutters; Holders of conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property; the holders of easements, rights-of-way, and other restrictions; and every engineer, architect, land surveyor, or soil or wetlands scientist whose seal appears on any plan submitted to the Board; and any other persons required by RSA 676:4, I(d). The names and mailing addresses shall be furnished by the Applicant.

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

Map & Lot Number: 77-106	Map & Lot Number:
Property Owner: City of Lebanon 51 North Park Street Lebanon, New Hampshire 03766	Applicant, Co-Applicant, Agent, or Lessee:
Map & Lot Number: 48-2	Map & Lot Number: 77-83
Richard Marchese, Trustee Brickyard One Nominee Trust Post Office Box 720 Middleton, Massachusetts 01949	Max James Seidman & Angel Zhang 53 Winter Street Lebanon, New Hampshire 03766
Map & Lot Number: 77-85	Map & Lot Number: 77-86
Mark A. & Rebecca J. Kidder 41 Winter Street Lebanon, New Hampshire 03766	Thuy Hone & Stephen Le 37 Winter Street Lebanon, New Hampshire 03766

Map & Lot Number: 77-87	Map & Lot Number: 77-105
Wanda Jean Bachmann 29 Winter Street Lebanon, New Hampshire 03766	Randall A. & Lourie A. Herrin 44 Stoney Brook Road Lebanon, New Hampshire 03766
Map & Lot Number: 77-108	Map & Lot Number: 77-111
Home Crafters, LLC 4253 Allen Hill Road South Royalton, Vermont 05068	Zenia Mae Valdiviezo 49 Juniper Circle Lebanon, New Hampshire 03766
Map & Lot Number:	Map & Lot Number:
NHDOT District 2 7 Hazen Drive Concord, New Hampshire 03302	
Consultant: Landscape Architect	Consultant Wetlands Scientist
Paul Simon Park Architecture 3 Schoolhouse Lane, Suite #1 Etna, New Hampshire 03750	Rick Van de Poll, Ph.D. Ecosystem Management Consultants of NE 30 North Sandwich Road Center Sandwich, New Hampshire 03227-3326
Consultant: Architect	Map & Lot Number:
Doug Sonsalla Studio Nexus 46 South Main Street White River Junction, Vermont 05001	
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:

(Revised 2/8/2024)

CITY OF LEBANON, NH SITE PLAN REVIEW REGULATIONS TECHNICAL CHECKLIST	
PROJECT NAME: BARROWS STREET COTTAGE DEVELOPMENT	
APPLICANT: CITY OF LEBANON	DATE: 12/9/2024
GENERAL SUBMISSION REQUIREMENTS:	

All applications to the Planning Board for Site Plan Review must be submitted by 12:00 Noon on the day of the filing cutoff. [§4.7.B] Submissions must be accompanied by the following information or review of the application may be delayed:

- ✓ A properly completed and signed Application Form (available at www.lebanonnh.gov). [§5.1.A]
- N/A The appropriate filing fees. [§5.1.B]
- ✓ A written project description. [§5.1.C]
- ✓ A list of the names and mailing addresses of all persons to be notified, by certified mail, of the public hearing. [§5.1.D]
- ✓ A completed and signed Application for Waivers (available at www.lebanonnh.gov) [§5.1.G.3]
- ✓ A completed and signed Technical Checklist (available at www.lebanonnh.gov). [§4.7.B]
[Applicants must complete the entire checklist to ensure that all necessary information and materials have been provided with the application or that written requests for waivers have been properly provided in accordance with Article VII of the Site Plan Review Regulations, as appropriate.]
- ✓ Two (2) full-size sets of the Site Plan set. [§5.1.E]
- ✓ A digital copy of the Site Plan set in .PDF format. [§5.1.F]

NOTE: Applications shall contain sufficient information to enable the City Staff and the Planning Board to evaluate the proposed development for compliance with the Zoning Ordinance, the Planning Board's Regulations, and other applicable City Codes, and for the Planning Board to make an informed decision.

All required application materials shall be submitted as a single inclusive package, including any appropriate waiver requests as permitted by the Regulations. Submission of a complete application package ensures that the review process by City Staff is as efficient and effective as possible.

The purpose of the filing deadline is to provide adequate time for City review of the proposal. Submission of any altered, additional, or substitute application materials required by Article V of these Regulations, subsequent to the filing deadline, other than as directed by City Staff, shall cause the application to be deemed untimely filed, and such application shall not be heard until a subsequent month.

CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST

PLAN SUBMITTAL TECHNICAL CHECKLIST:

NOTE: Site plan drawings shall include the information described below pursuant to Article V of the Lebanon Site Plan Review Regulations. Plans shall be submitted on sheets no larger than 24" x 36". Plan sets with multiple sheets shall include sheets of uniform size and be bound on the left edge. When more than three (3) sheets are required, an additional cover sheet shall be attached including a table of contents. A scale of not smaller than one (1) inch equals 40 feet is suggested. All lettering shall be of a size and type that is legible.

In order to facilitate the use of the City's Geographic Information System (GIS) for planning purposes, all surveys and engineered plans submitted for Site Plan Review shall utilize the NH State Plane Coordinate system and shall reference the North American Vertical Datum of 1988 (NAVD 88), unless prior approval to use an alternate coordinate system and/or vertical datum is granted by the Planning & Development Department.

A written request for waiver shall be required, pursuant to Article VII of the Site Plan Review Regulations, for any submission requirement for which the information or data is not provided by the applicant. [§5.1.G(4)] NOTE: The submission requirements described in paragraphs 5.1.E(1) through 5.1.E(4) shall not be waivable under the procedures of Article VII of the Site Plan Review Regulations. [§5.1.E]

[Checklist begins on following page]

[illegible]

CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST

Plan Requirements (cont.)	Info. Provided	Waiver Sought
5.1.E(6) - Existing and proposed grades, including topographic contours, with spot elevations. Where the grade is less than 20%, the contours shall be at 2-foot intervals; otherwise they shall be at 5-foot intervals. All contours shall be referenced to USGS or FEMA Flood Insurance Rate Map (FIRM) datums, as appropriate. Existing topographic information shall be prepared by a professional engineer registered in New Hampshire or land surveyor licensed in New Hampshire.	☒	☐
5.1.E(7) - Shape, size, height, and location of all existing structures located on site and within 200 feet of site.	☐	☒
5.1.E(7) - Elevation views indicating shape, size, height, and location of all proposed structures, including expansions of or additions to existing buildings. Such elevation views shall provide sufficient detail to allow for review by the Board and City staff of the adequacy of proposed access and egress points, walkways, lighting, and other site-related improvements.	☒	☐
5.1.E(8) - Location of existing natural features such as streams, marshes, lakes, ponds, wetlands, rock outcrops, or wooded areas, and existing man-made features such as roads and structures. Indicate those natural and man-made features that are to be removed, retained, or altered.	☒	☐
5.1.E(8) - Wetlands on the property shall be delineated by a NH Certified Wetlands Scientist, whose seal and signature shall appear on the plan. Documentation in the form of U.S. Army Corps of Engineers New England District Wetlands Delineation Data Sheets and/or other field notes and materials concerning the delineation shall be submitted.	☒	☐
5.1.E(9) - Zoning District, Tax Map and Lot number, and use of abutting properties within 200 feet of property.	☒	☐
5.1.E(9) - Location of streets, pedestrian paths/trails, and bicycle routes within 200 feet of the site boundary; and the location of curb cuts and vehicle accesses within 200 feet of the site boundary.	☒	☐
5.1.E(10) - Proposed streets, driveways, emergency vehicle accesses, parking spaces, and sidewalks, with indication of dimensions and direction of travel. Show required sight distances at curb cuts and dimensions for the inside radii of all curves.	☒	☐
5.1.E(10) - Vehicle and bicycle parking spaces shall be numbered.	☒	☐
5.1.E(10) - Loading spaces and facilities used in connection with any structures on the site shall be shown	☒	☐
5.1.E(10) - Total square footage and percentage of the lot covered by impervious cover shall be shown.	☒	☐
5.1.E(11) - Parking area safety measures including raised crosswalks/speed tables, signage, walkway lighting, striping and similar markings such as dedicated pedestrian/bicycle crossings and lanes through parking areas, fire lanes, compact and/or electric vehicle parking/charging, parking wayfinding, ADA signage and access aisles.	☒	☐
5.1.E(12) - Size and location of all existing and proposed public and private utilities. (Note: the applicant is encouraged to submit a Sewer Use Permit Application and obtain a Notice of Permitted Allocation, and to obtain a Water Use Permit prior to submission of the Site Plan Review application.)	☒	☐

CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST

Plan Requirements (cont.)	Info. Provided	Waiver Sought
5.1.E(13) - Plan for outdoor lighting showing proposed location, mounting height, fixture type, lamp type, color correlated temperature (CCT), and wattage of all exterior free-standing lighting or building-mounted fixtures.	☒	☐
5.1.E(13) - Analyses and illuminance-level diagrams, to include average and minimum foot-candle measurements, showing that proposed installation conforms to the lighting-level standards in Site Plan Review Regulations.	☒	☐
5.1.E(13) - Manufacturer's specification information for each proposed light fixture and lamp (NOTE: This information may be provided on the plan or as a separate attachment).	☒	☐
5.1.E(13) - Drawings of all relevant building elevations showing location and height of all building-mounted fixtures, the portions of any walls or architectural features to be illuminated, illumination levels of walls or architectural features, and aiming points for any remote light fixtures.	☒	☐
5.1.E(14) - Plan for location of free-standing or building-mounted signs, including location, mounting, aiming, and shielding of any remote light fixtures for externally-lit signs.	☒	☐
5.1.E(14) - For internally-lit signs, relevant information concerning the method of illumination and the opacity of the sign background, showing that the proposed installation conforms to the requirements of the Regulations.	☒	☐
5.1.E(15) - The location and boundaries of any Overlay Districts established pursuant to Article IV of the Zoning Ordinance (including but not limited to the Wetlands Conservation District, Riverbank Protection District, Steep Slopes District, and Floodplain District) and, if applicable, protected shorelands pursuant to the Shoreland Water Quality Protection Act (NH RSA 483-B).	☒	☐
5.1.E(15) - For properties located within the Floodplain District, the 100-year flood elevation, floodway, shoreland protection zone, and flood plain limits shall be identified.	☒	☐
5.1.E(16) - Landscaping plan showing proposed new plantings to be installed and existing natural vegetation to be retained. Plan shall show in detail the number, size (height and/or caliper), and species (botanical and common names) of all proposed shrubs and trees.	☒	☐
5.1.E(16) - Existing trees over 12 inches in diameter (measured 4.5 feet above ground surface) within 25 feet of the disturbed area, must be counted and shown on the plan, if included towards fulfilling landscaping requirements.	☒	☐
5.1.E(16) - Calculations for square footage of perimeter landscaping.	☒	☐
5.1.E(16) - Parking lot shading calculations shall be provided by depicting new trees and shrubs at 10-year crown size.	☒	☐
5.1.E(17) - Existing and proposed surface and subsurface storm drainage facilities, including City storm drainage facilities located within 200' of site.	☒	☐
5.1.E(17) - Plans for retention, detention, slow release, and treatment of storm water shall be provided shall be provided in accordance with the requirements of Section 6.6.	☒	☐
5.1.E(18) - Section 6.6. Stormwater Management submission requirements.	See Stormwater Checklist	
5.1.E(19) - Plans for snow removal and storage.	☒	☐

CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST

Plan Requirements (cont.)	Info. Provided	Waiver Sought
5.1.E(20) - A plan for the development showing provisions for automobile, transit, bicyclist, and pedestrian access and circulation. Such plan shall show both existing and proposed means of access to the site including connections with, public streets, sidewalks, transit stops, and formal paths/trails. Plans shall include any traffic calming and traffic control devices necessary in conjunction with the site development, as well as the location of all existing transit routes and transit stops located or passing within 1/4 mile (1,320 feet) of the property.	☒	☐
5.1.E(21) - Construction detail drawings including, but not limited to, pavements, walks, steps, curbing, drainage structures, water and/or sewer utilities, ground-mounted signage (e.g., fire lanes, ADA parking, commercial), surface treatments, transit shelters, energy generation units (e.g., solar), bike rack style, electric vehicle charging, outdoor lighting, outdoor furniture, retaining walls, tree boxes and other site systems or structures. Accompanying specifications and cutsheets may be required.	☒	☐
5.1.E(21) - Where applicable, roadway, drainage, water and sewer utility profile drawings shall be provided at a scale of 1"=40 feet (horizontal) and 1"=4 feet (vertical) and typical cross-section drawings shall be provided at a scale of 1"=5 feet (horizontal and vertical), unless prior approval to use an alternate scale is granted by the Reviewing Engineer. (NOTE: Ordinarily, only two (2) sets of such construction drawings shall be provided to the Planning and Development Department with the application submission.)	☒	☐
5.1.E(22) - Depict any current and proposed easements, rights-of-way, and deed restrictions including those related to sewer, electrical utility, shared access, etc.	☒	☐
5.1.E(23) - For multi-family structures, plans for on-site recreational facilities.	☒	☐
5.1.E(24) - Where a fire, emergency equipment, or similar vehicle turnaround area is provided, it must have an adequate turn radius. Provide CAD Autoturn data or a similar basis of design for the turn radius, if requested by Lebanon Fire or Engineering staff. City staff may also ask for this information at any time.	☒	☐
Supporting Documents and Information, Where Applicable	Info. Provided	Not Applicable
5.1.G(1) - An estimated timetable, to include phasing schedules, for construction and completion of buildings, parking, facilities, landscaping, and other required improvements.	☒	☐
5.1.G(2) - Any development estimated to generate a net increase of 100 peak hour trips or 1,000 average daily trips (based upon the most current edition of the ITE Trip Generation Manual) shall prepare and submit a Traffic Impact Study in accordance with standard traffic analysis conventions as set forth by the NHDOT. The Board may, at its discretion, require the submission of a Traffic Impact Study for developments estimated to generate less than 100 peak hour trips or 1,000 average daily trips if the Board has reason to believe such development could adversely affect levels of service or have other adverse impacts.	☒	☐
5.1.G(3) - Written requests for waivers from all applicable provisions of these Regulations shall be provided pursuant to Article VII - "Waiver Procedure". (note: use Application for Waivers form).	☒	☐
5.1.G(4) - For multi-family dwelling developments and mixed-use developments resulting in a net increase of 50 dwelling units or more, the application shall include the information and impact statements identified in Section 6.9.B.	☒	☐

NOTE: THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE REQUIRED INFORMATION PURSUANT TO ARTICLE V OF THE SITE PLAN REVIEW REGULATIONS. PLEASE BE AWARE THAT THIS CHECKLIST IS FOR INFORMATION AND GUIDANCE ONLY AND DOES NOT REPRESENT THE LAW DICTATING SUBMITTAL REQUIREMENTS NOR IS IT COMPLETE AND INCLUSIVE THEREOF.

Completed By: Rob Fuley - City Engineer

Last Revised 9/20/21

Page 6 of 10

**CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST**

CITY OF LEBANON, NH STORMWATER REVIEW REGULATIONS TECHNICAL CHECKLIST	
PROJECT NAME: BARROWS STREET COTTAGE DEVELOPMENT	
APPLICANT: CITY OF LEBANON	DATE: 12/9/2024

NOTE: Stormwater plans shall include the information described below pursuant to Article VI of the Lebanon Site Plan Review Regulations. Plans shall be submitted on sheets no larger than 24" x 36". Plan sets with multiple sheets shall include sheets of uniform size and be bound on the left edge. When more than three (3) sheets are required, an additional cover sheet shall be attached including a table of contents. A scale of not smaller than one (1) inch equals 40 feet is suggested. All lettering shall be of a size and type that is legible.

In order to facilitate the use of the City's Geographic Information System (GIS) for planning purposes, all surveys and engineered plans submitted shall utilize the NH State Plane Coordinate system and shall reference the North American Vertical Datum of 1988 (NAVD 88), unless prior approval to use an alternate coordinate system and/or vertical datum is granted by the Planning Office.

A written request for waiver shall be required, pursuant to Article VII of the Site Plan Review Regulations, for any submission requirement for which the information or data is not provided by the applicant. [§6.6.]

[Stormwater checklist begins on following page]

SITE PLAN REVIEW REGULATIONS

TECHNICAL CHECKLIST & STORMWATER CHECKLIST

[illegible]

CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST

Plan Requirements (cont.)	Info. Provided	Waiver Sought
g. Plan references and notes (including sequence of soil disturbance)	☒	☐
h. Proposed and existing public and private utilities	☒	☐
i. Proposed project components to become property of or the responsibility of the City shall be labeled as such	☒	☐
j. Existing and proposed impervious cover, with areas used to calculate effective impervious cover (EIC, as defined herein) clearly identified and the square footage of each type identified and labeled.	☒	☐
k. Test Pit(s) locations and data where stormwater practices are proposed, as appropriate.	☒	☐
l. Details of individual design elements shown on separate plan sheets following the Proposed Conditions SMP.	☒	☐
The Existing Conditions SMP & the Proposed Conditions SMP shall be provided on sheets no larger than 24" x 36", at a scale of one (1) inch = 20 feet for urban areas, and one (1) inch = 40 feet for non-urban areas. The City Engineer will make the final determination as to the appropriate scale, ensuring that all important site and hydrologic features are easily recognized. If plan shall encompass more than two (2) sheets, at the required 1:40 or 1:20 scale, a separate large scale representation plan sheet (e.g. 1:100) is required to be provided, so as to show entirety of site, as well as off-site contributing areas.		
6.6.C.2 - In addition to the above described SMP plan sheets, the following SMP supplemental information is required: 1. A drainage analysis that includes calculations comparing pre- and post-development stormwater runoff rates (cubic feet per minute) and volumes (cubic feet) based on a 1-inch rainstorm, and the 2-year, 25-year, 50-year, and 100-year, 24-hour frequency storms. Calculations shall include, but not be limited to, the sizing of all structures and BMPs, including sizing of emergency overflow structures based on the 50-year 24-hour frequency storm discharge rate, with 1-foot of free-board. Storm rates shall be based on current design depths from the Northeast Regional Climate Center - http://precip.eas.cornell.edu. <i>Any site that was primarily wooded in the last five years shall be considered undisturbed woods Any site from which wooded vegetation has been removed within 5 years prior to the first submission to the planning board with respect to a proposed development, or upon which, at some earlier time, clearing has occurred in anticipation of development, shall be treated as undisturbed woodland for purposes of calculating pre-development runoff volumes. For purposes of this paragraph any tree cutting which occurred without leaving stands of healthy, growing trees within areas near waters and highways, as required by RSA 227-J:9, I, shall be presumed to have occurred in anticipation of development</i>	☒	☐

CITY OF LEBANON, NH
SITE PLAN REVIEW REGULATIONS
TECHNICAL CHECKLIST & STORMWATER CHECKLIST

Plan Requirements (cont.)	Info. Provided	Waiver Sought
2. A drainage analysis results summary tabulated (pre & post) for each proposed outfall or catchment outlet point including runoff rates and volumes for each storm event analyzed above.	☒	☐
3. An Erosion and Sediment Control Plan for all proposed construction activities in accordance with the NH Stormwater Management Manual Volume 3, (December 2008 or current revision; downloadable from the website)	☒	☐
4. A comprehensive Operation and Maintenance Plan for long-term maintenance of all proposed stormwater management elements and BMPs including the proposed schedule of inspections and anticipated maintenance (see section H.2 Operations & Maintenance Plan for detailed requirements).	☒	☐
6.6.D - Phased Development: For phased developments, the plans and calculation requirements under this section (6.6) shall apply as though the development of the entire parcel were being proposed in one single application. The review and approval process for phased development applications is provided in section 4.9 of the Lebanon Site Plan Regulations.	☒	☐

NOTE: THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE REQUIRED INFORMATION PURSUANT TO ARTICLE VI OF THE SITE PLAN REVIEW REGULATIONS. PLEASE BE AWARE THAT THIS CHECKLIST IS FOR INFORMATION AND GUIDANCE ONLY AND DOES NOT REPRESENT THE LAW DICTATING SUBMITTAL REQUIREMENTS NOR IS IT COMPLETE AND INCLUSIVE THEREOF.

Completed By: Rod Finney - City Engineer


(Last Revised 9/20/2021)

Planning office Use Only:

Date Received ___/___/___ Checklist Complete YES or NO Checked by: _____

CITY OF LEBANON, NH SUBDIVISION REGULATIONS – TECHNICAL CHECKLIST FINAL MAJOR SUBDIVISION	
PROJECT NAME: BARROWS STREET COTTAGE DEVELOPMENT	
APPLICANT: CITY OF LEBANON	DATE: 12/9/2024
GENERAL SUBMISSION REQUIREMENTS:	

All applications to the Planning Board for Subdivision Review must be submitted by 12:00 Noon on the day of the filing cutoff. [§7.7.C] Submissions must be accompanied by the following information or review of the application may be delayed:

- ☒ A properly completed and signed Application Form. [§7.7.A(1)]
- ☒ The appropriate filing fees. [§7.7.A(2)]
- ☒ A written project description. [§7.7.A(3)]
- ☒ A list of the names and mailing addresses of all persons to be notified, by certified mail, of the public hearing. [§7.7.A(4)]
- ☒ A completed and signed Technical Checklist. [§7.7.B]
[Applicants must complete the entire checklist to ensure that all necessary information and materials have been provided with the application or that written requests for waivers have been properly provided in accordance with Section 7.15 of the Subdivision Regulations, as appropriate.]
- ☒ Eight (8) sets of project plans to be distributed for Staff Review. [§10.4.A(1)]
[A Staff Review meeting is held at City Hall one (1) week following the cutoff date. Staff Review meetings begin at 2:00PM, unless otherwise noted. All revised and/or additional information or materials must be submitted within one (1) week following the Staff Review meeting.]
- ☒ A digital copy of Subdivision plan in .PDF and .DWG format. [§10.4.A(2)]

NOTE: Applications shall contain sufficient information to enable the City Staff and the Planning Board to evaluate the proposed development for compliance with the Zoning Ordinance, the Planning Board's Regulations, and other applicable City Codes, and for the Planning Board to make an informed decision.

All required application materials shall be submitted as a single inclusive package, including any appropriate waiver requests as permitted by the Regulations. Submission of a complete application package ensures that the review process by City Staff is as efficient and effective as possible.

The purpose of the filing deadline is to provide adequate time for City review of the proposal. Submission of any altered, additional, or substitute application materials required by the Regulations, subsequent to the filing deadline, other than as directed by City Staff, shall cause the application to be deemed untimely filed, and such application shall not be heard until a subsequent month.

PLAN SUBMITTAL TECHNICAL CHECKLIST:

NOTE: Final Major Subdivision plans shall include the information described below pursuant to Section 10 of the Lebanon Subdivision Regulations. Plans shall be submitted on sheets no larger than 24" x 36". Plan sets with multiple sheets shall include sheets of uniform size and be bound on the left edge. When more than three (3) sheets are required, an additional cover sheet shall be attached including a table of contents. The scale of the plans shall be appropriate to the size of the overall development. All lettering shall be of a size and type that is legible.

In order to facilitate the use of the City's Geographic Information System (GIS) for planning purposes, all surveys and engineered plans submitted for Subdivision Review shall utilize the NH State Plane Coordinate system and shall reference the North American Vertical Datum of 1988 (NAVD 88), unless prior approval to use an alternate coordinate system and/or vertical datum is granted by the Planning Office.

A written request for waiver shall be required, pursuant to Section 7.15 of the Subdivision Regulations, for any submission requirement for which the information or data is not provided by the applicant. [§10.4.A(3)]

Plan Requirements	Info. Provided	Waiver Sought
10.4.A(1)(a) - - Proposed subdivision name or identifying title; - Name of the City and County in which the subdivision is proposed; - A Locus map; - North arrow; - Scale of the plat; - Date of the plat and of any revisions to the plat shall be shown on the first page or cover page, if applicable; (NOTE: The date on the plat at the time of initial submission for application review shall be included on all subsequent submissions to the City. Any subsequent change(s) to the plat shall include a revision date and description of the revision(s).)	☒ ☒ ☒ ☒ ☒ ☒ ☒	☐ ☐ ☐ ☐ ☐ ☐
10.4.A(1)(b) - Names and mailing addresses of Applicant(s); Owner(s) of Record of subject properties; Owners of abutting properties, including tax map and lot references; and Holders of any easements, rights-of-way, or other restrictions.	☒	☐
10.4.A(1)(c) - Names and business addresses of the surveyor, including license number and seal, and of every engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board.	☒	☐
10.4.A(1)(d) - Zoning District in which the subdivision is located, including district boundaries if in more than one district.	☒	☐

Plan Requirements (cont.)	Info. Provided	Waiver Sought
<u>10.4.A(1)(e)</u> - Boundary lines of the overall tract, and each of the proposed lots, including bearings and distances as determined by an actual field survey by a licensed land surveyor, including the date of the completion of the survey. All dimensions shall be shown in feet and decimals. Monuments shall be referenced on the plat as required under Section 13.5(A) of the Regulations.	☒	☐
<u>10.4.A(1)(f)</u> - Topographic contours, at intervals of 5 feet or less, including spot elevations on existing roads and a grading plan, if natural contours are to be changed by more than 2 feet. All contours and spot elevations shall be referenced to USGS or FEMA FIRM datums, as appropriate. Existing topographic information shall be prepared by a professional engineer or licensed land surveyor.	☒	☐
<u>10.4.A(1)(g)</u> - Location of existing structures, roads, easements, and trails on the property and within 200 feet of the property.	☒	☐
<u>10.4.A(1)(h)</u> - Location of existing natural features, such as permanent or intermittent watercourses, marshes, lakes, ponds, flood plains, wetlands, rock outcrops, wooded areas, and other significant features on the property and within 200 feet of the property. Indicate the approximate limits of clearing and those natural features to be removed, retained, or altered. Wetlands on the property, if any, shall be delineated by a NH Certified Wetlands Scientist, whose seal and signature shall appear on the plat.	☒	☐
<u>10.4.A(1)(i)</u> - Location of existing water and wastewater mains, culverts, and drains on the property and within 200 feet of the property with sufficient information, including pipe sizes and direction of flow, to allow the subdivision to be viewed in the context of existing City utilities.	☒	☐
<u>10.4.A(1)(j)</u> - If the application covers only a part of the applicant's entire holding, a map of the entire tract shall be drawn at a scale of not smaller than 1" = 400', showing all existing streets and an outline of the platted area.	☒	☐
<u>10.4.C(1)(a)</u> - Final proposed lot lines and rights-of-way, with bearings and distances, and areas of each lot in square feet and acres.	N/A	☐
<u>10.4.C(1)(b)</u> - Final width, location, and grades of all proposed streets or road rights-of-way.	N/A	☐
<u>10.4.C(1)(c)</u> - Final profile of streets and cross-sections for construction of streets and sidewalks.	N/A	☐
<u>10.4.C(1)(d)</u> - Names of all proposed streets.	N/A	☐
<u>10.4.C(1)(e)</u> - Final design, location and size of all proposed water lines, valves, hydrants, wastewater lines, manholes, and connections to existing public or private utility lines. Alternate means of water supply or wastewater disposal and treatment, including data on soil tests and final designs and locations, shall be provided if existing municipal systems are not available.	☒	☐
<u>10.4.C(1)(f)</u> - Typical lot layout(s) with building envelopes and location for on-site wastewater disposal facilities, if applicable.	N/A	☐

Plan Requirements (cont.)	Info. Provided	Waiver Sought
10.4.C(1)(g) - Final storm drainage plan, indicating the location and size of proposed catch basins, manholes, drainage lines, ditches, retention, detention, or infiltration systems and their profiles, connections to existing lines or ditches, and all other means of storm water management.	☒	☐
10.4.C(1)(h) - Final design and location of any proposed bridges or culverts.	N/A	☐
10.4.C(1)(i) - Final plan for existing and proposed telephone, cable, and electric utilities, including municipal fire alarm systems.	☒	☐
10.4.C(1)(j) - Final location of proposed recreational or open space areas, including land proposed to be dedicated to public use. The plan shall also indicate the location of all existing publicly accessible recreation or open space areas within 1/4 mile (1,320 feet) of the property.	☒	☐
10.4.C(1)(k) - Final location and design of any proposed traffic control devices necessary in conjunction with the subdivision, as well as the location of all existing transit routes and transit stops located or passing within 1/4 mile (1,320 feet) of the property.	☒	☐
10.4.C(1)(l) - Phasing lines, where applicable.	☒	☐
10.4.C(1)(m) - Where applicable, there shall be shown on each lot whether or not there will be easements for water or wastewater mains, storm drainage of the proposed streets, or other improvements.	☒	☐
Supporting Documents and Information, Where Applicable	Info. Provided	Not Applicable
10.4.C(2)(a) - Final statement of the work required on existing streets and other off-site improvements to meet the minimum standards set forth in the Regulations, including cost estimates and the method of meeting such costs.	☒	☐
10.4.C(2)(b) - Cost estimates for the completion of all on-site and off-site improvements which shall be subject to a Performance Security Agreement pursuant to Section 7.10 of the Regulations.	N/A	☐
10.4.C(2)(c) - Temporary Control Plan(s) to be implemented during the proposed construction period, such as traffic control, erosion control, dust control, and hours of operation.	☒	☐
10.4.C(2)(d) - Copy of any proposed covenants or deed restrictions, including Owners Association documents and Bylaws as described in Section 12.8 of the Regulations, as may be intended to apply to the property in whole or in part. Where applicable, such Owners Association documents or other legal instruments shall include provisions for the ownership and maintenance of open space as described in Section 12.2 of the Regulations.	PENDING ☐	☐
10.4.C(2)(e) - For phased developments, a final schedule for construction and completion of streets, utilities, and other required infrastructure improvements, as further set forth in Section 7.13.C of the Regulations.	N/A	☐
10.4.C(2)(f) - Any proposed street or roadway access to a State highway shall be approved by the NHDOT and provided to the Board prior to the recording of the approved final plat.	N/A	☐
10.4.C(2)(g) - Approvals, as prescribed by law, from any other City agency which may have jurisdiction, including but not limited to, wetland permits.	☒	☐

Supporting Documents and Information, Where Applicable (cont.)	Info. Provided	Not Applicable
10.4.C(2)(h) - Where applicable to a specific subdivision, the Board may require a statement from telephone, cable, and electric utilities stating that services will be furnished and that arrangements have been made for installation of such utilities according to the plat as submitted by the applicant.	☒	☐

NOTE: THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE REQUIRED INFORMATION PURSUANT TO SECTION 10 OF THE SUBDIVISION REGULATIONS. PLEASE BE AWARE THAT THIS CHECKLIST IS FOR INFORMATION AND GUIDANCE ONLY AND DOES NOT REPRESENT THE LAW DICTATING SUBMITTAL REQUIREMENTS NOR IS IT COMPLETE AND INCLUSIVE THEREOF.

Completed By: ROD FINLEY - CITY ENGINEER


Planning office Use Only:

Date Received ___/___/___ Checklist Complete YES or NO Checked by: _____

(Last Revised 05/23/13)



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

Project: Barrows Street Housing – Lebanon, New HampshireDate: 01/08/2025To: Planning and Zoning DepartmentFrom: Park Architecture LLCSubject: Response to Staff Comments by project team members

Attn: Tim Corwin, AICP, Deputy Planning and Development Director, City of Lebanon, NH

Please find responses to staff comments per email dated: January 3, 2025

ZONING ORDINANCE

- Not possible to verify street facing façade requirement without seeing relevant facades (ZO 509.6.H) Response: The subject property is somewhat unique in that the public street does not continue past and along the parcel frontage as might normally be the case on most other lots. In this case, the public right-of-way ends at the property frontage and provides very limited options for where to site the cottage units as compared with the parking and vehicular circulation areas. The parking and vehicular circulation areas must necessarily be connected to the off-site public roadway, which cannot be relocated. As a result, the cottage units themselves are located to the side of the parcel and don't exactly have "street facing facades". Nevertheless, given the unique aspects of the subject property, we have done our best to address the spirit of the regulation and avoid having blank walls face the project entrance so as not to "turn our backs" in that direction. Although the cottage side wall is not specifically a "street facing façade" in this case, the number of windows is commensurate with the unit floor plan; there are three windows associated with the three rooms along that wall, and it will not be a "blank" façade.
- Plan does not appear to meet ZO 509.6.F.1 & 201.7 – the parking area encroaches into the minimum required 5 ft. front yard. Response: We believe that the proposed parking area is distinct from the driveway and other circulation areas on the property, and each area will comply with applicable requirements. The average minimum front yard along Barrows Street (per ZO Section 201.1) is approximately 10 feet, and the closest proposed parking space is approximately 13 feet from the front parcel boundary. The driveway access to the refuse and recycling area will be adjusted near the project entrance to achieve 5 feet of separation before tying in to the proposed retaining wall.



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- Plan does not appear to meet ZO 509.6.F.4...(?) (“Parking areas shall be separated from the common open space by landscaping or an architectural screen.”) **Response:** As noted above, the subject property is somewhat unique. The parking and vehicular circulation areas must necessarily be connected to the off-site public roadway, which cannot be relocated. As a result, the cottage units and the common open space are located to the side of the parcel and are functionally separated from the parking area, which we believe meets the spirit of the regulation. Although there is landscaping between the parking area and Unit #1, and additional landscaping between the parking area and the wetlands, fire code access requirements into the common open space area do not allow for the installation of larger vegetation or other structures to visually screen the common open space from the parking area. On a more typical lot, in which the common open space opens toward the public roadway running along the property frontage, the parking area could be set off to the side of the site, and would be separated from the common open space by the individual cottage units themselves.
- ZO 509.6.A – cottage building sites need to be delineated on the plan set. **Response:** A separate plan has been provided to delineate the required 1,500 minimum square foot “building site” for each detached cottage, see sheet L3.2 titled: Interior Lot Plan. This plan delineates each interior lot area with an orange dashed line. In addition, this plan also delineates the common open space area with a green dashed line.
- To verify compliance with ZO 509.6.D – please delineate the common open space in the plan set and identify the size. **Response:** A separate plan has been provided to verify that the common open space exceeds 2,000 square feet (400 sq ft per cottage) as required, see sheet L3.2. The designated common open space area is approximately 4,080sf as depicted on L3.2.
- ZO 607.8 EV regulations – it appears that 6 EVSE-installed spaces are to be provided- if correct, identify on plan set cover sheet using ZO terminology (which will make it clear that the plan more than complies with the applicable requirements). **Response:** The Site Information Table on the cover page has been updated to indicate that 6 of the 11 parking spaces will be EVSE-installed spaces.

SITE PLAN REG SUBMISSION REQUIREMENTS – the following information does not appear to have been provided:

- 5.1.E(3) The names and business addresses of the preparer(s) of the plan and every surveyor, engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board. (eg. will need to at least identify surveyor, wetland scientist, PE or LLS for countours) **Response:** PS to add to the plan set:



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

Architect

Studio Nexus Architects + Planners, PC

Doug Sonsalla, AIA, LEED AP

46 South Main Street, Suite 200

PO Box 275

White River Junction, VT 05001-0275

Landscape Architect

Park Architecture

Paul Simon, ASLA

3 School House Lane, Suite #1

Etna NH 03750

Surveyor

Pathways Consulting, LLC

Gardner P. Kellogg, LLS

240 Mechanic Street

Lebanon, NH 03766

Civil Engineer

Lebanon Department of Public Works

Rodrick J. Finley, P.E.

193 Dartmouth College Highway

Lebanon, NH 03766

Civil Engineer

Pathways Consulting, LLC

Scott A. Williams, P.E.

240 Mechanic Street

Lebanon, NH 03766

Wetlands Scientist

Ecosystem Management Consultants, LLC

Rick Van de Poll, Ph.D., CWS

30 North Sandwich Road

Center Sandwich, NH 03227



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- A current survey certified by a land surveyor licensed in New Hampshire (see also comments below for plan sheet L1.0). [A stamped and signed boundary survey plan has been included in the resubmission package.](#)
- Section 5.1.E.7 - Please provide architectural renderings/elevation views for all four sides of each building type (there appear to be two types) [Response: The architectural plans have been provided see sheets A1 and A2; These plans have been updated to include a clarifying note regarding the typical and mirrored unit types.](#)
- Partial waiver is needed from 5.1.8 (existing conditions) for back of lot. [Response: waiver has been requested.](#)
- Documentation in the form of the U.S. Army Corps of Engineers New England District Wetlands Delineation Data Sheets and/or other field notes and materials concerning the delineation shall be submitted to the Planning and Development Department (5.1.E.8). [Response: Wetland data sheets and materials from Ecosystem Management Consultants is has now been submitted.](#)
- 5.1.E.9 - Requiring the plans to identify the Zoning District and use of abutting properties within 200 feet of the site boundary. [Response: A Zoning map and identification of the site's Zoning District \(R3\) \(Residential\) has been included on the cover sheet. Abutting properties to the West, East and South are also zoned R3. The lands abutting the Northern side of the property include I-89 \(unzoned parcel\).](#)
- 5.1.E.15 – partial waiver needed from requirement to depict the boundaries of the wetland conservation district. [Response: a waiver has been requested.](#)
- 5.1.E.16- partial waiver needed from landscaping plan submission requirements (for rear of lot). [Response: waiver has been requested.](#)
- 5.1.E.17 – inset shown on Sheet L2.9 is not legible. [Response: These are maps provided from Lebanon GIS data and shows available information regarding drainage facilities within 200' of project site. Unfortunately, higher resolution images are not available.](#)
- 5.1.E.18 - 6.6 submission requirements; the site plan checklist indicates that the materials required by Section 6.6.C have been submitted but I don't see these in the file.
 - 6.6.C.1.1 – existing conditions SMP – are the existing conditions sheets in the plan set (Sheets L1.0 and L1.1) intended to meet this requirement? [Response: Yes.](#)
 - 6.6.C.1.2 – proposed conditions SMP – are the site grading and site utilities sheets in the plan set (Sheets L2.2 and L2.3) intended to address this requirement? [Response: Yes.](#)
 - 6.6.C.2.1 & 2 – drainage analysis calculations and tabulated results – I don't see this in the file. [Response: RF will provide detailed drainage calculations.](#)



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- 6.6.C.2.3 – erosion and sediment control plan – I don't see this in the file. [Response: See sheet L1.1 'Erosion Control Plan'; this includes a silt fence detail as well.](#)
- 6.6.C.2.4 – O&M plan – I don't see this in the file. [Response: Inspection and Maintenance Requirements are listed on sheet L2.7. And additional notes are shown on L2.9](#)
- 5.1.E.19 - Plans for snow removal and storage. [Response: Snow storage areas are shown on plan L2.2 "Site Grading Plan"; This includes small areas surrounding the parking lot, and a large designated area beyond the grass pavers. Clouded areas have been shown on plan L2.2 to indicate these snow storage areas.](#)
- 5.1.E(22) Depict any current and proposed easements, rights-of-way, and deed restrictions including those related to sewer, electrical utility, shared access, etc. [Response: Water and Sewer easements have been added to plan L2.3 Site Utilities Plan.](#)
- Please identify how the project complies with Section 6.5.E of the Site Plan Review Regulations (groundwater protection). [Response: 6.5G? The grade of the site has been raised upwards of 8 feet with clean sandy gravel. Stormwater will be treated within this fill-material area to protect the groundwater. See Site Grading plan L2.2 for new grades, and proposed elevations.](#)

SITE PLAN DESIGN REQUIREMENTS – the plan set does not appear to comply with the following requirements:

- Section 6.2.D.1 – 10 ft. landscaping around buildings requirement re: units 1-4. [Response: waiver requested due to cottage-style development.](#)
- Section 6.5.C.1 Orientation to Frontage [Response: waiver requested due to fact that there is no frontage orientation; This is because Barrows St. dead-ends perpendicular to the East boundary of the site/project. The site/project does not front parallel to Barrows Street and therefore has no frontage orientation to Barrows St. \(this section does not apply\)](#)
- Section 6.5.C.2 Highlight entrances [Response: waiver requested due to cottage-style development.](#)
- Section 6.7.B.2 providing that “the light intensity at adjoining residential property boundaries shall not exceed 0.1 foot-candles at grade level.” [Response: waiver requested. Photometric data slightly exceeds 0.1 foot-candles along the property line.](#)



SUBDIVISION SUBMISSION REQUIREMENTS – the following information does not appear to have been provided:

- 10.4.A(1)(g) - The location of existing structures, roads, easements, and trails located on the property and within 200 feet of the property. [Response: Map provided \(and shown on plan L2.9\) from Lebanon GIS data and shows available information within 200' of project site.](#)
- 10.4.A(1)(h) - The location of existing natural features, including, but not limited to, permanent or intermittent watercourses, marshes, lakes, ponds, flood plains, wetlands, rock outcrops, wooded areas, and other significant features on the property and within 200 feet of the property. [Response: Map provided \(and shown on plan L2.9\) from Lebanon GIS data and shows available information within 200' of project site.](#)
- 10.4.A(1)(h) The plan shall indicate the approximate limits of clearing necessary for the development and those natural features that are to be removed, retained, or altered. Not clear if the existing conditions plan sheets reflect actual existing conditions per the approved site plan or not. [Response: Yes, existing conditions plan sheets reflect actual existing conditions. Plans L1.0 and L1.1 now include contour 624 drawn to reflect the actual \(recently-filled\) new grading and raised elevation of current existing conditions.](#)
- 10.4.A(1)(i) - The location of existing water and wastewater mains, culverts, and drains on the property and within 200 feet of the property with sufficient information to allow City Staff and the Board to view the proposed subdivision in the context of existing City utilities, with pipe sizes, and direction of flow. To the extent the inset shown at the bottom of Sheet L2.9 is intended to provide this information, the inset is not legible. [Response: Map provided \(and shown on plan L2.9\) from Lebanon GIS data and shows available information within 200' of project site.](#)
- 10.4.C(1)(e) - connections to existing public [...] utility lines. Existing lines not shown... (?) [Response: Existing water line and sewer manhole is shown on the survey boundary plan by Pathways Consulting \(survey now provided\). These utilities are also shown on L1.0.](#)
- 10.4.C(1)(i) - The final plan for existing and proposed telephone, cable, and electric utilities, including municipal fire alarm systems. [Response: A note on Plan L2.3 has been added to the plans stating that "Proposed telephone, cable tv, and electric utilities including services for street lighting, and including municipal fire alarm systems will be underground".](#)
 - Note that 13.8.C requires that "Electric, telephone and cable TV distribution systems shall be underground, including services and street lights, unless modified by the Board." [Response: Note has been provided as described above for 10.4.C\(1\)\(i\).](#)



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- 10.4.C(1)(m) – [...] there shall be shown on each lot on the plat whether or not there will be easements for water or wastewater mains, storm drainage of the proposed streets, or other improvements. **Response:** [water and sewer easements have been added to plan L2.3.](#)
- 10.4.C(2)(b) - Cost estimates for the completion of all on- and off-site improvements which shall be subject to a Performance Security Agreement pursuant to Section 7.10 of these Regulations. Will the units be sold prior to completion of improvements? This might need to be a conversation with David. **Response:** [waiver requested; estimates will be provided at a later date. The City can work with its design professionals to develop a preliminary estimate of the costs for completion of on- and off-site improvements for the project. Upon receipt of entitlements, the City expects to issue a Request for Proposals to identify a qualified and capable developer/builder to complete the construction phase of the project. Through the RFP process, the City will obtain a much more refined estimate of project costs for use in any required Performance Security Agreement. Simultaneously, the City anticipates coordinating with lenders to pre-certify potential buyers who would be entered into a lottery drawing for the opportunity to purchase a unit. Units are expected to be sold “at cost”, which won’t be fully known until construction is complete.](#)
- 10.4.C(2)(c) - Temporary Control Plan(s) to be implemented during the proposed construction period, including, but not limited to, traffic control, erosion control, dust control, and hours of operation. **Response:** [see Site Civil Specification Plan Notes on sheet L2.9](#)
- 10.4.C(2)(d) - A copy of such proposed covenants or deed restrictions, including Owners Association documents and Bylaws as described in Section 12.8 of these Regulations, as may be intended to apply to the property in whole or in part. Where applicable, such Owners Association documents or other legal instruments shall include provisions for the ownership and maintenance of open space as described in Section 12.2 of these Regulations. **WAIVER NEEDED** from requirement to provide at time of application submission. **Response:** [waiver requested. The City requests a waiver of the requirement to submit such proposed covenants or deed restrictions, including Owners Association documents and Bylaws, as part of the final subdivision review. The City is already engaged in discussions with its legal counsel concerning the development of these documents, which will be a requirement of the Attorney General’s Office in connection with registering the condominium. However, because of the complexity of the intended conveyance of the units to “public employees’ of the City, School District, and Housing Authority, and the inclusion of mechanisms to maintain long-term affordability, such documents may take longer than typical to be generated. Nevertheless, as is common in all other subdivision projects, the documents will be prepared and reviewed to the satisfaction of the City’s attorney.](#)



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- 10.4.C(2)(g) - Other Approvals: Approvals, as prescribed by law, from any other City agency which may have jurisdiction, including but not limited to, wetland permits (see Section 7.4). see 7.4.B & C – water and sewer notices of allocation needed. **Response:** The City has already obtained wetlands permits from the NHDES, and does not expect to require any other wetlands permits for the project. The City may require NHDES approval for proposed connections to the municipal sewer system for the addition of a sewer manhole structure. In addition, the city will obtain such approval prior to the start of any construction or installation of improvements as required. The City will also obtain water and sewer allocations and excavation and driveway permits from the DPW as required by applicable City Codes.
- 12.2.E - Open Space Ownership: The type of ownership of land dedicated for open space purposes shall be selected by the subdivider subject to the approval of the Planning Board. **Response:** The City anticipates that the project will be registered as a condominium with the Attorney General's Office. The common open space as well as the undeveloped portions of the property will be owned and maintained by the owner's association, subject to appropriate C&Rs, and that such documents will be prepared and reviewed to the satisfaction of the City's attorney, as is typically the case with other subdivision applications. Interior lot areas have now been depicted on the plans (see plan L3.2) in addition the common open space area is also shown on plan L3.2.
- 12.2.F & 12.8.A – Owners association – “If the open space is owned and maintained by an owners association, the subdivider shall file a Declaration of Covenants and Restrictions that will govern the association, to be submitted with the application for the Final Plat approval.” And “In the case of a subdivision requiring a management organization to operate and maintain private roads, community water or sewer systems, common lands or reserve areas or recreational facilities, the subdivider shall furnish a copy of the proposed legal documents establishing this organization and shall include specific provisions for the collection of fees, assessments and charges to pay for the operation and maintenance of such common facilities.” WAIVER NEEDED from requirement to provide at time of application submission. **Response:** waiver requested. The City requests a waiver from the requirement to submit such documents as part of the final subdivision review. The City anticipates that the common open space as well as the undeveloped portions of the property will be owned and maintained by an owner's association, subject to appropriate C&Rs, and that such documents will be prepared and reviewed to the satisfaction of the City's attorney at a later date, as is typically the case with other subdivision applications.



- 12.3 Statement as to Impact of Subdivision and Determination of Whether or Not Premature or Scattered – need info required by Section 12.3.B.1-8, [Response: waiver requested waiver from the requirement to provide fiscal, traffic and other impact statements for the project at this time. The proposed application for 5 detached cottages for owner occupancy complies with the definition of subdivision under the City’s subdivision regulations and by state statute. However, because individual lots or parcels are not proposed, and the project does not involve the creation of new streets or extension of existing streets, many of the most common subdivision submission and design requirements may not be applicable to this project. To the extent that only 5 cottage units are proposed, the City requests a waiver from the requirement to provide fiscal, traffic and other impact statements for the project.](#)

SUBDIVISION REG DESIGN REQUIREMENTS –

- the plan does not appear to comply with the following requirements:
 - 12.2.A – 15% open space is required, designed in accordance with 12.2.A.1, 2 and 3. [Response: The open space calculation has been provided and shown on plan L3.0. There is approximately 87% remaining open space with this proposed project.](#)
 - 13.3 – “Lots shall be laid out in relation to the topography and graded sufficiently to provide adequate drainage for the purpose intended without the diversion of water onto other lots or onto property adjoining the subdivision.” [Response: The project meets this requirement. Stormwater is collected and drained internally \(on-site\) to an underground stormwater detention system within the common open space area. Calculations for on-site drainage and infiltration are provided by the engineer.](#)
- 13.10 – I’m not sure how to verify/ensure compliance – will need to discuss with you and Brian. [Response: TBD](#)
- 13.11 – Same comment... [Response: TBD](#)
- 13.8.A.2 – do the plans show the provision of a “blow off for flushing the water line”? [Response: TBD](#)



PLAN SET

General

- The use of grading and existing conditions makes each plan sheet very difficult to read. For the benefit of the Planning Board members and the site plan review process, please provide a site plan layout sheet that shows only surface conditions that are proposed (whether proposed to remain or proposed to be constructed) without contours and any underground improvements. The Site Plan should not show any existing conditions that are proposed to change or underground improvements. The idea is that Planning Board members, in general, are primarily interested in understanding how the site will operate and what it will look like above ground when its finished. It's confusing and unnecessary then to have the existing conditions shown. Of course it's important from an engineering/construction standpoint to have a sheet that overlays the proposed conditions on top of the existing conditions. But from a Planning Board review perspective, it's just as important to also have a sheet that only shows the above-ground site as it will be. I hope this makes sense. If not, please let me know.
 Response: This can be accomplished with Autocad / layer management properties and an additional plan can be created with surface condition layers only. However we request this plan be a condition of the approval as this request will take additional time to develop. **PS.**
- The various fencing labels throughout are very confusing and it's not clear why they're disbursed throughout the plan set and aren't consolidated on one sheet. Response: For clarity, fencing labels will remain on sheet L2.2 and removed from plans L2.0 and L3.1.
- The site feature notes (e.g. those relating to the EV charging, parking structure, and garbage collection) are inconsistent throughout Response: notations have been reviewed and edited.
- The majority of plan sheets are labeled "CONCEPTUAL" – please remove throughout. Response: The CONCEPTUAL label has been removed from the drawings.
- Please change "mountable curb" notes throughout to "sloped granite curb" to match construction detail. Response: All curb notes have been updated to read "sloped granite curb".
- Please add the following sections of the Site Plan Review Regulations as plan notes:
 Response: Planting Regulation notes have been added to plan L3.1 including:
 - 6.2.B.3 ("All new plant material shall be nursery-grown stock.")
 - 6.2.E.6.b 'Trees at maturity must have a trunk diameter of at least 12 inches, measured 4 feet above the ground surface'.



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- 6.2.H.1 'The property owner shall be responsible for maintaining all landscaping, to include grass and mulch, in good, healthy condition so as to present a neat and orderly appearance. The property owner shall replace any unhealthy or dead plant materials in conformance with the landscape plan approved by the Board as part of the site plan'.
- 6.2.K 'After the issuance of a Certificate of Occupancy, the storage, display, or parking of motor vehicles, boats, mobile homes, trailers, or construction equipment within landscaped areas, buffers, or screens, shown as such on the approved landscape plan, is expressly prohibited and a violation of the Notice of Action'.
- 6.2.F.1 'Graded areas shall be vegetated to insure erosion control by seeding, mulching, and fertilizing. Disturbed areas shall be planted with suitable plant materials'.
- 6.2.F.2 'Grading shall not exceed a ratio of 3 horizontal to 1 vertical without special erosion control measures. Netting or similar material shall be provided on slopes with a ratio greater than 3:1 while ground cover is being established'.
- The sheet(s) to be recorded as the subdivision plat needs to be identified, and:

Plan L5.0 has been added to the planset for purposes of recording the subdivision plat. In addition, the following notes have been added to plan L5.0:

 - "no topsoil, sand or gravel shall be removed from the site for any other purpose other than to meet the construction needs of the development. (Section 13.11.A of the Subdivision Regulations)"
 - Add the statement require by Section 7.11 of the Subdivision Regulations. "The Subdivision Regulations of the City of Lebanon and the Notice of Action are a part of the Plat, and approval of this Plat requires the completion of all the requirements of the Notice of Action and said Subdivision Regulations excepting only any modification or waiver set forth in the Notice of Action."
 - Add a note to address Section 7.7.A.4.e ("All persons holding conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property. (NOTE: When there are no such restrictions on the subject property, the Applicant shall provide a definitive statement to that effect.)) Response: **PS** to add note that states, 'No conservation, preservation, or agricultural preservation restrictions on the property'. This has been added to plan L5.0
 - Add a note to address 7.7.A.4.f ("The holders of any easements, rights-of-way, or other restrictions on or over the subject property. (NOTE: When there are no such easements, rights-of-way, or other restrictions on the subject property, the Applicant shall provide a definitive statement to that effect.)



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- An open space plat for recording will need to be prepared. [Response: Plan L5.0 Overall Subdivision Plat Plan has been provided for purposes of recording the common open space and recordin of the interior lot areas designated for the project.](#)
 - Please include the following as a note: “There shall be no depositing, dumping, or storage of waste, or other natural or man-made material, supplies or equipment, on any subdivision land designated as open space. (Section 13.14 of the Subdivision Regulations)” [Response: note has been provided on plan L5.0](#)

Cover Sheet:

- Vicinity sketch is usually provided on the cover sheet (although technically not required to be on the cover sheet) – 5.1.E.1 [Response: This is now provided on the cover sheet.](#)
- Add name of City and County (5.1.E.4.a) [Response: Grafton County and City of Lebanon added to cover sheet.](#)
- Identify state and local permits/approvals that are required. [Response: A list of state, local, and Army Corps approvals has been added to the cover sheet.](#)
- identify the Zoning Ordinance and Site Plan Regs in effect at the time of submission [Response: ZO and Site Plan Reg info has been added to the cover sheet.](#)
- Add a note indicating that the plat was approved pursuant to the City of Lebanon Subdivision Regulations last revised June 28, 2021. [Response: Note added to cover sheet.](#)
- Add Planning Board number (2025-04-FMAJSPRCUP). [Response: Planning Board number added to cover sheet.](#)
- Please provide reference to previously approved site plan for this project (PB2024-33-SPR) [Response: Previously approved site plan reference added to cover sheet.](#)
- Provide date and description of revisions made (9.5.A.1). [Response: Date December 09, 2024 added to cover sheet and last revised date January 08, 2025 added to cover sheet.](#)
- Add sheet numbers to bottom right corner of each plan sheet in a prominent size so that each sheet is identified as “Sheet ____ of ____”. Update Table of Contents accordingly. [Response: Sheet numbers added to each plan sheet and Table of Contents updated accordingly.](#)
- Sheet L2.4 does not appear in the table of contents, but appears to be duplicative of Sheet L2.4A. [Response: Sheets L2.4A is the fire truck turning plan, L2.4B is the refuse truck turning plan, and L2.4C is the ambulance turning plan. \(there are 3 separate plans\) There is no L2.4.](#)
- Site Information Chart:



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- Is the acreage 1.52 or 2.09 (as indicated in the project narrative)? **Response: 2.09 acres.**
The site information chart has been updated to 2.09 acres.
- Please note that the proposed use is a cottage development per Section 509 of the Zoning Ordinance. **Response: (Proposed used is specified as “cottage development”).**
- The minimum required parking space at this time is 2.0 per unit for a total of 10. **Response: (Required parking spaces has been updated to 10.)**
- Please add a footnote to the required front yard to indicate that the 5 ft. minimum required front yard is per Section 201.1 of the Zoning Ordinance. **Response: this has been added to table.**
- Please add a footnote to the required rear yard to indicate that it is “NA” per Section 201.3 of the Zoning Ordinance. **Response: This has been added to the table**
- Identify minimum required common open space required per Section 509.6.D of the ZO and the amount provided. **Response: Common open space has been added to the table.**
- Identify the minimum required open space required by Section 12.2 of the Subdivision Regs and the amount provided (note that I’m preliminarily considering this to be in addition to the 509.6.D “common open space” but we can discuss further...) **Response: The chart has been updated to include 15% minimum open space requirement and a calculation of 87% open space has been shown as proposed.**
- “Wetlands Permit has been issued” – please provide permit number and date of issuance. **Response: Wetlands and Non-Site Specific Permit 2024-00988 dated August 22, 2024. Has been added to the site information sheet.**
- ADD:
 - GFA of proposed buildings (5.1.E.4.e.4)
 - height of each proposed building (5.1.E.4.e.8)
 - the gross square footage of each story of the proposed buildings (5.1.E.4.e.9)
 - impervious coverage in square feet and as a percentage (Section 5.1.E.10).
Response: The architectural plans have been updated to indicate the GFA, height and gross square footage of each story the proposed building, see sheets A1 and A2.



L2.0 –

- will the grass paver area need to be maintained and plowed during the winter? If so, please add note that structures are prohibited and that the area will need to be maintained and plowed during the winter...

Response: Grasspaver notes have been added to plan L2.0 and L2.2.

L1.0 Response: The stamped and signed boundary plan as part of our resubmission package.

- Does this show existing conditions as of today (ie post-phase 1 site plan) or pre-phase 1 site plan? Response: yes; L1.0 now includes contour 624 for the existing conditions (as of today).
 - If post – was the grading performed in conformance with the approved site plan? Response: Yes.
- Identify Barrows Street. Response: Barrows Street has been identified and labeled.
- Add surveyor stamp confirming compliance with Section 5.1.E.5 requiring a current survey certified by a land surveyor licensed in New Hampshire. Response: Stamped survey plan is now included in the plan set. (see plan by Pathways dated October 9, 2024).
- Identify the date of the survey was completed as required per Section 9.5.A.5. Please note that this refers to the date the actual field survey was performed, which is distinct from the date of the plat. Response: Survey was completed on October 9, 2024.
- Survey must identify the lot area (5.1.E.5). Response: It does; at 2.09 acres. (see survey).
- Add surveyor stamp or professional engineering stamp confirming compliance with Section 5.1.E.6 requiring existing topographic information prepared by a professional engineer registered in New Hampshire or land surveyor licensed in New Hampshire. Response: Survey plan dated October 9, 2024 has been stamped by Gardner Kellogg. LLS 662. (see survey).
- Provide wetlands scientist signature and seal. (5.1.E.8).
- What is this (a light pole?) and is it staying or going? Response: This is an existing utility pole and is staying.



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting



L1.1

- Is this an existing conditions plan or is it an erosion control plan? If the latter, please rename the sheet accordingly. [Response: This sheet is an erosion control plan and has been renamed accordingly. This sheet also includes silt fence detail.](#)
- To the extent it's an existing conditions plan, same questions as above, ie: [Response: This sheet is an erosion control plan and has been renamed accordingly.](#)
 - Does this show existing conditions as of today (ie post-phase 1 site plan) or pre-phase 1 site plan? [Response: Contour 624 has been added to the plan to help demonstrate the extent of recent work to add fill and raise the grade on site to show "existing conditions as of today".](#)
 - If post – was the grading performed in conformance with the approved site plan?



ParkArchitecture

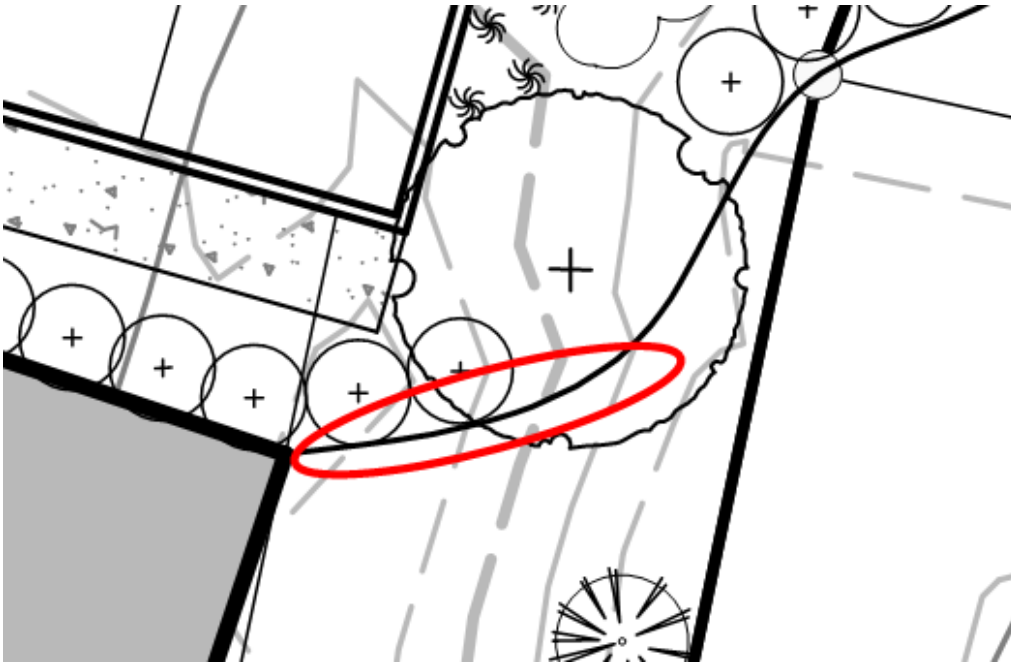
Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

L2.0

- Water is proposed to discharge directly onto 37 Winter Street. Is this permissible? (see subdivision regs 13.3) **Response: No, inlet headwall.**
- What does the “alternate parking enclosure” note signify? Why “alternate”? **Response: All parking enclosure notes have been updated to read “24’-0” X 47’-2” PARKING ENCLOSURE WITH STORAGE AREAS AND CEILING MOUNTED LIGHTING (SEE ARCHITECTURAL PLANS)”.**
- Please add asterisk next to all site features that have a corresponding construction detail and then add a footnote referencing the construction detail.
- Please identify this line (steel edging?) **Response: Line has been identified as steel edging.**





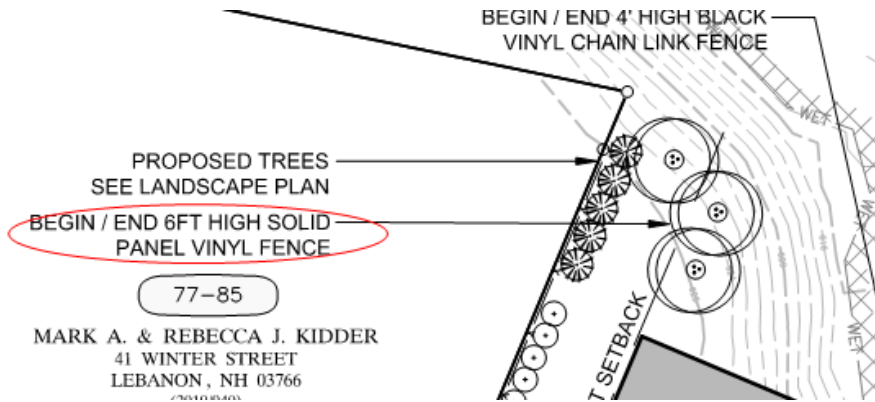
ParkArchitecture

Paul Simon, ASLA

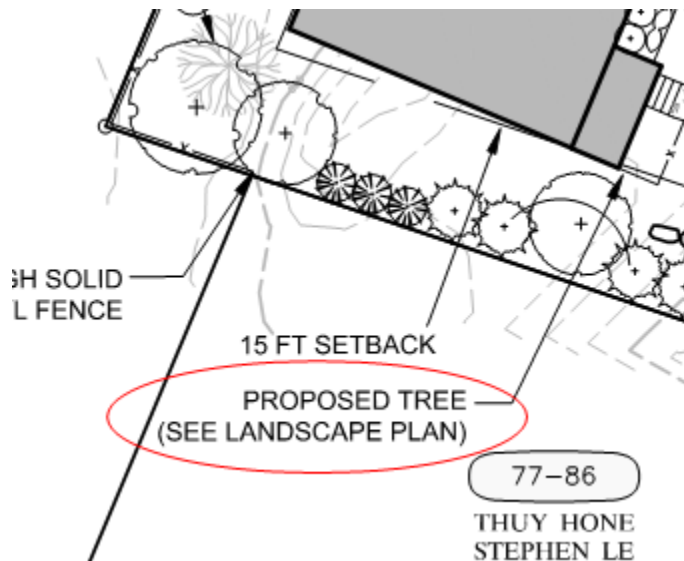
www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- Is this correct? Where does this fencing begin and end? Response: Fence label and proposed trees label were switched. Labels with corresponding leader lines are now correct. Also, fencing labels (begin, end, and type) now only shown in detail on plan L2.2. (as requested).



- What is this pointing to? Response: Leader line is now pointing to correct proposed tree.





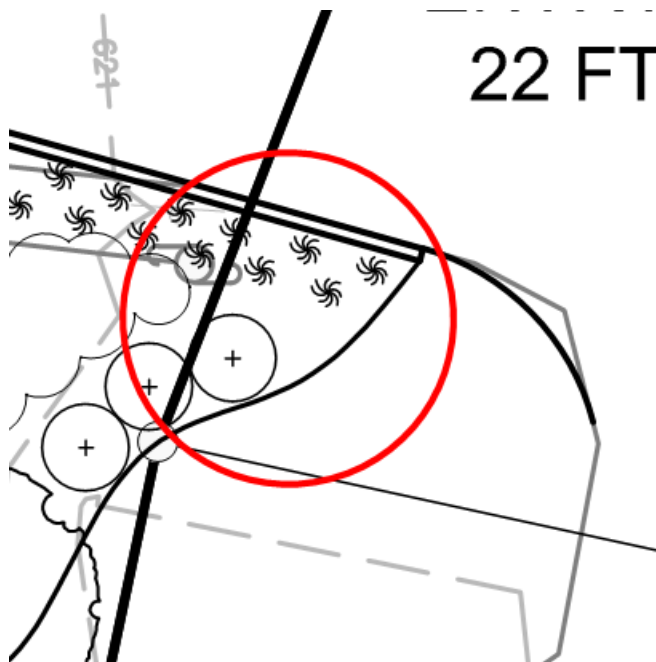
ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

- Will the HOA be responsible for maintaining the proposed landscaping improvements that are located in the City's ROW? If so, a note should be added to the plan. **Response:** Landscaping updated to remain within property boundaries.
 - Also how is this responsibility formalized? (is the plan note sufficient? Or is a license or some other agreement with the City needed?) **Response:** N/A as landscaping now remains within property boundaries.



L2.2

- The mixture of grading notes with other non-grading notes is confusing. Please consider removing notes that do not relate to grading including but not limited to the custom refuse, EV charging, and parking enclosure notes.
 - Also, these notes are different than their counterparts on Sheet L2.0 – which are correct? **Response:** we simplified the tags and notes, and placed the detailed fencing notes on L2.2.



L2.3

- Existing City sewer and water lines should be depicted and should be illustrated to make it clear what is existing and what is proposed. [Response: This has now been shown using the information provided from the survey plan.](#)

L2.6

- provides a yard drain detail – where is the location of the yard drains shown in the plan set? [Response: The yard drain detail has been removed from L2.6.](#)

L2.9

- maps provided are not legible. [Response: Maps provided from Lebanon GIS data and shows available information within 200' of project site.](#)

L3.0 –

- Re parking area shading – It appears all 4 shade trees are located in similar positions relative to the parking area. So, what makes the one tree a “full” shade tree? [Response: It is our understanding that trees placed close to a 90d corner of a pavement area can be counted as a “full shade tree” at 707 full value, which is the case with the one tree. The other 3 trees, while similarly placed around the pavement area are not within an island or a 90d pavement corner. These 3 trees have placement alongside the pavement area and are counted as half-shading at 353 half value. If staff believes the one tree cannot be credited with a 707 value, we request that the parking shade structure be allowed consideration towards the credit we need to achieve the parking shading requirements.](#)
- Provide required understory trees per Section 6.2.B.2, update landscape planting schedule and perimeter landscape calculations accordingly (“The perimeter landscaped area shall be planted [...] shall be planted at a minimum with one (1) shade tree plus a mix of shrubs and understory trees totaling at least 5 plants for each 600 square feet[.]” (emphasis added) [Response: We are meeting the perimeter requirements and requesting a waiver for some of](#)



ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

the perimeter landscaping because the project because the majority of the site will retain existing vegetation. A portion of the East perimeter (East-A) has been calculated for perimeter landscape requirements. A portion of the West perimeter (West-A) has also been calculated for perimeter landscape requirements. And the full Southern portion of the property has been calculated for perimeter landscape requirements. The trees and understory shrub plantings are detailed on plan L3.0. Again, a waiver has been requested for the balance of the landscaping because the majority of the site includes existing vegetation that will remain.

- In the perimeter landscape table indicates that a waiver has been requested for 3 of the perimeter sections, but no such waiver request has been provided. **Response: a waiver will now be requested.**

L3.1 –

- The plat is very difficult to read. To make less confusing and more readable, please remove unnecessary layers including existing conditions. For the benefit of the Planning Board members and the site plan review process, please provide a site plan that primarily shows the above-ground proposed physical improvements that is readable and is without any unnecessary or confusing information. **Response: We turned-off many of the existing conditions layers as requested on plan L3.1.**
- Identify percentage of evergreen trees used to meet the 6.2.B perimeter landscaping requirements (max permitted is 25%). It appears 39% of the new trees are evergreen which exceeds the 25% maximum. **Response: We are requesting some of the perimeter trees be evergreen for purposes of screening and because of the narrow size of the landscape areas (in some cases). The board may exceed the 25% total where they deem such evergreen tree plantings may be necessary for screening purposes per sec 6.2.B.4 of the regulations.**
- All trees must be planted a minimum of 8 ft. from any property line (6.2.B.4). It appears that several of the perimeter trees are located closer than 8 ft including but not limited to the imperial honeylocust at the southwest corner and the Armstrong maple on the northern side of the parking area access. **Response: We have adjusted the majority of all shade trees to be 8ft from the property line. This includes the star magnolia trees on the East perimeter, the Honeylocust trees on the South perimeter, the two Armstrong maple trees at the North side of the dumpster enclosure, and the star magnolia on the West perimeter. We kept the one Armstrong maple on the East perimeter within the 5ft landscape bed where it is because of**



ParkArchitecture

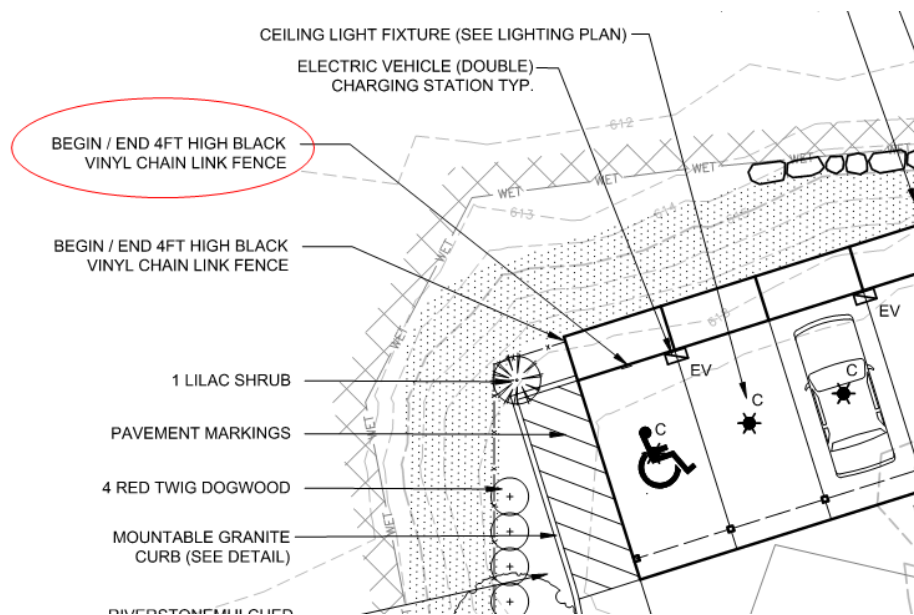
Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting

the tight design of the pavement area needed. We can eliminate this one tree from the plan providing that the parking structure satisfies the parking area shade requirements in lieu of this one tree.

- The size of the patio is identified as 32 ft x 12 ft, but is identified as 32 ft x 24 ft on Sheet L2.0. **Response:** Patio size is 32 ft x 12 ft and has been updated on sheet L2.0.
- There is a note indicating that a detail for the concrete sidewalk has been provided, but I can't locate it (it's also not clear why this note appears on sheet L3.1 as opposed to L2.0). **Response:** Concrete paving / joint treatment sidewalk detail is shown on L3.4. Concrete sidewalk note has been added to sheet L2.0.
- Remove fencing notes and add to Sheet L2.0. Or add all fence notes to both sheets and ensure that they are the same notes. **Response:** this has been adjusted and now shown in detail on plan L2.2.
- What is this note pointing to? **Response:** This is pointing to and now correctly labeled "WALL MOUNTED HANDICAP RESERVED PARKING SIGN".



- Please remove notes that aren't related to landscaping and add those notes to a more appropriate sheet as needed/applicable, including but not limited to these:

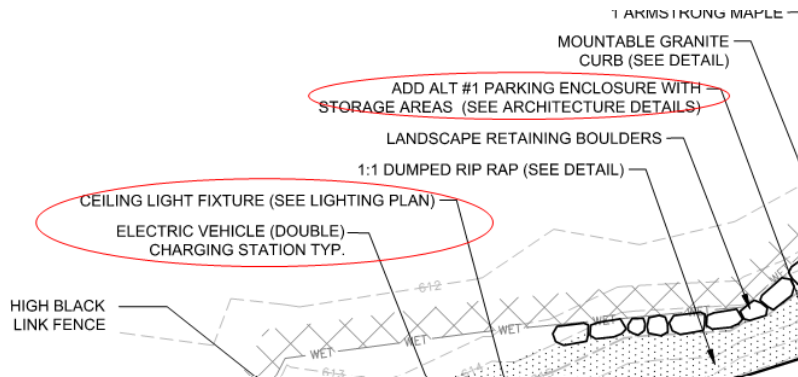


ParkArchitecture

Paul Simon, ASLA

www.parkarchitecture.com

Landscape Architecture | Architectural Planning | Public Art | Site Planning | Multi-Disciplinary Design Coordination | Permitting



L4.2

- The lighting plan must provide all information required by Section 5.1.E.13, i.e.:
 - For all exterior light fixtures:
 - mounting height,
 - fixture type,
 - lamp type,
 - color correlated temperature (CCT),
 - wattage of all exterior free-standing or building-mounted light fixtures, and
 - analyses and illuminance-level diagrams, to include average and minimum foot-candle measurements. [Response: Provided, see L4.0, L4.1 and L4.2. In addition, photometric statistics, data, and schedule with specifications are now provided on plan L4.2.](#)
- Provide analyses demonstrating compliance with Section 6.7.C.1 which requires parking lots to:
 - be illuminated so that the average horizontal illuminance at grade level is no more than 5.0 foot-candles; and... [Response: Now provided see plan L4.2 with Schedule and Stats.](#)
 - have a uniformity ratio (ratio of average to minimum illuminance) no greater than 4:1. [Response: Now provided see plan L4.2.](#)
- grill is located on the east side of the patio – is that the correct location? [Response: Grill location has been updated and is now located on the West side of the patio due to underground utility conflicts. Please disregard this aspect on the lighting plan L4.2. The pole locations will remain the same.](#)

By:

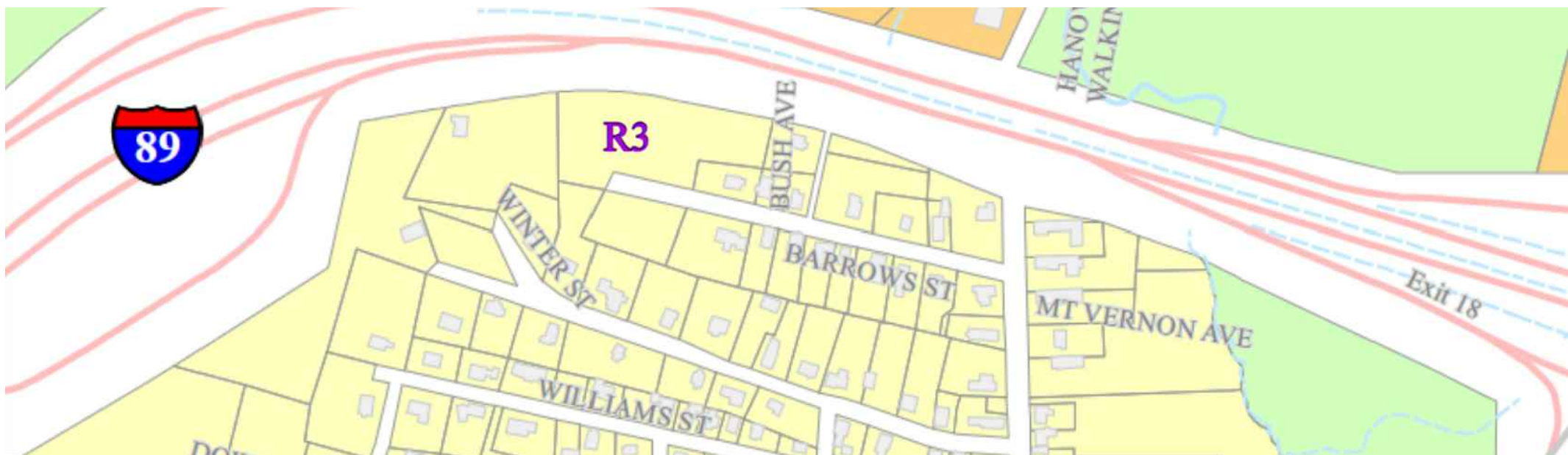
Paul Simon, Park Architecture LLC

BARROWS STREET COTTAGE DEVELOPMENT

GRAFTON COUNTY, CITY OF LEBANON, NEW HAMPSHIRE

SHEET INDEX #	DESCRIPTION:
1 - BP	BOUNDARY PLAN BY PATHWAYS CONSULTING
2 - A1	CARPORT AND COTTAGES
3 - A2	COTTAGE ELEVATIONS
4 - L1.0	OVERALL EXISTING CONDITIONS PLAN
5 - L1.1	EROSION CONTROL PLAN
6 - L2.0	OVERALL SITE PLAN
7 - L2.1	SITE LAYOUT PLAN
8 - L2.2	SITE GRADING PLAN
9 - L2.3	SITE UTILITIES PLAN
10 - L2.4A	FIRE TRUCK TURNING PLAN
11 - L2.4B	REFUSE TRUCK TURNING PLAN
12 - L2.4C	AMBULANCE TURNING PLAN
13 - L2.5	SITE / CIVIL DETAILS
14 - L2.6	SITE / CIVIL STORMWATER DETAILS
15 - L2.7	SITE / CIVIL STORMTECH DETAILS
16 - L2.8	SITE / CIVIL SEWER DETAILS
17 - L2.9	SITE / CIVIL SPECIFICATIONS

ZONING MAP



PREPARED BY:

GRAFTON COUNTY

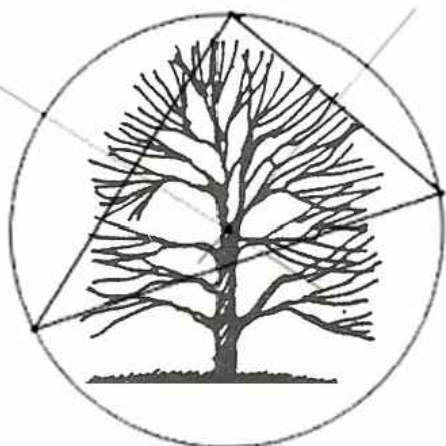


Civil Engineer
City of Lebanon New Hampshire
Lebanon Department of Public Works
Rodrick J. Finley, P.E.
193 Dartmouth College Highway
Lebanon, NH 03766



**STUDIO
NEXUS**
ARCHITECTS + PLANNERS
PO Box 275, White River Junction, VT 05001
802 275 5110 | studionexusarch.com

Architect
Studio Nexus Architects + Planners, PC
Doug Sonsalla, AIA, LEED AP
46 South Main Street, Suite 200
PO Box 275
White River Junction, VT 05001-0275



ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467

Landscape Architect
Park Architecture, LLC
Paul Simon, ASLA
3 School House Lane, Suite #1
Etna, NH 03750



**PATHWAYS
CONSULTING, LLC**
240 MECHANIC STREET, SUITE 100
LEBANON, NEW HAMPSHIRE 03766
(603) 448-2200

Surveyor
Pathways Consulting, LLC
Gardner P. Kellogg, LLS
240 Mechanic Street
Lebanon, NH 03766

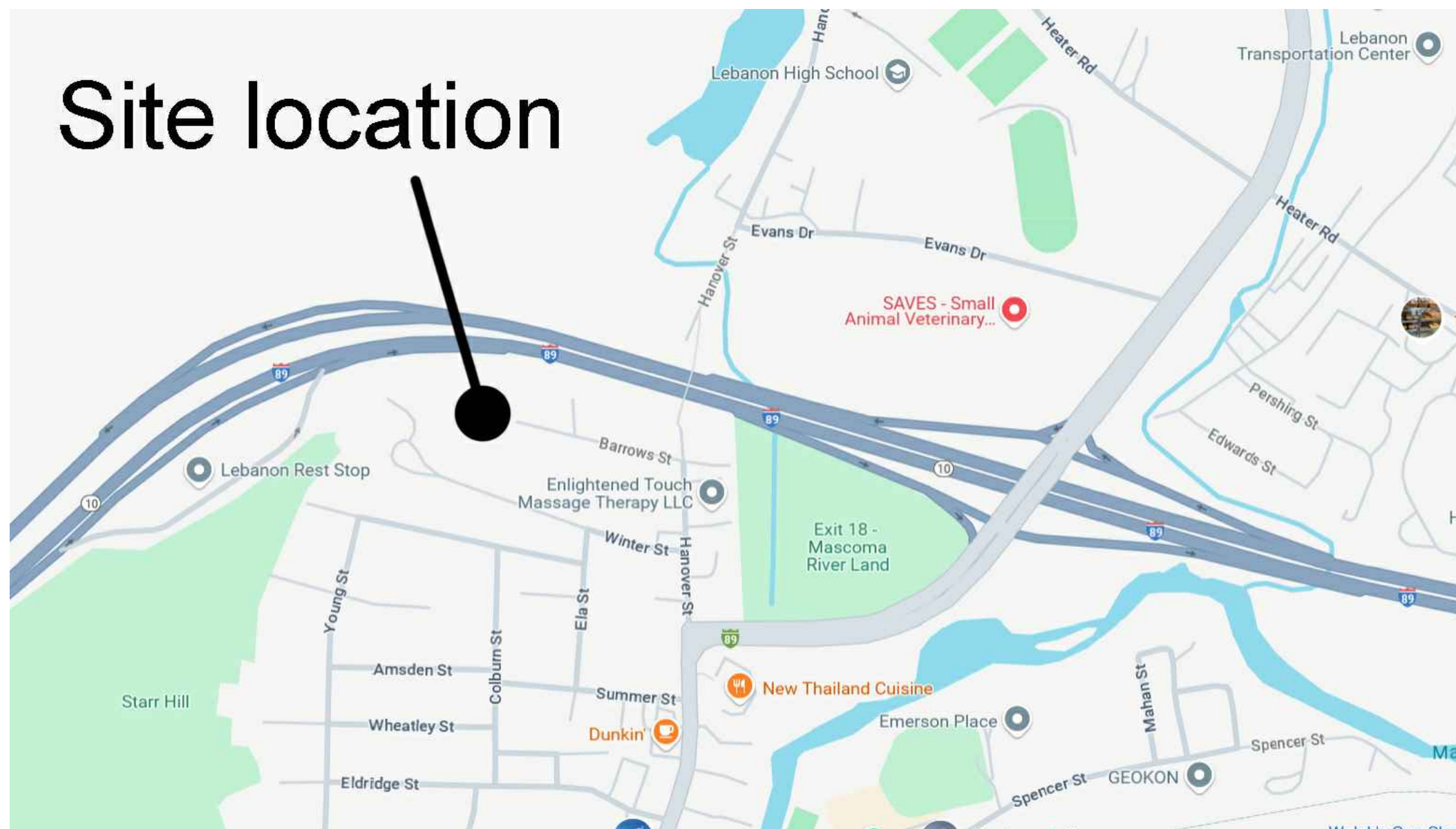
Civil Engineer
Pathways Consulting, LLC
Scott A. Williams, P.E.
240 Mechanic Street
Lebanon, NH 03766



Wetlands Scientist
Ecosystem Management Consultants, LLC
Rick Van de Poll, Ph.D., CWS
30 North Sandwich Road
Center Sandwich, NH 03227

SHEET INDEX #	DESCRIPTION:
18 - L3.0	LANDSCAPE REQUIREMENTS PLAN
19 - L3.1	SITE LANDSCAPE PLAN
20 - L3.2	INTERIOR LOT PLAN
21 - L3.3	SITE LANDSCAPE DETAILS
22 - L3.4	SITE LANDSCAPE DETAILS
23 - L3.5	SITE LANDSCAPE DETAILS
24 - L3.6	SITE LANDSCAPE DETAILS
25 - L4.0	SITE LIGHTING PLAN
26 - L4.1	SITE LIGHTING DETAILS
27 - L4.2	SITE LIGHTING PHOTOMETRICS
28 - L5.0	OVERALL SUBDIVISION PLAT (WITH INTERIOR LOT AREAS)

VICINITY MAP



PLANNING BOARD NUMBER (2025-04-FMAJSPRCUP)
PREVIOUSLY APPROVED SITE PLAN (PB2024-33-SPR)

SUBMITTED UNDER:

ZONING ORDINANCE #2 ADOPTED: JANUARY 16, 2023; LAST AMENDED APRIL 3, 2024
SITE PLAN REVIEW REGULATIONS ADOPTED: MAY 13, 1991; LAST REVISED: JANUARY 23, 2023

SITE INFORMATION

SITE INFORMATION			
TAX MAP & LOT NUMBER:		MAP 77, LOT106	
ZONING DISTRICT:		RESIDENTIAL THREE (R-3)	
AREA OF LOT:		2.09 ± ACRES	
PROPOSED USE:		COTTAGE DEVELOPMENT PER SECTION 509 OF THE ZONING CODE	
NUMBER OF UNITS:		5	
PARKING:	REQUIRED	PROPOSED	
	10 SPACES	5 GARAGE SPACES	
		6 PAVED SPACES	
		11 TOTAL SPACES	
NUMBER OF STORIES:		1 STORY	
LOADING SPACES:		N/A	
BUILDING HEIGHT:	REQUIRED		
	≤24'		
BUILDING SETBACKS:	REQUIRED	PROPOSED	
	FRONT: 5'	15'	
PER SEC. 201.1 OF ZONING CODE	SIDE: 15'	15'	
	REAR: N/A	N/A	
PER SEC. 201.3 OF ZONING CODE	SIDE: 15'	15'	
	LOT COVERAGE (BUILDINGS):	ALLOWED	PROPOSED
		35%	6.59%
IMPERVIOUS AREA:		13,077 sq. ft.	
COMMON OPEN SPACE:		2,000 SF MIN.	4,080 SQ. FT.
OPEN SPACE:		15% MIN.	87% PROPOSED
WETLANDS CONSERVATION DISTRICT /FLOODPLAIN DISTRICT, SHORELAND WATER QUALITY PROTECTION JURISDICTION:		WETLANDS PERMIT HAS BEEN ISSUED. THIS SITE IS NOT WITHIN FLOODPLAIN DISTRICT/OR WITHIN THE SHORELAND WATER QUALITY PROTECTION JURISDICTION. WETLANDS & NON-SITE SPECIFIC PERMIT 2024-0098 AUGUST 22, 2024	

PARKING INCLUDES
6 ELECTRICAL (EV)
CHARGING SPACES

PLAT WAS APPROVED PURSUANT TO THE CITY OF LEBANON SUBDIVISION
REGULATIONS LAST REVISED JUNE 28, 2021

SEC. 607.8 ELECTRIC VEHICLES

C.1. ONE-AND TWO -FAMILY DWELLINGS. ALL NEW ONE-AND TWO-FAMILY DWELLINGS
SHALL PROVIDE AT LEAST ONE (1) EV-READY SPACE PER DWELLING UNIT.

# OF UNITS	REQUIRED EV-READY SPACE	PROVIDED EV-READY SPACE
5	5	6

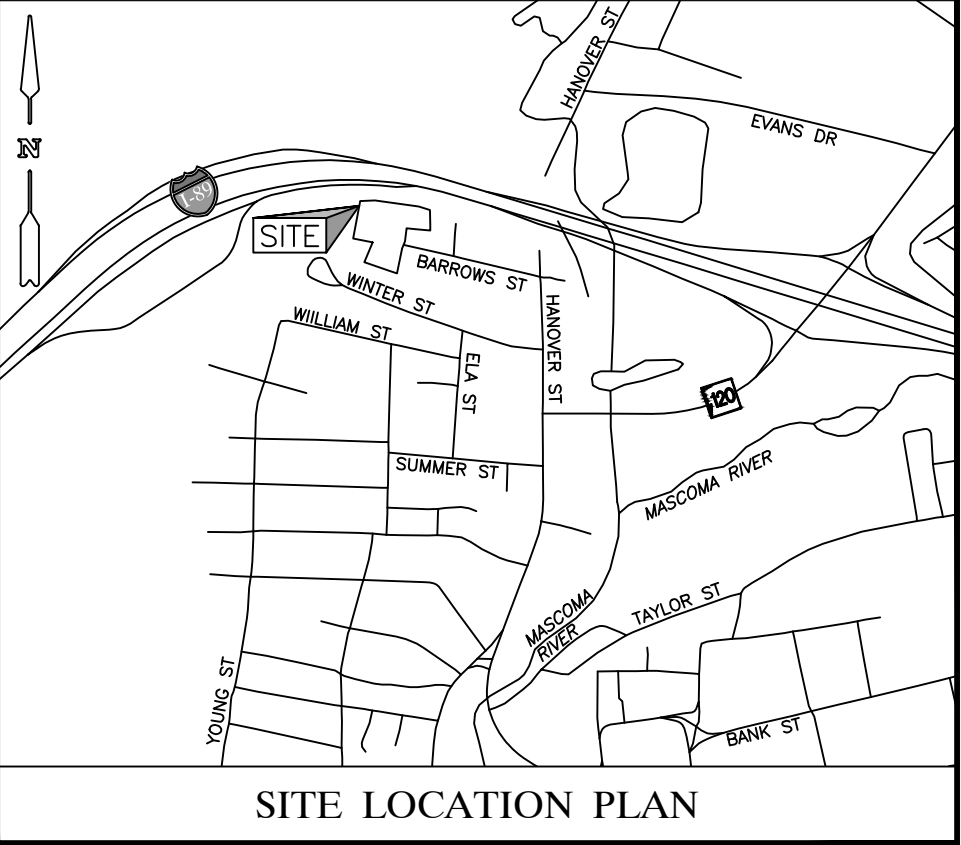
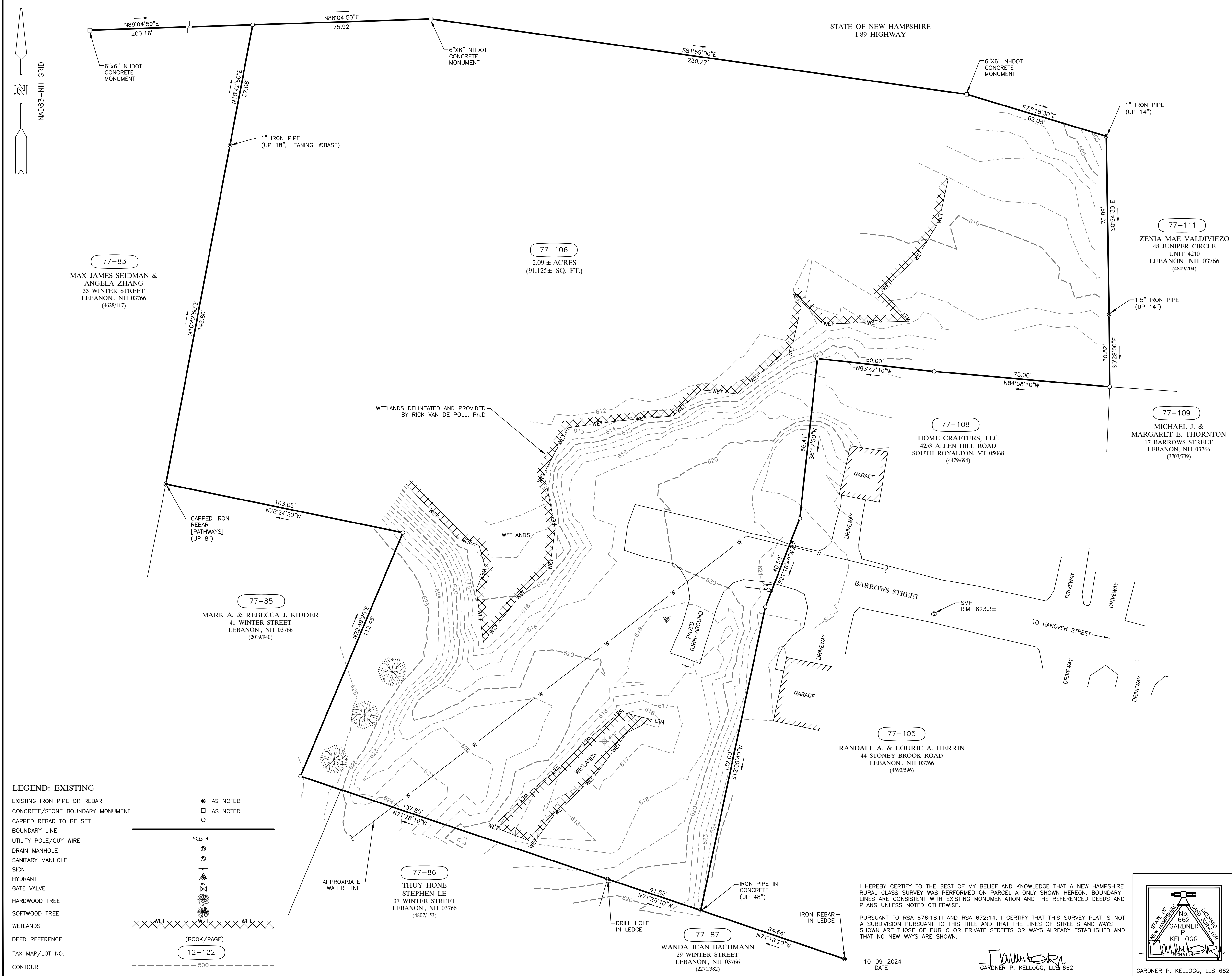
STATE AND LOCAL PERMITS / APPROVALS REQUIRED

PROJECT REQUIRES THE FOLLOWING APPROVALS:

LOCAL SUBDIVISION APPROVAL
STATE OF NH DES APPROVAL
USACOE / ARMY CORPS APPROVAL

Date: December 09, 2024

Last Revised: January 08, 2025



- PLANS OF REFERENCE:
- REFERENCE IS MADE TO THE FOLLOWING PLANS RECORDED AT THE GRAFTON COUNTY REGISTRY OF DEEDS:
A. (PLAN) BOOK 895, PAGE 59 ENTITLED "PLAN OF LOTS SOLD BY THE TOWN OF LEBANON," PREPARED BY L.P. DAVIS, DATED MAY 8, 1957.

- GENERAL SURVEY NOTES:
- HORIZONTAL DATUM: NH STATE PLANE GRID NAD83 (SURVEY FEET) FROM GPS OBSERVATION.
 - VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM 1988 (NAVD88) FROM GPS OBSERVATION.
 - UNDERGROUND UTILITIES ARE APPROXIMATE AND NOT WARRANTED TO BE EXACT OR COMPLETE AND ARE TO BE FIELD VERIFIED PRIOR TO ANY EXCAVATION OR SITE MODIFICATIONS.
 - PATHWAYS CONSULTING, LLC COLLECTED DATA FOR THIS PLAN IN DECEMBER 2023 AND JANUARY 2024 UNDER PARTIALLY SNOW COVERED CONDITIONS AND IN OCTOBER 2024.

RECORD OWNER: CITY OF LEBANON
MAP 77, LOT 106 51 NORTH PARK STREET
LEBANON, NH, 03766

DEED REFERENCE: BOOK 749, PAGE 340
BOOK 4871, PAGE 412 (VOLUNTARY MERGER OF LAND
P82024-24-VLM)
LEBANON CITY COUNCIL REGULAR SESSION MINUTES
WEDNESDAY, MAY 1, 2024 7:00 P.M. (DISCONTINUOUS OF
WESTERN PORTION BARROWS ROAD)

Date	Revision	By

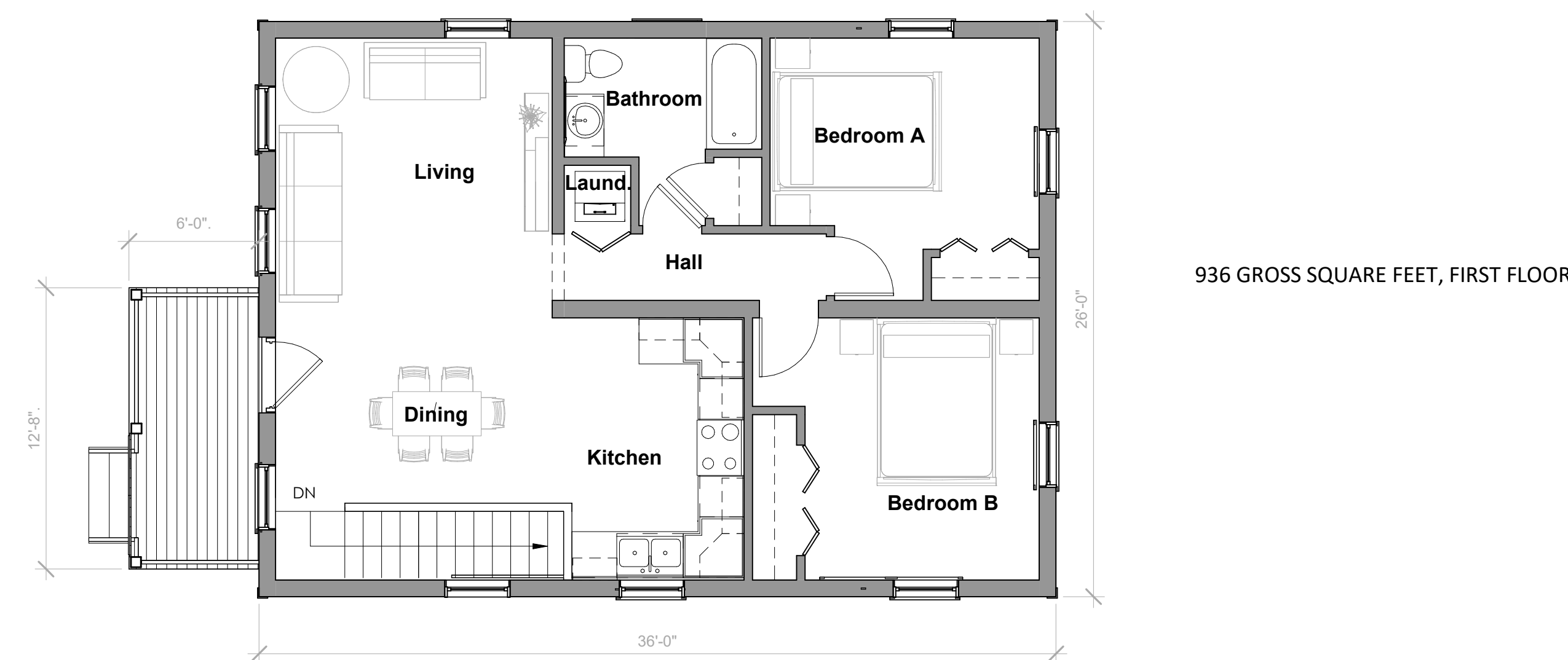
BOUNDARY PLAN FOR
CITY OF LEBANON
TAX MAP 77, LOT 106
0 BARROWS STREET, LEBANON, GRAFTON CO., NEW HAMPSHIRE

0 20' 40' 60' 80' 100'

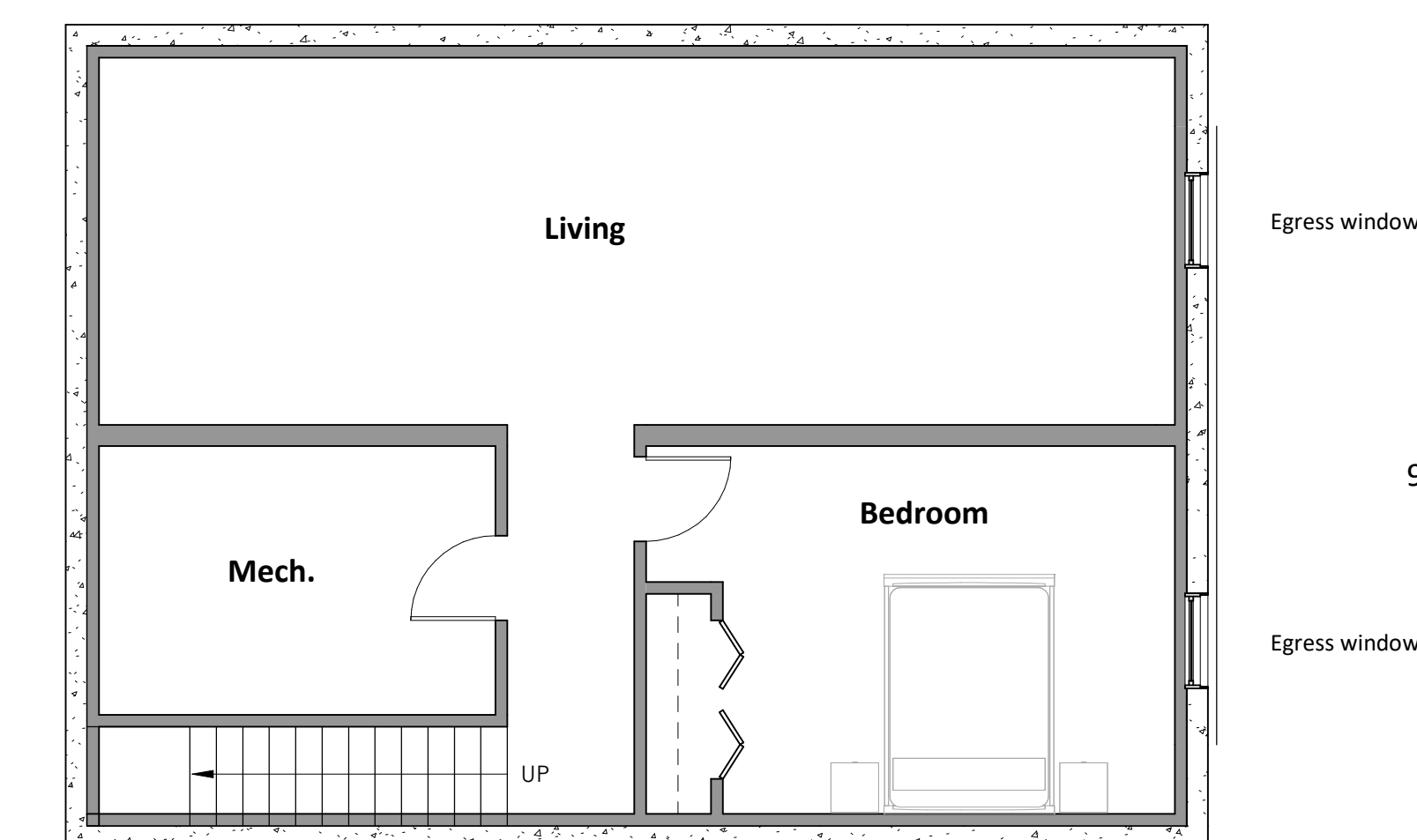
OCTOBER 9, 2024 SCALE: 1"= 20' PROJ. NO. 13377

PATHWAYS CONSULTING, LLC
240 MECHANIC STREET, SUITE 100
LEBANON, NEW HAMPSHIRE 03766
(603) 448-2200

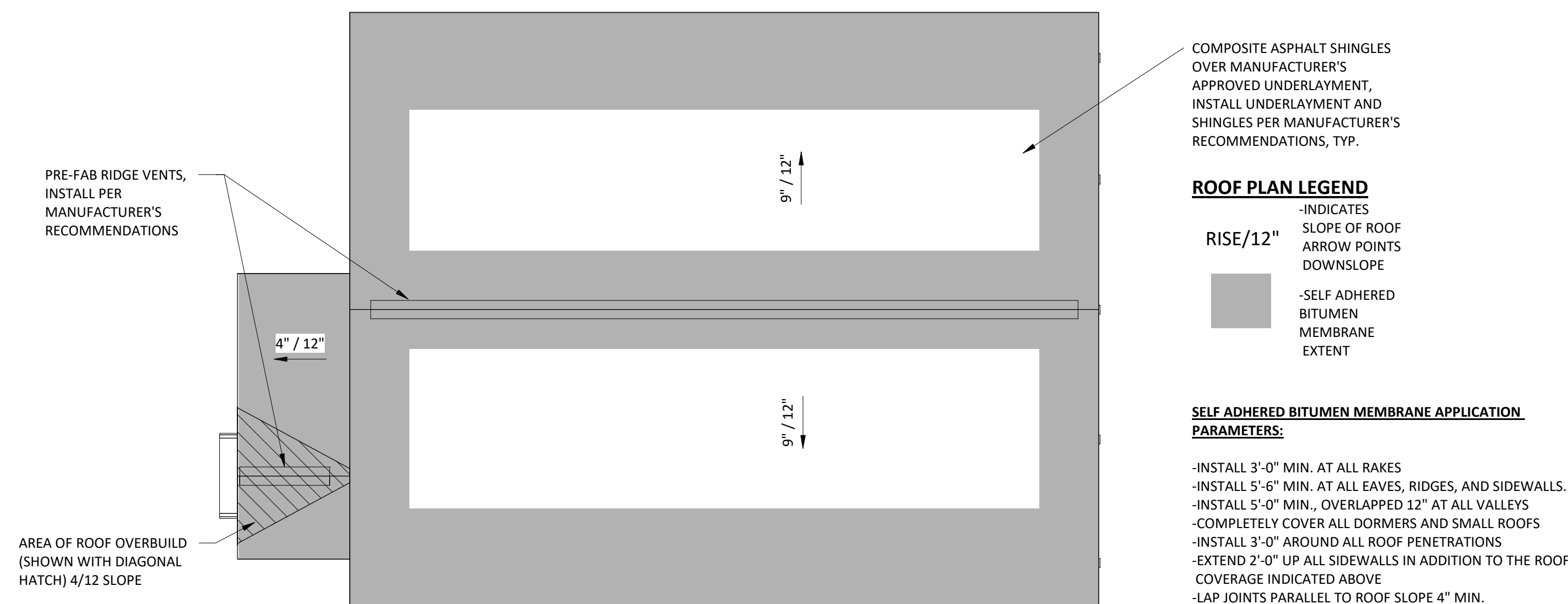
COTTAGE FLOOR PLANS



5 First Floor Copy 1
3/16" = 1'-0"

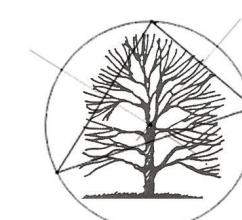


⑥ Basement
3/16" = 1'-0"



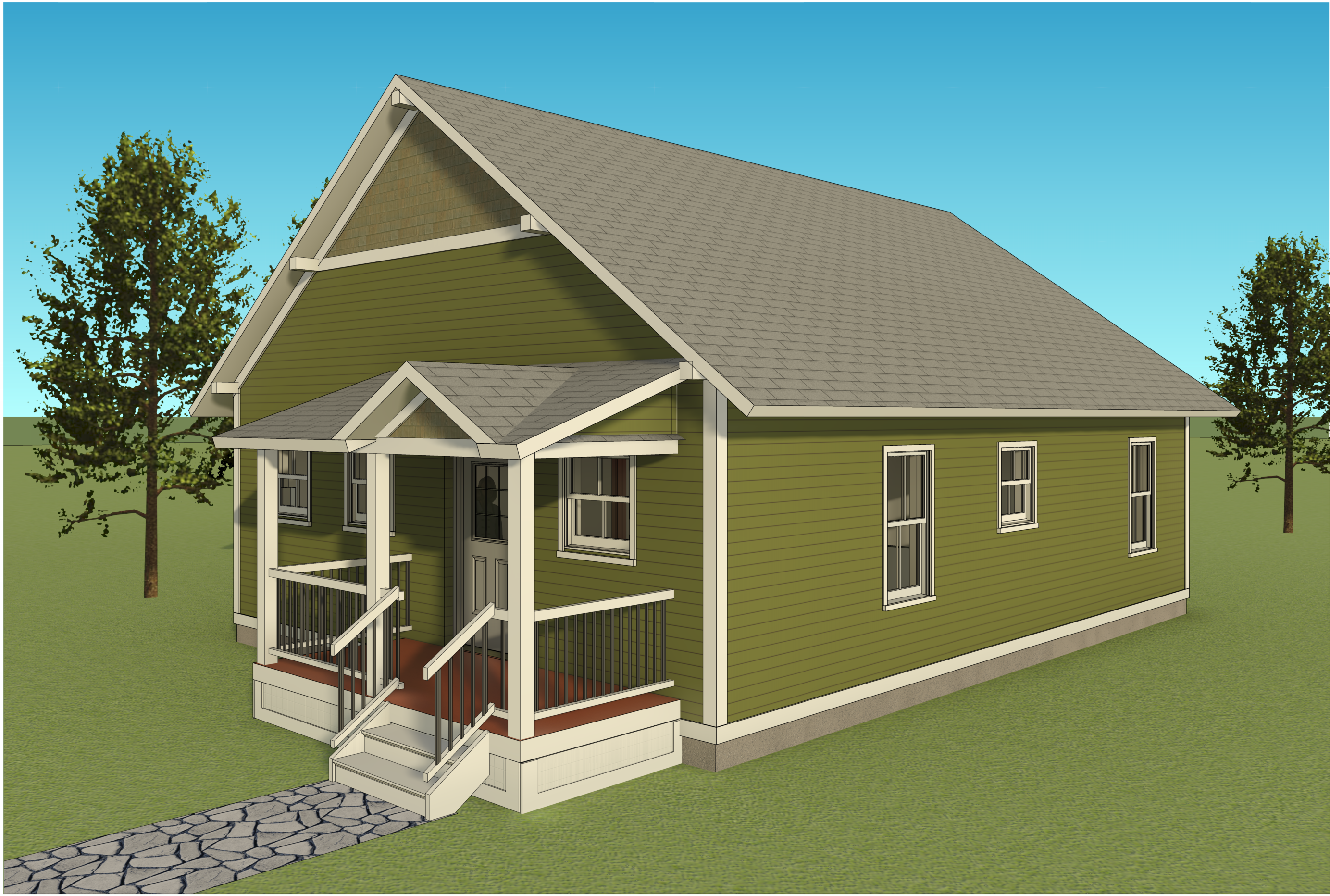
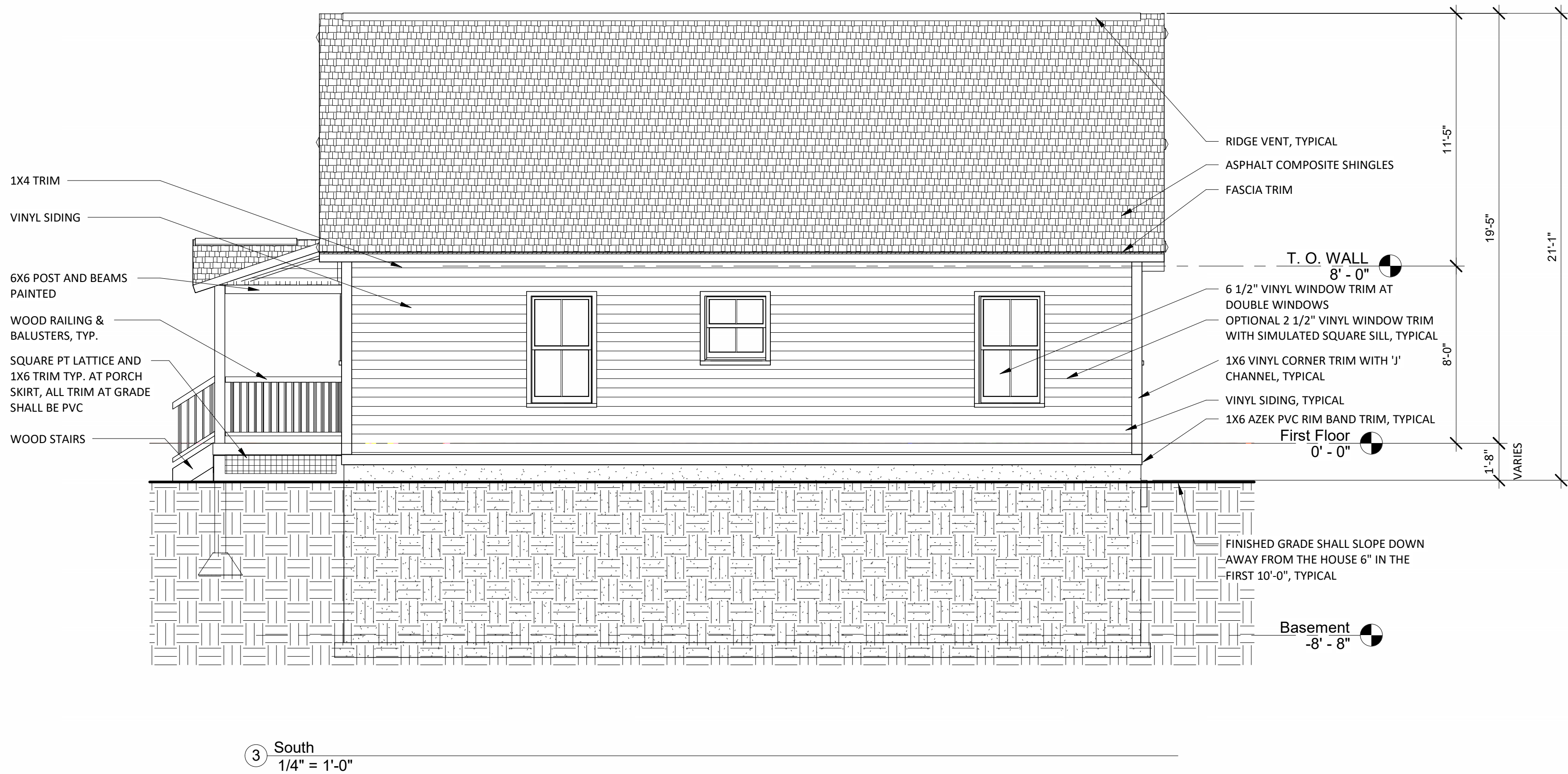
⑦ Roof Plan
3/16" = 1'-0"

NOTE: UNITS 1, 2, 3, AND 4 ARE DEPICTED ON THE SITE PLAN AS SHOWN ON THE ARCHITECTURAL PLANS AND ELEVATIONS. UNIT 5 HAS THE EXACT SAME CONFIGURATION, BUT IS MIRRORED ABOUT THE LONG AXIS OF THE UNIT



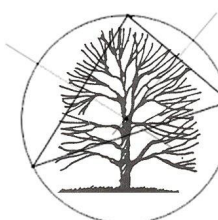
ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467

			Project			
			BARROWS STREET COTTAGES			
0	INITIAL ISSUE		CARPORT AND COTTAGES			
No.	REVISIONS/SUBMISSIONS	Date	Title			
☐ RECORD DRAWING			☐ FINAL			
☐ PRELIMINARY			☐ SKETCH/CONCEPT			
 ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467			Prepared by: Doug Sansalla / djs		Project No.	DWG File Name
			Drawn: djs		Scale	as noted
			Checked: djs		Drawing No.	
			Reviewed: PS		A1	
			Date: Jan 8, 2025			



⑤ Architectural Perspective

NOTE: UNITS 1, 2, 3, AND 4 ARE DEPICTED ON THE SITE PLAN AS SHOWN ON THE ARCHITECTURAL PLANS AND ELEVATIONS. UNIT 5 HAS THE EXACT SAME CONFIGURATION, BUT IS MIRRORED ABOUT THE LONG AXIS OF THE UNIT.



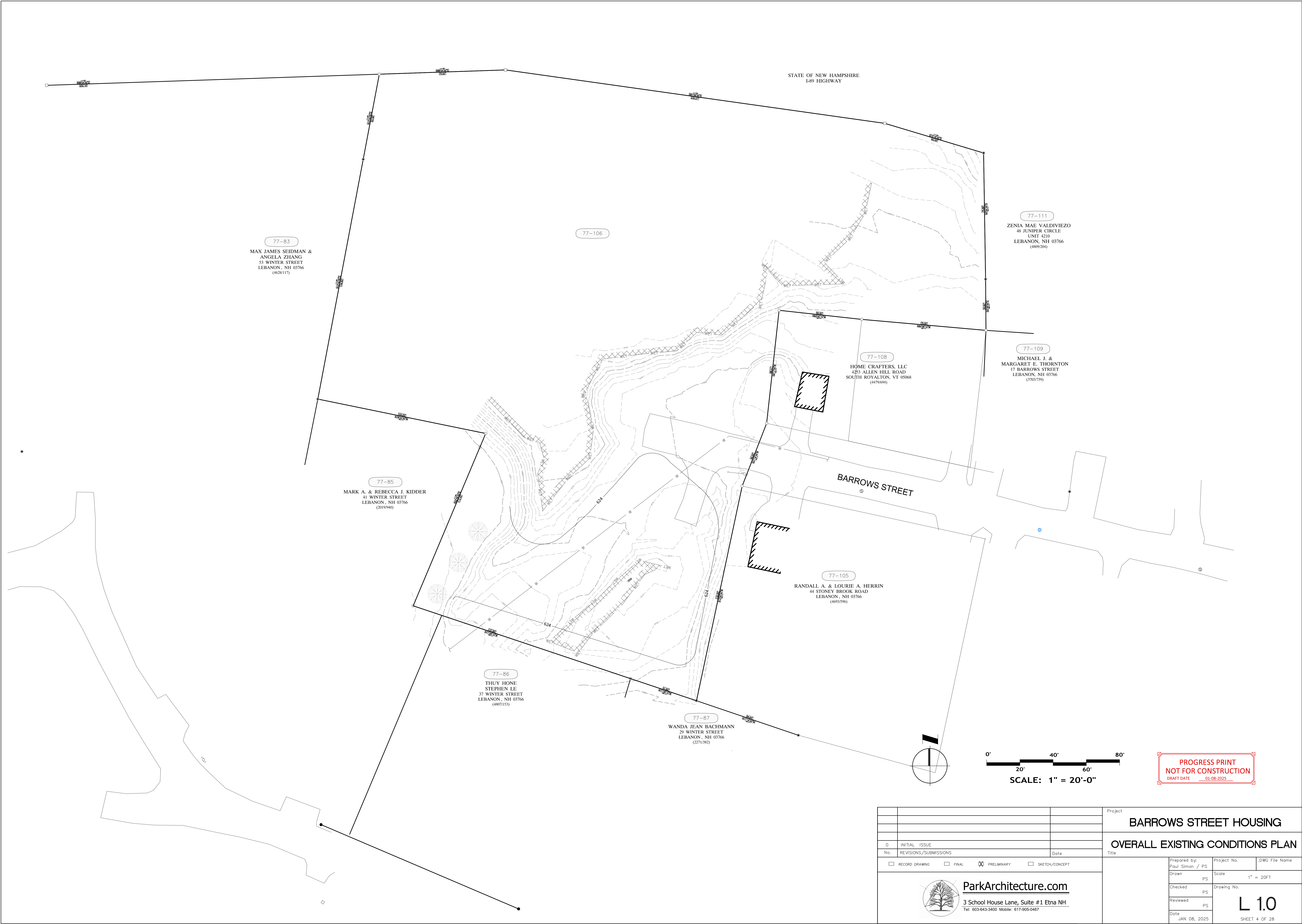
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467

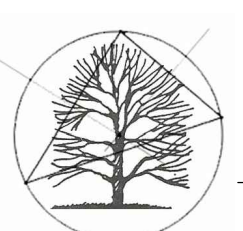
Project
BARROWS STREET COTTAGES

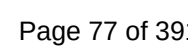
COTTAGE ELEVATIONS

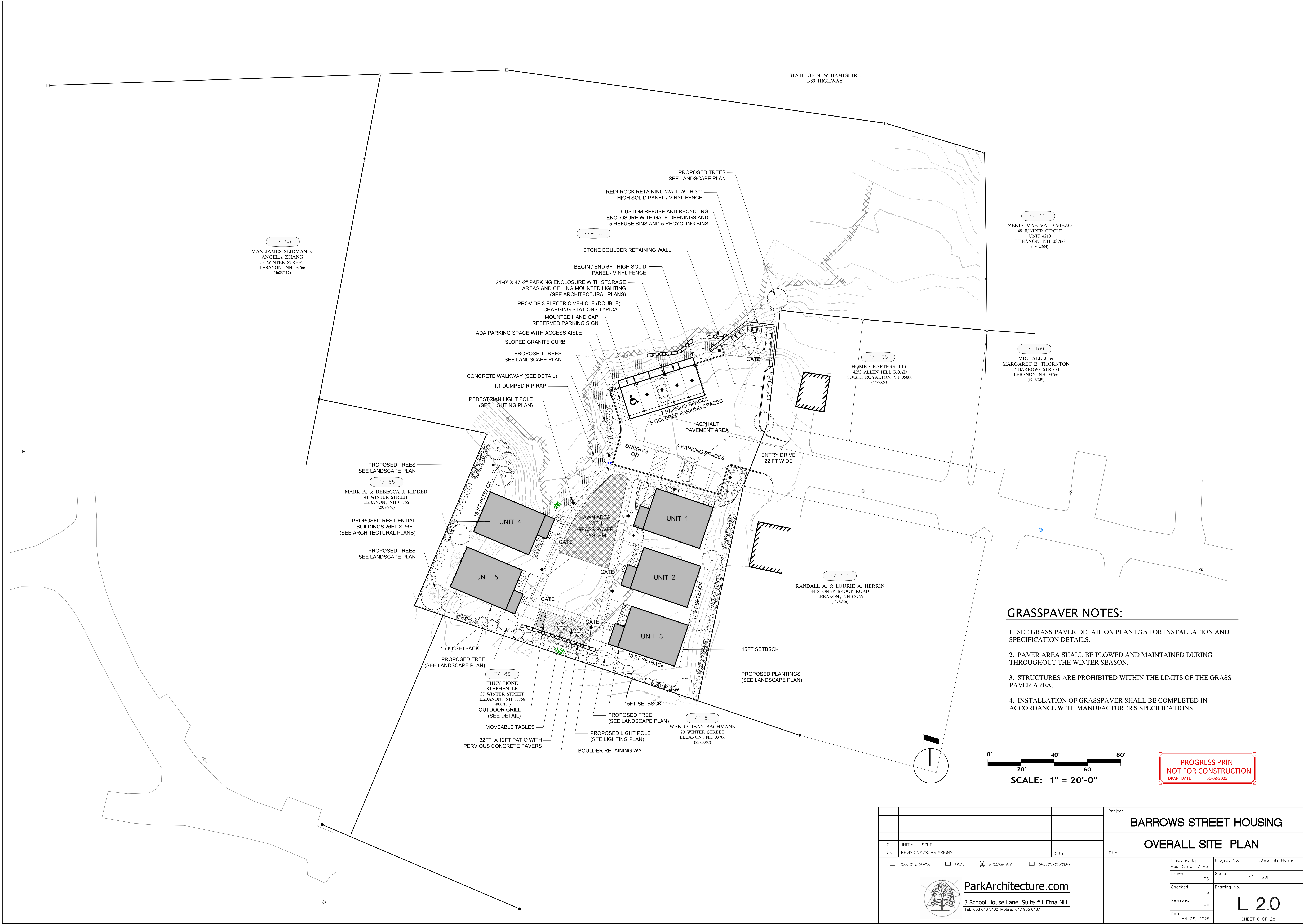
Prepared by: Doug Sansella / djs	Project No.	DWG File Name
Drawn djs	Scale	as noted
Checked djs	Drawing No.	
Reviewed PS		
Date Jan 8, 2025		

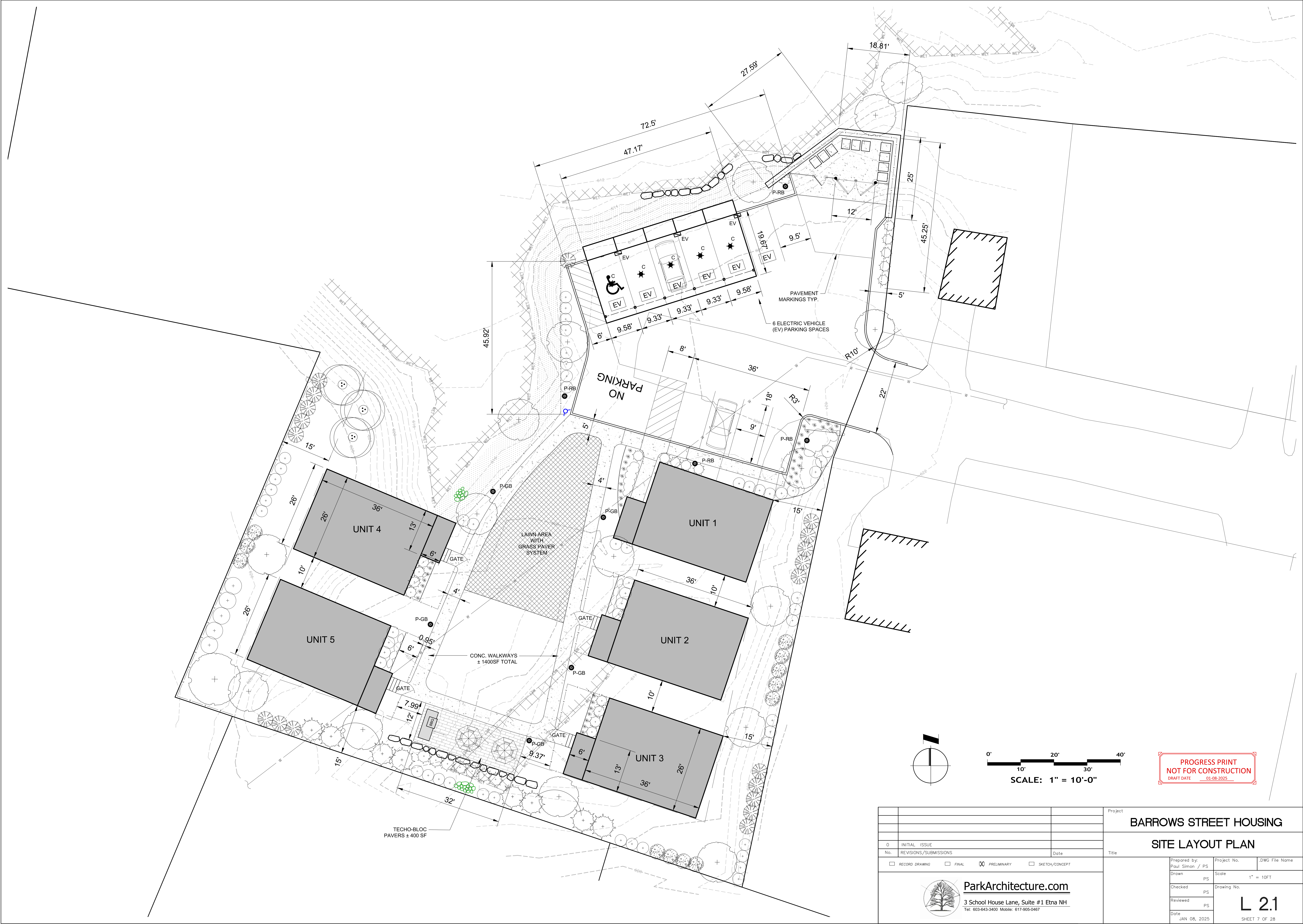
A2

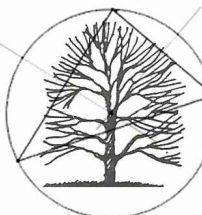


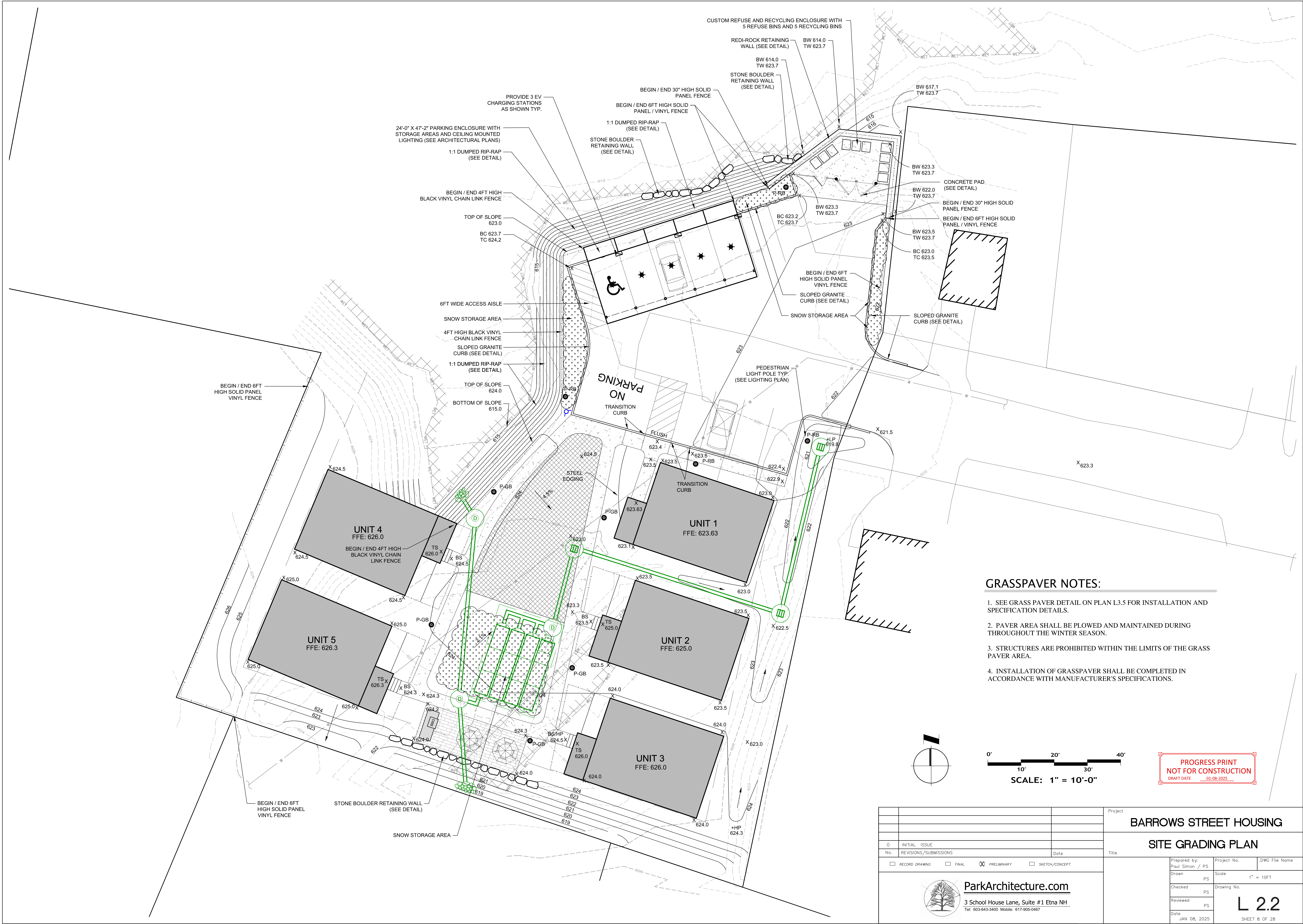
				Project	BARROWS STREET HOUSING			
					OVERALL EXISTING CONDITIONS PLAN			
0	INITIAL ISSUE			Title	Prepared by: Paul Simon / PS	Project No.	DWG File Name	
No.	REVISIONS/SUBMISSIONS		Date			Scale	1" = 20FT	
☐	RECORD DRAWING	☐ FINAL	☒ PRELIMINARY	☐ SKETCH/CONCEPT		Checked	PS	Drawing No. L 1.0 SHEET 4 OF 28
ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467				Reviewed		PS		
				Date		JAN 08, 2025		





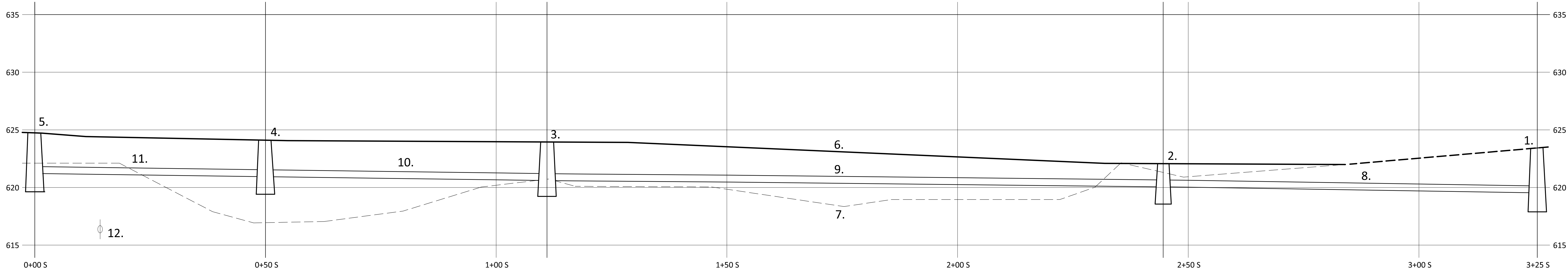


		Project		BARROWS STREET HOUSING	
				SITE LAYOUT PLAN	
0 INITIAL ISSUE				Title	
No. REVISIONS/SUBMISSIONS		Date			
☐ RECORD DRAWING		☐ FINAL		☒ PRELIMINARY	
				☐ SKETCH/CONCEPT	
 ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467		Prepared by:	Paul Simon / PS	Project No.	
		Drawn	PS	Scale	1" = 10FT
		Checked	PS	Drawing No.	L 2.1 SHEET 7 OF 28
		Reviewed	PS		
		Date	JAN 08, 2025		



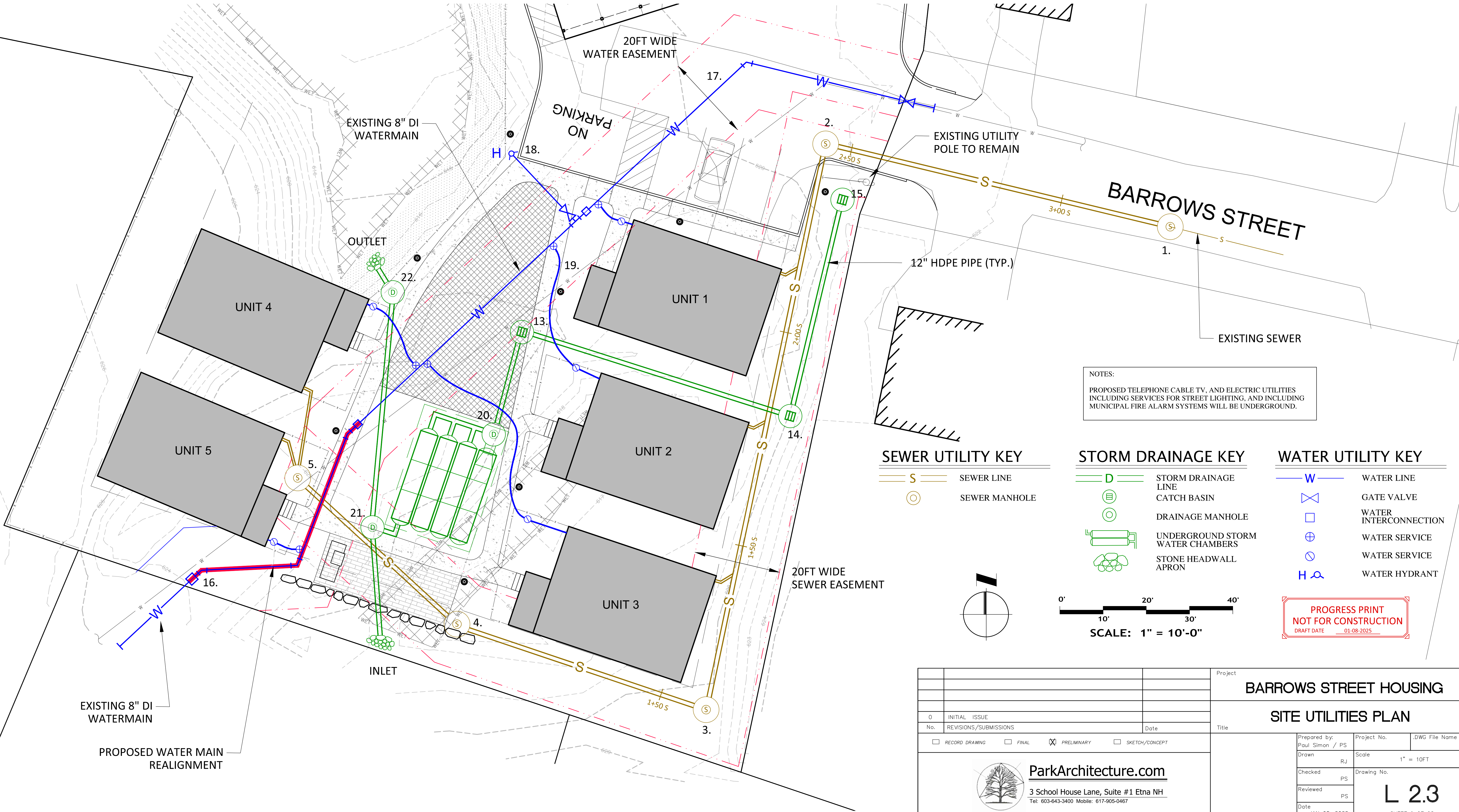
SEWAGE SYSTEM PROFILE DETAIL

1" = 10' HORIZ.
1" = 4' VERT.



UTILITY NOTES

- EXISTING SEWER MANHOLE, STA 3+25S
RIM 623.32'
INV: 619.65'
- SMH - 1, STA 2+44S
RIM 622.0'
INV. IN: 620.07'
INV. OUT: 619.97'
- SMH - 2, STA 1+11S
RIM 624.0'
INV. IN: 620.70'
INV. OUT: 620.60'
- SMH - 3, STA 0+50S
RIM 624.0'
INV. IN: 621.04'
INV. OUT: 620.94'
- SMH - 4, STA 0+00S
RIM 624.70'
INV. OUT: 621.24'
- FINISHED GRADE
- EXISTING GRADE
- 8" SDR 35 PVC
L=81' S=0.004
- 8" SDR 35 PVC
L=133' S=0.004
- 8" SDR 35 PVC
L=61' S=0.004
- 8" SDR 35 PVC
L=50' S=0.004
- 8" DI WATER MAIN
- YD-1
RIM 622.8'
INV. IN: 618.2'
INV. OUT: 618.2'
- YD-2
RIM 622.4'
INV. IN: 618.3'
INV. OUT: 618.5'
- YD-3
RIM 620.8'
INV. OUT: 618.8'
- WATER INTERCONNECTION
8" DI LONG BODY SOLID SLEEVE, MJ
8" DI PIPE, AS NEEDED
8" - 45 DEG DI BEND, MJ
8" DI PIPE, AS NEEDED
8" - 45 DEG DI BEND, MJ
8" DI PIPE, AS NEEDED
8" - 45 DEG DI BEND, MJ
8" DI PIPE, AS NEEDED
8" - 45 DEG DI BEND, MJ
8" DI PIPE, AS NEEDED
8" DI LONG BODY SOLID SLEEVE, MJ
RETAINER GLANDS
- EXISTING 8" DI WATER MAIN
- HYDRANT ASSEMBLY
8" DI LONG BODY SOLID SLEEVE, MJ
8" DI PIPE, AS NEEDED
8" X 6" DI ANCHOR TEE, MJ
6" GATE VALVE, MJ W/ BOX
6" DI PIPE, AS NEEDED
HYDRANT
RETAINER GLANDS
- WATER SERVICE (TYP.)
1" CORPORATION STOP
1" TYPE K COPPER
1" CURB STOP WITH BOX
1" TYPE K COPPER TO FOUNDATION
- CB-1 (CATCH BASIN #1)
RIM: 623.00
INV. IN: 618.00
24" INV. OUT: 617.00
12" INV. OUT: 618.00
- CB-2 (CATCH BASIN #2)
RIM: 624.30
INV. IN: 617.00
INV. IN: 617.00
INV. OUT: 617.00
- CB-3 (CATCH BASIN #3)
RIM: 624.00
INV. IN: 616.00
INV. OUT: 616.00



NOTES:
PROPOSED TELEPHONE CABLE TV, AND ELECTRIC UTILITIES INCLUDING SERVICES FOR STREET LIGHTING, AND INCLUDING MUNICIPAL FIRE ALARM SYSTEMS WILL BE UNDERGROUND.

SEWER UTILITY KEY

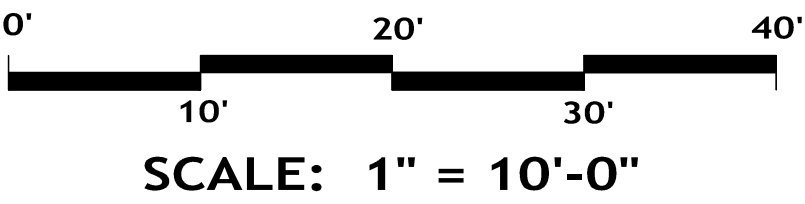
- SEWER LINE
- SEWER MANHOLE

STORM DRAINAGE KEY

- STORM DRAINAGE LINE
- CATCH BASIN
- DRAINAGE MANHOLE
- UNDERGROUND STORM WATER CHAMBERS
- STONE HEADWALL APRON

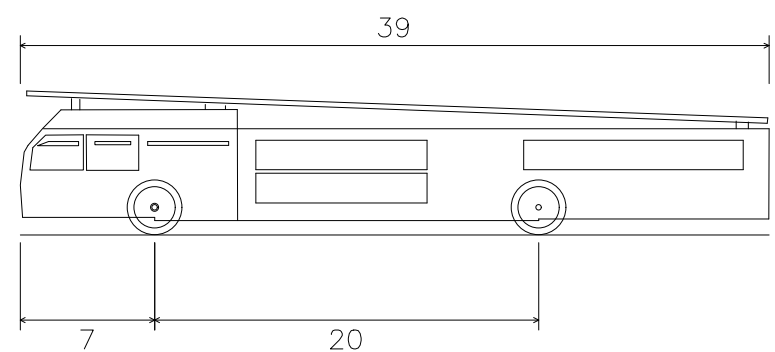
WATER UTILITY KEY

- WATER LINE
- GATE VALVE
- WATER INTERCONNECTION
- WATER SERVICE
- WATER SERVICE
- WATER HYDRANT

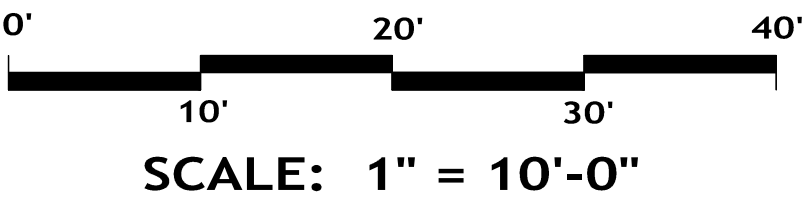
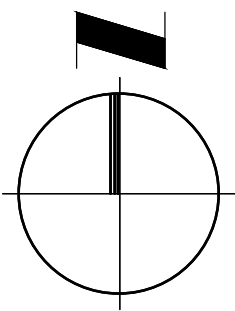
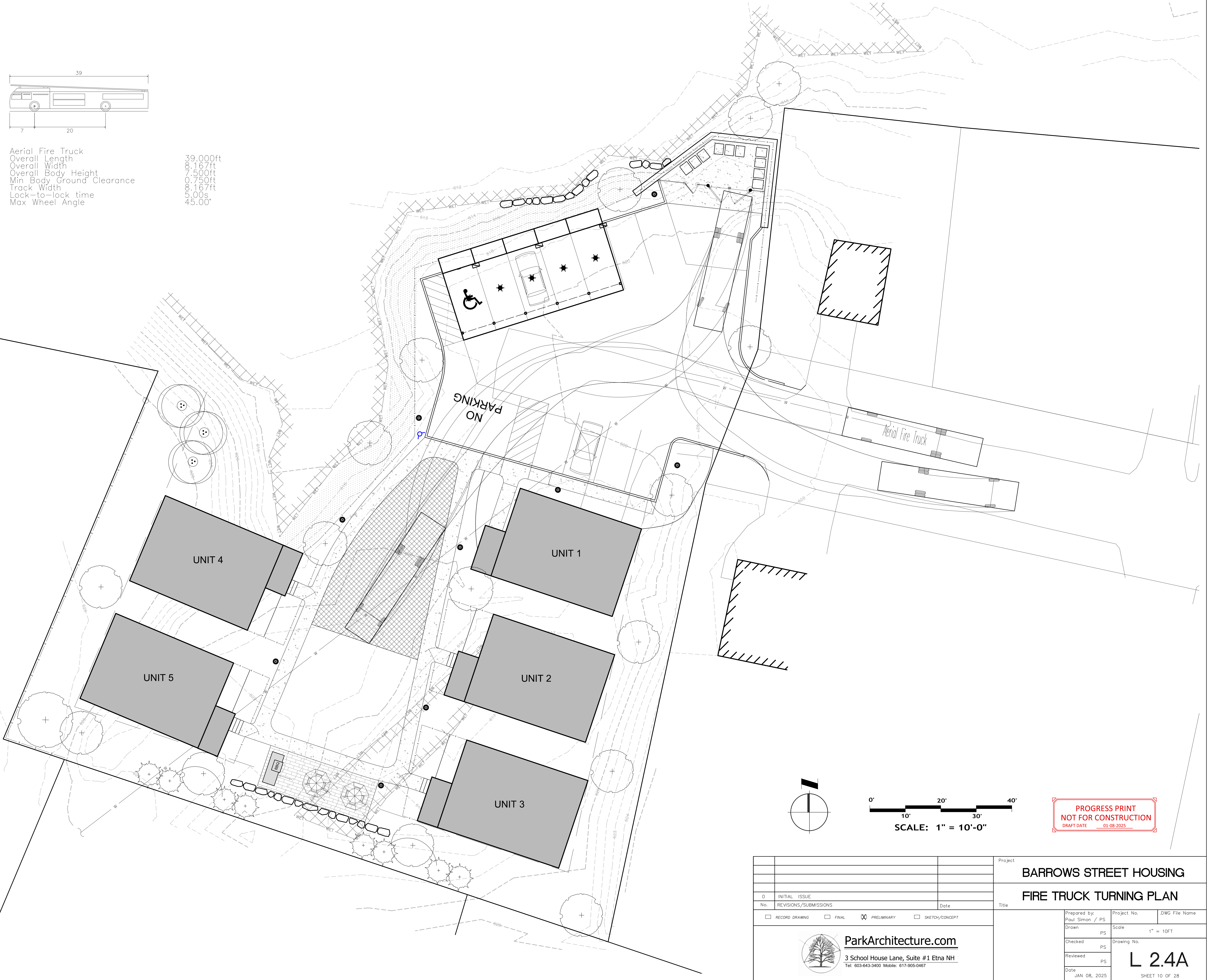


PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

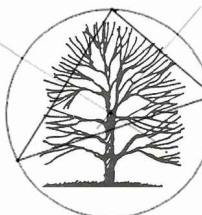
		Project	
		BARROWS STREET HOUSING	
		SITE UTILITIES PLAN	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
		Drawn: RJ	
		Checked: PS	
		Reviewed: PS	
		Date: JAN 08, 2025	
		Project No. /DWG File Name	
		Scale: 1" = 10FT	
		Drawing No.	
		L 2.3	
		SHEET 9 OF 28	

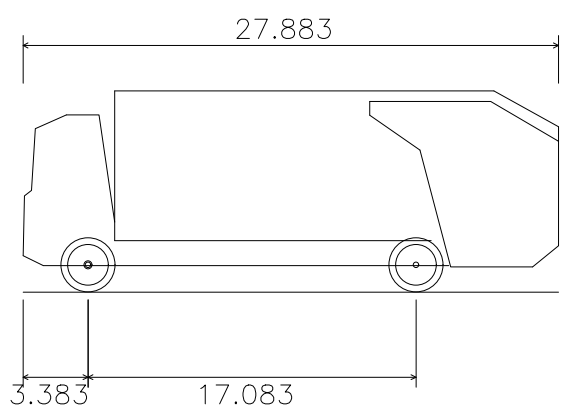


Aerial Fire Truck
Overall Length 39.000ft
Overall Width 7.500ft
Overall Body Height 20.750ft
Min Body Ground Clearance 8.167ft
Track Width 5.00s
Lock-to-lock time 45.00°
Max Wheel Angle

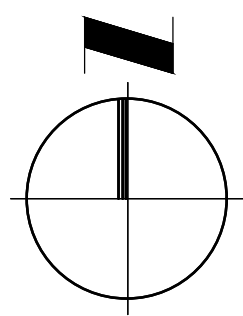
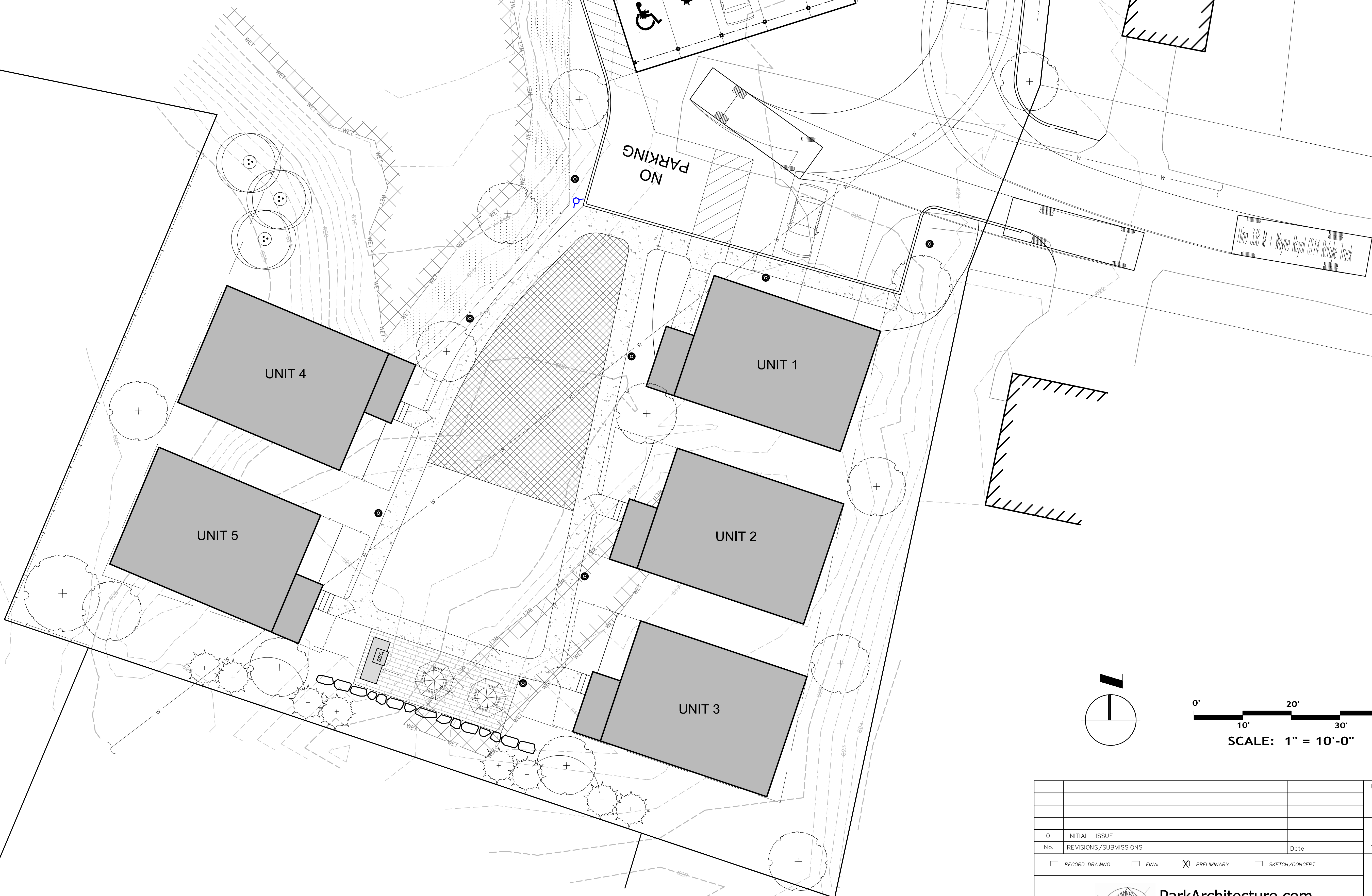


PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

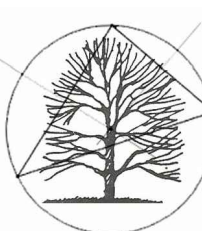
		Project	
		BARROWS STREET HOUSING	
		FIRE TRUCK TURNING PLAN	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☐ FINAL	
☒ PRELIMINARY		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
		Drawn: PS	
		Checked: PS	
		Reviewed: PS	
		Date: JAN 08, 2025	
		Project No. _____	
		DWG File Name _____	
		Scale: 1" = 10FT	
		Drawing No. _____	
		L 2.4A	
		SHEET 10 OF 28	



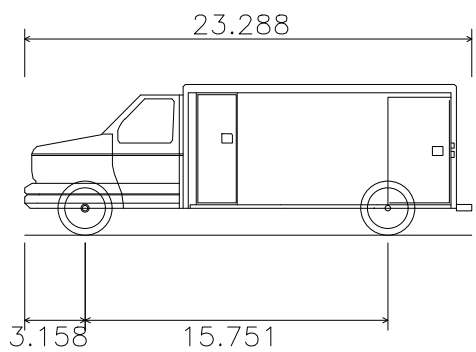
Hino 338 M + Wayne Royal GT14 Refuse Truck
Overall Length 27.883ft
Overall Width 8.042ft
Overall Body Height 10.488ft
Min Body Ground Clearance 1.318ft
Track Width 8.042ft
Lock-to-lock time 6.00s
Curb to Curb Turning Radius 27.400ft



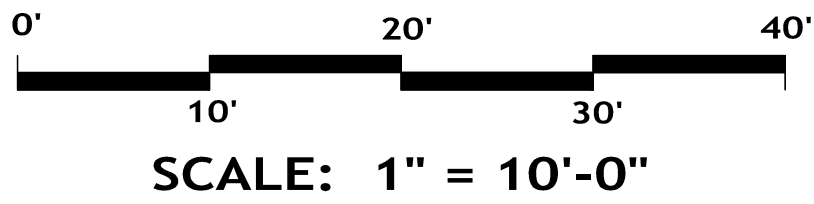
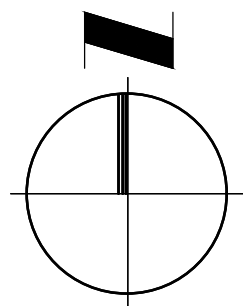
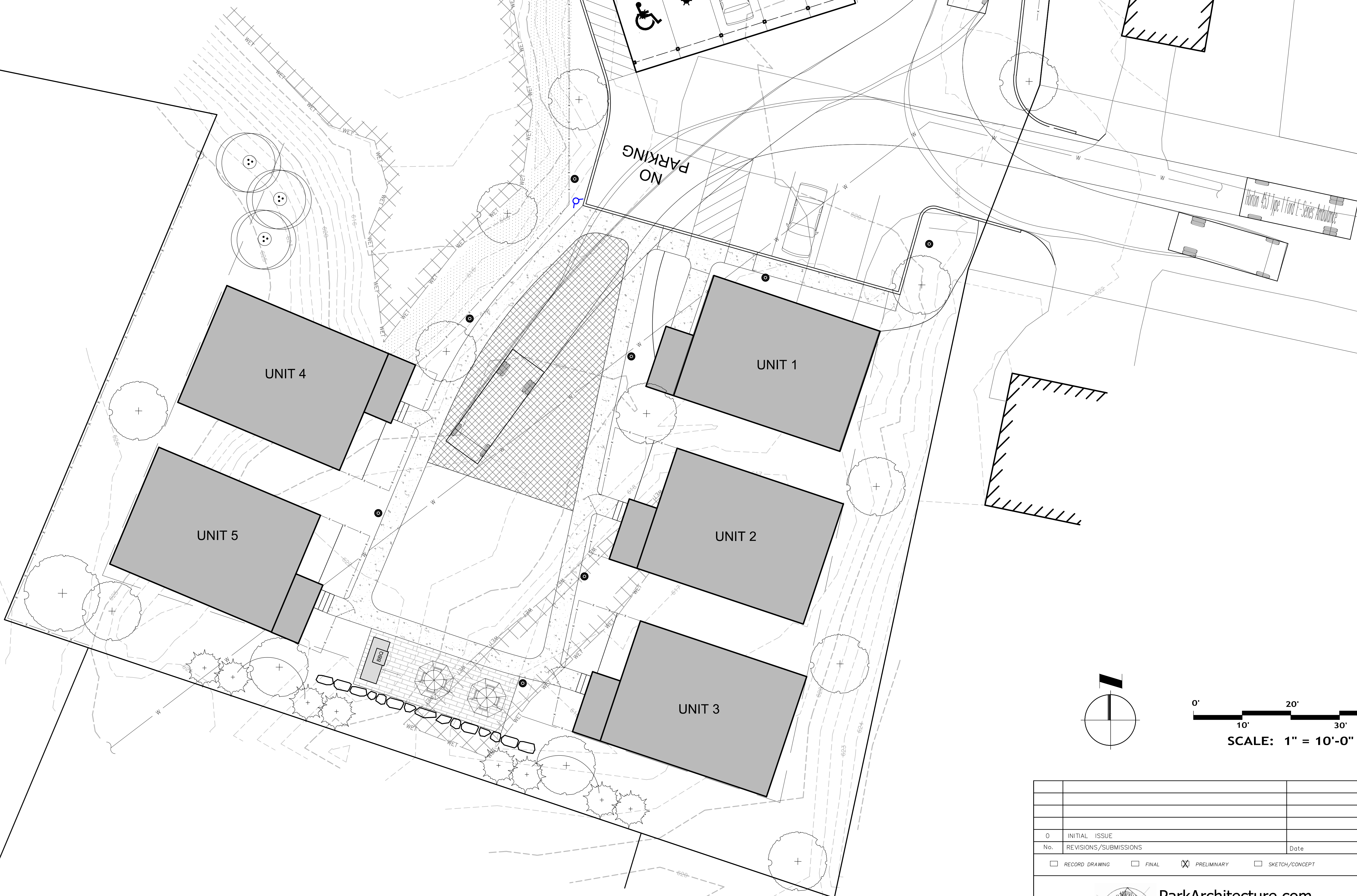
PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

		Project	
		BARROWS STREET HOUSING	
		REFUSE TRUCK TURNING PLAN	
0 INITIAL ISSUE		Title	
No.	REVISIONS/SUBMISSIONS	Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
		Drawn: PS	
		Checked: PS	
		Reviewed: PS	
		Date: JAN 08, 2025	
		Project No.:	
		Scale: 1" = 10FT	
		Drawing No.:	
		L 2.4B	
		SHEET 11 OF 28	

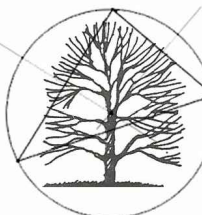
ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467



Horton 453 Type I Ford E-Series Ambulance
Overall Length 23.288ft
Overall Width 8.021ft
Overall Body Height 7.653ft
Min Body Ground Clearance 1.265ft
Track Width 8.021ft
Lock-to-lock time 5.00s
Curb to Curb Turning Radius 27.400ft

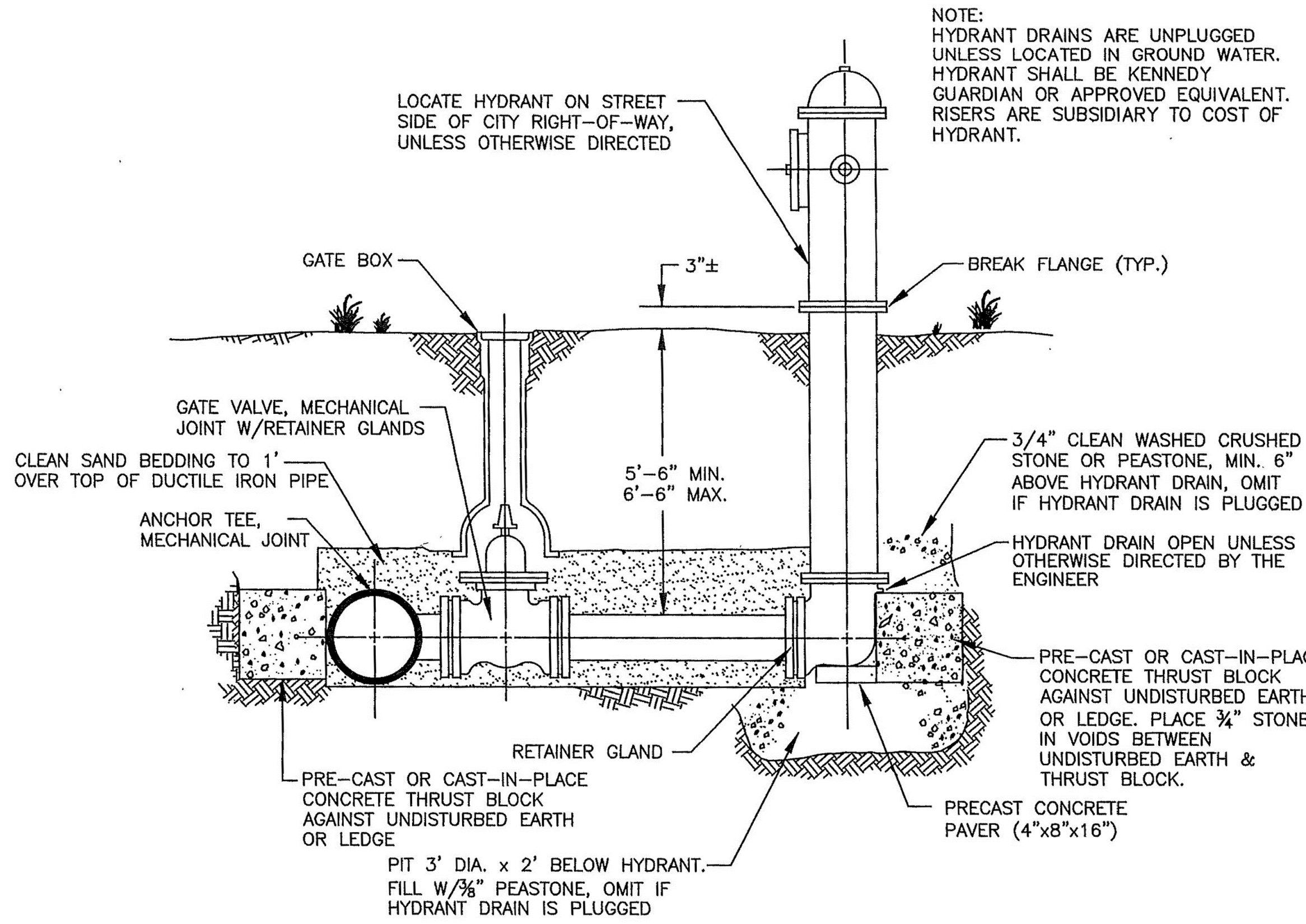


PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

		Project	
		BARROWS STREET HOUSING	
		AMBULANCE TURNING PLAN	
0 INITIAL ISSUE		Title	
No.	REVISIONS/SUBMISSIONS	Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
☐ FINAL		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
		Drawn: PS	
		Checked: PS	
		Reviewed: PS	
		Date: JAN 08, 2025	
		Project No.	DWG File Name
		Scale	1" = 10FT
		Drawing No.	
		L 2.4C	
		SHEET 12 OF 28	

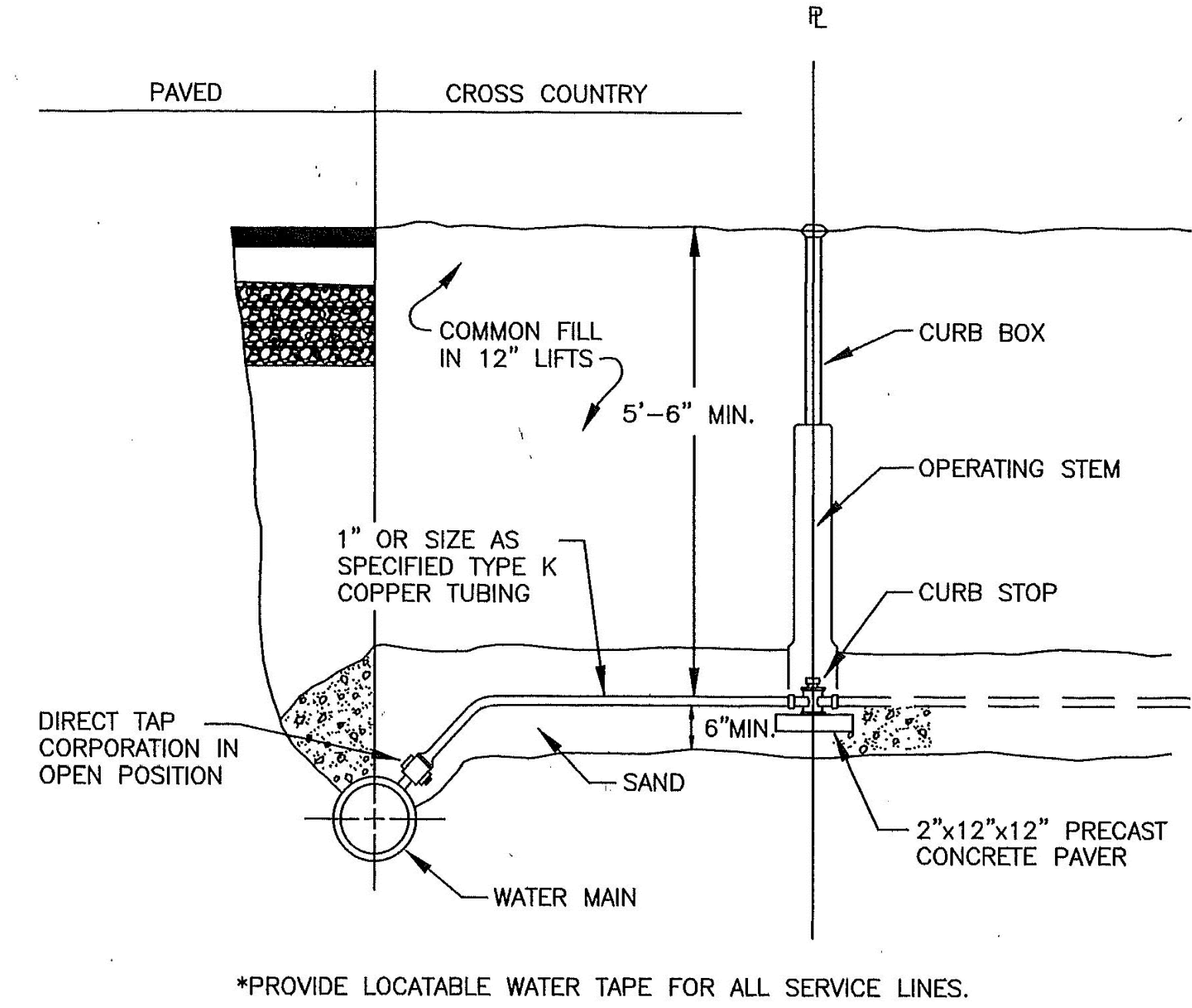
HYDRANT DETAIL

NOT TO SCALE



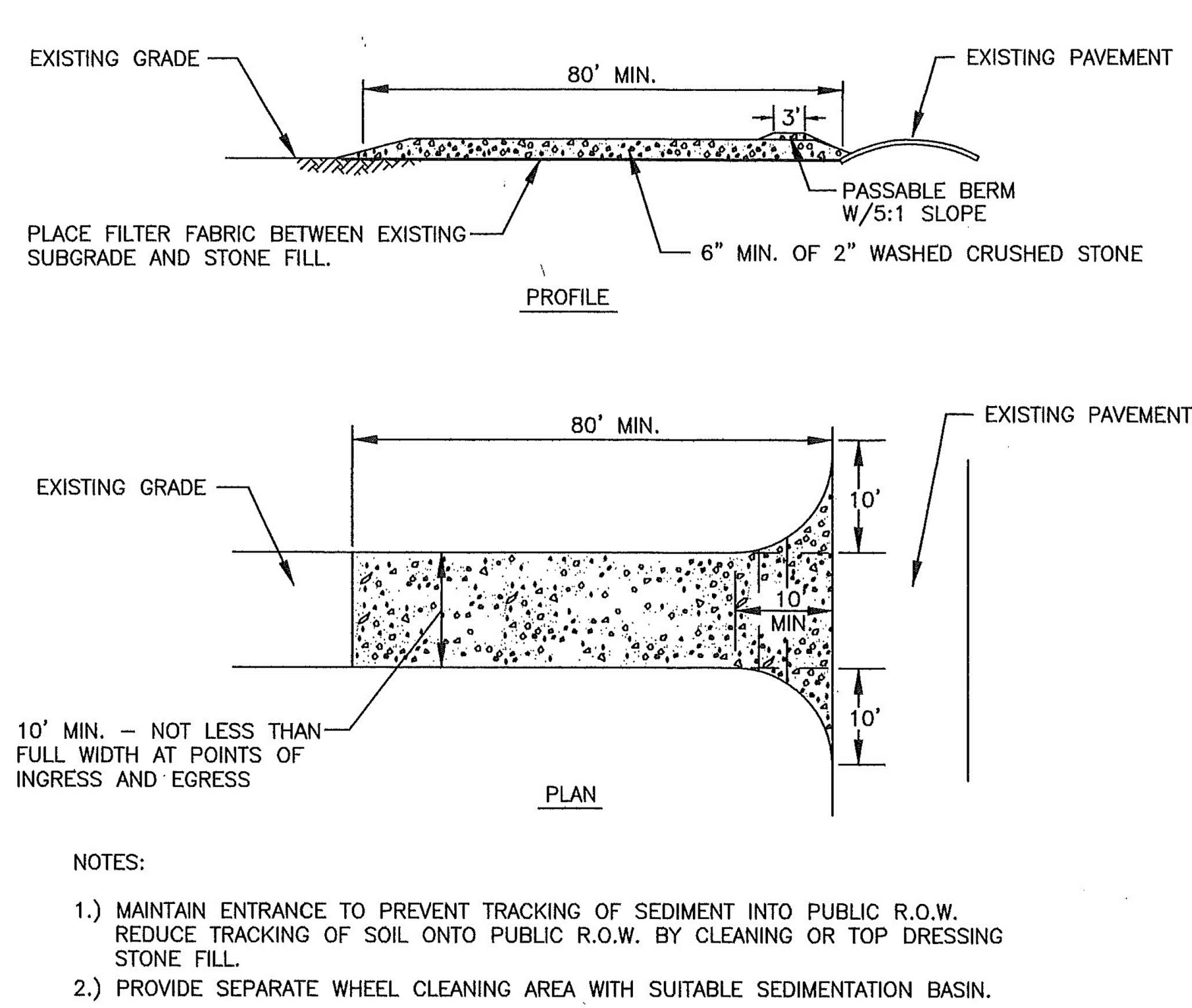
WATER SERVICE CONNECTION DETAIL

NOT TO SCALE



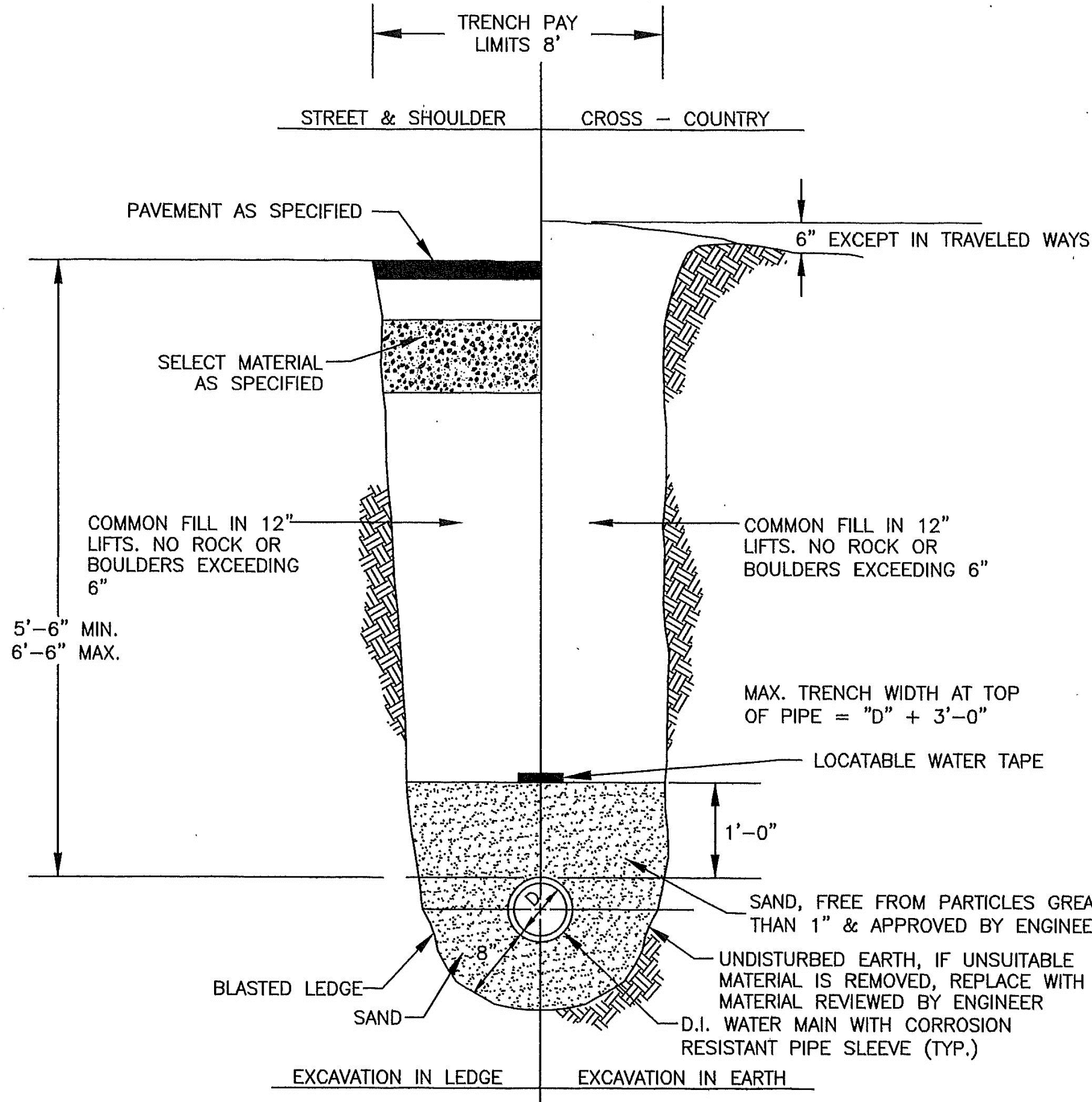
STABILIZED CONSTRUCTION ENTRY DETAIL

NOT TO SCALE



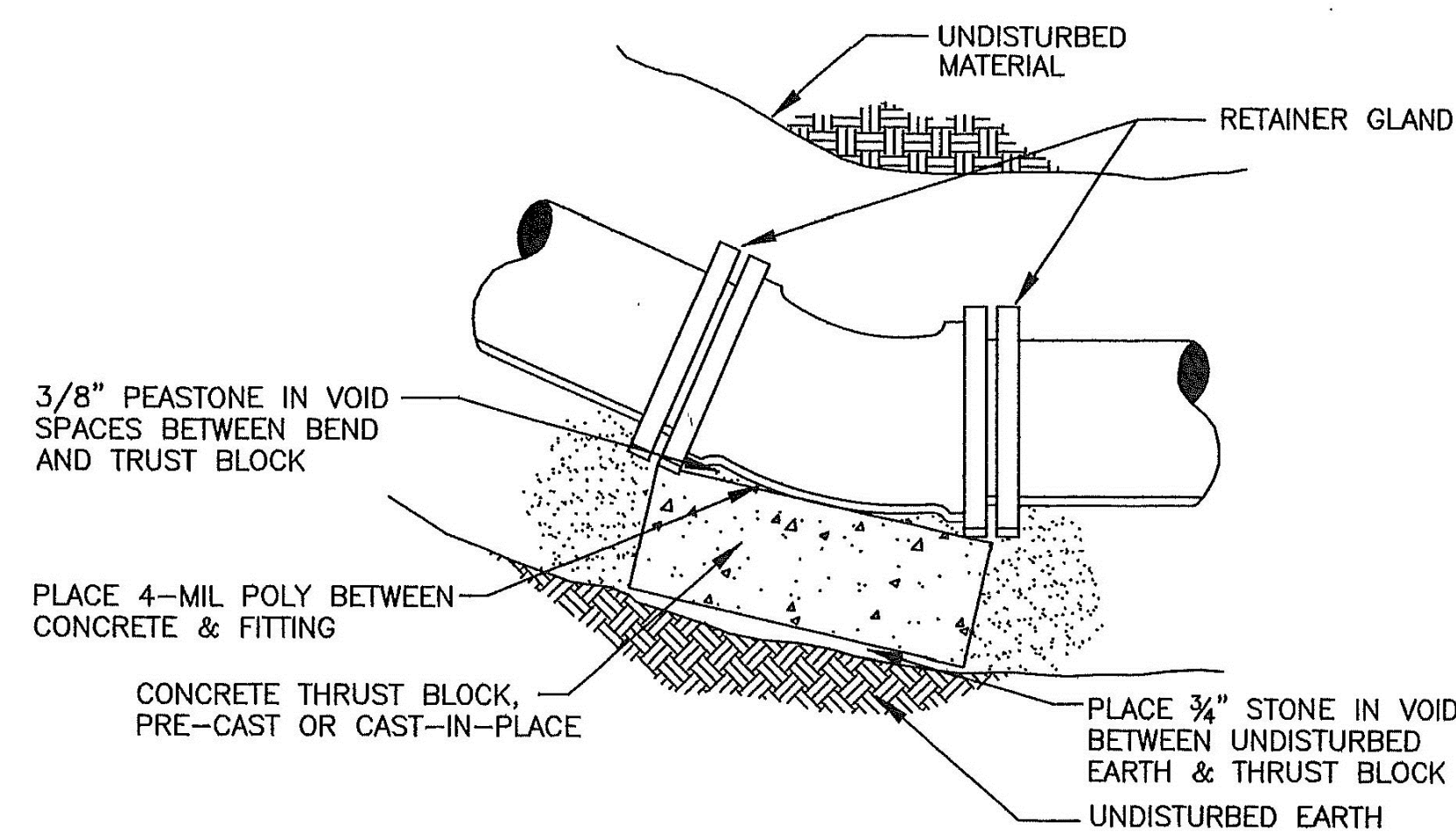
WATER MAIN TRENCH SECTION - DUCTILE IRON

NOT TO SCALE



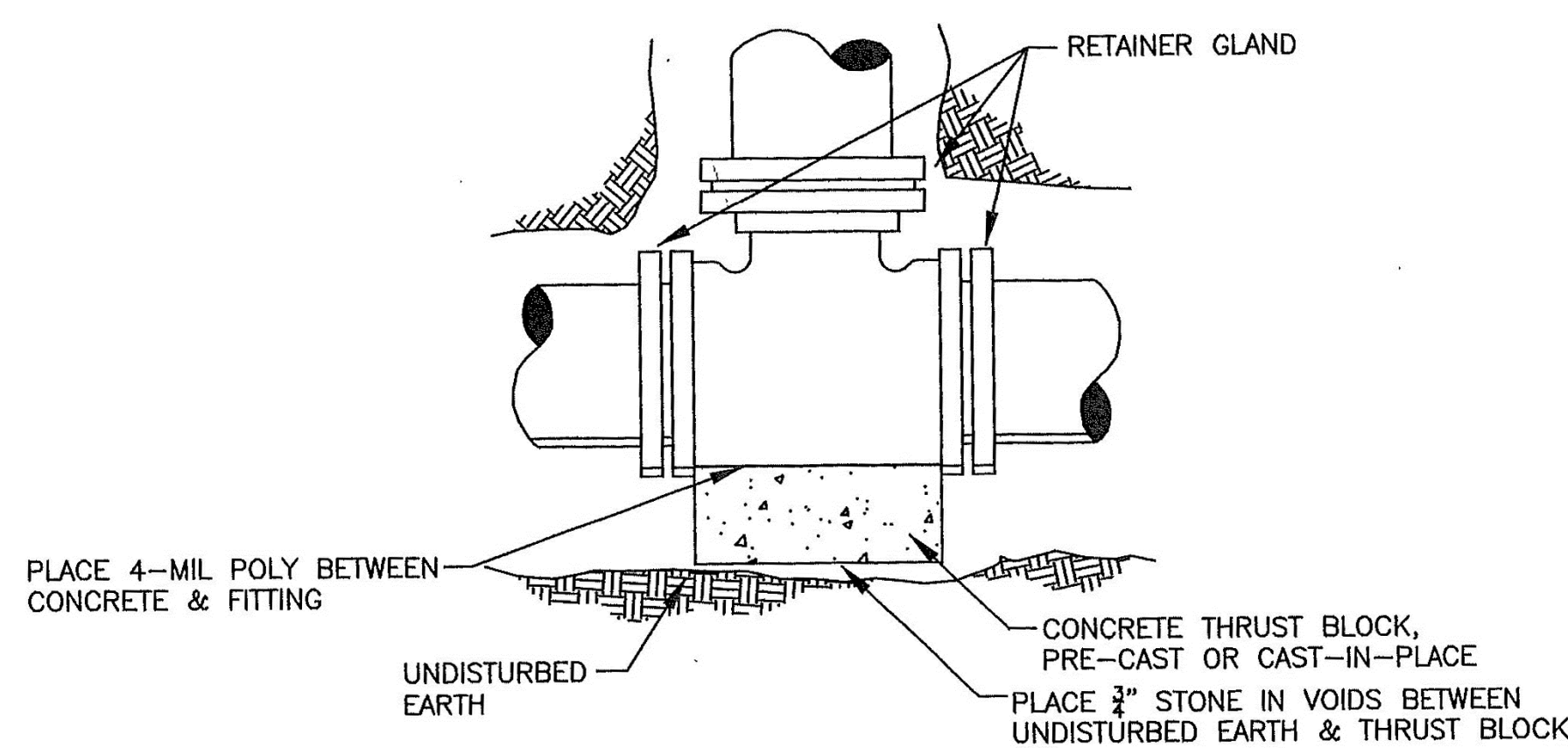
M.J. BEND DETAIL

NOT TO SCALE



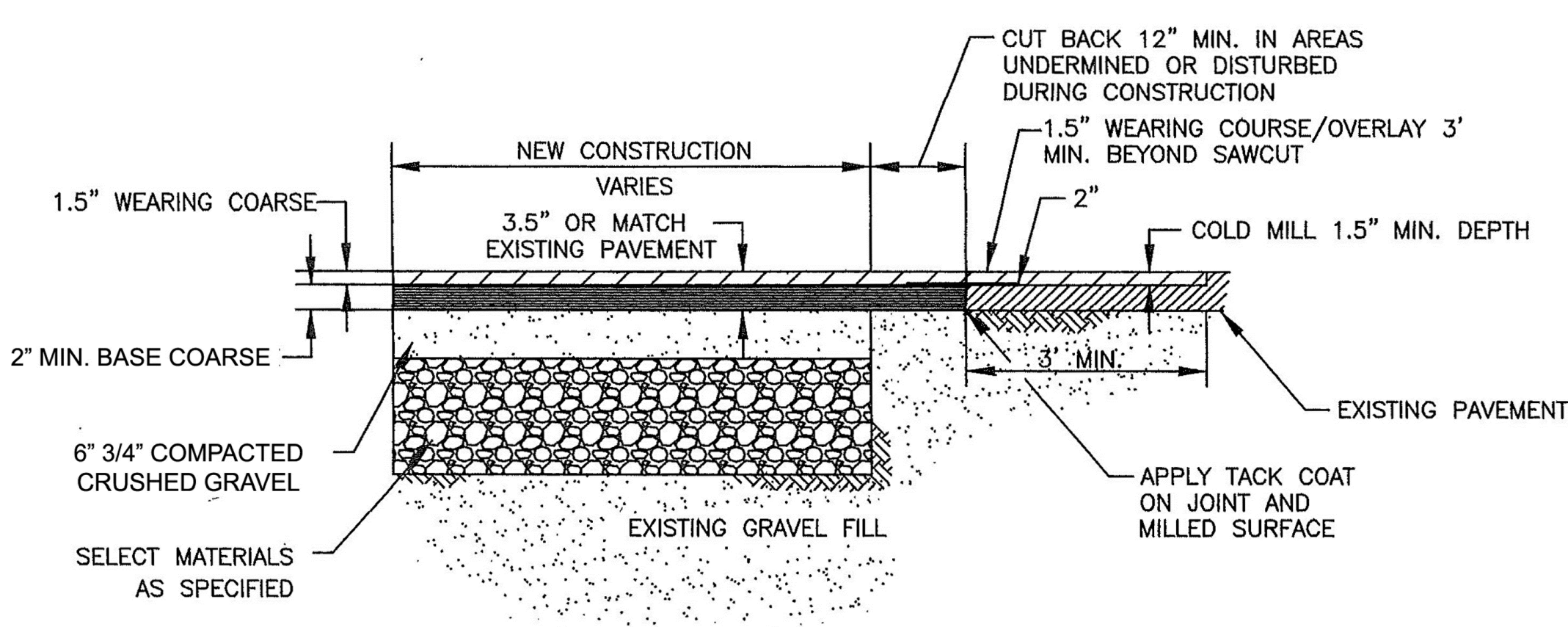
M.J. TEE - PLAN VIEW

NOT TO SCALE



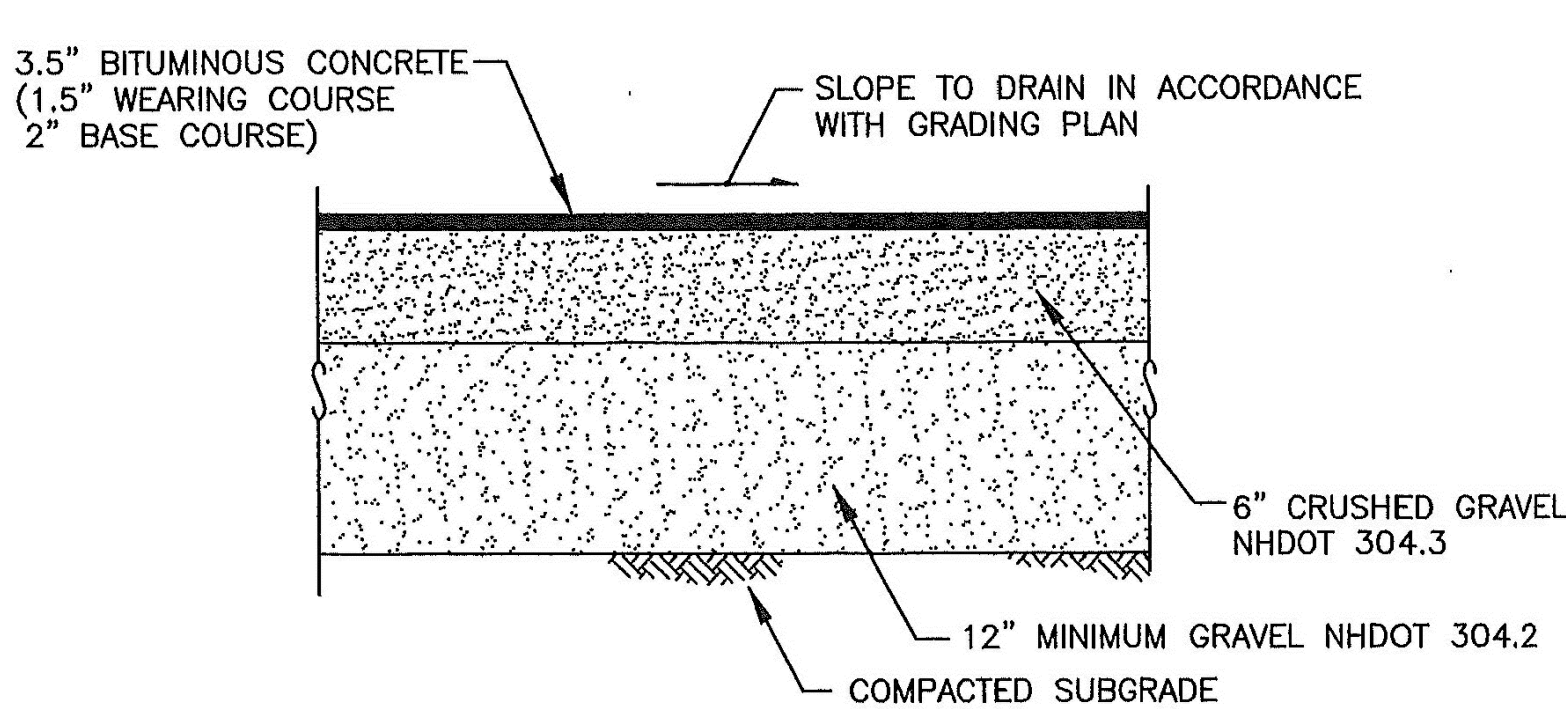
PAVEMENT SAWCUT DETAIL

NOT TO SCALE



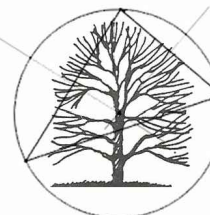
ACCESS ROAD & PARKING LOT PAVEMENT DETAIL

NOT TO SCALE



PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

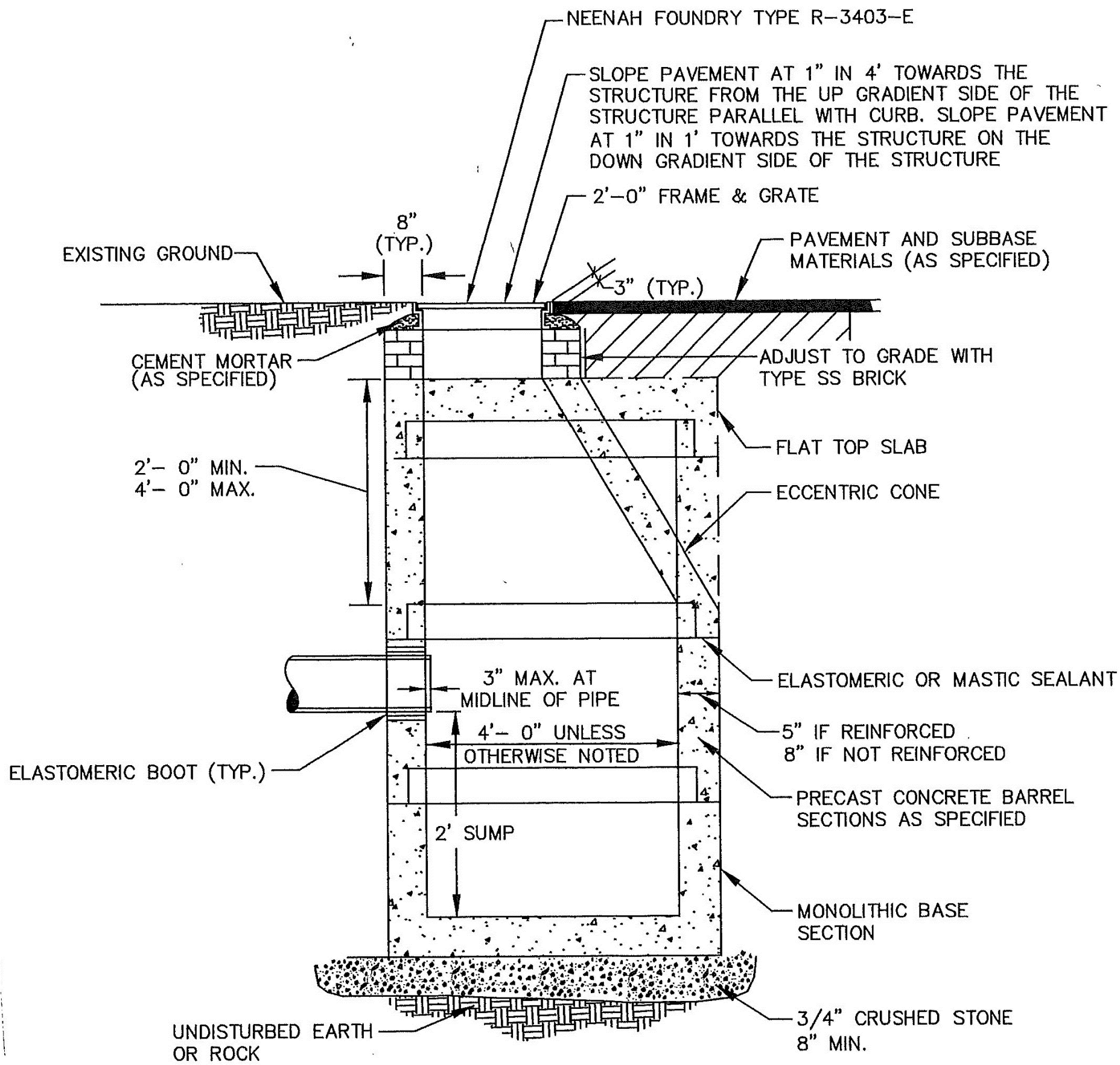
			Project	BARROWS STREET HOUSING		
				SITE / CIVIL DETAILS		
0	INITIAL ISSUE					
No.	REVISIONS/SUBMISSIONS		Date			
☐ RECORD DRAWING ☐ FINAL ☒ PRELIMINARY ☐ SKETCH/CONCEPT				Prepared by:	Project No.	DWG File Name
				Drawn	PS	Scale NTS
				Checked	PS	Drawing No.
				Reviewed	PS	
				Date	JAN 08, 2025	
				L 2.5		
				SHEET 13 OF 28		



ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467

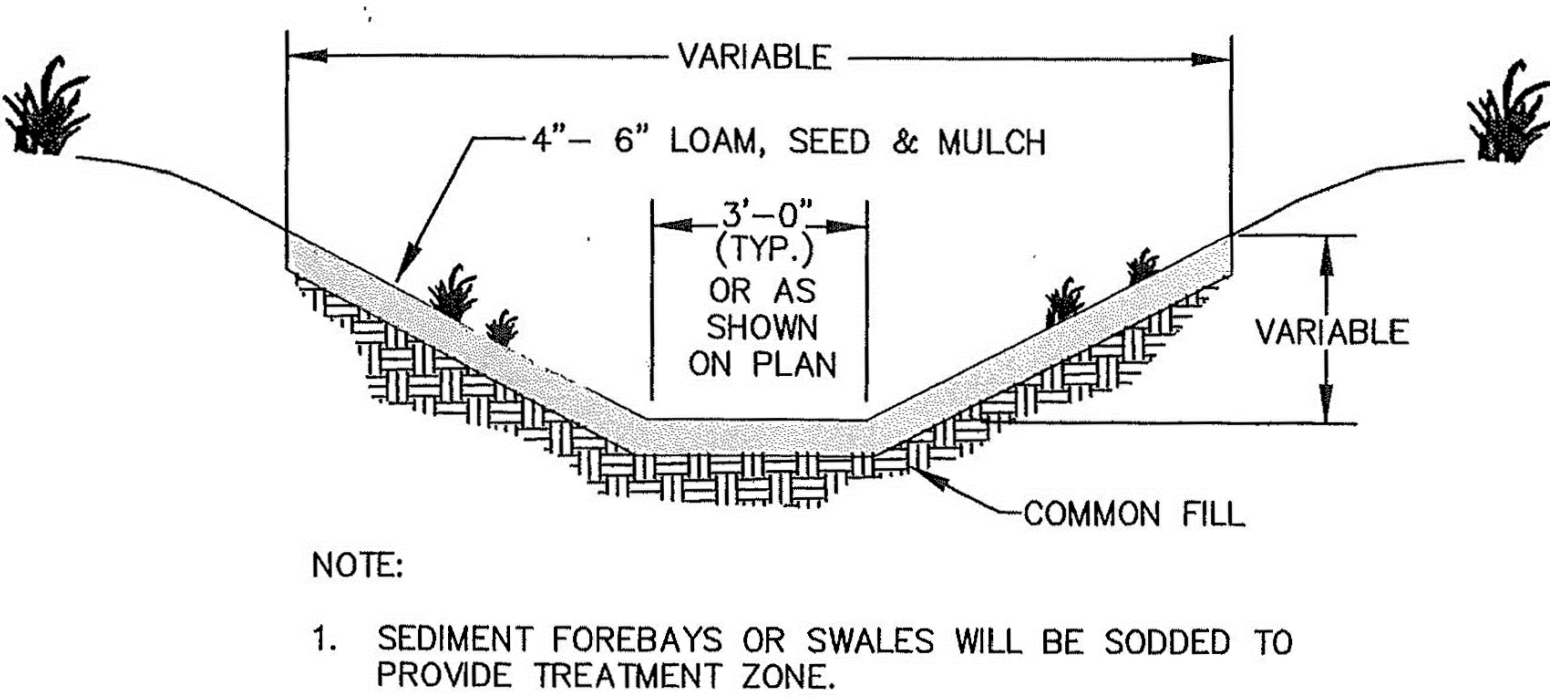
PRECAST CONCRETE CATCH BASIN DETAIL

NOT TO SCALE



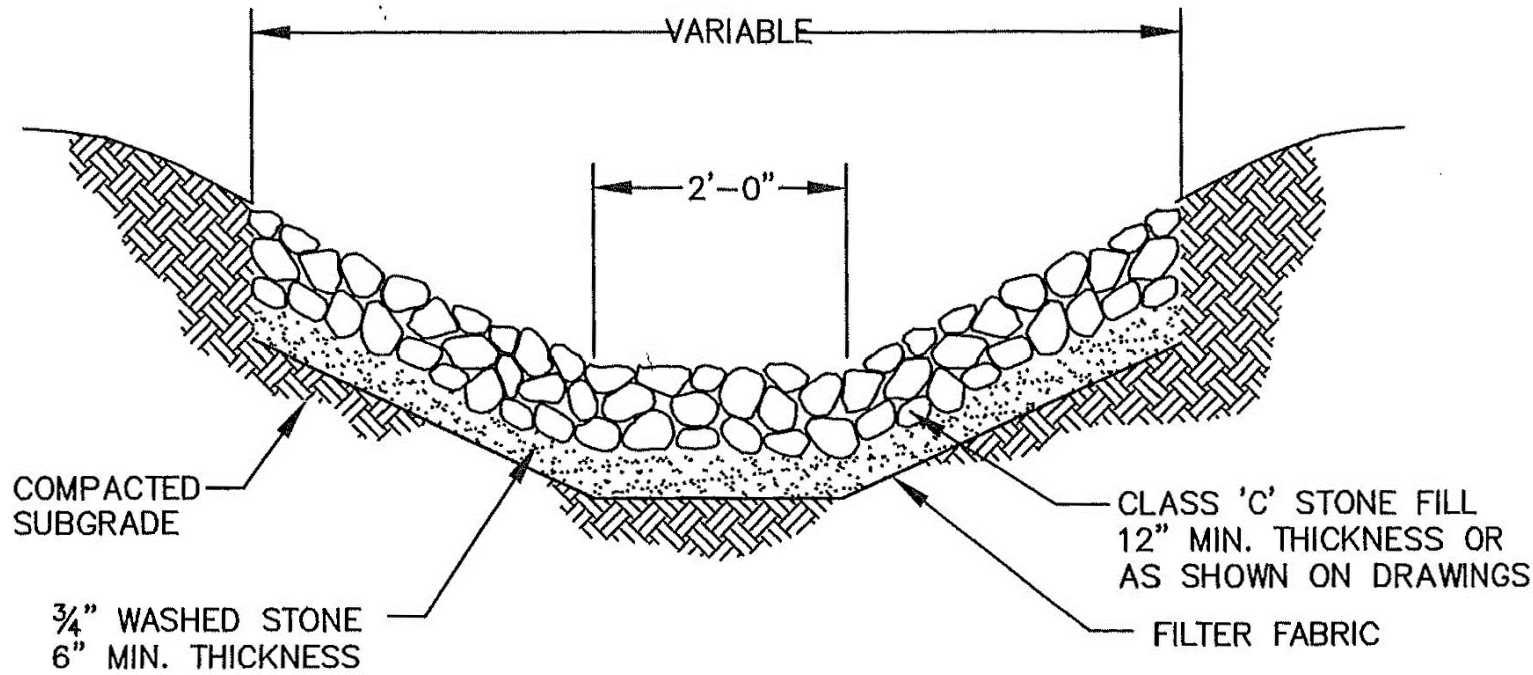
GRASS LINED DRAINAGE SWALE DETAIL

NOT TO SCALE



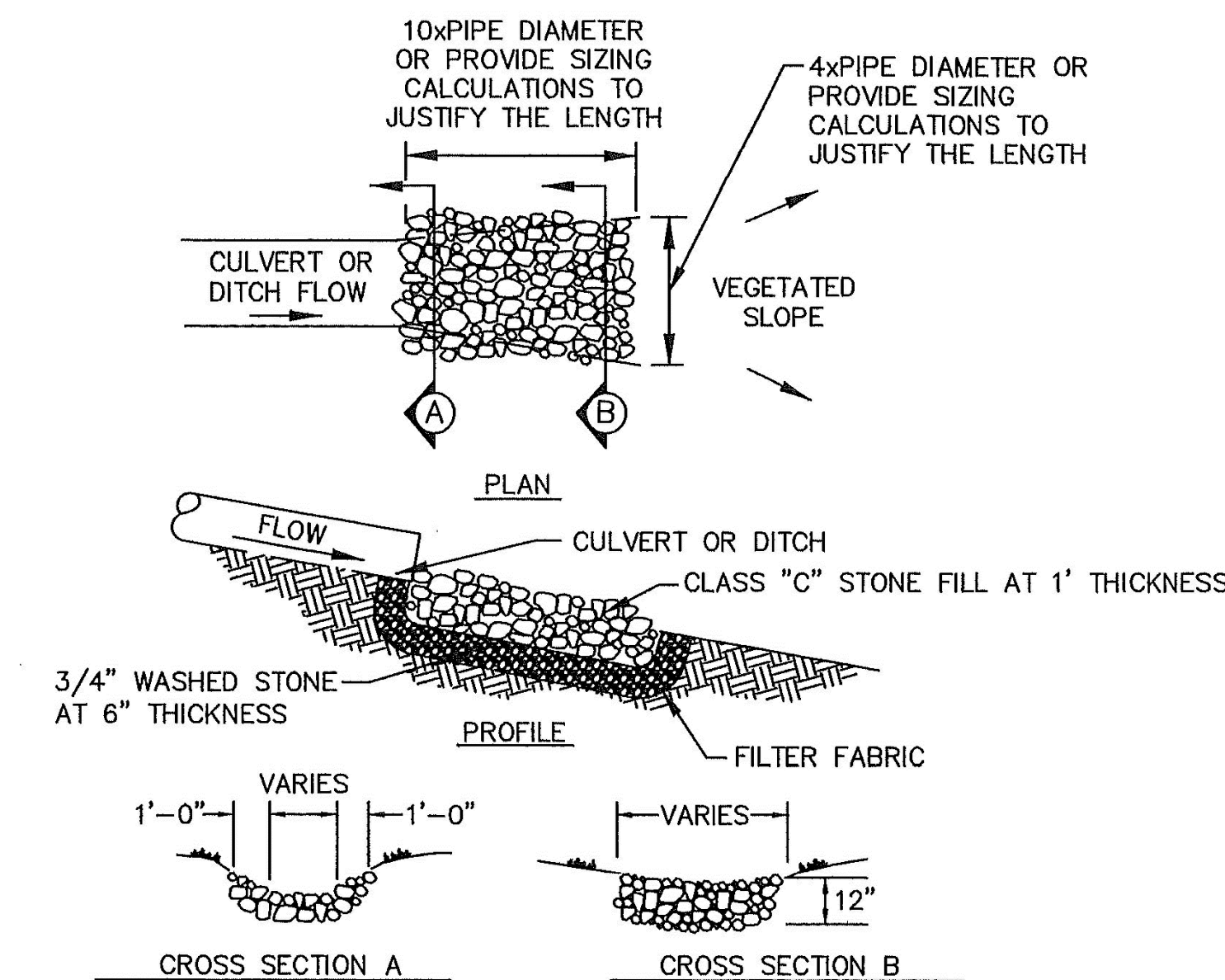
STONE LINED SWALE DETAIL

NOT TO SCALE



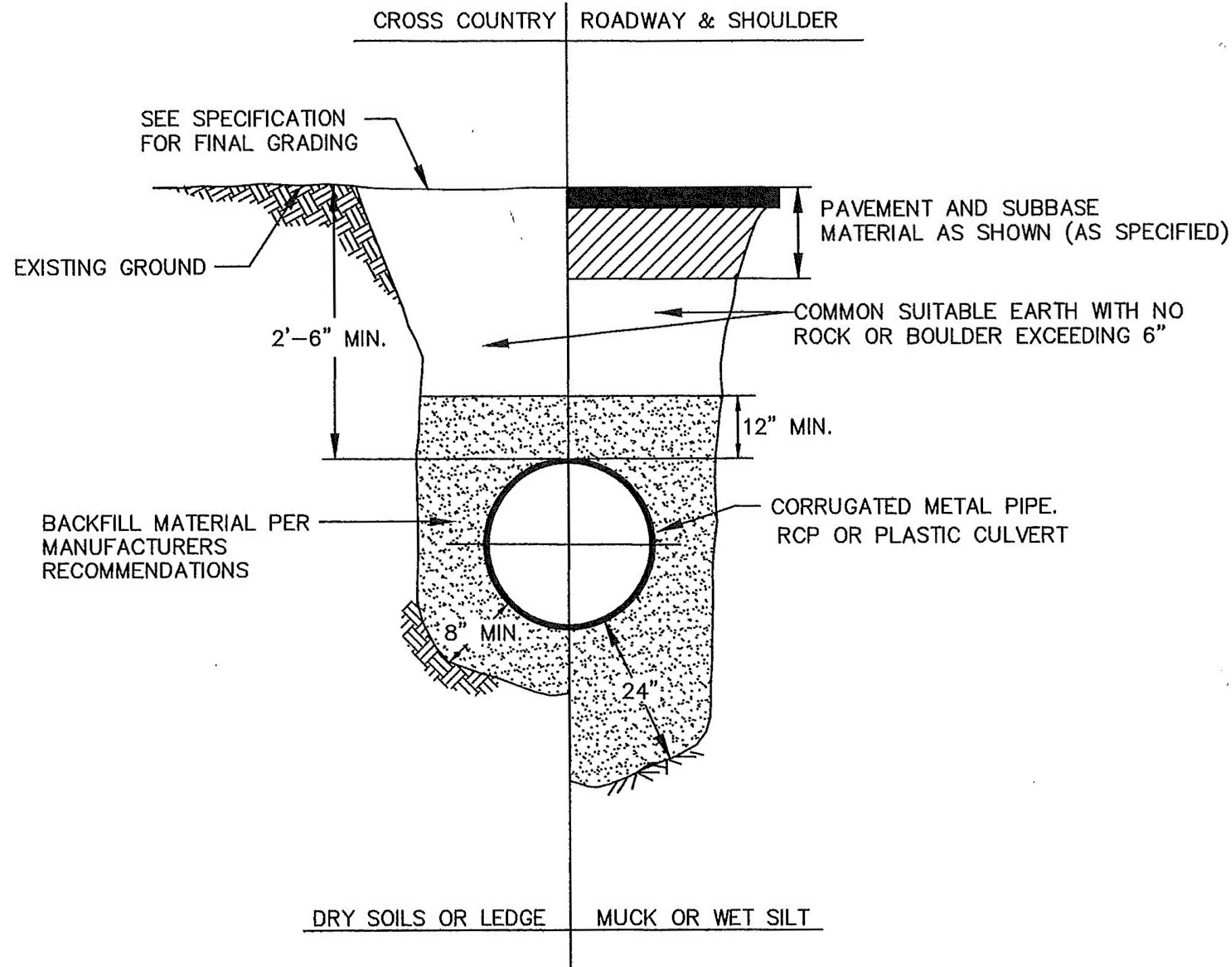
STONE DISCHARGE APRON DETAIL

NOT TO SCALE



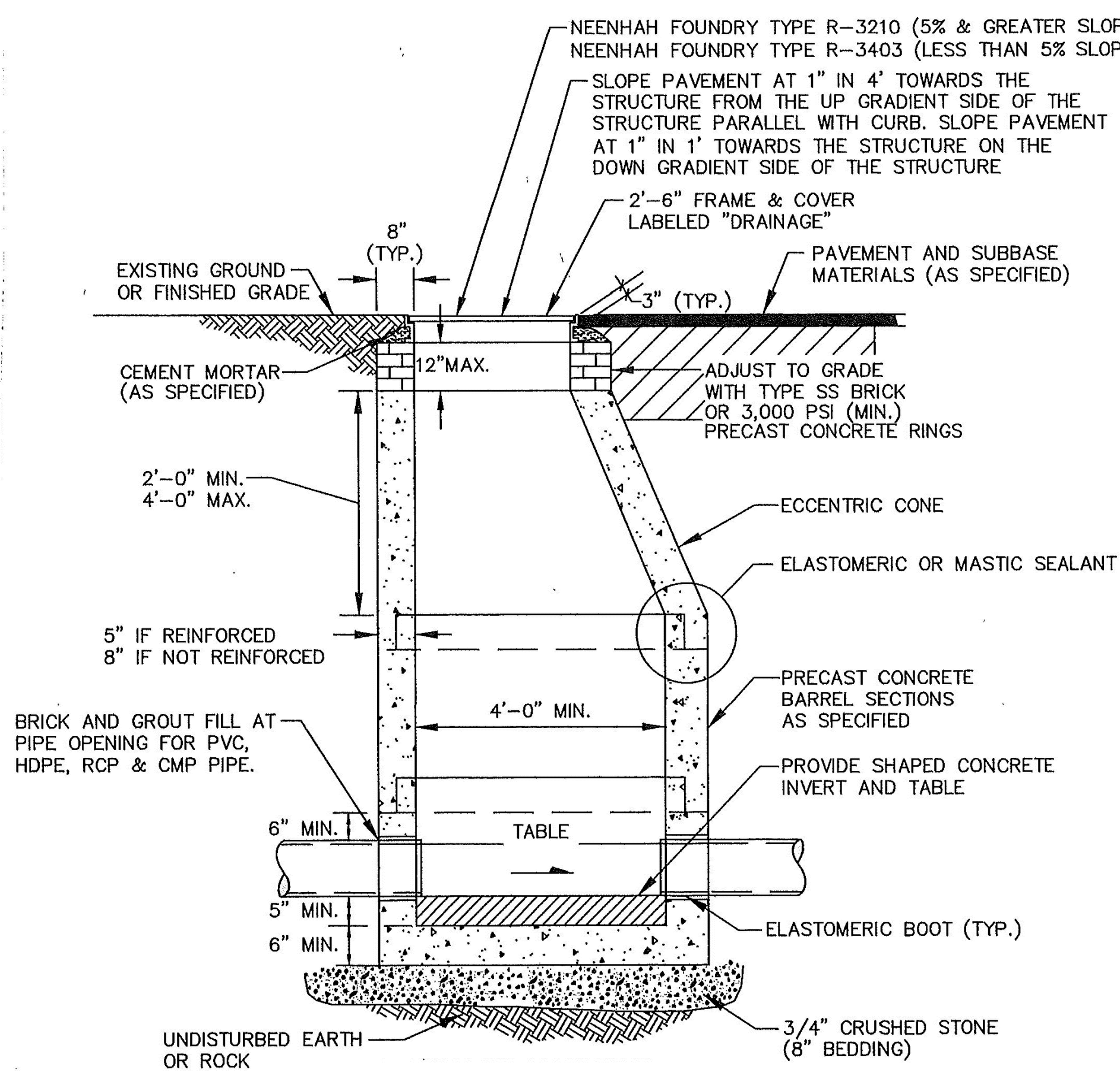
DRAINAGE TRENCH SECTION

NOT TO SCALE



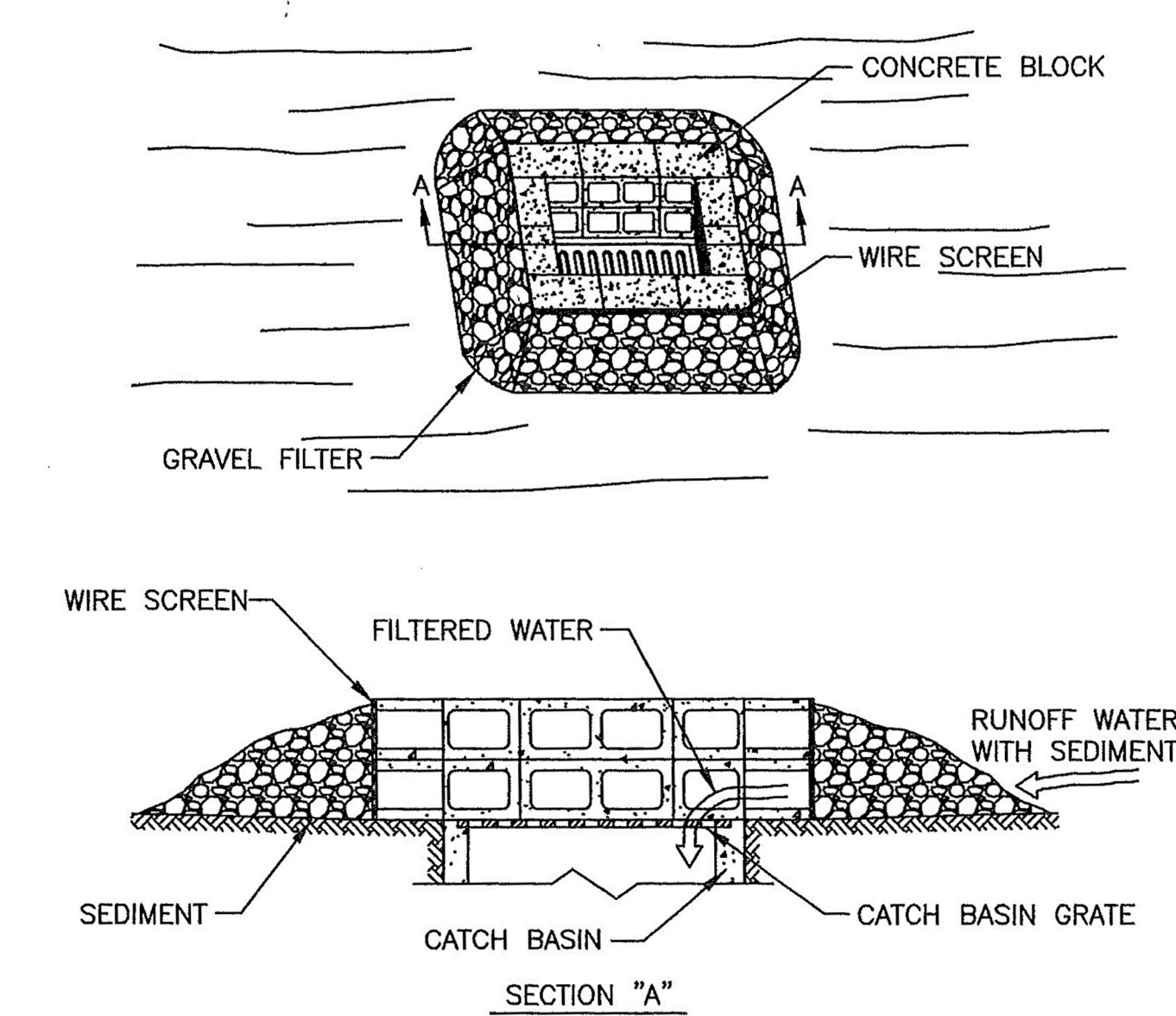
DRAINAGE MANHOLE DETAIL - LEBANON, NH

NOT TO SCALE

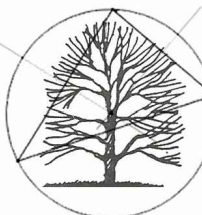


BLOCK & STONE INLET SEDIMENT FILTER DETAIL

NOT TO SCALE



PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

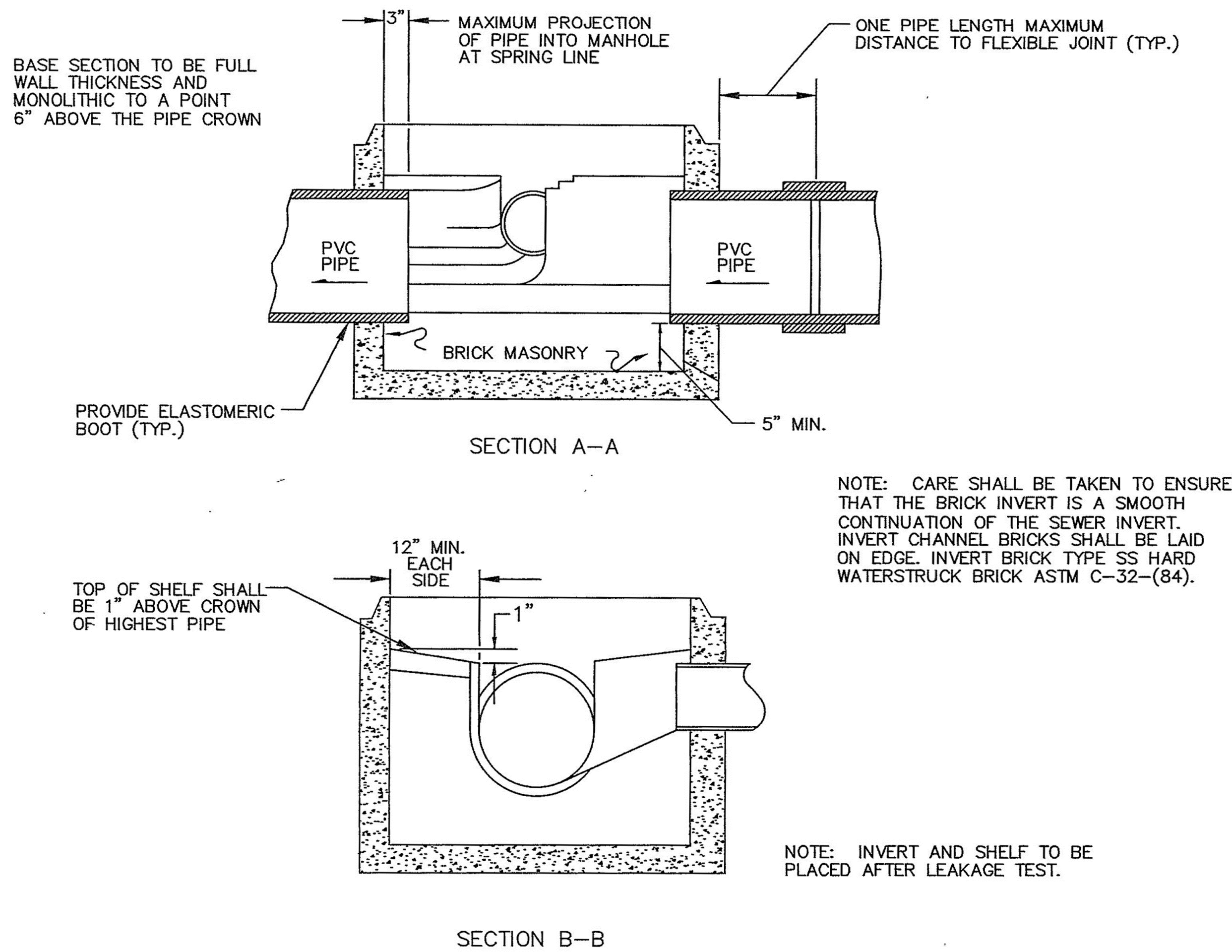
		Project	
		BARROWS STREET HOUSING	
		SITE / CIVIL STORMWATER DETAILS	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
		☐ SKETCH/CONCEPT	
 ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467		Prepared by: Paul Simon / PS	Project No.
		Drawn PS	Scale NTS
		Checked PS	Drawing No.
		Reviewed PS	L 2.6 SHEET 14 OF 28
		Date JAN 08, 2025	

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

		Project	
		BARROWS STREET HOUSING	
		SITE / CIVIL STORMTECH DETAILS	
0	INITIAL ISSUE	Title	
No.	REVISIONS/SUBMISSIONS	Date	
☐ RECORD DRAWING ☐ FINAL ☒ PRELIMINARY ☐ SKETCH/CONCEPT			
 ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467		Prepared by: Paul Simon / PS Scale NTS Checked PS Reviewed PS Date JAN 08, 2025 Project No. Drawing No. L 2.7 SHEET 15 OF 28	

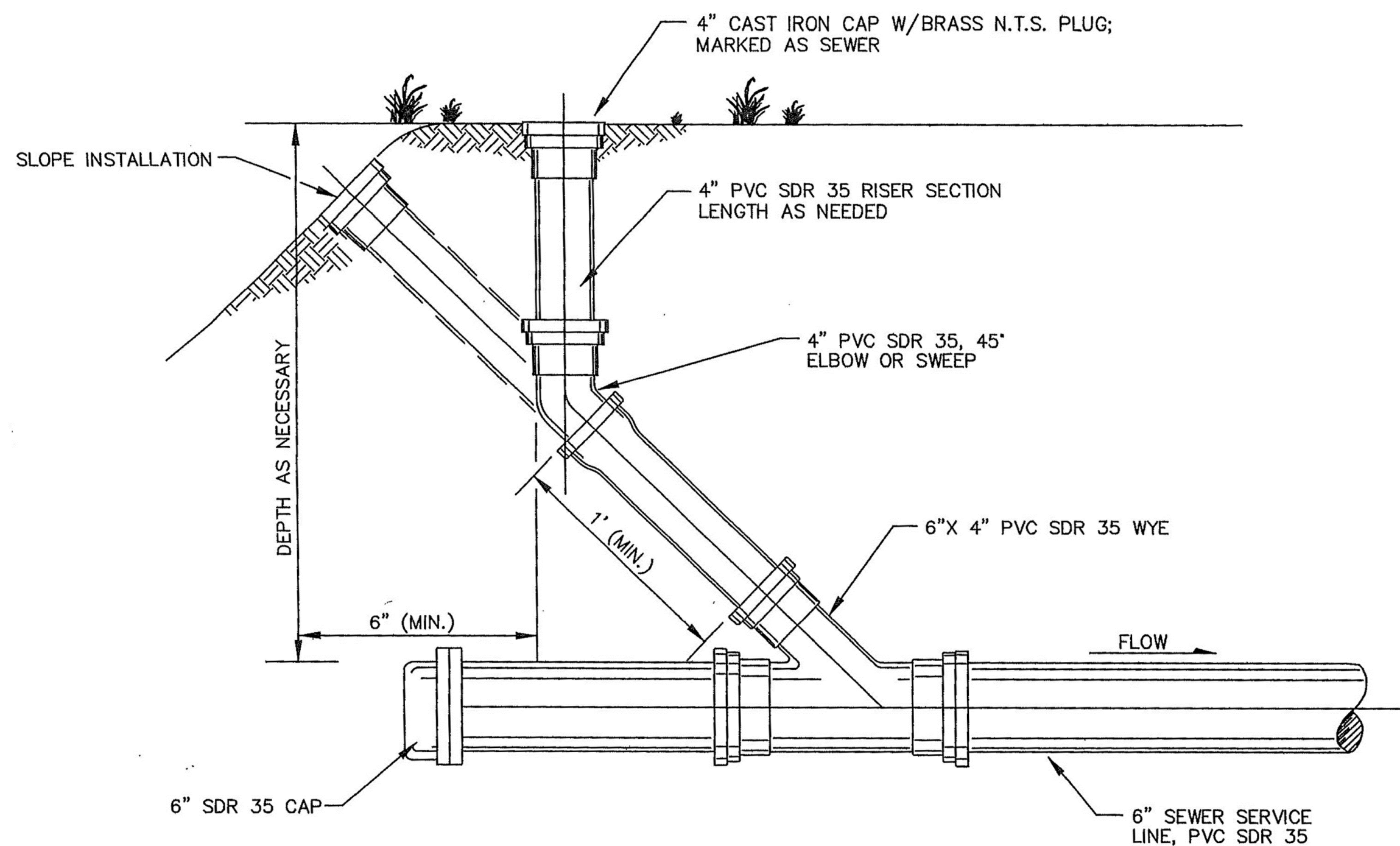
BRICK SEWER INVERT PLAN DETAIL

NOT TO SCALE



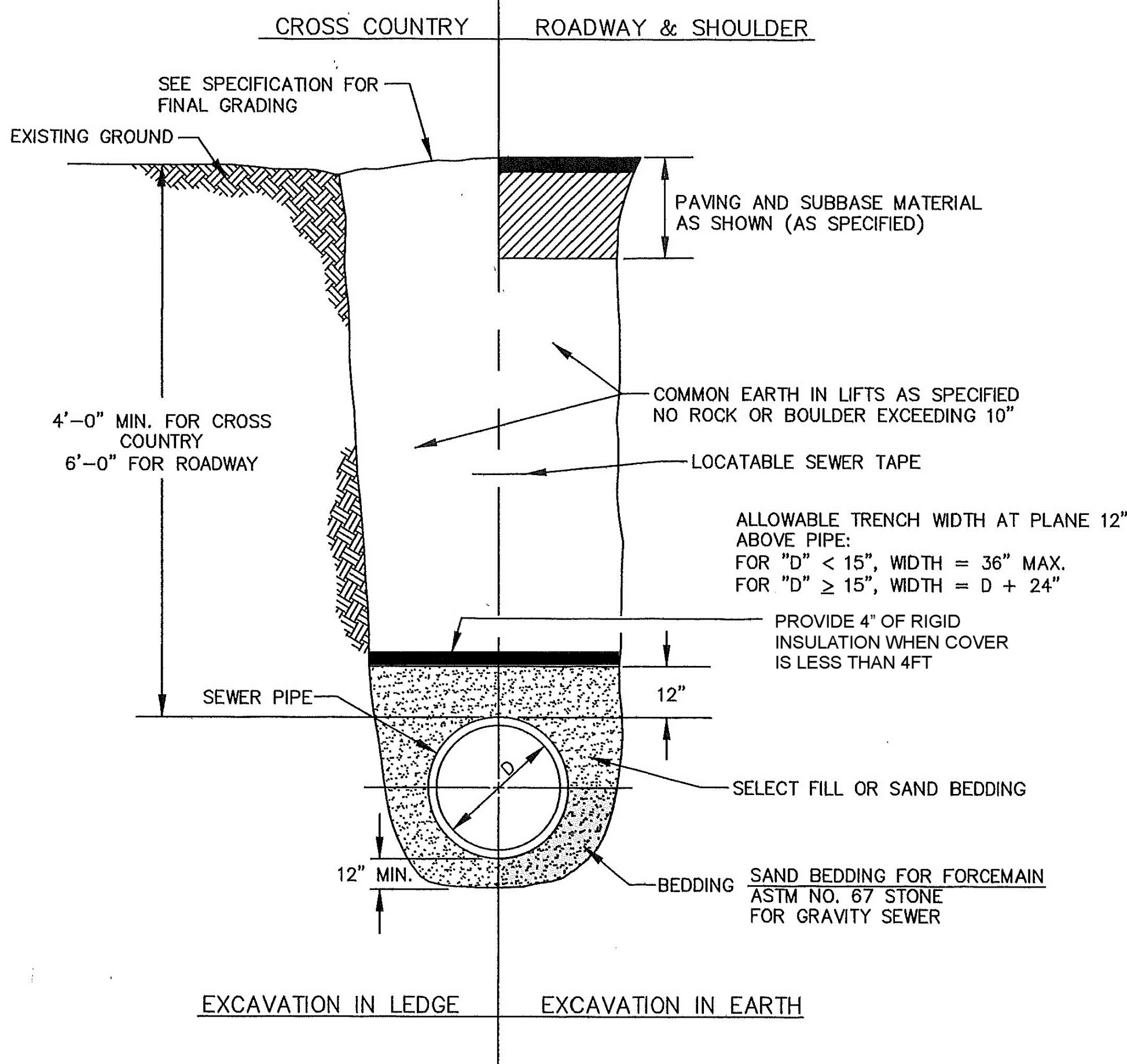
PVC SEWER SERVICE CLEANOUT DETAIL

NOT TO SCALE



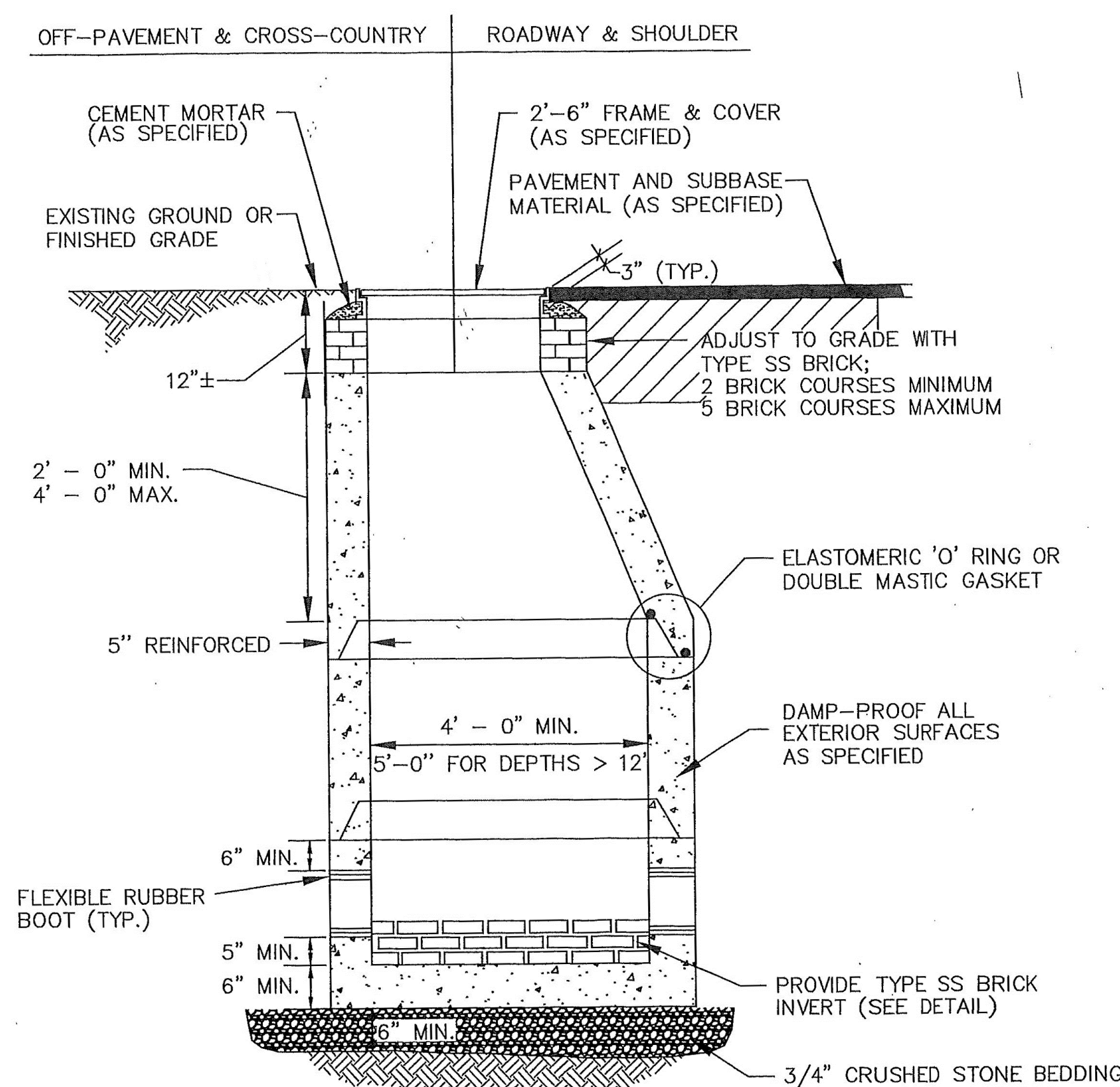
SEWER TRENCH DETAIL

NOT TO SCALE



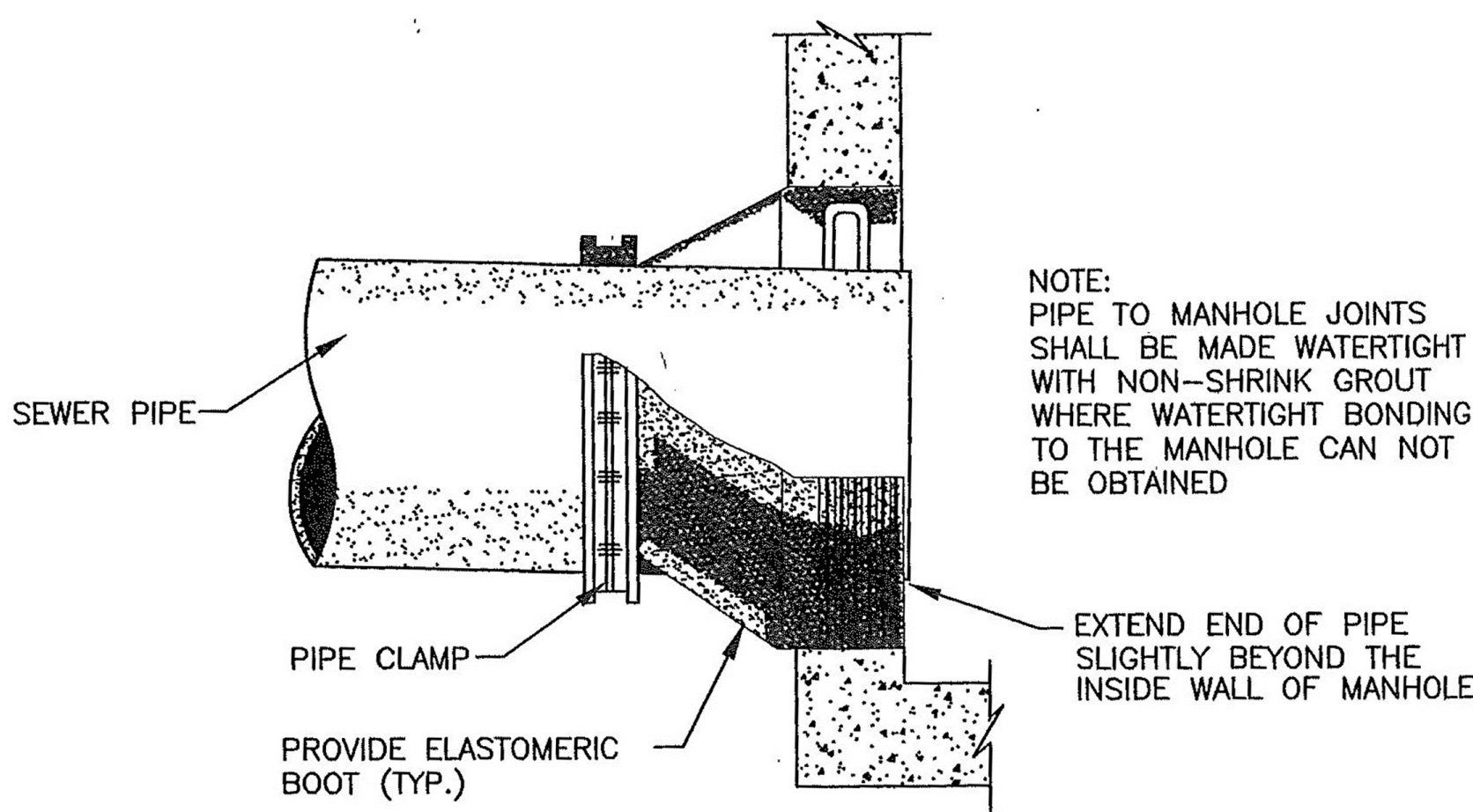
TYPICAL SEWER MANHOLE DETAIL

NOT TO SCALE

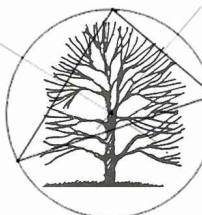


ELASTOMERIC BOOT DETAIL

NOT TO SCALE

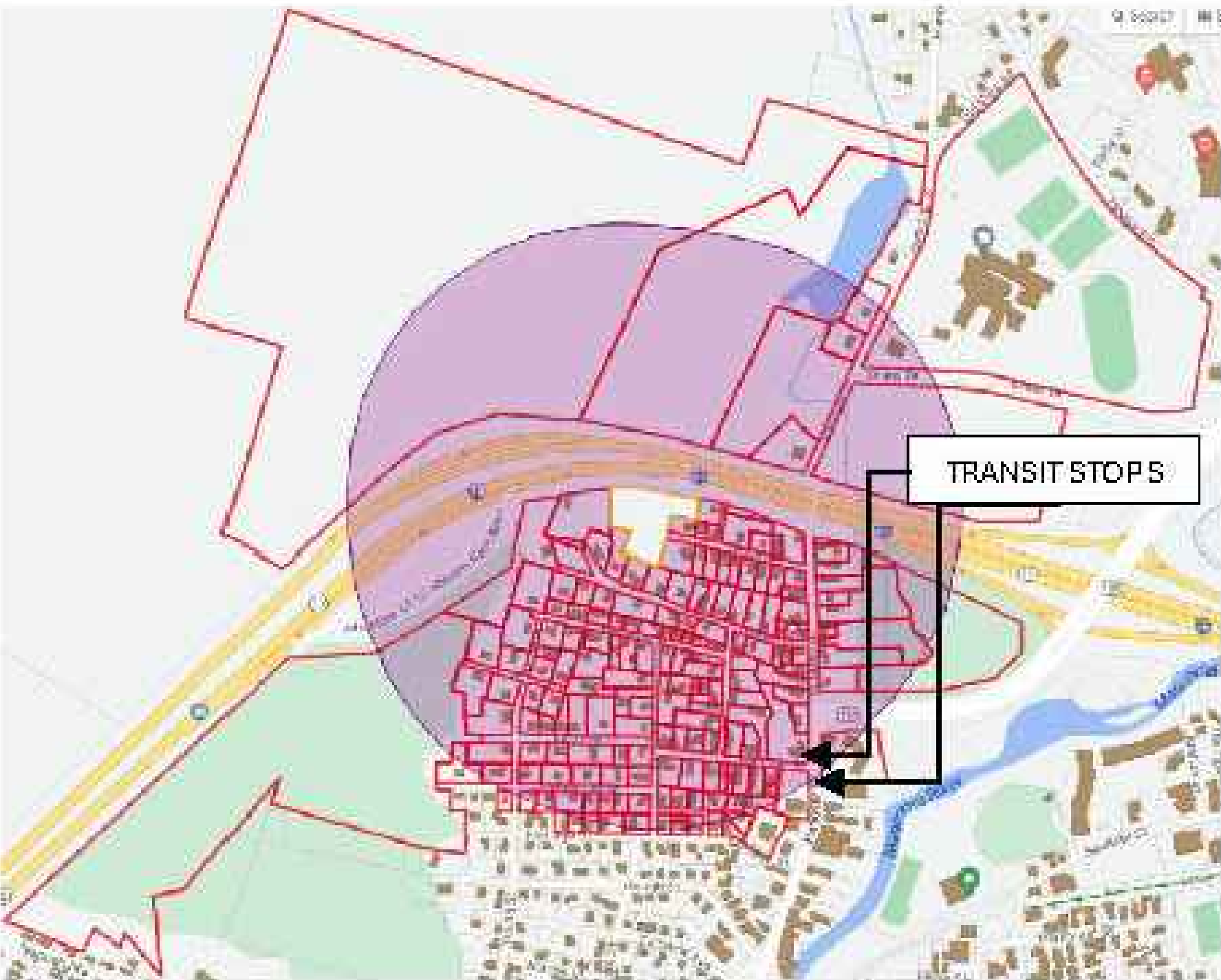


PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

		Project	
		BARROWS STREET HOUSING	
		SITE / CIVIL SEWER DETAILS	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
		Drawn: PS	
		Checked: PS	
		Reviewed: PS	
		Date: JAN 08, 2025	
		Project No. _____	
		Scale: NTS	
		Drawing No. _____	
		L 2.8	
		SHEET 16 OF 28	



CITY OF LEBANON CONSERVATION PROPERTIES WITHIN 1/4 MILE
SCALE 1/8"=1'-0"



CITY OF LEBANON TRANSIT STOPS WITHIN 1/4 MILE
SCALE 1/8"=1'-0"



CITY OF LEBANON STRUCTURES, WATER, SEWER & DRAINAGE UTILITIES WITHIN 200'
SCALE 1/8"=1'-0"

CONSTRUCTION SEQUENCE

1. PRE-CONSTRUCTION MEETING
2. NOTIFY DIGSAFE. ALL UTILITIES IN PROJECT AREA IDENTIFIED.
3. INSTALL SILT FENCE AROUND THE SITE PERIMETER.
4. INSTALL SILT FENCE AT ALL OTHER LOCATIONS INDICATED ON PLAN AND AT OTHER LOCATIONS AS DETERMINED BY ENGINEER. INSTALL OTHER TEMPORARY AND PERMANENT EROSION AND SEDIMENT CONTROL MEASURES AS EARTHWORK PROCEEDS AND AS DETERMINED NECESSARY BY THE ENGINEER.
5. GRUB SITE, CHIP STUMPAGE AND BRUSH FOR USE AS ADDITIONAL EROSION CONTROL MEASURES, OR DISPOSE OF STUMPAGE AND BRUSH DEBRIS OFF-SITE.
6. WHERE PRACTICAL, UNSUITABLE EXCAVATED EARTH MATERIALS WILL BE TRANSPORTED OFF-SITE FOR PROPER DISPOSAL. IF TEMPORARY STOCKPILES ARE REQUIRED, THEY WILL BE LOCATED TOTALLY OUTSIDE OF ANY WETLAND AREAS AND WILL BE PROTECTED AGAINST EROSION. TEMPORARY STOCKPILES ARE ONLY ALLOWED FOR A 72-HOUR PERIOD.
7. INSTALL TEMPORARY CULVERTS AS REQUIRED WITH SILT FENCE AND STONE CHECK DAMS.
8. INSTALL STABILIZED CONSTRUCTION ENTRANCE. CONSTRUCT TEMPORARY ACCESS ROADS WITH COARSE AGGREGATE 4 INCHES (MINIMUM) OVER COMPACTED FILL AREAS TO PREVENT OFF-SITE TRACKING BY VEHICLES AND EQUIPMENT.
9. COMPACT EXISTING SUBBASE WITH ROLLER.
10. INSTALL TEMPORARY ELECTRICAL SERVICE.
11. POUR CONCRETE FOUNDATIONS.
12. CONSTRUCT UNDERGROUND UTILITIES AND SITE LIGHTING.
13. PREPARE, SEED, AND MULCH (TEMPORARY AND PERMANENT) IMMEDIATELY AFTER GRADING.
14. INSPECT ALL DISTURBED AREAS ON A DAILY BASIS, FOLLOWING THIS DAILY INSPECTION, INSTALL AS REQUIRED ANY AND ALL TEMPORARY DRAINAGE, EROSION, AND SEDIMENT CONTROL PRACTICES AS INDICATED, I.E., DIVERSION CHANNELS, BERMS, DRAINS, DITCHES, SILT FENCES, SEED AND MULCH OR OTHER PRACTICES AS RECOMMENDED AND SPECIFIED IN THE 'STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL HANDBOOK FOR DEVELOPING AREAS OF NEW HAMPSHIRE' (DURHAM: USDA - SOIL CONSERVATION SERVICE).
15. CONSTRUCT COTTAGES.
16. CONSTRUCT UTILITY SERVICES TO COTTAGES.
17. CONSTRUCT ROADWAY, PARKING AREA, AND SITE WALKWAYS AND PAVE.
18. CONSTRUCT GRAVEL WETLAND.
19. PLACE TOPSOIL. COMPLETE PERMANENT FERTILIZING, LIMING, SEEDING AND MULCHING. INSTALL LANDSCAPE PLANTINGS.
20. CLEAN AND RESTORE SILT DETENTION SITES AND DRAINAGE STRUCTURES. REMOVE OTHER EROSION CONTROL PRACTICES ON A TIMELY BASIS AS PERMANENT MEASURES TAKE HOLD. SPOT FERTILIZE, SEED, AND MULCH AS REQUIRED.
21. INSPECT AND MAINTAIN GRADING, EROSION CONTROL AND SEDIMENT CONTROL PRACTICES WEEKLY AND IMMEDIATELY AFTER ALL STORMS OF MORE THAN 1/2" IN 24 HOURS.
22. REFER TO EROSION AND SEDIMENT CONTROL PLAN FOR ADDITIONAL DETAILS RELATIVE TO THE REQUIRED CONSTRUCTION SEQUENCE.
23. MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL COMPONENTS AND INSTALLATION OF ADDITIONAL EROSION AND SEDIMENT CONTROL COMPONENTS SHALL BE AN ONGOING PRACTICE AND IN STRICT ACCORDANCE WITH THE APPROVED "EROSION & SEDIMENT CONTROL AND STORMWATER MANAGEMENT PLAN."
24. AFTER FULL STABILIZATION REMOVE TEMPORARY EROSION CONTROL MEASURES.
25. FINAL CLEANING AND SITE RESTORATION.

GENERAL CONSTRUCTION NOTES:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE APPROVED DRAWINGS, AND ANY ISSUED ADDENDA.
2. HOURS OF OPERATION WILL BE LIMITED TO 7 AM TO 7 PM MONDAY THROUGH FRIDAY, EXCLUDING HOLIDAYS.
3. WRITTEN DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED DIMENSIONS. THE CONTRACTOR SHALL USE CAUTION WHEN SCALING REPRODUCED PLANS. THE ENGINEER OR OWNER SHALL BE NOTIFIED IMMEDIATELY FOR CLARIFICATIONS.
4. THE CONTRACTOR SHALL INSTALL AND MAINTAIN PERMANENT AND TEMPORARY TRAFFIC CONTROL DEVICES AS NECESSARY AND IN A MANNER CONSISTENT WITH THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.).
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING TRAFFIC FLOW AT ALL TIMES. THE CONTRACTOR IS REQUIRED TO SUBMIT A TRAFFIC CONTROL PLAN TO THE CITY AND ENGINEER PRIOR TO START OF CONSTRUCTION. THE LEBANON POLICE DEPARTMENT (448-1212) AND FIRE DEPARTMENT (448-8810) ARE TO BE NOTIFIED AT LEAST 24 HOURS IN ADVANCE OF ANY STREET CLOSING OR DETOUR. UNIFORM TRAFFIC OFFICERS ARE NOT ANTICIPATED FOR THIS PROJECT. THE CONTRACTOR SHALL PROVIDE NECESSARY CERTIFIED FLAGGERS NEEDED TO SAFELY CONTROL THE FLOW OF TRAFFIC AND COMPLY WITH CITY EXPECTATIONS.
6. OPEN TRENCHES IN THE ROADWAY MUST BE BACKFILLED AT THE END OF EACH WORKDAY, UNLESS PERMISSION TO LEAVE THEM OPEN IS GIVEN IN WRITING BY THE CITY. ALL STREETS MUST BE BASE PAVED PRIOR TO WINTER SHUTDOWN. TEMPORARY PAVEMENT SHALL BE CONSIDERED INCIDENTAL TO THE CONTRACT.
7. COMPACTION TESTS SHALL BE PERFORMED IN ACCORDANCE WITH THE CONTRACT.
8. CONTRACTOR SHALL MITIGATE FUGITIVE DUST TO A TOLERABLE LIMIT. A WATER TRUCK IS EXPECTED TO BE ON-SITE AT ALL TIMES DURING THE WORK WITH APPLICATION SEVERAL TIMES A DAY AS NEEDED TO CONTROL DUST. CONTRACTOR SHALL NOT TRACK OR SPILL EARTH AND DEBRIS ON PUBLIC STREETS WITHIN AND/OR OUTSIDE THE PROJECT AREA. STREETS OPENED TO THE PUBLIC SHALL BE KEPT SWEEPED AND FREE OF DEBRIS.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESETTling ALL EXISTING PROPERTY MONUMENTATION THAT IS DISTURBED BY THEIR OPERATIONS AT NO EXPENSE TO THE CITY. THE WORK IS TO BE DONE BY A LAND SURVEYOR LICENSED IN THE STATE OF NEW HAMPSHIRE.
10. THE CONTRACTOR SHALL NOT HAVE ANY RIGHT OF PROPERTY OF ANY MATERIALS TAKEN FROM ANY EXCAVATION. SUITABLE EXCAVATED MATERIAL MAY BE INCORPORATED IN THE PROJECT. EXCESS MATERIAL IS TO BE TAKEN TO 370 PLAINFIELD ROAD (LEBANON LANDFILL) IF OWNER SO DESIRES, AT NO ADDITIONAL COST. THE CONTRACTOR SHALL DISPOSE OF UNSUITABLE AND EXCESS MATERIAL IN ACCORDANCE WITH THE APPLICABLE SECTIONS OF THE CONTRACT AND ALL STATE, FEDERAL, AND LOCAL REGULATIONS.
11. THE CONTRACTOR IS TO TAKE SPECIAL CARE NOT TO DAMAGE TREES, SHRUBS, OR OTHER PLANTINGS WITHIN THE CONSTRUCTION AREA UNLESS THEY ARE NOTED TO BE REMOVED.
12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MEANS AND METHODS OF CONSTRUCTION AND FOR CONDITIONS AT THE SITE. THESE PLANS DO NOT EXTEND TO OR INCLUDE SYSTEMS PERTAINING TO THE SAFETY OF THE CONSTRUCTION CONTRACTOR OR THEIR EMPLOYEES, AGENTS OR CITY'S REPRESENTATIVES IN THE PERFORMANCE OF THE WORK. THE SEAL OF THE SURVEYOR OR ENGINEER HEREON DOES NOT EXTEND TO ANY SUCH SAFETY SYSTEMS THAT MAY OR HEREAFTER BE INCORPORATED INTO THESE PLANS. THE CONSTRUCTION CONTRACTOR SHALL PREPARE OR OBTAIN THE APPROPRIATE SAFETY SYSTEMS WHICH MAY BE REQUIRED BY THE U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA), LOCAL REGULATIONS, AND/OR THE BOARD OF LABOR.
13. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE PROJECT AREA AND ALL EXISTING CONDITIONS SURROUNDING IT THEREON.
14. THE ENGINEER SHALL BE NOTIFIED PRIOR TO CONSTRUCTION IF THERE ARE ANY DISCREPANCIES IN PLANS OR EXISTING DATA. CONSTRUCTION SHALL NOT PROCEED WITHOUT WRITTEN PERMISSION FROM THE ENGINEER.
15. THE ENGINEER WILL PROVIDE THE CONTRACTOR WITH EXISTING CONTROL POINTS TO ESTABLISH THE CONSTRUCTION BASELINE. THE POINTS TO BE PROVIDED ARE INCLUDED WITH THESE DRAWINGS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING AND REESTABLISHING THESE POINTS FOR THE DURATION OF THE PROJECT. CONTROL POINT AND BENCHMARK ACCURACY WAS CONFIRMED AT THE TIME OF THE SURVEY AND IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY ACCURACY OF THESE POINTS PRIOR TO USING THEM FOR CONSTRUCTION OR RECORDING RECORD INFORMATION. IF THE CONTRACTOR FINDS ANY POINT PROVIDED TO BE INACCURATE, THE CONTRACTOR MUST NOTIFY THE ENGINEER IMMEDIATELY IN WRITING. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR LAYOUT OF THE WORK AT THE PROJECT SITE.

EROSION CONTROL SPECIFICATIONS

1. SOIL EROSION AND SEDIMENT CONTROL MEASURES SHALL BE IN ACCORDANCE WITH NEW HAMPSHIRE STORMWATER MANAGEMENT; VOLUMES 1, 2, & 3, DECEMBER 2008 (OR LATEST EDITION). THE CONTRACTOR SHALL HAVE REFERENCE TO THESE PUBLICATIONS.
2. IMMEDIATE ATTENTION TO EROSION CONTROL PRACTICES DRAMATICALLY IMPROVES SOIL AND MOISTURE CONSERVATION AND REDUCES NEGATIVE IMPACTS ON WATER QUALITY. THE CONTRACTOR SHALL GIVE PRIORITY TO THE TIMELY INSTALLATION OF BOTH TEMPORARY AND PERMANENT EROSION AND SEDIMENT CONTROL MEASURES.
3. THE EROSION AND SEDIMENT CONTROL PRACTICES SHOWN ON THIS PLAN ARE THE MINIMUM REQUIRED FOR ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THESE PRACTICES SHALL BE UPGRADED AS NEEDED FOR UNEXPECTED STORM EVENTS AND MODIFIED TO ACCOUNT FOR CHANGING SITE CONDITIONS.
4. THE SMALLEST PRACTICAL AREA SHALL BE DISTURBED DURING CONSTRUCTION, BUT SHALL NOT EXCEED 1 ACRE AT ANY ONE TIME BEFORE STABILIZATION. A CONSTRUCTION SEQUENCE HAS BEEN DEVELOPED TO FACILITATE INSTALLATION OF EROSION CONTROL MEASURES AND THE COMPLETION OF GRADING, SEEDING, AND LANDSCAPING AS SOON AS POSSIBLE WITHIN A DISTURBED AREA.
5. PERIMETER CONTROLS SHALL BE INSTALLED PRIOR TO EARTH MOVING OPERATIONS.
6. ALL SWALES SHALL BE INSTALLED EARLY ON IN THE CONSTRUCTION SEQUENCE (PRIOR TO ROUGH GRADING THE SITE).
7. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THE PLANS SHALL BE CLEARLY FLAGGED BY SURVEY TAPE OR FENCING, IF REQUIRED, PRIOR TO CONSTRUCTION. DURING THE CONSTRUCTION PERIOD, NO DISTURBANCE BEYOND THE CLEARING LIMITS SHALL BE PERMITTED. THE CLEARING LIMITS SHALL BE MAINTAINED FOR THE DURATION OF CONSTRUCTION.
8. A STABILIZED CONSTRUCTION ENTRANCE SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED FOR THE DURATION OF THE PROJECT. ADDITIONAL MEASURES, SUCH AS CONSTRUCTED WHEEL WASH SYSTEMS OR WASH PADS, MAY BE REQUIRED TO ENSURE THAT ALL PAVED AREAS ARE KEPT CLEAN AND TRACK OUT TO ROAD RIGHT OF WAY DOES NOT OCCUR FOR THE DURATION OF THE PROJECT. ANY SEDIMENT TRACKED ONTO PAVED AREAS SHALL BE REMOVED BY THE END OF THE SAME WORKDAY IT IS NOTED, AND IF NOTED ON A NON-WORK DAY, NOT LATER THAN THE END OF THE NEXT WORK DAY.
9. EARTH STOCKPILES SHALL BE SEEDDED AND MULCHED AND HAVE A SILT FENCE INSTALLED ON THE DOWN-SLOPE SIDE. AT A MINIMUM, STOCKPILES SHALL BE COVERED WITH IMPERVIOUS TAPPS AND/OR STABILIZED WITH TEMPORARY SEED AND MULCH TO PROTECT MATERIALS IN THE EVENT THAT THEY WILL REMAIN FOR LONGER THAN 1 MONTH.
10. INSTALL EROSION CONTROL MEASURES AS SHOWN. CLEAN ACCUMULATED SEDIMENT AS NECESSARY. LEAVE IN PLACE UNTIL DISTURBED AREAS HAVE BEEN ADEQUATELY STABILIZED. DISTURBED AREAS RESULTING FROM SILT FENCE REMOVAL SHALL BE PERMANENTLY SEEDDED.
11. CUT AND FILL SLOPES SHALL BE PROTECTED WITH EROSION CONTROL MEASURES. INSTALL EROSION CONTROL BLANKET AS SHOWN ON ALL SLOPES 3:1 (1 RISE ON 3 RUN) AND STEEPER. ALL CUT AND FILL SLOPES SHALL BE SEEDDED AND MULCHED WITHIN 72 HOURS OF THEIR CONSTRUCTION.
12. ALL DISTURBED AREAS SHALL BE TEMPORARILY STABILIZED WITH MULCH AND/OR MULCH NETTING BEFORE THE END OF EACH WORKDAY.
13. ALL DISTURBED AREAS SHALL HAVE TOPSOIL SPREAD (4" MINIMUM) AND BE LIMED, FERTILIZED, TILLED, SEEDDED AND MULCHED (WITH ANCHORED BLANKET IF REQUIRED) WITHIN 72 HOURS OF FINAL GRADING. WHEN PERMANENT SEEDING CANNOT BE INSTALLED BY SEPTEMBER 15, TEMPORARY SEEDING AND MULCHING OF ALL DISTURBED AREAS SHALL BE INSTALLED IMMEDIATELY AND MAINTAINED IN THAT CONDITION UNTIL PERMANENT MEASURES CAN BE INSTALLED IN THE FOLLOWING PLANTING SEASON.
14. ROADWAYS/PARKING LOTS SHALL BE STABILIZED WITHIN 72 HOURS OF ACHIEVING FINISHED GRADE.
15. WHEN WORK IS SUSPENDED WITHIN THE GROWING SEASON, ALL DISTURBED AREAS SHALL BE TEMPORARILY STABILIZED WITH SEED AND MULCH WITHIN 14 DAYS. OUTSIDE THE GROWING SEASON, ALL DISTURBED AREAS SHALL BE TEMPORARILY STABILIZED WITH MULCH; MULCH AND TACK ON SLOPES STEEPER THAN 3:1; OR EROSION MATTING ON SLOPES STEEPER THAN 2:1 AND MAINTAINED IN THAT CONDITION UNTIL PERMANENT MEASURES CAN BE INSTALLED IN THE FOLLOWING PLANTING SEASON.
16. TEMPORARY STABILIZATION OF DISTURBED AREAS:
SEED BED PREPARATION: TILL THREE INCHES DEEP MIXING IN FERTILIZER. APPLY 2 TONS/ACRE (1000/1,000 SQ. FT.)
FERTILIZE: UNIFORMLY APPLY NOT LESS THAN 300#/ACRE (7#/1,000 SQ. FT.) OF 10-20-20 OR EQUIVALENT
SEEDING: SELECT APPROPRIATE SEEDING MIXTURE FROM TABLE 1 BELOW. SPREAD SEED UNIFORMLY. FIRM SOIL BY ROLLING OR PACKING. IF NOT FEASIBLE, THEN RAKE LIGHTLY TO COVER SEEDS.
MULCHING: MULCH ALL DISTURBED AREAS WITH 1-1/2 TO 2 TONS OF HAY OR STRAW PER ACRE (70-90#/1,000 SQ. FT.). ANCHOR ON ALL SLOPES 3:1 OR STEEPER AND ON SLOPES SUBJECT TO WASH OR WIND-BLOWN CONDITIONS. JUTE OR OTHER BIODEGRADABLE BLANKET, STAKING AND STABLING MAY BE REQUIRED.
17. PERMANENT STABILIZATION OF DISTURBED AREAS:
SEED BED PREPARATION: TOPSOIL (SANDY LOAM, LOAM, OR SILT LOAM), FRIABLE, FREE OF STUMPS, WOOD AND ROOTS. STONES MORE THAN 1-1/2 INCHES IN DIAMETER OR LENGTH SHALL BE PLACED OVER ALL DISTURBED AREAS IN A 4" (MINIMUM) THICK LAYER. TOPSOIL SHALL BE FREE OF HERBICIDES AND TOXIC MATERIALS. TILL THREE INCHES DEEP. MIXING IN THE FERTILIZER AND LIME. UNIFORMLY APPLY NOT LESS THAN 500#/ACRE (12#/1,000 SQ. FT.) OF 10-20-20 OR EQUIVALENT.
FERTILIZE: SPREAD SEED UNIFORMLY. FIRM SOIL BY ROLLING OR PACKING; IF NOT FEASIBLE, THEN RAKE LIGHTLY TO COVER SEED.
SEEDING: MULCH ALL DISTURBED AREAS WITH 1-1/2 TO 2 TONS OF HAY OR STRAW PER ACRE (70-90#/1,000 SQ. FT.). ANCHOR ON ALL SLOPES 3:1 OR STEEPER AND ON SLOPES SUBJECT TO WASH OR WIND BLOWN CONDITIONS. JUTE OR OTHER BIODEGRADABLE BLANKET, STAKING AND STABLING MAY BE REQUIRED.
MULCHING: GRASS MATERIALS (SHADY GENERAL LAWN MIX)

TABLE 1 PLANT SELECTION AND SEEDING RATES			
SPECIES	PER ACRE	PLANT SELECTION	SEEDING RATES
WINTER RYE	2 BU OR 112 LBS.	2.5 LBS.	BEST FOR FALL SEEDING. SEED AUGUST 15 TO SEPTEMBER 15 FOR BEST COVER. SEED TO DEPTH OF ONE INCH.
OATS	2 1/2 BU OR 80 LBS.	2 LBS.	BEST FOR SPRING SEEDINGS. LATER THAN MAY 15 FOR SUMMER PROTECTION. SEED TO DEPTH OF ONE INCH.
ANNUAL RYE	40 LBS.	1 LB.	GROWS QUICKLY BUT IS OF SHORT GRASS DURATION. USE WHERE APPEARANCES ARE IMPORTANT. COVER SEED WITH NO MORE THAN 1/2 INCH OF SOIL. WITH MULCH, SEEDING MAY BE DONE THROUGHOUT GROWING SEASON. OTHERWISE, SEED EARLY SPRING OR BETWEEN AUGUST 15 & SEPTEMBER 15.

GRASS SEED SHALL BE FRESH, CLEAN, NEW-CROP SEED AND SHALL MEET THE PROVISIONS OF THE NEW HAMPSHIRE AGRICULTURAL AND VEGETABLE SEEDS LAW. SEED SPECIFIED IN THIS SECTION SHALL MEET THE FOLLOWING ANALYSIS:

	LBS/ACRE
CHEWING FESCUE 'SR 5000'	40
CHAMPION PERENNIAL RYE GRASS	30
HARD FESCUE 'SR 3000'	25
RED FESCUE - 'PENNLAWN'	25
BLUEGRASS - 'GLADE'	10
	130 LBS/ACRE

OTHER SEED MIXTURES AND SEEDING RATES AS RECOMMENDED BY THE USDA - SOIL CONSERVATION SERVICE AND APPROVED BY OWNER MAY BE UTILIZED ONLY UPON PRIOR WRITTEN PERMISSION FROM THE ENGINEER.

18. SEEDING MIXTURES FOR GRASSED SWALES AS SPECIFIED BY THE USDA SOIL CONSERVATION SERVICE, WOODSVILLE, N.H. ARE:

MIXTURE	SEEDING RATES POUNDS PER ACRE	POUNDS PER 1,000 SQ. FT.
A. TALL FESCUE	20	0.45
CREEPING RED FESCUE	20	0.45
RED TOP	2	0.05
TOTAL	42	0.95

19. MAINTENANCE: DURING THE CONSTRUCTION PERIOD UNTIL SUCH TIME AS LONG TERM VEGETATION IS ESTABLISHED

- A. DISTURBED AREAS WILL BE FERTILIZED AND RESEEDDED.
 - B. CATCH BASINS WILL BE CHECKED AND CLEANED AS NECESSARY.
 - C. DRAINAGE AND GRASS TREATMENT SWALES SHALL BE CHECKED FREQUENTLY AND CLEANED AS REQUIRED.
 - D. THE SILT FENCES WILL BE CHECKED ON A REGULAR BASIS AND REPAIRED AS NECESSARY TO CORRECT ANY DAMAGE, DETEIORATION, AND SHORT CIRCUITING.
 - E. THE BOTTOM OF SEDIMENT BASINS SHALL BE PERIODICALLY CLEANED, WITH THE SEDIMENT REMOVED TO A SECURE LOCATION.
20. SITE VISITS: THE CITY ENGINEER SHALL BE CONTACTED ON A REGULAR BASIS TO OBSERVE THE INSTALLATION AND MAINTENANCE OF EROSION AND SEDIMENT CONTROL PRACTICES, AND IN THE EVENT OF ANY EROSION, SEDIMENTATION OR TURBIDITY ISSUES THAT ARISE.
21. ALL PERMANENT DITCHES, SWALES AND DRAINAGE STRUCTURES SHALL BE STABILIZED USING THE VEGETATIVE AND NON-STRUCTURAL BMP'S PRIOR TO DIRECTING RUNOFF TO THEM.
22. THE CONTRACTOR SHALL INSPECT ALL EROSION CONTROLS DAILY AND PRIOR TO ANY ANTICIPATED RAIN EVENTS. THE CITY ENGINEER SHALL INSPECT ALL EROSION CONTROLS AT LEAST WEEKLY OR ONCE EVERY 14 DAYS AND WITHIN 24 HOURS OF ANY RAINFALL EVENT OF 0.25" OR GREATER RAINFALL THAT OCCURS WITHIN A 24 HOUR PERIOD. ALL DAMAGED SILT FENCES SHALL BE REPAIRED. SEDIMENT DEPOSITS SHALL BE REMOVED AS NECESSARY.
23. ONLY STRAW MULCH IS ALLOWED ON SITE. NO HAY PRODUCTS ARE TO BE UTILIZED.
24. VEGETATED DRAINAGE SWALES WILL BE STABILIZED BY SODDING TO PROVIDE IMMEDIATE VEGETATIVE TREATMENT ZONE, AS NOTED ON DRAWINGS.
25. STABILIZATION MEASURES MUST BE INITIATED AS SOON AS PRACTICABLE IN PORTIONS OF THE SITE WHERE CONSTRUCTION ACTIVITIES HAVE TEMPORARILY CEASED, BUT IN NO CASE MORE THAN 14 DAYS AFTER THE CONSTRUCTION ACTIVITY IN THAT PORTION OF THE SITE HAS TEMPORARILY CEASED.
26. AN AREA SHALL BE CONSIDERED PERMANENTLY STABILIZED IF ONE OF THE FOLLOWING HAS OCCURRED:
- A. BASE COURSE GRAVELS HAVE BEEN INSTALLED IN AREAS TO BE PAVED;
 - B. A MINIMUM OF 95% VEGETATED GROWTH HAS BEEN ESTABLISHED;
 - C. A MINIMUM OF 3" OF NON-EROSIVE MATERIAL SUCH AS STONE OR RIPRAP HAS BEEN INSTALLED;
 - D. EROSION CONTROL BLANKETS HAVE BEEN PROPERLY INSTALLED; OR
 - E. NON-VEGETATIVE COVER, SUCH AS HYDRO MULCH AND EROSION CONTROL BLANKETS, RIPRAP, STONE FILL, GABIONS AND/OR GEOTEXTILES HAVE BEEN PROPERLY INSTALLED.
27. WINTER CONSTRUCTION NOTES:
- A. TEMPORARY SEEDING SHALL OCCUR PRIOR TO SEPTEMBER 15TH.
 - B. ALL PROPOSED VEGETATED AREAS WHICH DO NOT EXHIBIT A MINIMUM OF 95% VEGETATIVE GROWTH BY OCTOBER 15TH, OR WHICH ARE DISTURBED AFTER OCTOBER 15TH, SHALL BE STABILIZED BY SEEDING AND INSTALLING EROSION CONTROL BLANKETS ON SLOPES GREATER THAN 3:1, AND SEEDING AND PLACING 3 TO 4 TONS OF MULCH PER ACRE. SECURED WITH ANCHORED BLANKET. ELSEWHERE, THE INSTALLATION OF EROSION CONTROL BLANKETS OR MULCH BLANKET SHALL OCCUR OVER ACCUMULATED SNOW OR ON FROZEN GROUND AND SHALL BE COMPLETED IN ADVANCE OF THAW OR SPRING MELT EVENTS.
 - C. ALL DITCHES OR SWALES WHICH DO NOT EXHIBIT A MINIMUM OF 95% VEGETATIVE GROWTH BY OCTOBER 15TH, OR WHICH ARE DISTURBED AFTER OCTOBER 15TH, SHALL BE STABILIZED TEMPORARILY WITH STONE OR EROSION CONTROL BLANKETS APPROPRIATE FOR THE DESIGN FLOW CONDITIONS; AND
 - D. AFTER NOVEMBER 15TH, INCOMPLETE ROAD OR PARKING SURFACES, WHERE WORK HAS STOPPED FOR THE WINTER SEASON, SHALL BE PROTECTED WITH A MINIMUM OF 3 INCHES OF CRUSHED GRAVEL PER NH DOT ITEM 304.3.
28. FUGITIVE DUST: FUGITIVE DUST SHALL BE CONTROLLED IN ACCORDANCE WITH ENV-A 1002.

SOURCES OF FUGITIVE DUST MAY INCLUDE (1) CONSTRUCTION OR RENOVATION OF BUILDINGS, BRIDGES OR OTHER STRUCTURES, INCLUDING PAVING, SWEEPING, TRENCHING, EXCAVATING, FILLING, OR OTHER ACTIVITY ASSOCIATED WITH THE BUILDING OF STREETS, ROADS, HIGHWAYS, PARKING LOTS, PUBLIC WALKWAYS, SHOPPING CENTERS, HOUSING DEVELOPMENTS, OR OTHER CENTERS OF BUSINESS OR RESIDENTIAL DEVELOPMENT; (2) DEMOLITION, INCLUDING THE TEARING DOWN OF BUILDINGS, BRIDGES, OR OTHER STRUCTURES; AND (3) OUTDOOR STORAGE AND MATERIAL STOCKPILES, INCLUDING THE UNLOADING, REDISTRIBUTION, AND MAINTENANCE OF MATERIALS.

THE CONTRACTOR SHALL TAKE PRECAUTIONS THROUGHOUT THE DURATION OF CONSTRUCTION TO PREVENT, ABATE, AND CONTROL THE EMISSION OF FUGITIVE DUST. THIS SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

- A. THE USE OF WATER OR HYDROPHILIC MATERIAL ON OPERATIONS OR SURFACES, OR BOTH;
 - B. THE APPLICATION OF ASPHALT, WATER OR HYDROPHILIC MATERIAL, OR TAPPS OR OTHER SUCH COVERS TO MATERIAL STOCKPILES;
 - C. THE USE OF HOODS, FANS, FABRIC FILTERS, OR OTHER DEVICES TO ENCLOSE AND VENT AREAS WHERE MATERIALS PRONE TO PRODUCING FUGITIVE DUST ARE HANDLED;
 - D. THE USE OF CONTAINMENT METHODS FOR SANDBLASTING OR SIMILAR OPERATIONS; AND
 - E. THE USE OF VACUUMS OR OTHER SUCTION DEVICES TO COLLECT AIRBORNE PARTICULATE MATTER.
29. INVASIVE SPECIES:
- THE PROJECT SHALL BE MANAGED TO MEET THE REQUIREMENTS AND INTENT OF RSA 430:53 AND AGR 3890 RELATIVE TO INVASIVE SPECIES INCLUDING THE FOLLOWING REQUIREMENTS:

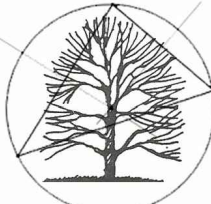
NO PERSON SHALL COLLECT, TRANSPORT, IMPORT, EXPORT, MOVE, BUY, SELL, DISTRIBUTE, PROPAGATE OR TRANSPLANT ANY LIVING AND VIABLE PORTION OF ANY PLANT SPECIES, WHICH INCLUDES ALL OF THEIR CULTIVARS AND VARIETIES, LISTED IN TABLE 3800.1 OF AGR 3800. NEW HAMPSHIRE PROHIBITED INVASIVE SPECIES LIST.

NO PERSON SHALL COLLECT, TRANSPORT, IMPORT, EXPORT, MOVE, BUY, SELL, DISTRIBUTE, PROPAGATE OR RELEASE ANY LIVING INSECT SPECIES LISTED IN TABLE 3800.1, NEW HAMPSHIRE PROHIBITED INVASIVE SPECIES LIST.

BIODEGRADABLE EROSION CONTROL BLANKETS (OR EQUIVALENT APPROVED BY OWNER'S REPRESENTATIVE), EROSION CONTROL BLANKETS AND MUST BE 100% BIODEGRADABLE (PLASTIC NETTING WILL NOT BE ALLOWED) AND SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.

		Project	
		BARROWS STREET HOUSING	
		SITE / CIVIL SPECIFICATIONS	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING ☐ FINAL ☒ PRELIMINARY ☐ SKETCH/CONCEPT		Prepared by: Paul Simon / PS	
		Project No. _____	
		DWG File Name _____	
		Drawn: PS	
		Scale: NTS	
		Checked: PS	
		Drawing No. _____	
		Reviewed: PS	
		Date: JAN 08, 2025	
		L 2.9	
		SHEET 17 OF 28	

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025



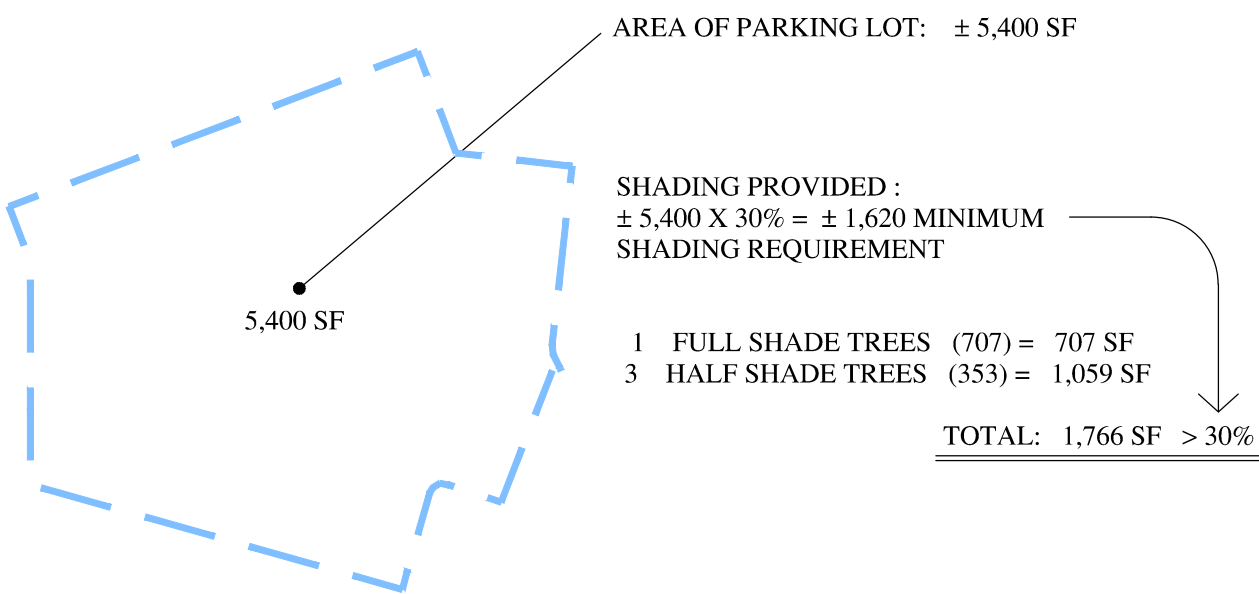
ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467

CITY PLANTING REQUIREMENTS

LANDSCAPING PLAN SHOWING PROPOSED NEW PLANTINGS TO BE INSTALLED AND EXISTING NATURAL VEGETATION TO BE RETAINED. PLAN SHALL SHOW IN DETAIL THE NUMBER, SIZE (HEIGHT AND/OR CALIPER), AND SPECIES (BOTANICAL AND COMMON NAMES) OF ALL PROPOSED SHRUBS AND TREES.

PARKING AREA SHADING REQUIREMENTS

PARKING LOT SHADING CALCULATIONS SHALL BE PROVIDED BY DEPICTING NEW TREES AND SHRUBS AT 10-YEAR CROWN SIZE.



SHADE PLANTING KEY

[ST] = SHADE TREE
REQUIRED SHADE TREE PLANTINGS FOR PARKING AREA SHADING REQUIREMENTS
★ LP = PROPOSED LIGHT POLE

PERIMETER PLANTING KEY

[PT] = PERIMETER TREE
[PF] = PERIMETER FLOWERING SHRUB
[PE] = PERIMETER EVERGREEN SHRUB

PERIMETER LANDSCAPE REQUIREMENTS

CALCULATIONS FOR SQUARE FOOTAGE OF PERIMETER LANDSCAPING:

PERIMETER LANDSCAPING SHALL BE PLANTED AT A MINIMUM WITH ONE (1) SHADE TREE PLUS A MIX OF SHRUBS AND UNDERSTORY TREES TOTALING AT LEAST 5 PLANTS FOR EACH 600 SQUARE FEET, UNLESS THE PLANNING BOARD DETERMINES THAT A SEMI-OPAQUE OR AN OPAQUE BUFFER IS REQUIRED.

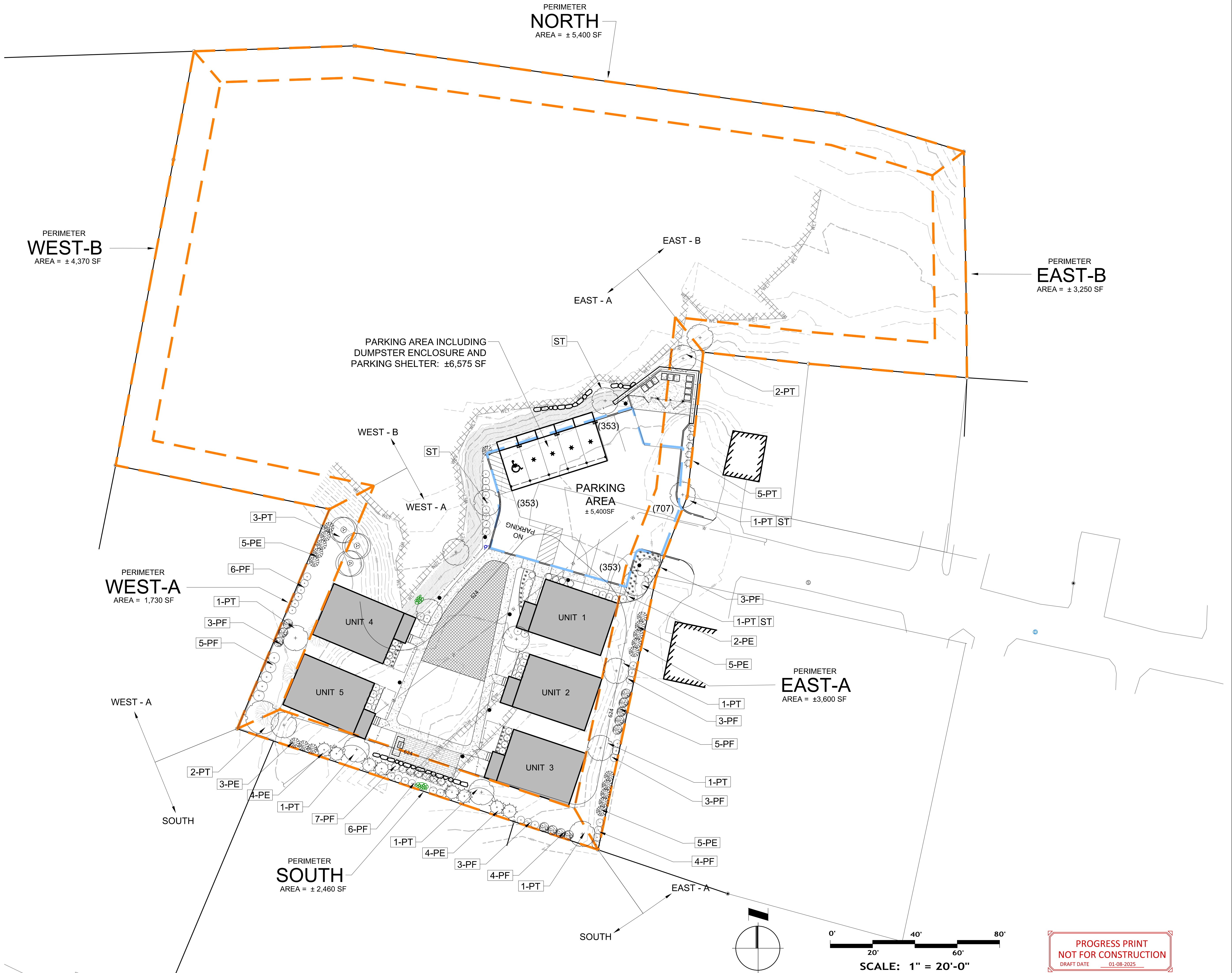
AT THE TIME OF PLANTING, ALL DECIDUOUS TREES SHALL BE A MINIMUM 2.5" TO 3" INCH CALIPER, MEASURED 6 INCHES ABOVE THE FINISH GRADE LEVEL; ALL EVERGREEN TREES SHALL BE A MINIMUM OF 6 TO 7 FEET IN HEIGHT. NEW TREES MAY INCLUDE EVERGREENS NOT TO EXCEED 25% OF THE TOTAL, UNLESS DETERMINED BY THE PLANNING BOARD TO BE NECESSARY FOR SCREENING.

SHRUBS SHALL BE PLANTED AS A MIX, RANGING FROM 50% TO 70% FLOWERING, WITH THE REMAINDER BEING EVERGREEN. AT THE TIME OF PLANTING, ALL SHRUBS WHETHER DECIDUOUS OR EVERGREEN, SHALL BE 24 TO 30 INCHES IN HEIGHT AND/OR 18 TO 24 INCHES IN SPREAD.

NORTH	NORTH PERIMETER AREA: ± 5,400 SF WAIVER REQUESTED FOR NORTH PERIMETER WITH PRESERVATION OF EXISTING VEGETATION TO REMAIN (SEE PLAN).
EAST-A	EAST-A PERIMETER AREA: ± 3,600 SF TREES REQUIRED: 6 NEW TREES PROPOSED: 11 [PT] SHRUBS REQUIRED: 30 SHRUBS PROPOSED: 30 [PF] & [PE] MIN. # OF PERIMETER FLOWERING SHRUBS REQUIRED: 15-21 (50 TO 70%) MIN. # OF PERIMETER EVERGREEN SHRUBS REQUIRED: 9-15 (30 TO 50%) NUMBER OF PERIMETER FLOWERING SHRUBS PROPOSED: 18 [PF] > 30 NUMBER OF PERIMETER EVERGREEN SHRUBS PROPOSED: 12 [PE]
EAST-B	EAST-B PERIMETER AREA: ± 3,250 SF WAIVER REQUESTED FOR EAST-B PERIMETER WITH PRESERVATION OF EXISTING VEGETATION TO REMAIN (SEE PLAN).
SOUTH	SOUTH PERIMETER AREA: ± 2,460 SF TREES REQUIRED: 5 NEW TREES PROPOSED: 5 [PT] SHRUBS REQUIRED: 25 SHRUBS PROPOSED: 33 [PF] & [PE] MIN. # OF PERIMETER FLOWERING SHRUBS REQUIRED: 13-18 (50 TO 70%) MIN. # OF PERIMETER EVERGREEN SHRUBS REQUIRED: 8-13 (30 TO 50%) NUMBER OF PERIMETER FLOWERING SHRUBS PROPOSED: 25 [PF] > 33 NUMBER OF PERIMETER EVERGREEN SHRUBS PROPOSED: 8 [PE]
WEST-A	WEST-A PERIMETER AREA: ± 1,730 SF TREES REQUIRED: 3 NEW TREES PROPOSED: 4 [PT] SHRUBS REQUIRED: 15 SHRUBS PROPOSED: 19 [PF] & [PE] MIN. # OF PERIMETER FLOWERING SHRUBS REQUIRED: 8-11 (50 TO 70%) MIN. # OF PERIMETER EVERGREEN SHRUBS REQUIRED: 5-8 (30 TO 50%) NUMBER OF PERIMETER FLOWERING SHRUBS PROPOSED: 14 [PF] > 19 NUMBER OF PERIMETER EVERGREEN SHRUBS PROPOSED: 5 [PE]
WEST-B	WEST-B PERIMETER AREA: ± 4,370 SF WAIVER REQUESTED FOR WEST-B PERIMETER WITH PRESERVATION OF EXISTING VEGETATION TO REMAIN (SEE PLAN).

OPEN SPACE CALCULATIONS

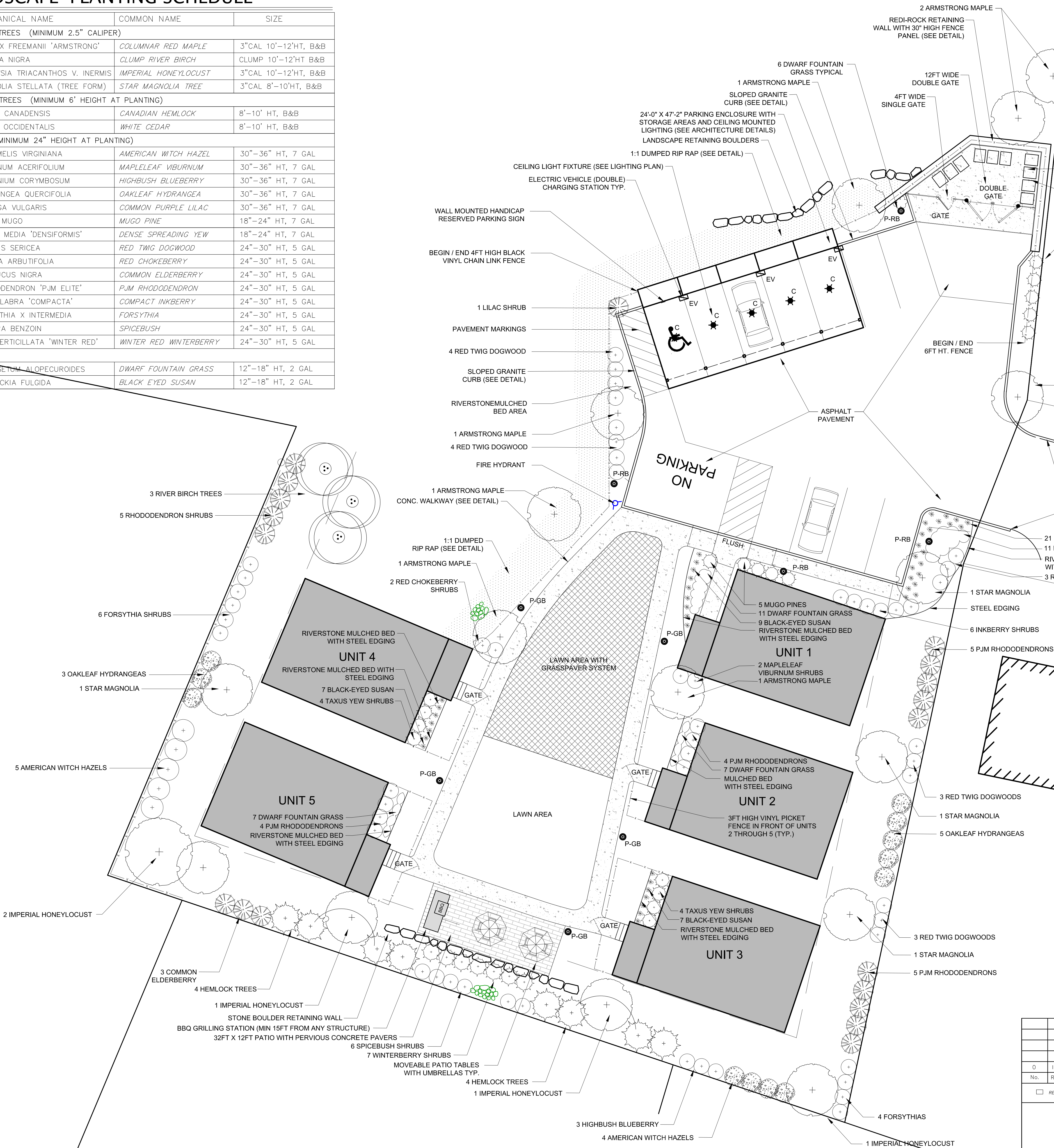
PARCEL AREA	PAVEMENT AREAS	BUILDING AREAS
± 91,127 SF AREA (ENTIRE PARCEL)	± 6,575 SF AREA INCLUDES PARKING AREA AND DUMPSTER ENCLOSURE	± 1,014 SF AREA BUILDING #1 ± 1,014 SF AREA BUILDING #2 ± 1,014 SF AREA BUILDING #3 ± 1,014 SF AREA BUILDING #4 ± 1,014 SF AREA BUILDING #5 ± 5,070 SF TOTAL
± 91,127 SF MINUS 11,645 SF (NON-OPEN SPACE) EQUALS: ± 79,482 SF OPEN SPACE AREA		11,645 SF NON-OPEN SPACE
REQUIRED OPEN SPACE		PROVIDED OPEN SPACE
15% REQUIRED		87% PROVIDED (± 79,482 SF DIVIDED BY ± 91,127SF)



Project		BARROWS STREET HOUSING	
Title		LANDSCAPE REQUIREMENTS PLAN	
0 INITIAL ISSUE	Date	Prepared by: Paul Simon / PS	Project No.
No. REVISIONS/SUBMISSIONS	Date	Drawn: RJ	Scale: 1" = 20FT
☐ RECORD DRAWING	☐ FINAL	☒ PRELIMINARY	☐ SKETCH/CONCEPT
ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467		Checked: PS	Drawing No.
Date: JAN 08, 2025		Reviewed: PS	L 3.0
		SHEET 18 OF 28	

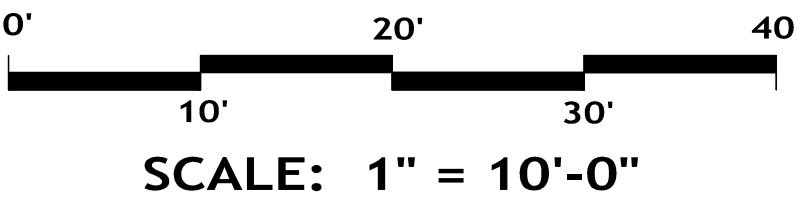
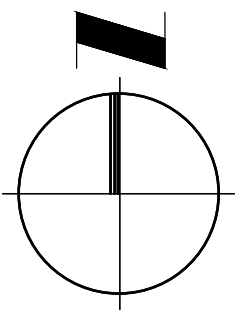
LANDSCAPE PLANTING SCHEDULE

QTY	BOTANICAL NAME	COMMON NAME	SIZE
DECIDUOUS TREES (MINIMUM 2.5" CALIPER)			
8	ACER X FREEMANII 'ARMSTRONG'	COLUMNAR RED MAPLE	3" CAL 10'-12' HT, B&B
3	BETULA NIGRA	CLUMP RIVER BIRCH	CLUMP 10'-12' HT B&B
5	GLEDITSIA TRIACANTHOS V. INERMIS	IMPERIAL HONEYLOCUST	3" CAL 10'-12' HT, B&B
4	MAGNOLIA STELLATA (TREE FORM)	STAR MAGNOLIA TREE	3" CAL 8'-10' HT, B&B
EVERGREEN TREES (MINIMUM 6' HEIGHT AT PLANTING)			
8	TSUGA CANADENSIS	CANADIAN HEMLOCK	8'-10' HT, B&B
5	THUJA OCCIDENTALIS	WHITE CEDAR	8'-10' HT, B&B
SHRUBS (MINIMUM 24" HEIGHT AT PLANTING)			
9	HAMAMELIS VIRGINIANA	AMERICAN WITCH HAZEL	30"-36" HT, 7 GAL
2	VIBURNUM ACERIFOLIUM	MAPLELEAF VIBURNUM	30"-36" HT, 7 GAL
3	VACCINIUM CORYMBOSUM	HIGHBUSH BLUEBERRY	30"-36" HT, 7 GAL
8	HYDRANGEA QUERCIFOLIA	OAKLEAF HYDRANGEA	30"-36" HT, 7 GAL
1	SYRINGA VULGARIS	COMMON PURPLE LILAC	30"-36" HT, 7 GAL
5	PINUS MUGO	MUGO PINE	18"-24" HT, 7 GAL
8	TAXUS MEDIA 'DENSIFORMIS'	DENSE SPREADING YEW	18"-24" HT, 7 GAL
17	CORNUS SERICEA	RED TWIG DOGWOOD	24"-30" HT, 5 GAL
2	ARONIA ARBUTIFOLIA	RED CHOKEBERRY	24"-30" HT, 5 GAL
3	SAMBUCUS NIGRA	COMMON ELDERBERRY	24"-30" HT, 5 GAL
23	RHODODENDRON 'PJM ELITE'	PJM RHODODENDRON	24"-30" HT, 5 GAL
6	ILEX GLABRA 'COMPACTA'	COMPACT INKBERRY	24"-30" HT, 5 GAL
10	FORSYTHIA X INTERMEDIA	FORSYTHIA	24"-30" HT, 5 GAL
6	LINDERA BENZOIN	SPICEBUSH	24"-30" HT, 5 GAL
7	ILEX VERTICILLATA 'WINTER RED'	WINTER RED WINTERBERRY	24"-30" HT, 5 GAL
PERENNIALS			
42	PENNISETUM ALOPECUROIDES	DWARF FOUNTAIN GRASS	12"-18" HT, 2 GAL
44	RUDBECKIA FULGIDA	BLACK EYED SUSAN	12"-18" HT, 2 GAL



REGULATION NOTES / REQUIREMENTS

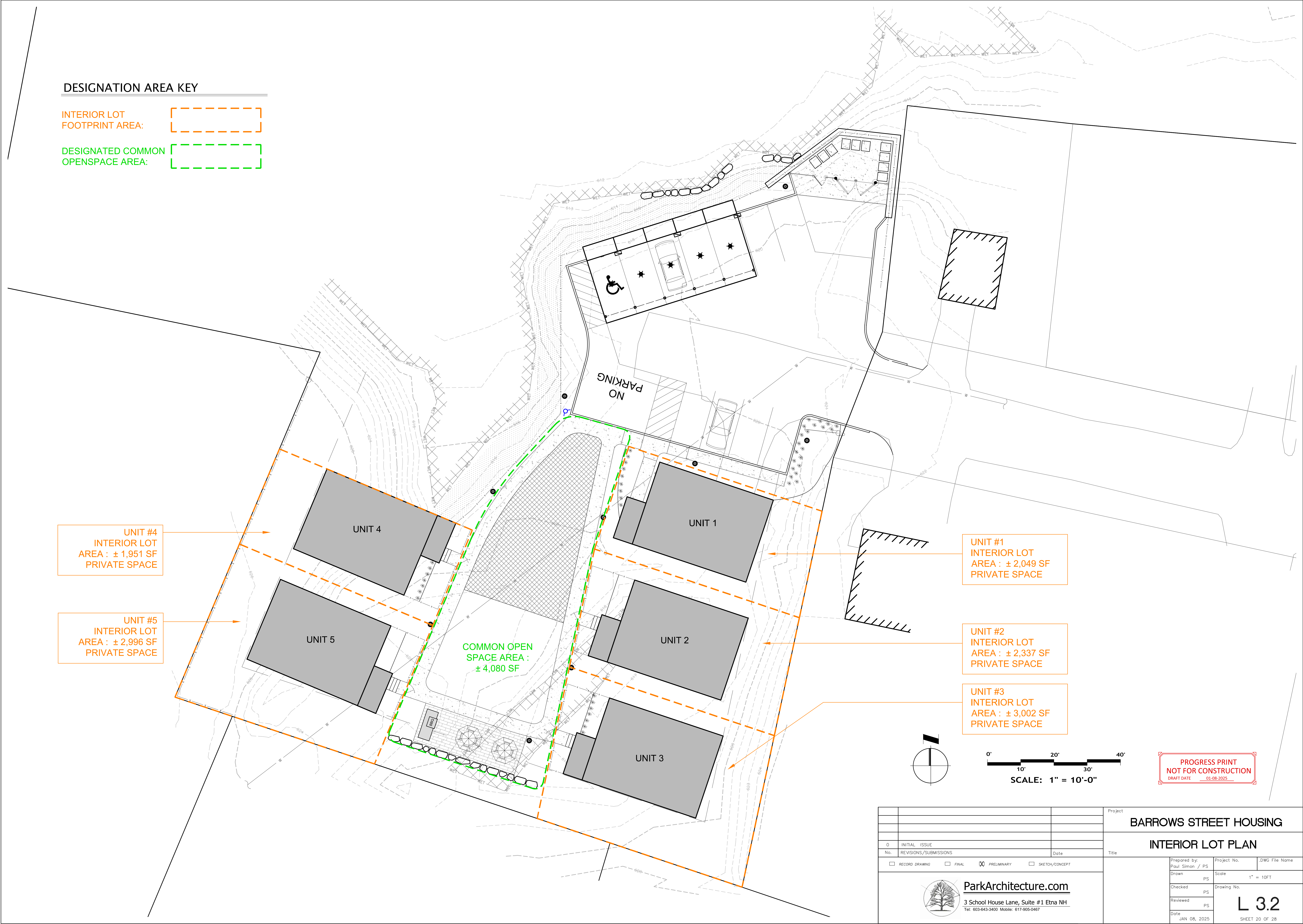
- 6.2.B.3 ALL NEW PLANT MATERIAL SHALL BE NURSERY-GROWN STOCK.
- 6.2.E.6.B TREES AT MATURITY MUST HAVE A TRUNK DIAMETER OF AT LEAST 12 INCHES, MEASURED 4 FEET ABOVE THE GROUND SURFACE.
- 6.2.H.1 THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTAINING ALL LANDSCAPING, TO INCLUDE GRASS AND MULCH, IN GOOD, HEALTHY CONDITION SO AS TO PRESENT A NEAT AND ORDERLY APPEARANCE. THE PROPERTY OWNER SHALL REPLACE ANY UNHEALTHY OR DEAD PLANT MATERIAL IN CONFORMANCE WITH THE LANDSCAPE PLAN APPROVED BY THE BOARD AS PART OF THE SITE PLAN.
- 6.2.K AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY, THE STORAGE, DISPLAY, OR PARKING OF MOTOR VEHICLES, BOATS, MOBILE HOMES, TRAILERS, OR CONSTRUCTION EQUIPMENT WITHIN LANDSCAPED AREAS, BUFFERS OR SCREENS, SHOWN AS SUCH ON THE APPROVED LANDSCAPE PLAN, IS EXPRESSLY PROHIBITED AND A VIOLATION OF THE NOTICE OF ACTION.
- 6.2.F.1 GRADED AREAS SHALL BE VEGETATED TO INSURE EROSION CONTROL BY SEEDING, MULCHING, AND FERTILIZING. DISTURBED AREAS SHALL BE PLANTED WITH SUITABLE PLANT MATERIALS.
- 6.2.F.2 GRADING SHALL NOT EXCEED A RATIO OF 3 HORIZONTAL TO 1 VERTICAL WITHOUT SPECIAL EROSION CONTROL MEASURES, NETTING OR SIMILAR MATERIAL SHALL BE PROVIDED ON SLOPES WITH A RATIO GREATER THAN 3:1 WHILE GROUND COVER IS BEING ESTABLISHED.
- 13.11.A. NO TOPSOIL, SAND, OR GRAVEL SHALL BE REMOVED FROM THE SITE FOR ANY OTHER PURPOSE OTHER THAN TO MEET THE CONSTRUCTION NEEDS OF THE DEVELOPMENT



PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

Project		BARROWS STREET HOUSING	
Title		SITE LANDSCAPE PLAN	
Prepared by:	Paul Simon / PS	Project No.	DWG File Name
Drawn	RJ	Scale	1" = 10FT
Checked	PS	Drawing No.	L 3.1
Reviewed	PS		
Date	JAN 08, 2025		SHEET 19 OF 28

ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467



PROPOSED PLANT MATERIAL IMAGES:



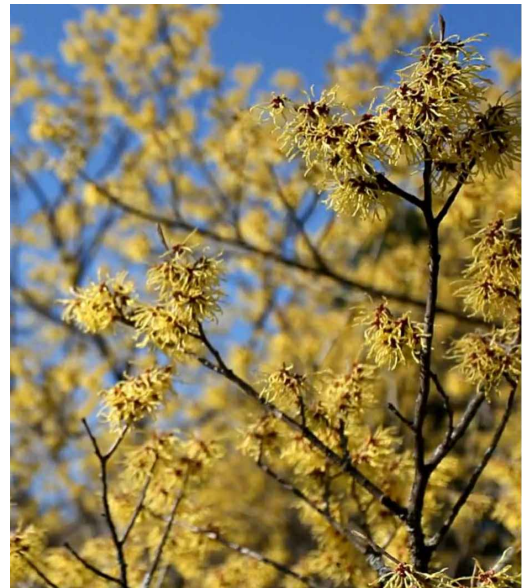
RED CHOKEBERRY



TAXUS YEW ELDERBERRY



ELDERBERRY



WITCHHAZEL



PURPLE LILAC



M. VIBURNUM



HIGHBUSH BLUEBERRY



SPICEBUSH



BLACK-EYED SUSAN



OAKLEAF HYDRANGEA



INKBERRY SHRUB



PJM RHODODENDRON



WINTERBERRY



WINTERBERRY



RED TWIG DOGWOOD



RED TWIG DOGWOOD



FORSYTHIA



MUGO PINE



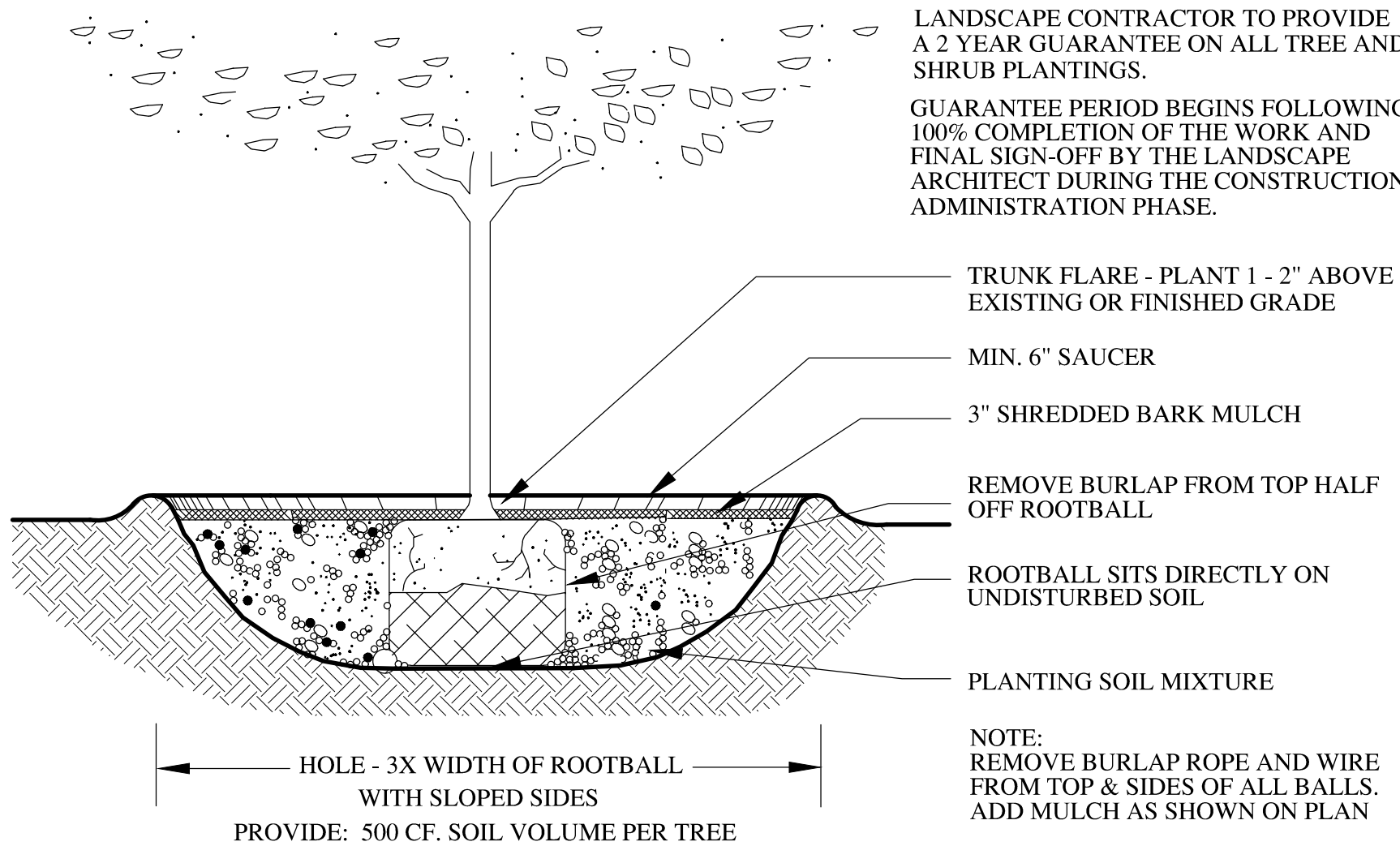
DWARF FOUNTAIN GRASS

LANDSCAPE NOTES

1. THE NUMBER OF EACH INDIVIDUAL PLANT TYPE AND SIZE IS PROVIDED IN THE PLANT LIST FOR CONTRACTORS CONVENIENCE ONLY. IF A DISCREPANCY EXISTS BETWEEN THE NUMBER OF PLANTS ON THE LIST AND THE NUMBER SHOWN ON THE DRAWING, THE GREATER NUMBER SHALL APPLY.
2. THE CONTRACTOR SHALL SUPPLY PLANT MATERIAL IN QUANTITIES SUFFICIENT TO COMPLETE THE PLANTING AS SHOWN.
3. ALL PLANT MATERIAL SHALL BE APPROVED BY THE LANDSCAPE ARCHITECT OR THE OWNER'S REPRESENTATIVE PRIOR TO ARRIVAL ON SITE.
4. ALL PLANT BEDS WILL BE TOP-DRESSED WITH 3" SHREDDED BARK MULCH OR RIVERSTONE MULCH (SEE PLANS).
5. THE CONTRACTOR SHALL LOCATE AND MARK ALL UTILITIES PRIOR TO PLANTING. ANY CONFLICTS BETWEEN PLANTING AND UTILITIES SHALL BE IMMEDIATELY REPORTED TO THE OWNER SO THAT ALTERNATIVE PLANTING LOCATIONS CAN BE DETERMINED.
6. NO SUBSTITUTION OF PLANT MATERIALS WILL BE ALLOWED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE OWNER OR LANDSCAPE ARCHITECT.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL PLANTS AGAINST DAMAGE FROM ON-GOING CONSTRUCTION. PROTECTION SHALL BEGIN AT THE TIME THE PLANT IS INSTALLED AND CONTINUE UNTIL FORMAL ACCEPTANCE OF ALL PLANTINGS.
8. ALL OTHER DISTURBED AREAS NOT OTHERWISE INDICATED SHALL BE LOAMED AND SEEDED.
9. CONTRACTOR SHALL PRESERVE EXISTING TREES AND EXISTING PLANTINGS WHERE INDICATED.
10. CONTRACTOR SHALL PROVIDE A 2-YEAR GUARANTEE ON ALL INSTALLED PLANT MATERIAL.
11. ALL PROPOSED TREES SHALL BE PLACED A MINIMUM OF 10FT FROM EXISTING AND PROPOSED UTILITIES.
12. ALL TREES SPECIFIED WILL BE OF GOOD QUALITY AND IN COMPLIANCE WITH THE MOST RECENT EDITION OF ANSI Z60.1 AMERICAN STANDARD FOR NURSERY STOCK PUBLISHED BY AMERICANHORT.
13. SPECIAL ATTENTION SHALL BE PAID TO THE SITE PREPARATION AND SOILS FOR ALL PLANTING AREAS TO ENSURE THE HEALTH AND VIGOROUS GROWTH OF PLANTINGS (ESPECIALLY TREES AND SHRUBS). CONTRACTOR SHALL PROVIDE ADEQUATE SOIL VOLUME AS DEPICTED IN THE TREE AND SHRUB PLANTING DETAILS HEREIN.
14. SEE CIVIL PLANS FOR LOCATION OF SNOW STORAGE AREAS

TREE PLANTING DETAIL

NOT TO SCALE



PROPOSED TREES:

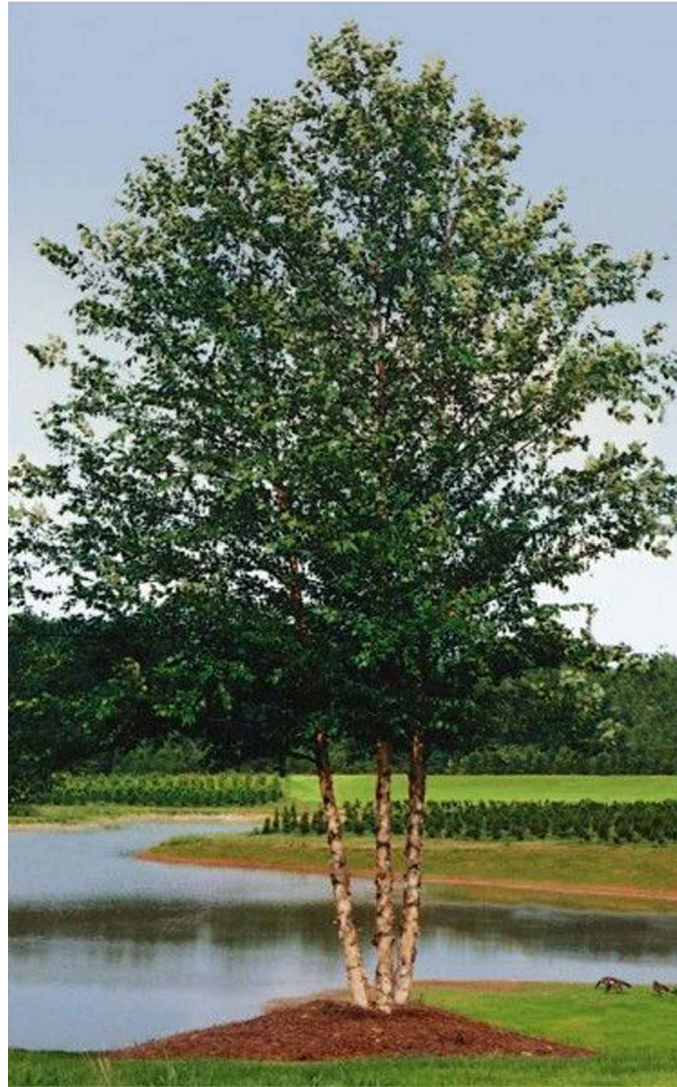
NOT TO SCALE



WHITE CEDAR



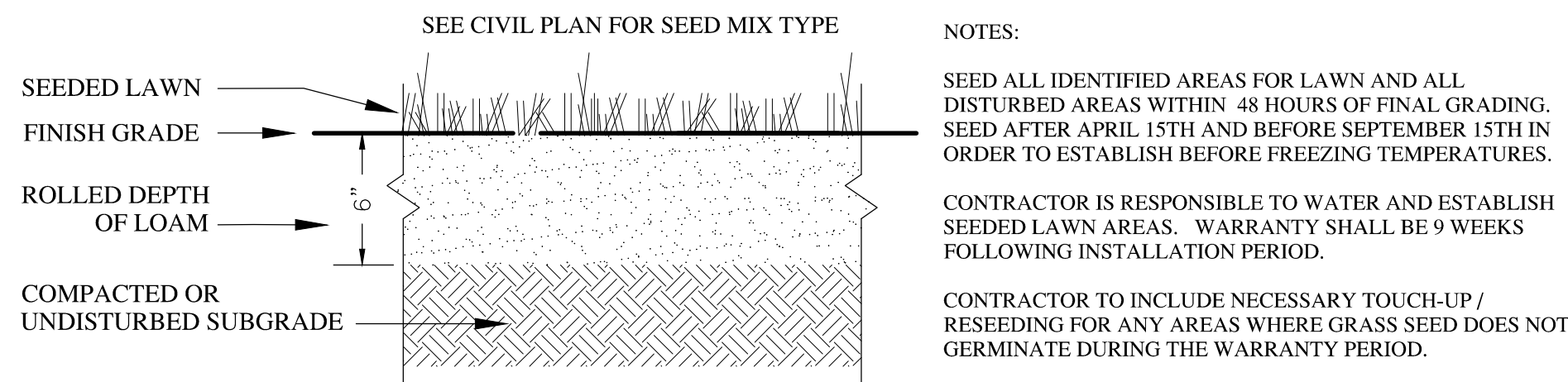
CANADIAN HEMLOCK



CLUMP RIVER BIRCH

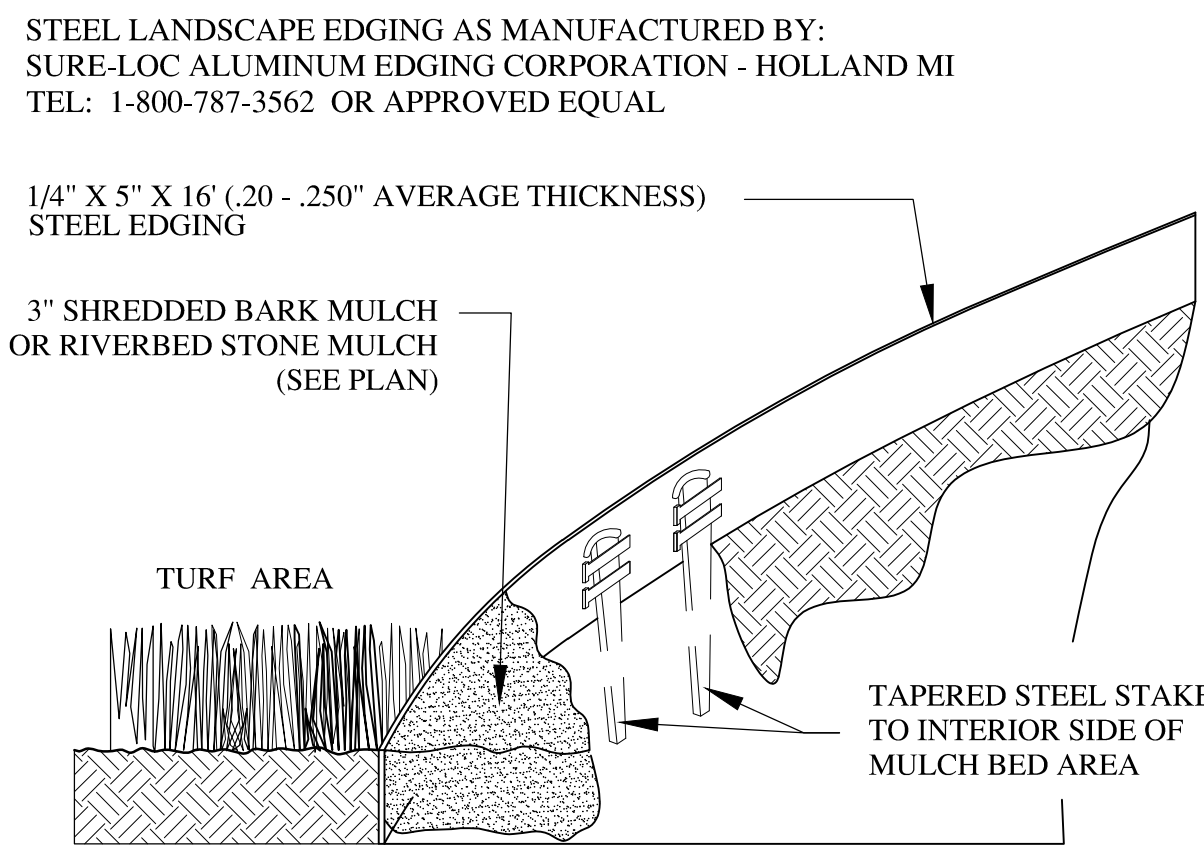
TURF PLANTING DETAIL

NOT TO SCALE



STEEL LANDSCAPE EDGING

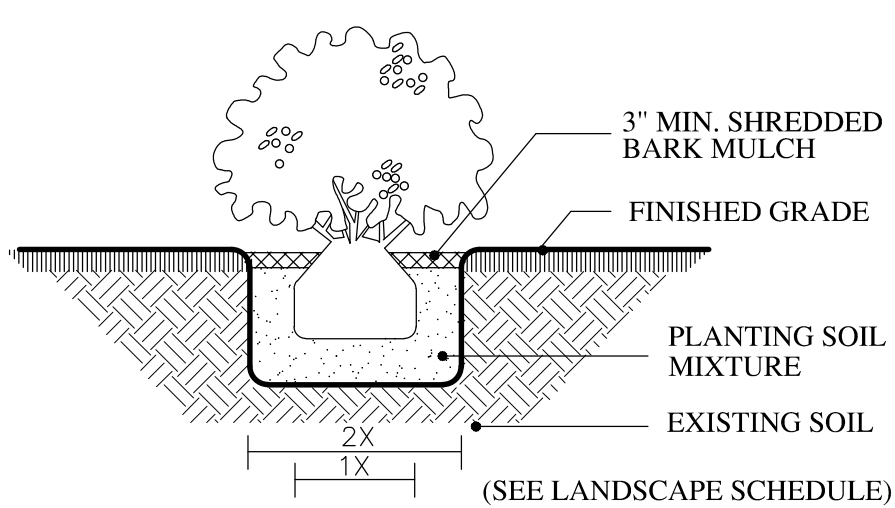
NOT TO SCALE



- NOTES:
- INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
- SEE LANDSCAPE PLAN FOR LOCATION OF LAWN VS. MULCHED BED AREAS AND PLACEMENT OF STEEL EDGING.
- CONTRACTOR TO PROVIDE SHOP DRAWING TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO MATERIALS ORDERING AND INSTALLATION.

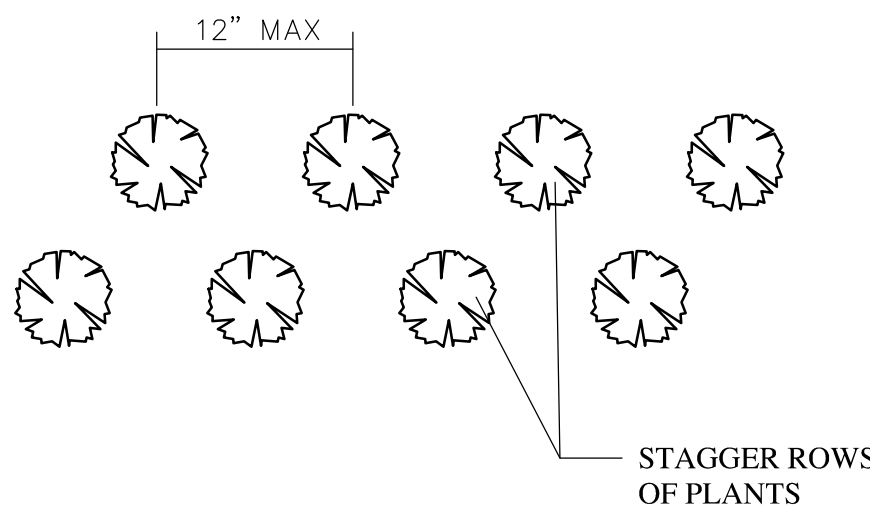
SHRUB PLANTING DETAIL

NOT TO SCALE



GROUNDCOVER SPACING

NOT TO SCALE



ARMSTRONG MAPLE

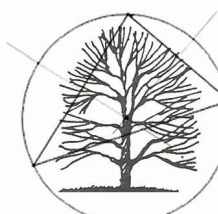


IMPERIAL HONEYLOCUST



STAR MAGNOLIA

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

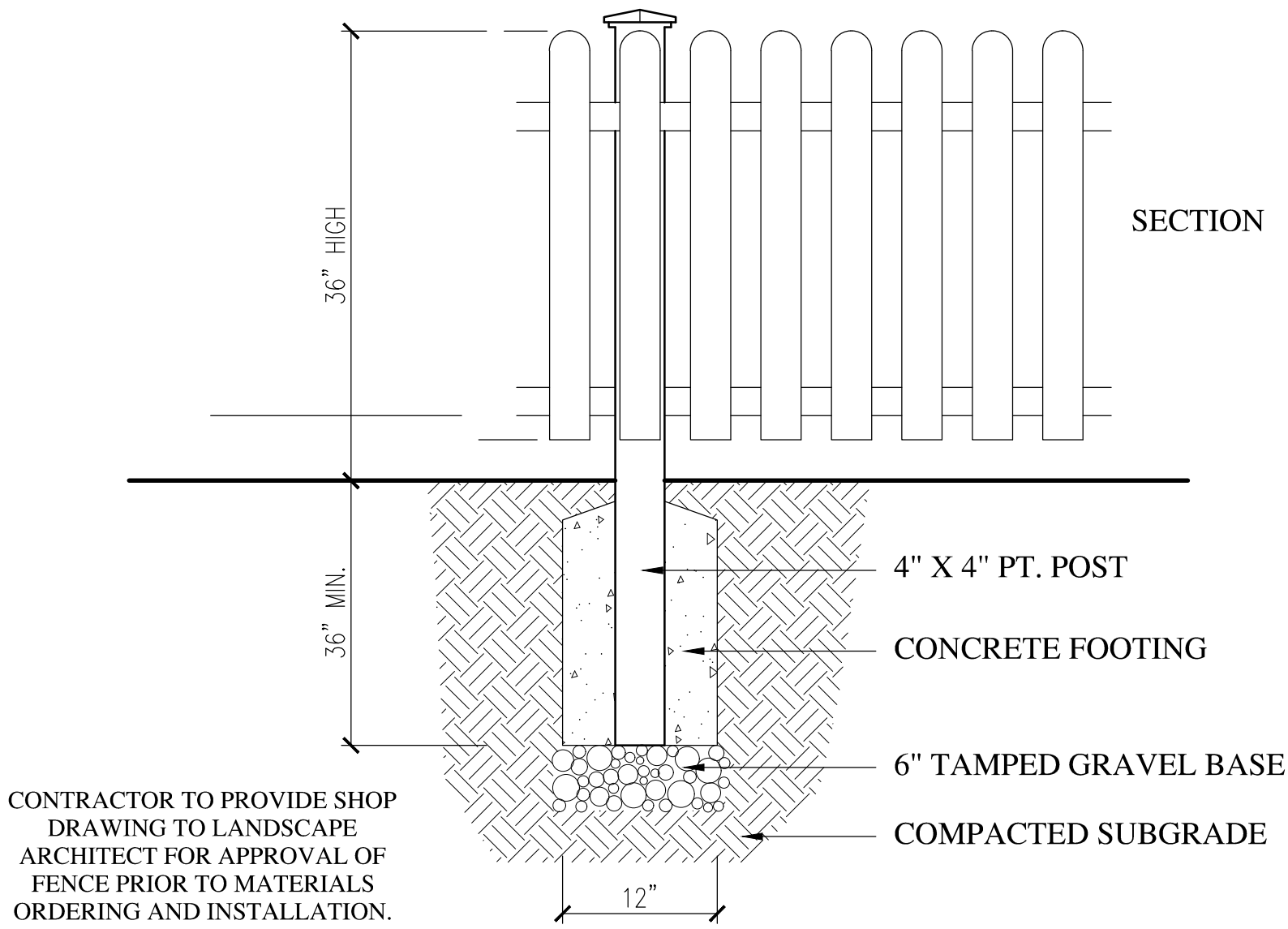
			Project		BARROWS STREET HOUSING						
					SITE LANDSCAPE DETAILS						
0	INITIAL ISSUE										
No.	REVISIONS/SUBMISSIONS		Date		Title						
☐ RECORD DRAWING			☐ FINAL			☒ PRELIMINARY			☐ SKETCH/CONCEPT		
			<u>ParkArchitecture.com</u>			3 School House Lane, Suite #1 Etna NH			Tel: 603-643-3400 Mobile: 617-905-0467		
			Prepared by: Paul Simon / PS			Project No.			DWG File Name		
			Drawn RJ			Scale NTS					
			Checked PS			Drawing No.					
			Reviewed PS			L3.3			SHEET 21 OF 28		
			Date JAN 08, 2025								

PROPOSED 3FT HIGH WHITE VINYL PICKET FENCE

NOT TO SCALE

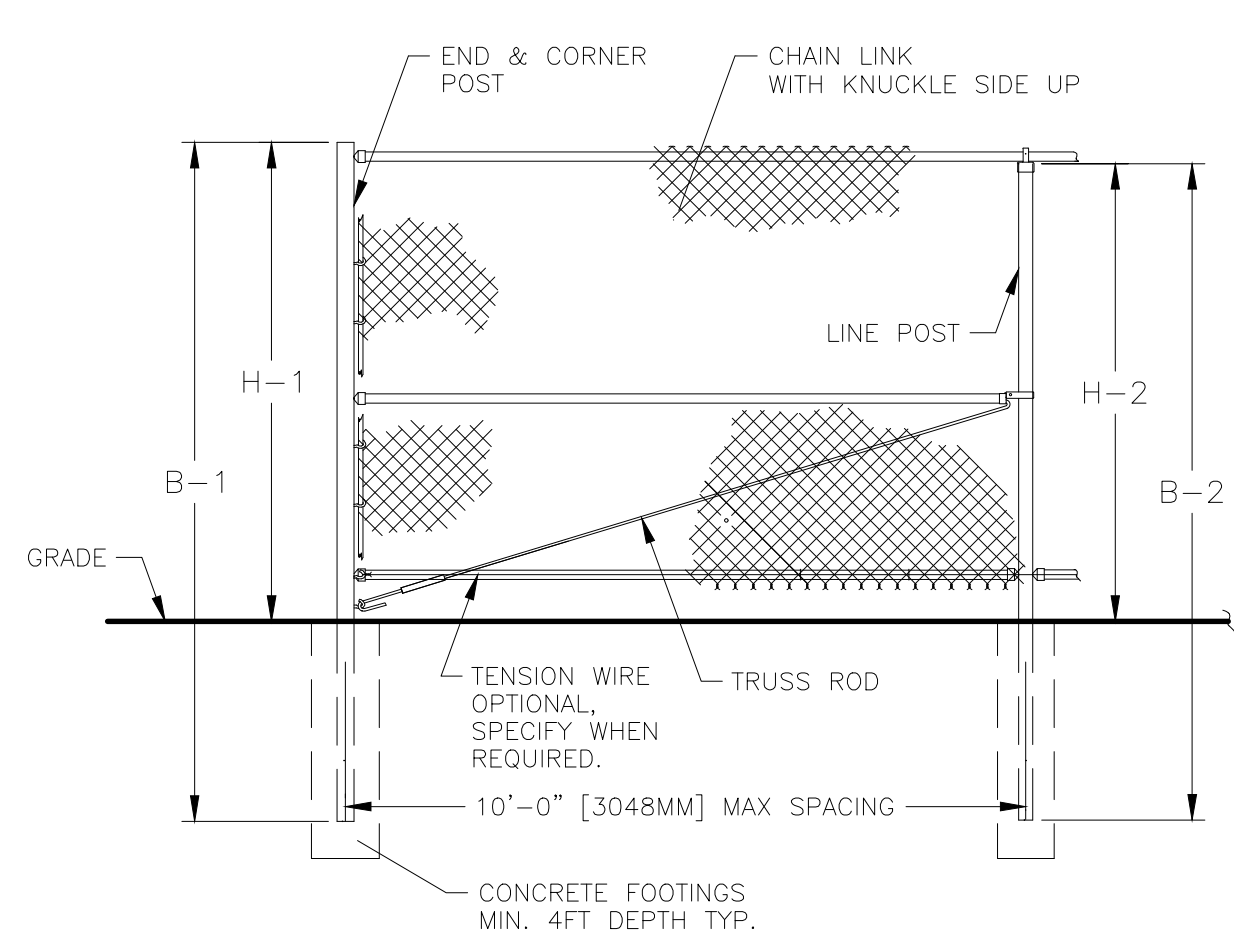


SEE LAYOUT PLAN FOR LOCATION OF FENCING



4FT HIGH BLACK VINYL CHAIN LINK FENCE INSTALLATION DETAIL

NOT TO SCALE



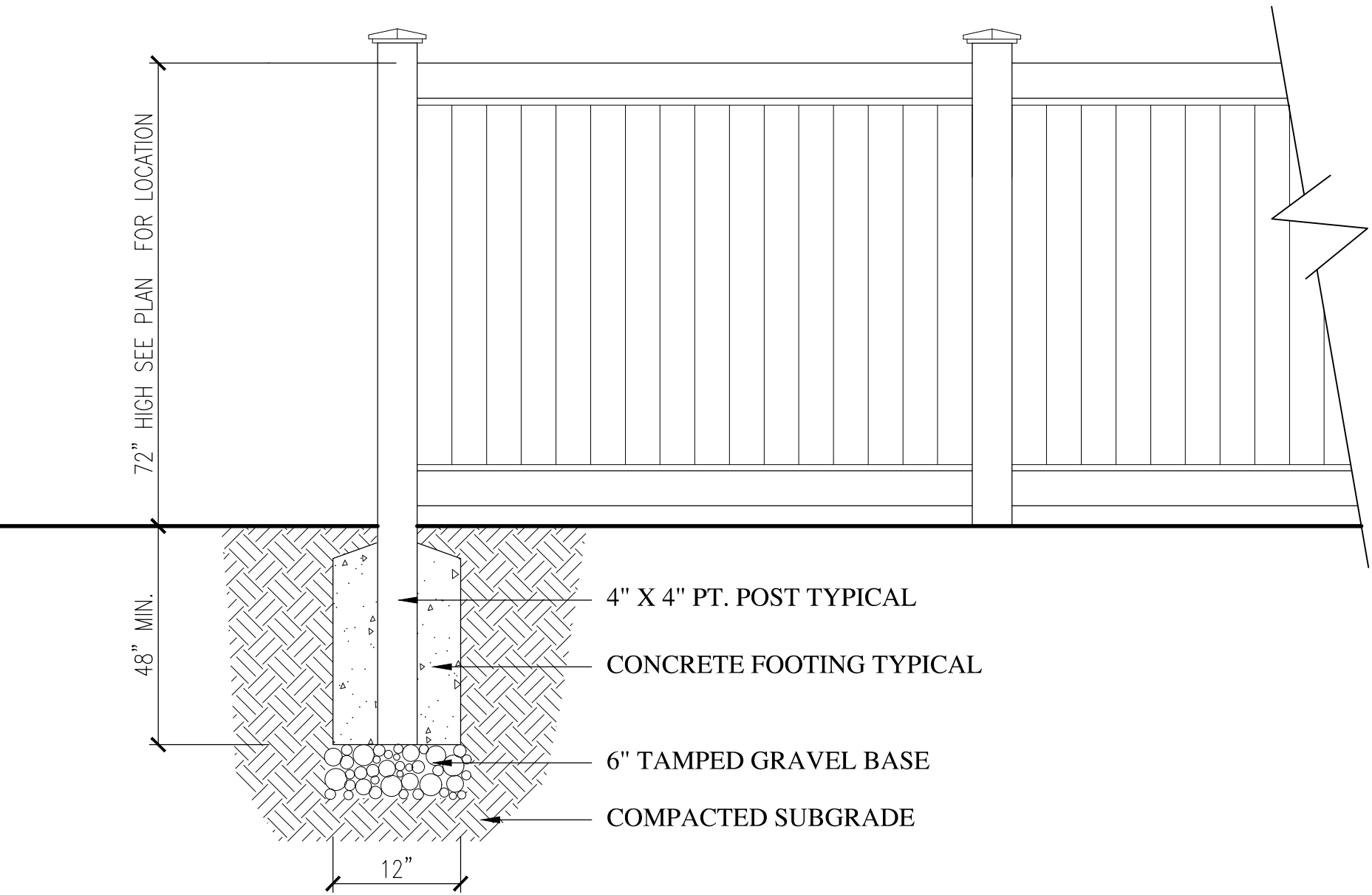
SEE LANDSCAPE AND CIVIL PLANS FOR LOCATIONS OF 4' CLF AND 6' CLF

NOTES:

1. SEE PLAN FOR LOCATION AND LENGTH OF PROPOSED FENCING. (BEGIN / END CLF LABELS)
2. ALL CHAIN LINK FABRIC SHALL BE BLACK VINYL COATED.
3. ALL POSTS, BARS, RODS & HARDWARE SHALL BE BLACK POWDER COATED STEEL FENCE.
4. CONTRACTOR SHALL INCLUDE TOP AND BOTTOM RAILS ON ALL FENCING.
5. MANUFACTURER SHALL BE ANCHOR FENCE OR APPROVED EQUAL.
6. INSTALL FABRIC WITH KNUCKLE SIDE UP AND POINTED END DOWN.
7. CONTRACTOR TO PROVIDE SHOP DRAWING TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO ORDERING MATERIALS AND INSTALLATION.

FENCE HEIGHT	END & CORNER POSTS	LINE POSTS
NOMINAL HEIGHT	B-1 BAR LENGTH	H-1 HEIGHT ABOVE GRADE
4'-0" [1219MM]	6'-0" [1829MM]	4'-0 5/8" [1219MM]
6'-0" [1829MM]	9'-0" [2743MM]	6'-0 5/8" [1845MM]

6FT HIGH SOLID WHITE VINYL PANEL FENCE



NOTES:

1. SOLID PANEL VINYL FENCE SHALL BE SUPPLIED BY WALPOLE OUTDOORS OR APPROVED EQUAL. PLAN INCLUDES BOTH 6FT HIGH FENCE
2. CONTRACTOR TO PROVIDE SHOP DRAWING TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO ORDERING OF MATERIALS AND INSTALLATION.
3. PANELS TO BE HUNG WITH UNIFORM HEIGHT AND SPACING.
4. POSTS TO BE SPACED 6FT O.C. AND/OR AS SHOWN ON PLAN. LENGTH OF FENCE AS SHOWN ON PLAN.
5. MATERIAL SHALL BE WHITE VINYL OR APPROVED SUBSTITUTION.

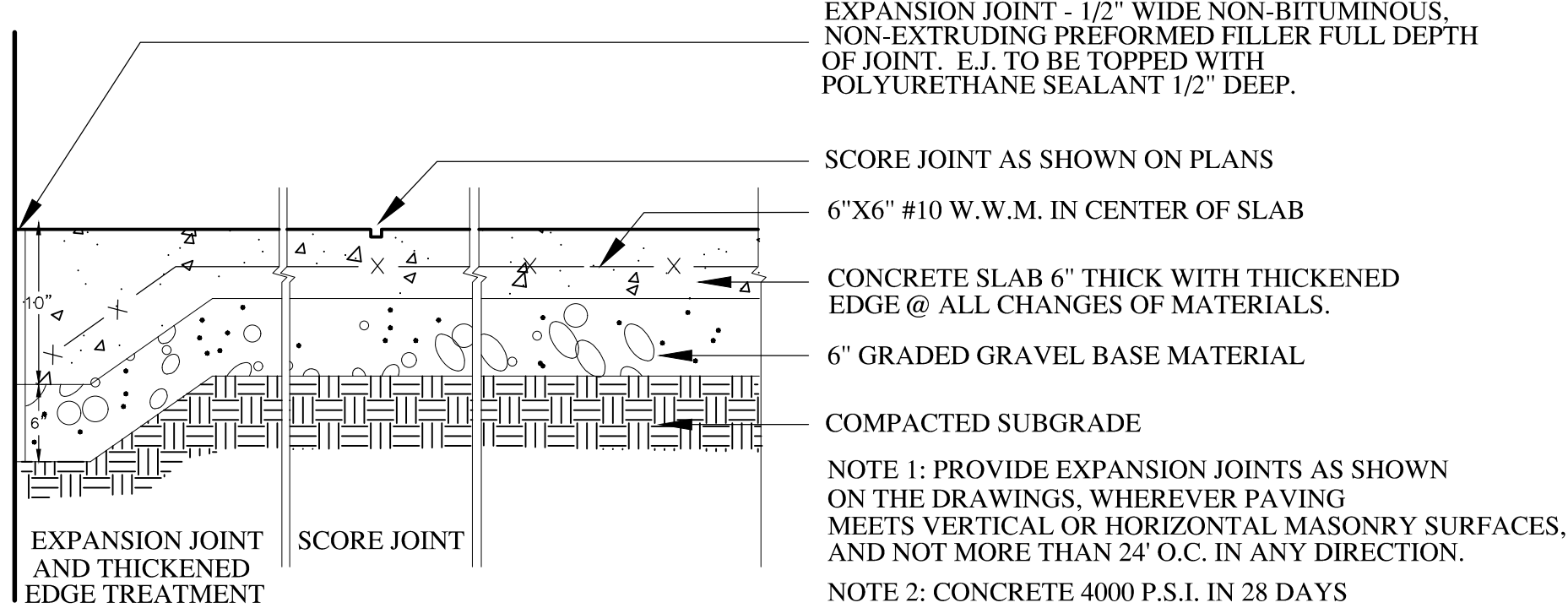
6FT HIGH WHITE VINYL PANEL FENCE

NOT TO SCALE



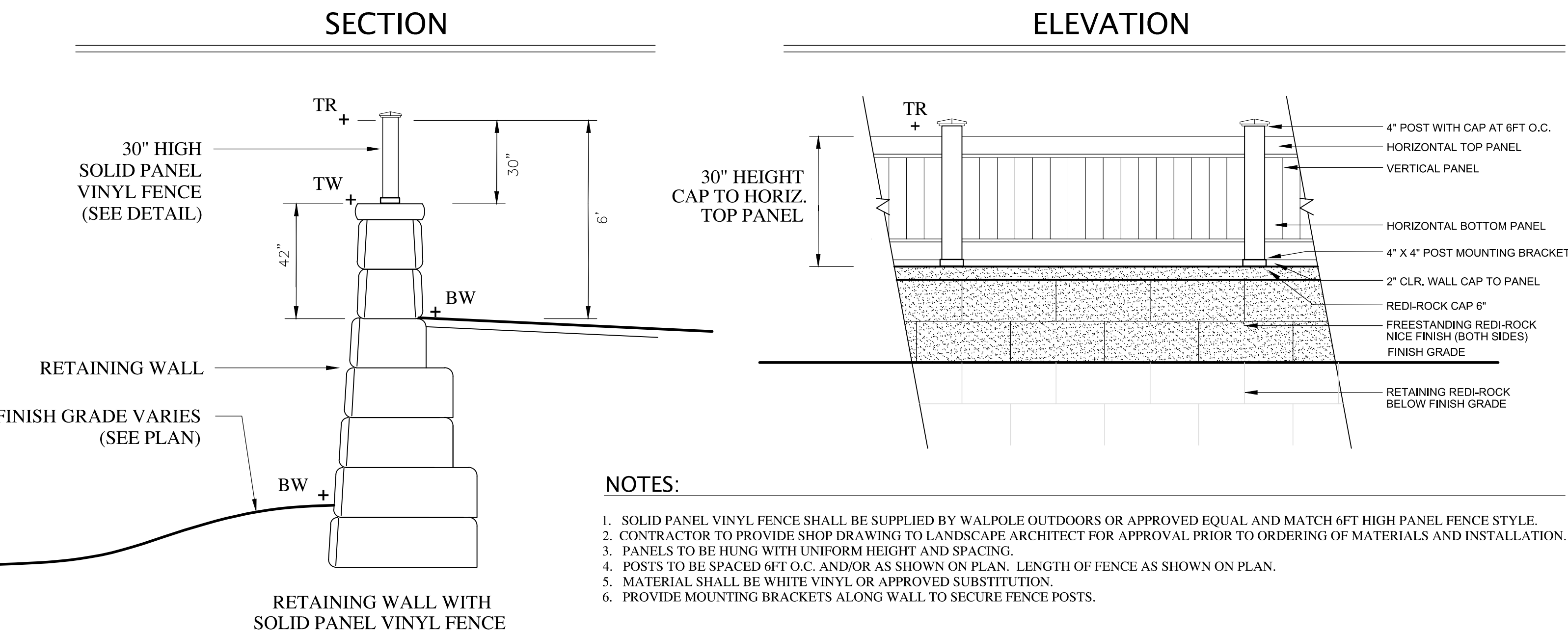
CONCRETE PAVING / JOINT TREATMENT DETAIL

NOT TO SCALE



SOLID PANEL / VINYL FENCE INSTALLATION ON REDI-ROCK RETAINING WALL

NOT TO SCALE



NOTES:

1. SOLID PANEL VINYL FENCE SHALL BE SUPPLIED BY WALPOLE OUTDOORS OR APPROVED EQUAL AND MATCH 6FT HIGH PANEL FENCE STYLE.
2. CONTRACTOR TO PROVIDE SHOP DRAWING TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO ORDERING OF MATERIALS AND INSTALLATION.
3. PANELS TO BE HUNG WITH UNIFORM HEIGHT AND SPACING.
4. POSTS TO BE SPACED 6FT O.C. AND/OR AS SHOWN ON PLAN. LENGTH OF FENCE AS SHOWN ON PLAN.
5. MATERIAL SHALL BE WHITE VINYL OR APPROVED SUBSTITUTION.
6. PROVIDE MOUNTING BRACKETS ALONG WALL TO SECURE FENCE POSTS.

MOUNTED HANDICAP RESERVED PARKING SIGN

NOT TO SCALE

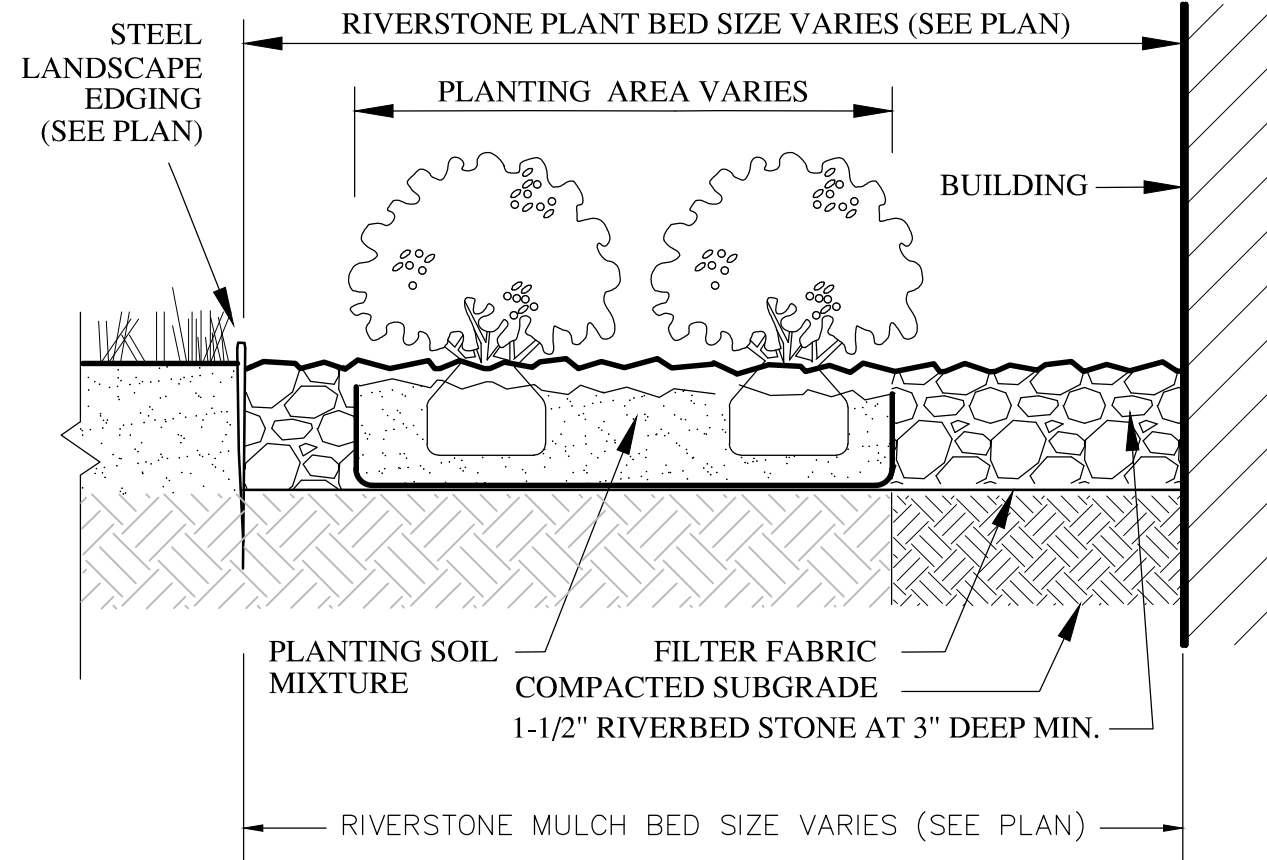


NOTES:

1. MOUNT SIGN ON WALL OF STORAGE ENCLOSURE (SEE PLAN) AT APPROXIMATELY 5FT - 6FT FROM FINISH GRADE.
2. SIGN SHALL BE 12" WIDE BY 18" TALL.
3. MATERIAL SHALL BE SHEET 0.080 ALUMINUM.
4. SIGN SHALL SHOW THE INTERNATIONAL SYMBOL OF ACCESSIBILITY.
5. SIGN SHALL BE IN ACCORDANCE WITH THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, LATEST EDITION (MUTCD).

STONE MULCH / LANDSCAPE BEDS

NOT TO SCALE



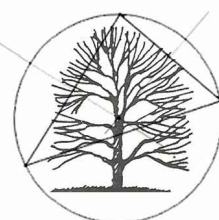
NH RIVERBED 1 1/2"

Native NH round stone consisting of multiple colors, mostly blue and grey with a hint of white and pink. This stone will add a naturally classic touch to any landscape project.

NOTE: RIVERSTONE BY THE DIRT DOCTORS OR APPROVED EQUAL. PEMBROKE, NH (603) 229-3200

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

			Project	BARROWS STREET HOUSING
			Title	SITE LANDSCAPE DETAILS
0	INITIAL	ISSUE	Prepared by:	Paul Simon / PS
No.	REVISIONS/SUBMISSIONS	Date	Drawn	Rd
☐ RECORD DRAWING	☐ FINAL	☒ PRELIMINARY	Checked	PS
			Reviewed	PS
			Date	JAN 08, 2025
			Project No.	NTS
			Drawing No.	L3.4
			DWG File Name	SHEET 22 OF 28



ParkArchitecture.com
3 School House Lane, Suite #1 Etna NH
Tel: 603-643-3400 Mobile: 617-905-0467

GRASSPAVE2 DETAIL TYPICAL

NOT TO SCALE



SPECIFICATIONS:

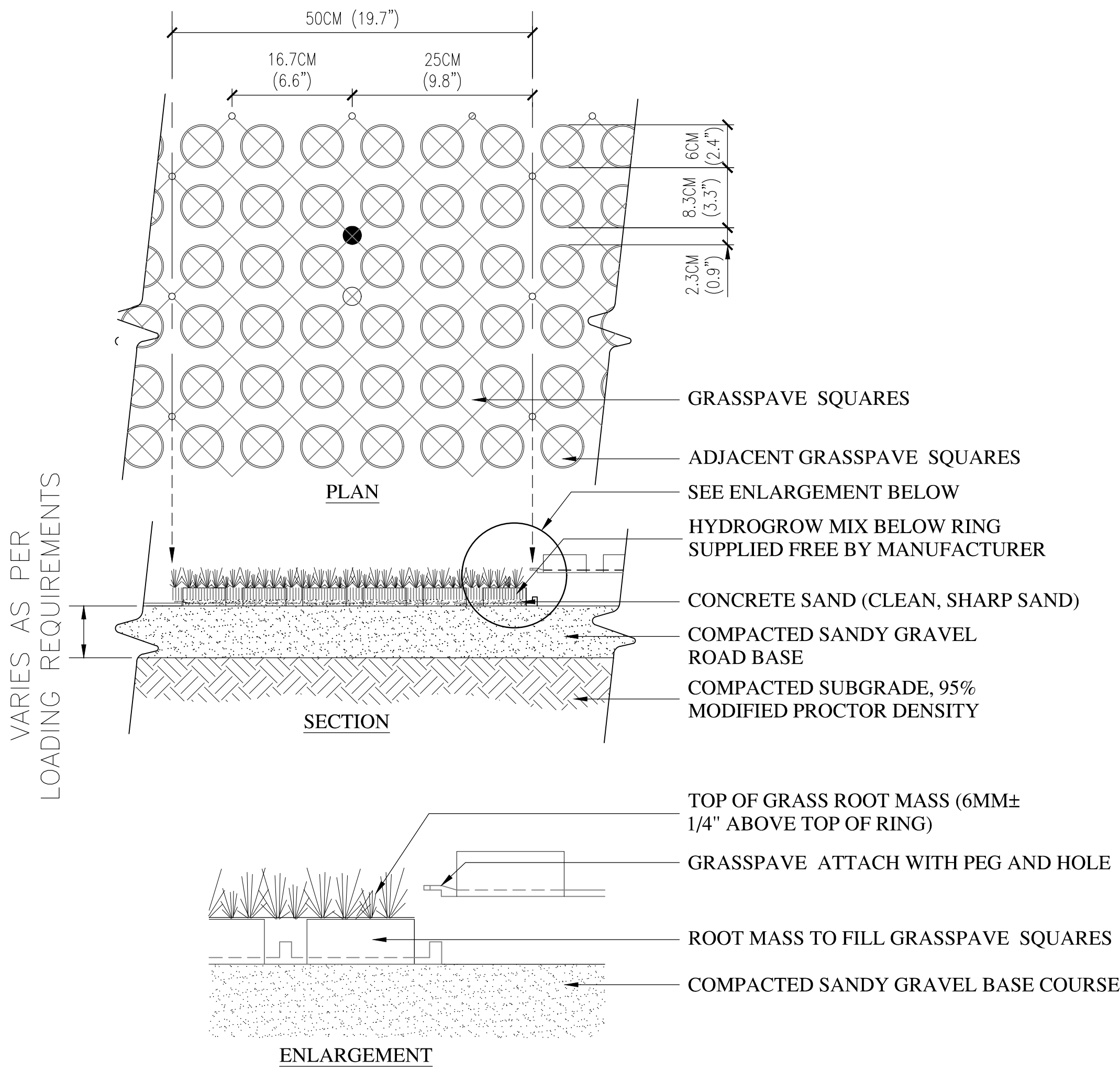
UNIT SIZE - 50 CM X 50 CM X 2.5 CM
(20" X 20" X 1")
PRODUCT AVAILABLE IN 9 PRODUCT
ROLL SIZES, SEE ROLL SIZES

UNIT WEIGHT - 510 GRAMS (18 OZ) RESIN - 100% POST-CONSUMER
OR 2.0 KG (4.5 POUNDS) RECYCLED HDPE/LDPE

STRENGTH - 402 KG/CM (5720 PSI) COLOR - BLACK (STANDARD)

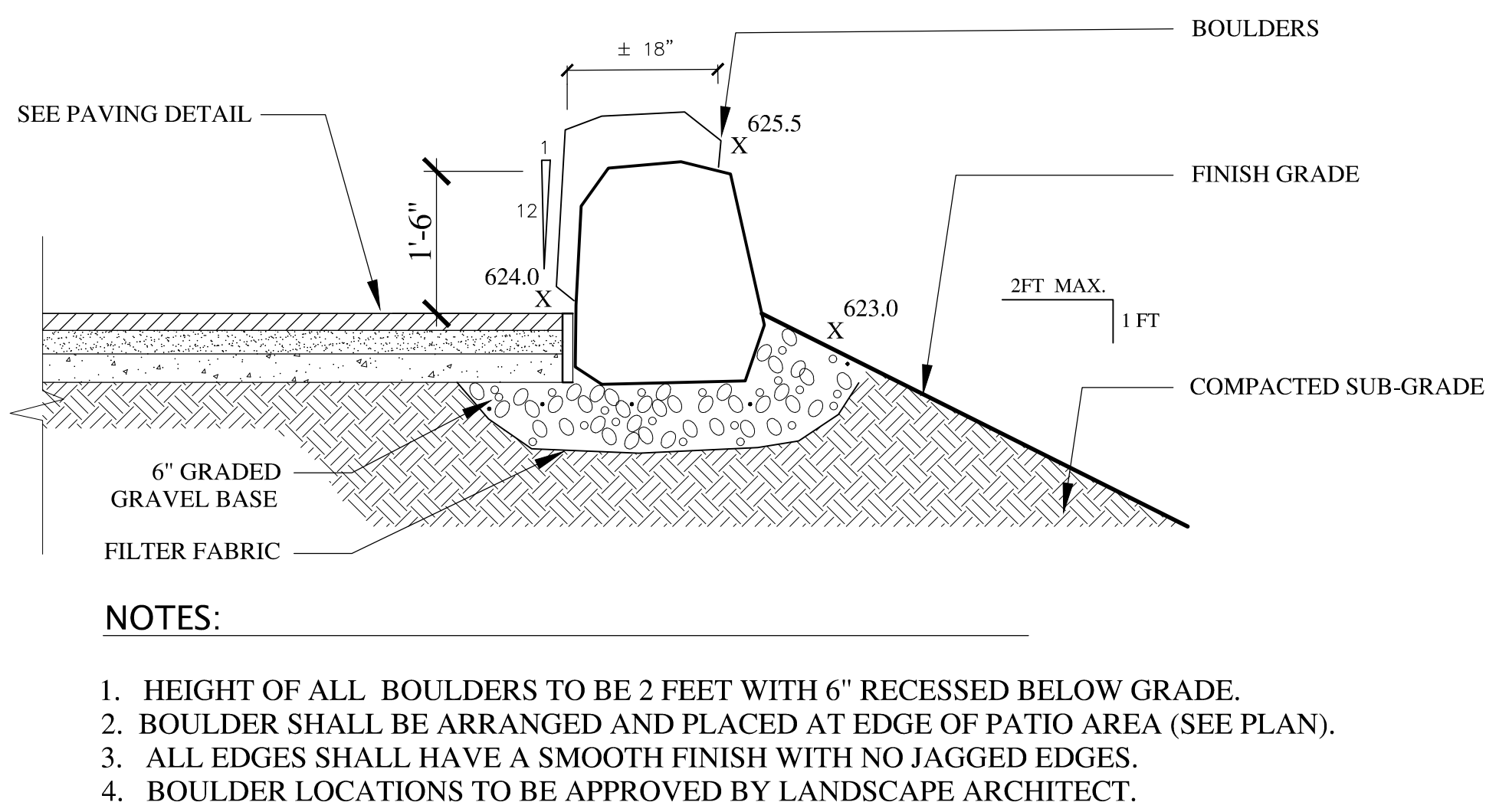
NOTES:

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. CONTRACTOR'S NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT: www.invisiblestructures.com
3. CONTRACTOR TO PROVIDE SHOP DRAWING TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO ORDERING AND INSTALLATION.
4. GRASS / PLANT TYPES SHALL BE SPECIFIED BY LANDSCAPE ARCHITECT.



BOULDER SEATING / RETAINING WALL SECTION DETAIL

NOT TO SCALE

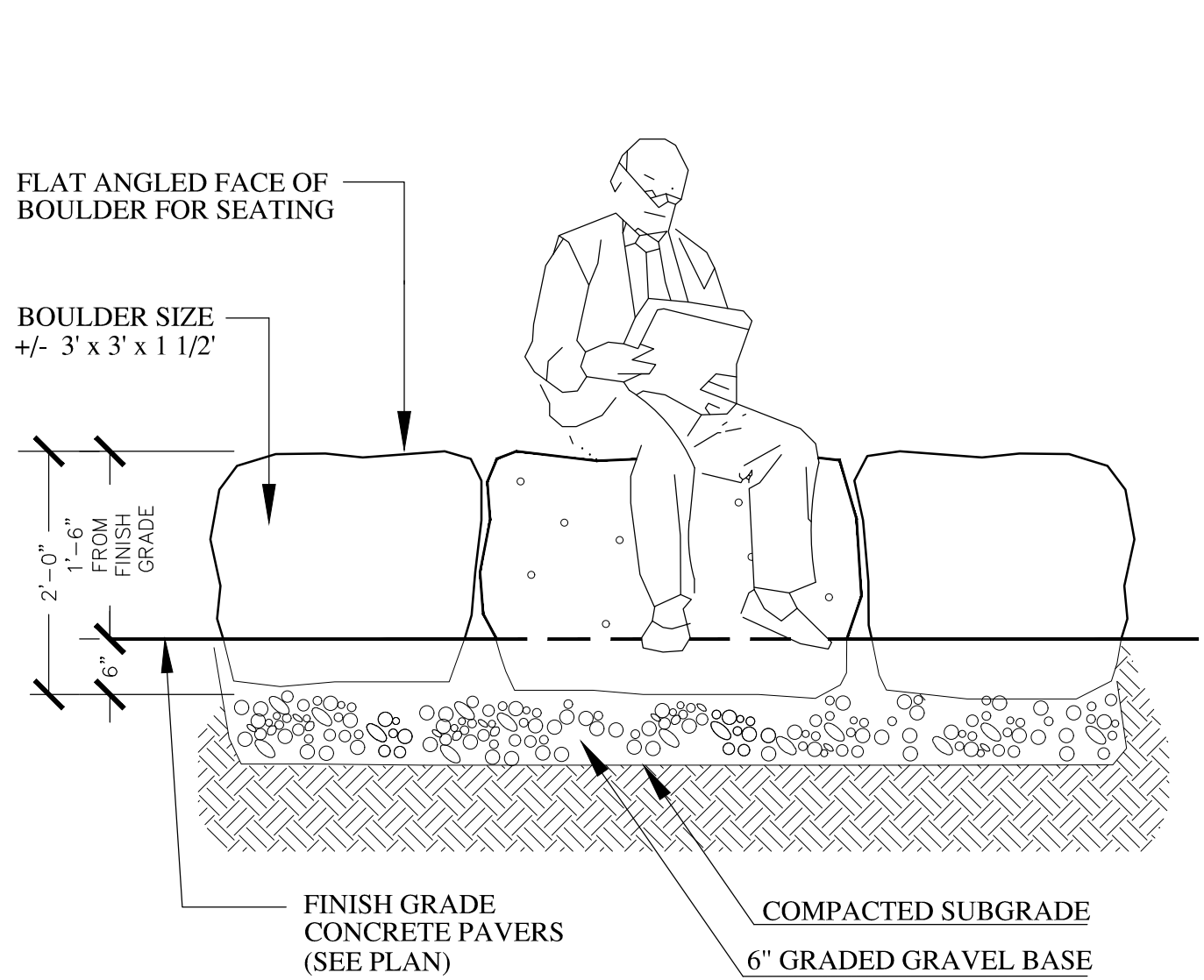


NOTES:

1. HEIGHT OF ALL BOULDERS TO BE 2 FEET WITH 6\"/>

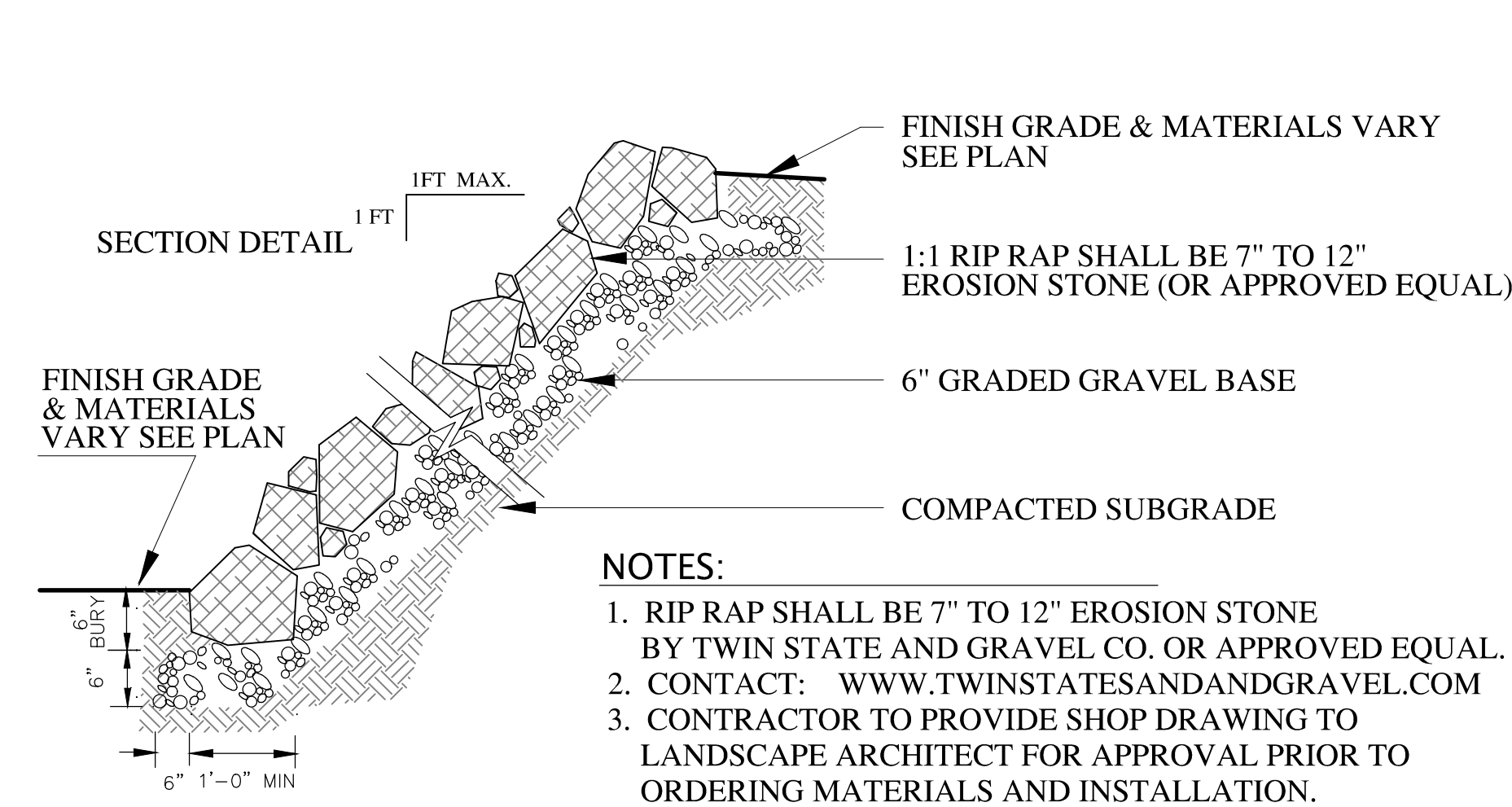
BOULDER SEATING ELEVATION DETAIL

NOT TO SCALE



1:1 DUMPED RIP-RAP DETAIL

NOT TO SCALE

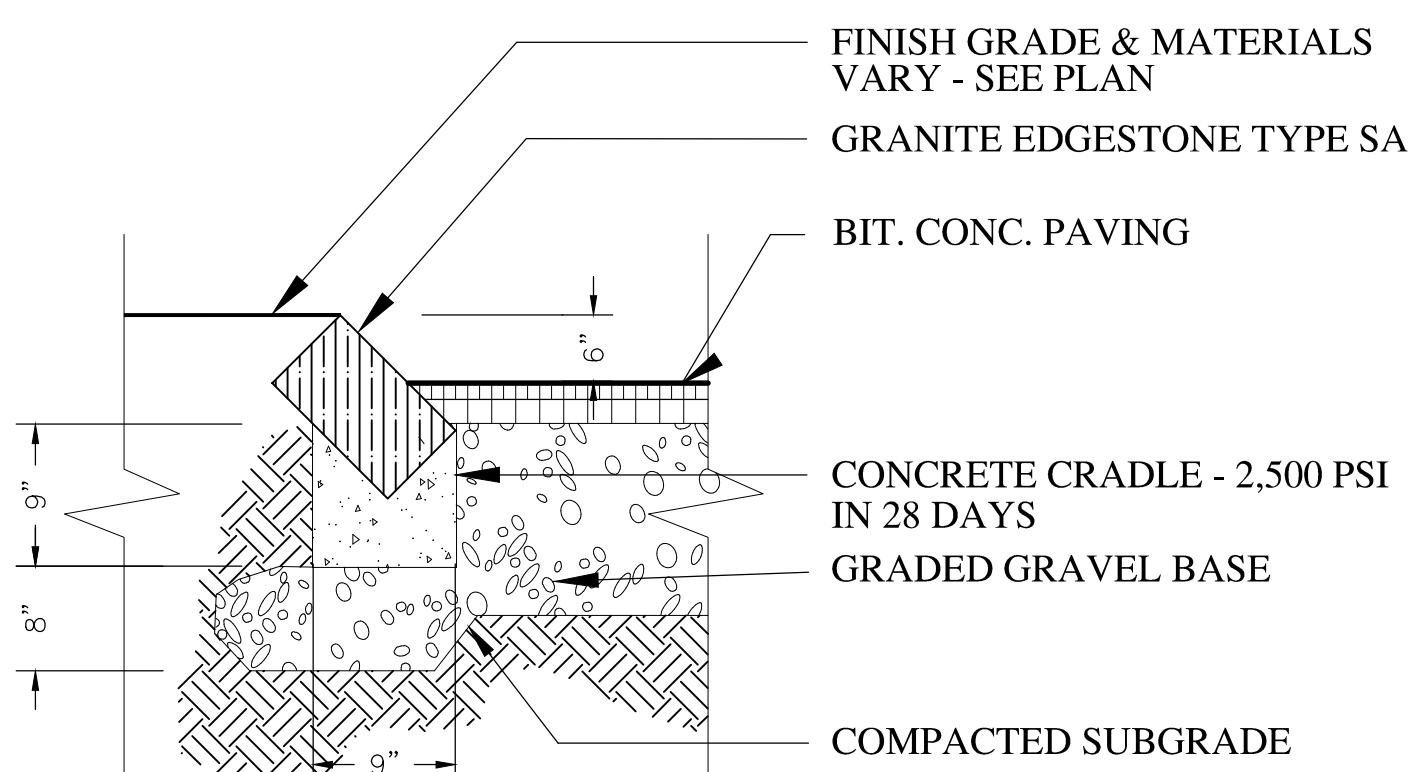


NOTES:

1. RIP RAP SHALL BE 7\"/>

SLOPED GRANITE CURB DETAIL

NOT TO SCALE



NOTES:

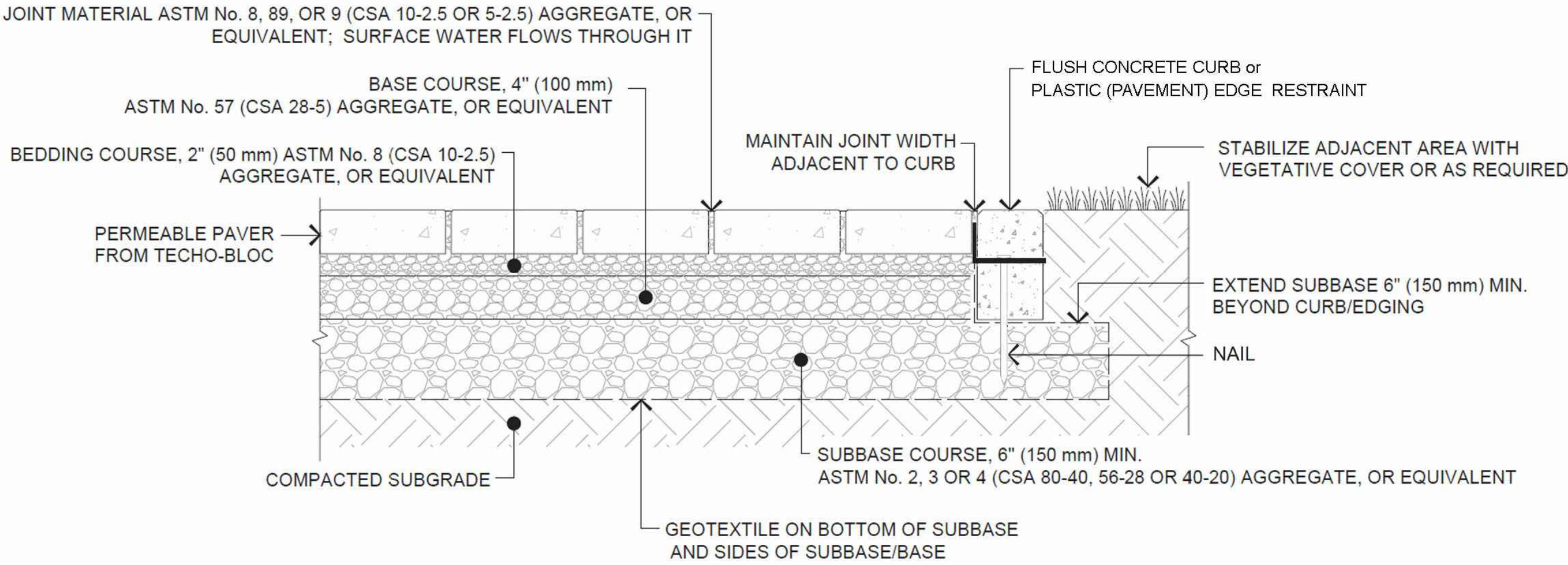
- 1.
- 2.
- 3.

PERVIOUS PAVER CROSS-SECTION AND INSTALLATION DETAILS

NOT TO SCALE



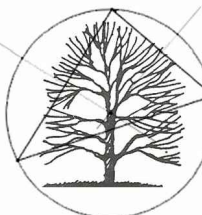
TECHO -BLOC BLU 60 SLATE PERVIOUS PAVER CROSS SECTION DETAIL



NOTES AND OWNER REQUIRED MAINTENANCE:

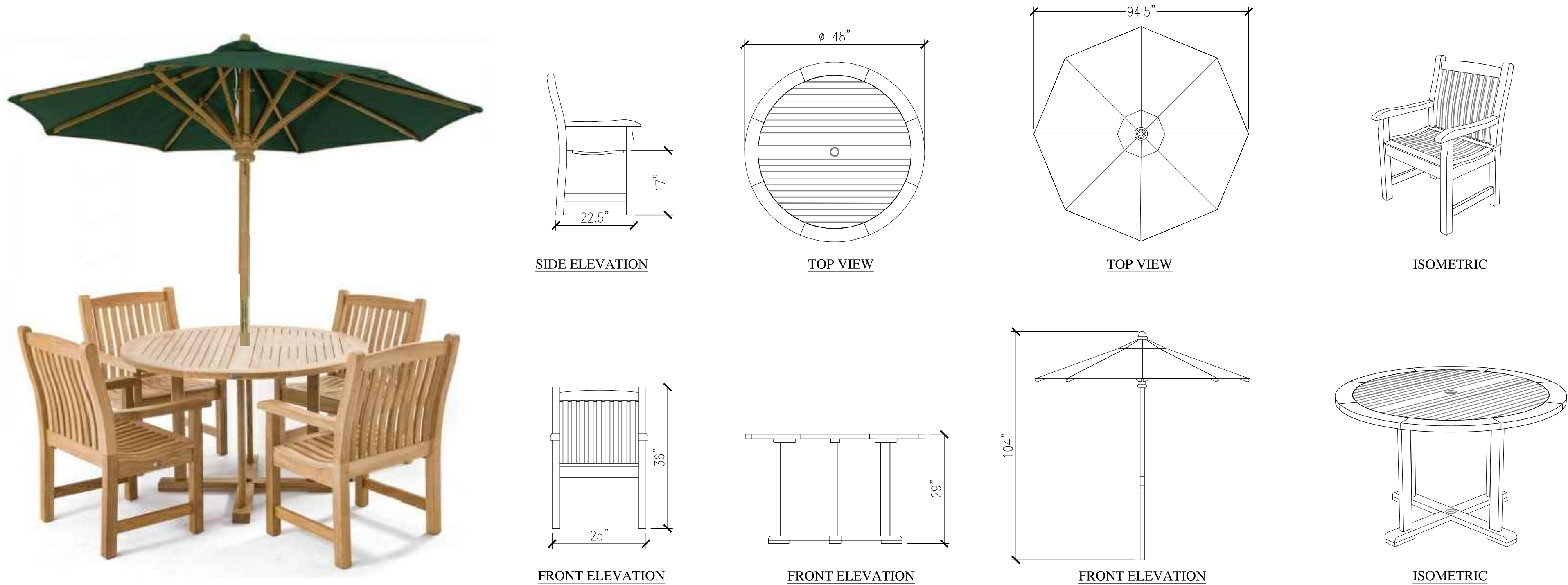
1. IMAGE DEPICTS PERMEABLE PAVER "BLU 60 SLATE" BY TECO - BLOC. COLOR SHALL BE SHALE GREY FINAL PERMEABLE PAVER STYLE, PATTERN LAYOUT, AND COLOR SHALL BE SELECTED BY OWNER.
2. PERVIOUS PAVER BY TECO-BLOC VISIT WWW.TECO-BLOC.COM
3. MONTHLY MAINTENANCE: OWNER SHALL REMOVE DEBRIS SUCH AS GRASS CLIPPINGS, SEDIMENT, TRASH AND LEAVES. SEASONAL MAINTENANCE: SWEEP PAVEMENT TWICE A YEAR TO REMOVE SEDIMENT AND PREVENT CLOGS.
4. CONTRACTOR SHALL PROVIDE SHOP DRAWING OF MATERIALS AND INSTALLATION PRIOR TO ORDERING MATERIALS FOR APPROVAL.

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

		Project	
		BARROWS STREET HOUSING	
		SITE LANDSCAPE DETAILS	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
		Drawn: RJ	
		Checked: PS	
		Reviewed: PS	
		Date: JAN 08, 2025	
		Project No. Drawing No.	
		Scale: NTS	
		L3.5	
		SHEET 23 OF 28	

MOVABLE PATIO TABLES WITH UMBRELLA

NOT TO SCALE



NOTES:

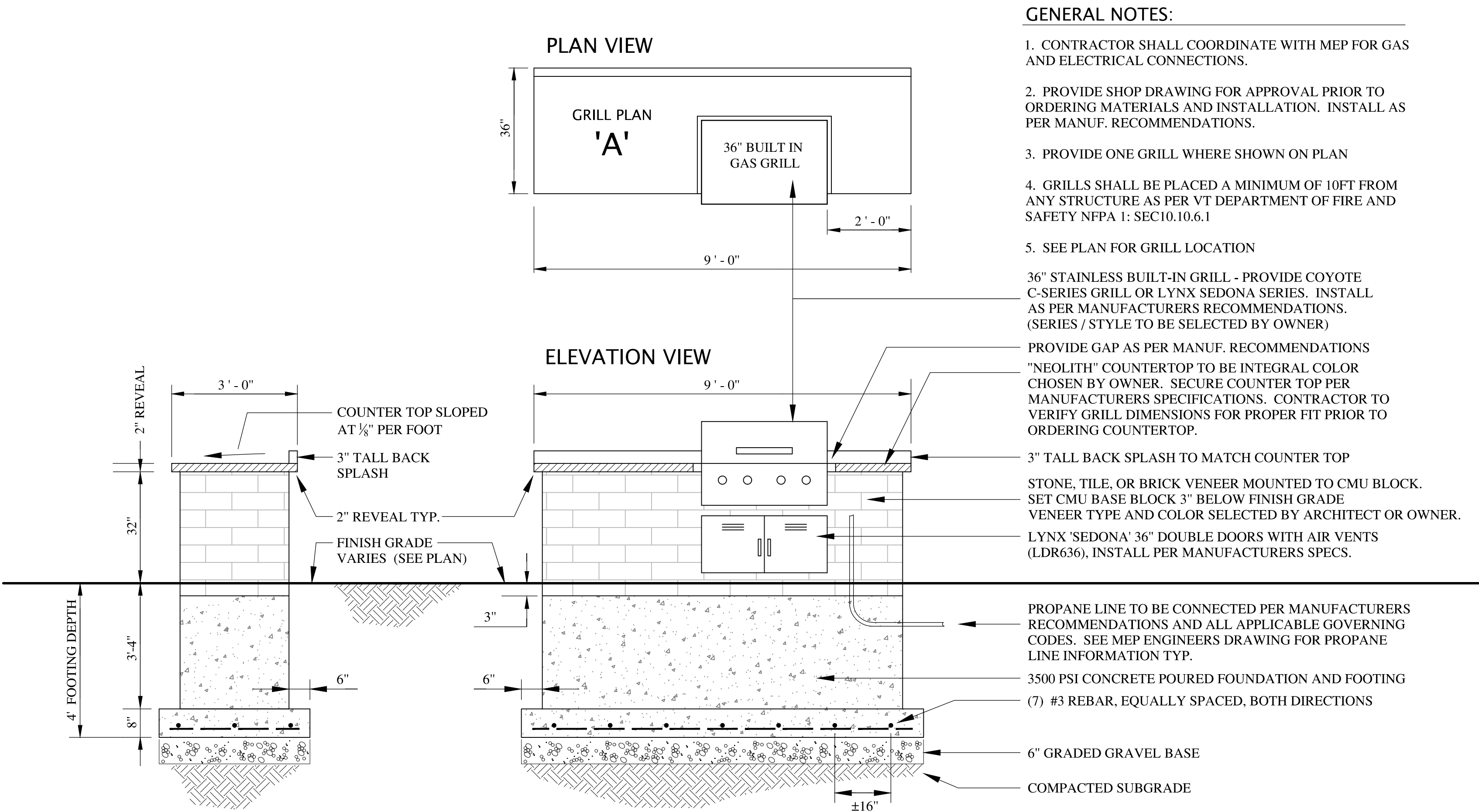
1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. PROVIDE 4FT ROUND TABLE, VERANDA DINING CHAIRS, AND 8FT UMBRELLA.
3. TABLE AND CHAIR TREATMENT OPTION TO BE SELECTED BY OWNER.
4. UMBRELLA FABRIC TO BE SELECTED BY OWNER.
5. CONTRACTOR'S NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT www.westminstersteak.com
6. CONTRACTOR TO PROVIDE SHOP DRAWING TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO ORDERING AND INSTALLATION.

CHAIR AND TABLE TREATMENT OPTIONS

- ☐ TEAK OIL-HAND RUBBED
- ☐ NATURAL GLOSS FINISH
- ☐ TEAK PROTECTOR

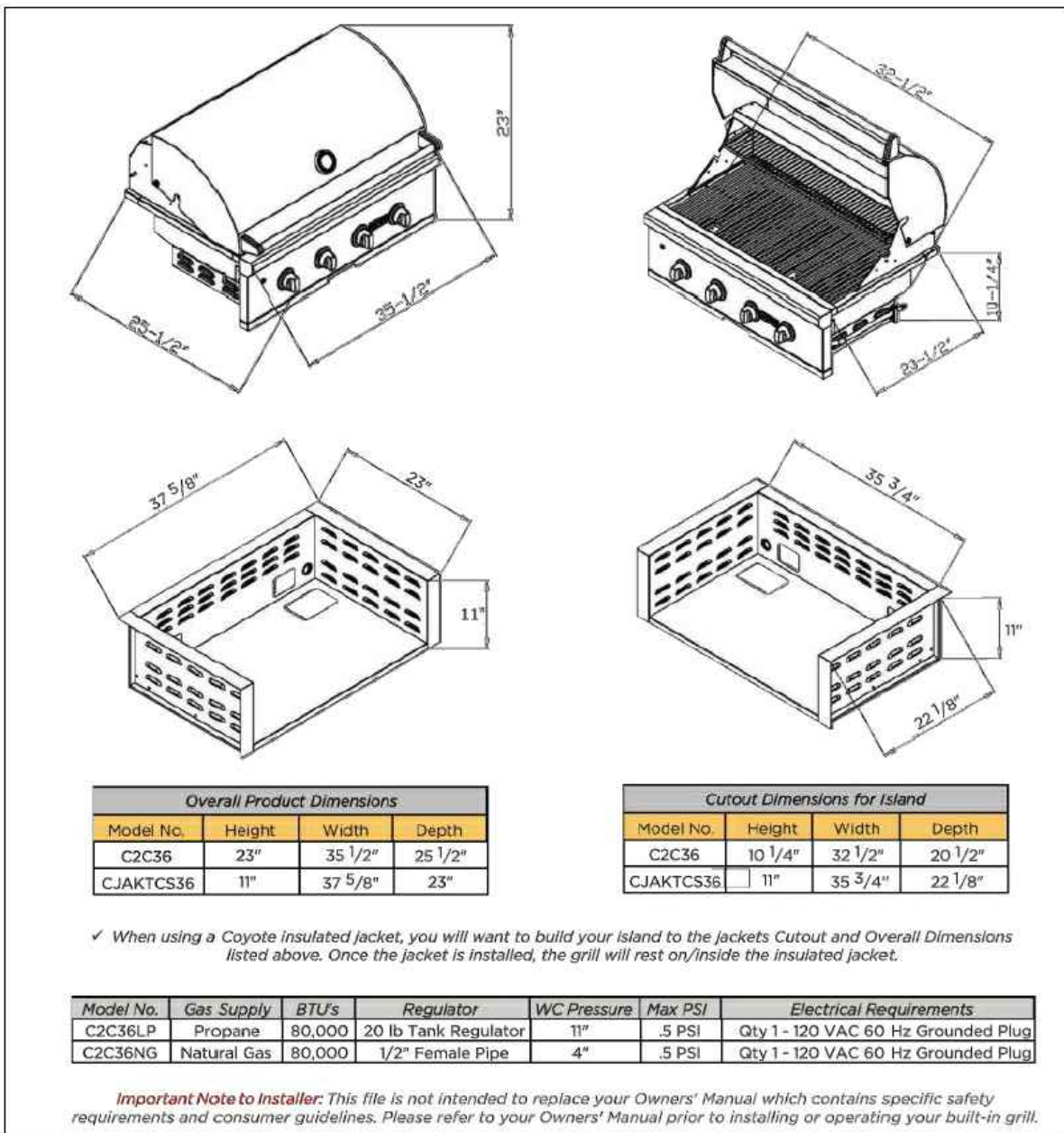
BBQ – GRILL COUNTER

NOT TO SCALE



GENERAL NOTES:

1. CONTRACTOR SHALL COORDINATE WITH MEP FOR GAS AND ELECTRICAL CONNECTIONS.
 2. PROVIDE SHOP DRAWING FOR APPROVAL PRIOR TO ORDERING MATERIALS AND INSTALLATION. INSTALL AS PER MANUF. RECOMMENDATIONS.
 3. PROVIDE ONE GRILL WHERE SHOWN ON PLAN
 4. GRILLS SHALL BE PLACED A MINIMUM OF 10FT FROM ANY STRUCTURE AS PER VT DEPARTMENT OF FIRE AND SAFETY NFPA 1: SEC10.10.6.1
 5. SEE PLAN FOR GRILL LOCATION
- 36" STAINLESS BUILT-IN GRILL - PROVIDE COYOTE C-SERIES GRILL OR LYNX SEDONA SERIES. INSTALL AS PER MANUFACTURERS RECOMMENDATIONS. (SERIES / STYLE TO BE SELECTED BY OWNER)
- PROVIDE GAP AS PER MANUF. RECOMMENDATIONS
- "NEOLITH" COUNTERTOP TO BE INTEGRAL COLOR CHOSEN BY OWNER. SECURE COUNTER TOP PER MANUFACTURERS SPECIFICATIONS. CONTRACTOR TO VERIFY GRILL DIMENSIONS FOR PROPER FIT PRIOR TO ORDERING COUNTERTOP.
- 3" TALL BACK SPLASH TO MATCH COUNTER TOP
- STONE, TILE, OR BRICK VENEER MOUNTED TO CMU BLOCK. SET CMU BASE BLOCK 3" BELOW FINISH GRADE
- LYNX 'SEDONA' 36" DOUBLE DOORS WITH AIR VENTS (LDR636), INSTALL PER MANUFACTURERS SPECS.



1. Install per manufacture's specifications
- COYOTE C-SERIES 4 BURNER GAS GRILL**



Coyote C Series 36" Built In Gas Grill - C2C36

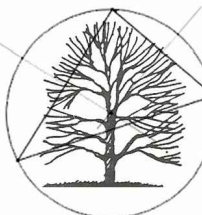
Overall Dimensions: 23" H x 35 1/2" W x 25 1/2" D
Cutout Dimensions: 19 1/4" H x 32 1/2" W x 20 1/2" D

Features:

- Premium 304 Stainless Steel Construction
- (4) high-performance Coyote Infinity Burners™
- 675 square inches of cooking area
- Up to 80,000 BTU of output
- LED interior lighting

INSTALL COYOTE GRILL MODEL# CJAKTCS36 WITH INSULATED JACKET

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

		Project	
		BARROWS STREET HOUSING	
		SITE LANDSCAPE DETAILS	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS Drawn: RJ Checked: PS Reviewed: PS Date: JAN 08, 2025	
3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467		Project No. _____ Scale: NTS Drawing No. _____ L3.6 SHEET 24 OF 28	



(C) SERIES CEILING MOUNTED SPECIFICATION

ARIA

Plan Label C Fixture Height: 10FT - 12FT

datasheet

designplan

ARIA is a surface mounted (wall or ceiling), IP65 rated luminaire for outdoor installation made of die-cast aluminum. It is available in 5 standard finishes of polyester powder paint with a protective treatment to prevent corrosion. Aria offered a diffused light emission. ADA compliant.

TECHNICAL DATA

Wattage / Input	13W
Power Supply	Integral 120VAC
Dimming	0-10V Dimming to 1.0%
Construction	Body: Die-Cast Aluminum Lens: Polycarbonate UV Resistant Diffuser Paint: Double Layer Polyester Powder Coat with Protective Anti-Corrosion Treatment
CCT	2700K, 3000K, 4000K
CRI	>80
Delivered Lumens	1538 lm (3000K); 1615 lm (4000K)
Efficacy	118.3 lm/W (3000K); 123.2 lm/W (4000K)
Optics	Diffuse
BUG Rating	B1-U1-G1
LED Source	Mid Power LED
Finishes	White, Sand, Graphite, Aluminum, Corten
Fixture Dimensions	Ø12.6" x 1.77" w
Aperature	Ø10.6"
IP Rating	IP65
Impact Resistance	IK07

ADA Compliant

Fixture Dimensions

1.77" 10.63" 12.59"

ORDERING INFORMATION

Example: D900727002.US

D9007			.US
Model No.	CCT	Finish	
D9007	3700-2700K 1700-3000K 2700 - 4000K	2 - White 3 - Sand 4 - Graphite 5 - Aluminum 8 - Corten	.US

Job Name/Date: Future Type Designation:

sales@designplan.com
www.designplan.com

79 Trenton Avenue, Frenchtown NJ 08825
© Copyright 2020 Designplan Lighting, Inc.
Published: May 25, 2023

P: 908-996-7710
F: 908-996-7042
1 of 2

(P) SERIES PEDESTRIAN LIGHT POST SPECIFICATION

Radean Post Top LED Area Luminaire

Specifications

EPA: 1.02 ft² (0.105 m²)
Length: 24" (61cm)
Width: 24" (61cm)
H1 Luminaire Height: 4" (10.16cm)
H2 Luminaire Height: 26" (66.04cm)
Weight: 38lbs (17.24kg)

Introduction

The architecturally-inspired shape of the RADEAN™ post top area luminaire embodies the grace and strength of the RADEAN family. The twin copper-core cast aluminum arms support the slender superstructure, creating a beautiful sculpture by day transforming into a beacon of comfort by night. Triangular arms redirect reflection maintaining its visually quiet appearance. With sleek lines and simple silhouettes, these LED luminaires use specialized lighting and visual comfort to transform common areas like courtyards, outdoor retail locations, universities and corporate campuses into pedestrian-friendly nighttime environments.

Ordering Information

EXAMPLE: RADPT LED P3 30K SYM MVOLT PT4 PIR DNAXD

Series	Performance package	Color temperature	Distribution	Package	Mounting required
RADPT LED	P1 3,000K Lumens P2 3,000K Lumens P3 3,000K Lumens P4 10,000 Lumens P5 15,000 Lumens	27K 2700K 50K 5000K 35K 3500K 40K 4000K 50K 5000K	SYM Symmetric type V ASY Asymmetric type H PRTB Pathway type B	MVOLT1 2271 1201 347 2401 480 2401	PT41 Slips inside a 4" ID round metal pole. RADPT20 Slips over a 2.318" diameter torso RADPT25 Slips over a 2.718" diameter torso

Control options	Mount options	Finish required
Shipped/installed NONE1 Single light fixture PIR Bi-level motion sensor (100% to 20% ¹⁰⁻¹²) PI Bottom photocell ¹ PI Field adjustable output ¹²	SH Single foot ¹ DF Double foot ¹ R90 Rotated optics ⁸	Shipped/installed DN000 Dark bronze DN001 Black DNAXD Natural aluminum DNWGD White DN020 Textured dark bronze DN021 Textured black DNAXD1 Textured natural aluminum DNWGD1 Textured white

LITHONIA LIGHTING

COMMERCIAL OUTDOOR One Lithonia Way • Conyers, Georgia 30012 • Phone: 1-800-735-SEER (7378) • www.lithonia.com
© 2011-2022 Acuity Brands Lighting, Inc. All rights reserved.

RADPT LED Rev. 04/19/22

(RB) RAISED LIGHT POLE BASE INSTALLATION DETAIL

NOT TO SCALE

ANCHOR BOLTS-QUANTITY SIZE AND BOLT CIRCLE DIAMETER ALL AS REQUIRED BY MANUFACTURER.

POLE WITH FINISH TO MATCH FIXTURE

HANDHOLE WITH GROUNDING LUG

BASE COVER BY. MANUF. 3/4" CHAMFER TOP EDGE

CONCRETE: 4,000 PSI AFTER 28 DAYS WITH AIR ENTRAINING AGENT.

FINISHED GRADE MATERIALS VARY (SEE PLAN)

CONTRACTOR SHALL PROVIDE SHOP DRAWING OF BASE, LIGHT POLE, AND FIXTURES TO LANDSCAPE ARCHITECT FOR APPROVAL BEFORE ORDERING MATERIALS AND INSTALLATION.

REBAR CAGE, (4) #4 VERTICAL ROD WITH SQUARE CONFIGURATION AND #3 HORIZONTAL TIES AT 12" O.C.

COMPACTED SUBGRADE

MIN. 18" DIAMETER OR 2" LARGER THAN BASE COVER. (WHICHEVER IS LARGER)

ELECTRICAL ENGINEERING DESIGN AND CONDUIT (BY OTHERS).

24" LP BASE HIT

4" 24" PER ELEC. CONTRACTOR

6'-0"

NOTES:

- PEDESTRIAN LIGHT FIXTURE MOUNTING HEIGHT SHALL BE 12FT FROM GRADE (SEE PLAN)
- CONTRACTOR SHALL INSTALL RAISED BASES (RB) AT 24" HIGH WHERE INDICATED ON PLANS

SHOP DRAWING NOTE

LIGHT FIXTURE NOTES:

CONTRACTOR SHALL PROVIDE SHOP DRAWINGS FOR APPROVAL FOR ALL LIGHTING MATERIALS, FIXTURES, POLES AND INSTALLATION METHODS TO LANDSCAPE ARCHITECT PRIOR TO CONSTRUCTION AND INSTALLATION. CONTRACTOR SHALL COORDINATE WITH LANDSCAPE ARCHITECT ON SITE TO VERIFY AND MARK LOCATION OF ALL PROPOSED FIXTURES INCLUDING LIGHT POLES, WALL PACKS AND BOLLARDS PRIOR TO INSTALLATION.

(GB) AT-GRADE LIGHT POLE BASE INSTALLATION

NOT TO SCALE

ANCHOR BOLTS-QUANTITY SIZE AND BOLT CIRCLE DIAMETER ALL AS REQUIRED BY MANUFACTURER.

POLE WITH FINISH TO MATCH FIXTURE

HANDHOLE WITH GROUNDING LUG

BASE COVER BY. MANUF. 3/4" CHAMFER TOP EDGE

CONCRETE: 4,000 PSI AFTER 28 DAYS WITH AIR ENTRAINING AGENT.

FINISHED GRADE MATERIALS VARY (SEE PLAN)

CONTRACTOR SHALL PROVIDE SHOP DRAWING OF BASE, LIGHT POLE, AND FIXTURES TO LANDSCAPE ARCHITECT FOR APPROVAL BEFORE ORDERING MATERIALS AND INSTALLATION.

REBAR CAGE, (4) #4 VERTICAL ROD WITH SQUARE CONFIGURATION AND #3 HORIZONTAL TIES AT 12" O.C.

COMPACTED SUBGRADE

MIN. 18" DIAMETER OR 2" LARGER THAN BASE COVER. (WHICHEVER IS LARGER)

ELECTRICAL ENGINEERING DESIGN AND CONDUIT (BY OTHERS).

24" PER ELEC. CONTRACTOR

6'-0"

NOTES:

- PEDESTRIAN LIGHT FIXTURE MOUNTING HEIGHT SHALL BE 12FT FROM GRADE (SEE PLAN)
- CONTRACTOR SHALL INSTALL AT GRADE BASES (GB) AT 2" HIGH WHERE INDICATED ON PLANS

LIGHTING NOTES:

- LIGHTING DESIGN BY VISIBLE LIGHT, INC.
- FIXTURE SYMBOLS ARE NOT TO SCALE
- ALL FIXTURES ON THIS PLAN MEET IESNA QUALIFICATIONS.
- REFER TO CIVIL PLANS FOR UTILITY LOCATIONS.
- LIGHT POLE FIXTURE MOUNTING HEIGHT CALCULATED FROM FINISH GRADE. (SEE POLE BASE INSTALLATION DETAIL.)
- ELECTRICAL ENGINEERING DESIGN, PANEL LOCATION, OPERATING SWITCH PLATES AND CONDUIT BY OTHERS.
- CONTRACTOR SHALL COORDINATE WITH LANDSCAPE ARCHITECT ON-SITE TO VERIFY LOCATION OF ALL LIGHT FIXTURES AND LIGHT POLES PRIOR TO PLACEMENT AND INSTALLATION.
- PROVIDE SHOP DRAWINGS TO LANDSCAPE ARCHITECT OF ALL LIGHTING MATERIALS AND INSTALLATION METHODS FOR APPROVAL PRIOR TO ORDERING AND INSTALLATION.

SITE LIGHTING KEY

SYM	LABEL	DESCRIPTION
☀	C	PROPOSED CEILING MOUNTED LIGHT FIXTURE
●	P	PROPOSED PEDESTRIAN LIGHT
⚡	EV	ELECTRIC VEHICLE CHARGING STATION (DOUBLE)
RB		2FT HIGH RAISED BASE (SEE DETAIL)
GB		AT GRADE BASE (SEE DETAIL)

SITE LIGHTING REQUIREMENTS / REGULATIONS

6.7B. GENERAL REQUIREMENTS

ALL LIGHT FIXTURES, INCLUDING FIXTURES MOUNTED INSIDE BUILDINGS OR STRUCTURS, SHALL BE LOCATED, MOUNTED, AIMED, AND SHIELDED SO AS TO MINIMIZE GLARE PERCEPTIBLE TO DRIVERS, PEDESTRIANS, BICYCLISTS, AND OTHER PASSERSBY WITHIN ADJACENT STREETS OR RIGHTS-OF-WAY. IN ADDITION TO THESE GENERAL STANDARDS, THE FOLLOWING SHALL ALSO APPLY:

1. LIGHTING INSTALLATIONS SHALL BE DESIGNED TO PROVIDE THE MINIMUM ILLUMINATION NECESSARY TO FACILITATE THE USE OF THE SITE, EXCEPT AS OTHERWISE STATED IN SPECIAL PROVISIONS OF THIS SECTION OR UNLESS APPROVED BY THE BOARD. LIGHTING LEVELS SHALL NOT EXCEED THE MINIMUM LEVEL OF ILLUMINATION RECOMMENDED BY THE IESNA FOR THE PROPOSED USE AND LEVEL OF ACTIVITY.

2. LIGHT FIXTURES SHALL BE LOCATED, MOUNTED, AIMED, AND SHIELDED SO AS TO NOT CAUSE LIGHT TRESPASS UPON ADJACENT PROPERTIES OR ONTO STREETS OR RIGHTS-OF-WAY IN EXCESS OF THE FOLLOWING LEVELS: THE LIGHT INTENSITY AT ADJOINING STREETS OR COMMERCIAL PROPERTY BOUNDARIES SHALL NOT EXCEED 0.5 FOOT-CANDLES AT GRADE LEVEL AND THE LIGHT INTENSITY AT ADJOINING RESIDENTIAL PROPERTY BOUNDARIES SHALL NOT EXCEED 0.1 FOOT-CANDLES AT GRADE LEVEL.

3. LIGHTING INSTALLATIONS SHALL UTILIZE FULLY-SHIELDED FIXTURES, AS DEFINED HEREIN, OR FULL CUT-OFF FIXTURES, AS DEFINED BY THE IESNA, SO AS TO PRODUCE NO LIGHT ABOVE A HORIZONTAL PLANE THROUGH THE LOWEST DIRECT LIGHT-EMITTING PART OF THE FIXTURE.

4. LIGHTING INSTALLATIONS SHALL INCLUDE TIMERS, DIMMERS, SENSORS, AND/OR OTHER ENERGY-SAVING TECHNOLOGIES TO REDUCE OVERALL ENERGY CONSUMPTION.

5. THE MAXIMUM MOUNTING HEIGHT OF THE LIGHT FIXTURE SHALL NOT EXCEED FIFTEEN (15) FEET IN RESIDENTIAL ZONING DISTRICTS OR TWENTY (20) FEET IN COMMERCIAL, INSTITUTIONAL, OR MIXED ZONING DISTRICTS.

6. LIGHTING INSTALLATIONS USED TO ILLUMINATE AREAS SUCH AS STREETS, WALKWAYS, OR PARKING LOTS SHALL UTILIZE ENERGY-EFFICIENT LIGHTING SUCH AS LED (LIGHT-EMITTING DIODE)

6.7.C. LIGHTING OF PARKING LOTS

1. AREAS DESIGNATED AS PARKING LOTS, PASSIVE VEHICULAR STORAGE AREAS, OR EXTERIOR DISPLAY/SALES AREAS SHALL BE ILLUMINATED SO THAT THE AVERAGE HORIZONTAL ILLUMINANCE AT GRADE LEVEL IS NO MORE THN 5.0 FOOT-CANDLES. THE UNIFORMITY RATIO (RATIO OF AVERAGE TO MINIMUM ILLUMINANCE) SHALL BE NO GREATER THAN 4:1. THE AVERAGE AND MINIMUM SHALL BE COMPUTED FOR ONLY THAT AREA DESIGNATED AS PARKING LOTS, PASSIVE VEHICULAR STORAGE AREAS, ANDEXTERIOR DISPLAY / SALES AREAS.

6.7.F. LIGHTING OF WALKWAYS / BIKEWAYS AND PARKS

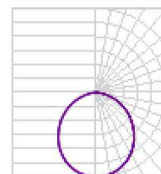
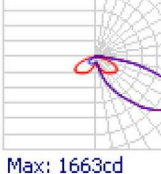
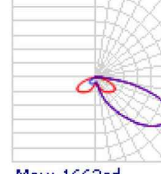
1. AREAS WITHIN PARKS OR ALONG WALKWAYS AND BIKEWAYS TO BE ILLUMINATED SHALL NOT EXCEED AN AVERAGE LEVEL OF 1.0 FOOT-CANDLE AT GRADE LEVEL.

2. LIGHT FIXTURES FOR WALKWAYS AND BIKEWAYS AND WITHIN PARKS SHALL BE MOUNTED NO MORE THAN 15 FEET ABOVE GRADE AND SHALL BE DESIGNED TO DIRECT LIGHT DOWNWARD.

PROGRESS PRINT
NOT FOR CONSTRUCTION
DRAFT DATE 01-08-2025

			Project	BARROWS STREET HOUSING		
				SITE LIGHTING DETAILS		
0	INITIAL	ISSUE				
No.	REVISIONS/SUBMISSIONS		Date	Title		
☐ RECORD DRAWING			☐ FINAL	☒ PRELIMINARY	☐ SKETCH/CONCEPT	
ParkArchitecture.com 3 School House Lane, Suite #1 Etna NH Tel: 603-643-3400 Mobile: 617-905-0467			Prepared by: Paul Simon / PS	Project No.	DWG File Name	
			Drawn PS	Scale NTS		
			Checked PS	Drawing No.		
			Reviewed PS			
			Date JAN 08, 2025	L 4.1 SHEET 26 OF 28		

Page 96 of 391

Schedule													
Symbol	Label	QTY	Manufacturer	Catalog Number	Description	Lamp	Filename	Lumens per Lamp	LLF	Wattage	Distribution	Polar Plot	Wattage
	C	5	Design Plan	D9007 1700 X US	Aria; mounted at 10ft	LED	ARIA_3000K.IES	1538	0.9	21.25		 Max: 566cd	21.25
	P-GB	5	Lithonia Lighting	RADPT P1 30K ASY MVOLT PT4 HS DBLXD with RSS 8 4B PT DDBXD	RADEAN Post-Top with Asymmetric distribution and house-side shield; mounted at 10ft	LED	RADPT_P1_30 K_ASY_HS.ies	2720	0.9	25.4134	TYPE IV, VERY SHORT, BUG RATING: B1 - U2 - G2	 Max: 1663cd	25.4134
	P-RB	4	Lithonia Lighting	RADPT P1 30K ASY MVOLT PT4 HS DBLXD with RSS 8 4B PT DDBXD	RADEAN Post-Top with Asymmetric distribution and house-side shield; mounted at 12ft, on 2ft base	LED	RADPT_P1_30 K_ASY_HS.ies	2720	0.9	25.4134	TYPE IV, VERY SHORT, BUG RATING: B1 - U2 - G2	 Max: 1663cd	25.4134

Statistics						
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
Carport		5.1 fc	8.5 fc	1.7 fc	5.0:1	3.0:1
Outside of Parking Lot		0.6 fc	5.5 fc	0.0 fc	N/A	N/A
Parking Lot		1.4 fc	3.6 fc	0.3 fc	12.0:1	4.7:1



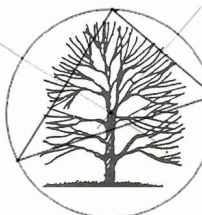
SUBDIVISION PLAT NOTES / REQUIREMENTS

- 13.11.A. NO TOPSOIL, SAND, OR GRAVEL SHALL BE REMOVED FROM THE SITE FOR ANY OTHER PURPOSE OTHER THAN TO MEET THE CONSTRUCTION NEEDS OF THE DEVELOPMENT.
- 7.11 THE SUBDIVISION REGULATIONS OF THE CITY OF LEBANON AND THE NOTICE OF ACTION ARE A PART OF THE PLAT, AND APPROVAL OF THIS PLAT REQUIRES THE COMPLETION OF ALL THE REQUIREMENTS OF THE NOTICE OF ACTION AND SAID SUBDIVISION REGULATIONS EXCEPTING ONLY ANY MODIFICATION OR WAIVER SET FORTH IN THE NOTICE OF ACTION.
- 7.7.A.4c. THERE ARE NO CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTIONS (AS DEFINED UNDER RSA 477:45) ON THE SUBJECT PROPERTY.
- 7.7.A.4.f. OTHER THAN THE EASEMENTS PROPOSED WITH THIS APPLICATION, AND SHOWN ON THE RECORD SURVEY PLAT, THERE ARE NO KNOWN EASEMENTS, RIGHTS-OF-WAY, OR HOLDERS OF ANY EASEMENTS OR OTHER RESTRICTIONS OVER THE SUBJECT PROPERTY.
- THIS PLAN INCLUDES DESIGNATION OF A ±4,080 SF "COMMON OPEN SPACE AREA". THIS DESIGNATED COMMON OPEN SPACE AREA SHALL BE SHARED IN ASSOCIATION AND IN-COMMON WITH UNITS 1 THROUGH 5 EQUALLY.
13. 14 OTHER THAN PURPOSES OF DESIGNATED SNOW STORAGE AREAS, THERE SHALL BE NO DEPOSITING, DUMPING, OR STORAGE OF WASTE, OR OTHER NATURAL OR MAN-MADE MATERIAL, SUPPLIES, OR EQUIPMENT, ON ANY SUBDIVISION LAND DESIGNATED AS OPEN SPACE.

SITE INFORMATION

SITE INFORMATION			
TAX MAP & LOT NUMBER:		MAP 77, LOT 106	
ZONING DISTRICT:		RESIDENTIAL THREE (R-3)	
AREA OF LOT:		2.09 ± ACRES	
PROPOSED USE:		COTTAGE DEVELOPMENT PER SECTION 509 OF THE ZONING CODE	
NUMBER OF UNITS:		5	
PARKING:	REQUIRED	PROPOSED	
	10 SPACES	5 GARAGE SPACES	
		6 PAVED SPACES	
		11 TOTAL SPACES	
NUMBER OF STORIES:		1 STORY	
LOADING SPACES:		N/A	
BUILDING HEIGHT:	REQUIRED		
	≤24'		
BUILDING SETBACKS:	REQUIRED	PROPOSED	
	FRONT:	5'	15'
PER SEC. 201.1 OF ZONING CODE	SIDE:	15'	15'
PER SEC. 201.3 OF ZONING CODE	REAR:	N/A	N/A
	SIDE:	15'	15'
LOT COVERAGE (BUILDINGS):	ALLOWED	PROPOSED	
	35%	6.59%	
IMPERVIOUS AREA:		13,077 sq. ft.	
COMMON OPEN SPACE:	2,000 SF MIN.	4,080 SQ. FT.	
OPEN SPACE:	15% MIN.	87% PROPOSED	
WETLANDS CONSERVATION DISTRICT / FLOODPLAIN DISTRICT, SHORELAND WATER QUALITY PROTECTION JURISDICTION:		WETLANDS PERMIT HAS BEEN ISSUED. THIS SITE IS NOT WITHIN FLOODPLAIN DISTRICT/OR WITHIN THE SHORELAND WATER QUALITY PROTECTION JURISDICTION. WETLANDS & NON-SITE SPECIFIC PERMIT 2024-0098 AUGUST 22, 2024	



		Project	
		BARROWS STREET HOUSING	
		OVERALL SUBDIVISION PLAT	
0 INITIAL ISSUE		Title	
No. REVISIONS/SUBMISSIONS		Date	
☐ RECORD DRAWING		☒ PRELIMINARY	
☐ FINAL		☐ SKETCH/CONCEPT	
		Prepared by: Paul Simon / PS	
3 School House Lane, Suite #1 Etna NH		Project No.	
Tel: 603-643-3400 Mobile: 617-905-0467		Scale 1" = 20FT	
		Drawing No.	
		L 5.0	
		SHEET 28 OF 28	



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



WETLANDS AND NON-SITE SPECIFIC PERMIT 2024-00988

NOTE CONDITIONS

PERMITTEE: CITY OF LEBANON DEPARTMENT OF PUBLIC WORKS
193 DARTMOUTH COLLEGE HIGHWAY
LEBANON NH 03766

PROJECT LOCATION: 0 BARROW ST, LEBANON
Tax Map/Block/Lot(s): 77/no block/106

WATERBODY: UNKNOWN

APPROVAL DATE: AUGUST 22, 2024

EXPIRATION DATE: AUGUST 22, 2029

Based upon review of permit application 2024-00988 in accordance with RSA 482-A and RSA 485-A:17, the New Hampshire Department of Environmental Services (NHDES) hereby issues this Wetlands and Non-Site Specific Permit. To validate this Permit, signatures of the Permittee and the Principal Contractor are required.

PERMIT DESCRIPTION:

Dredge and fill 945 square feet of a palustrine forested wetland to raise and regrade the site in preparation for a future residential development including several single-family dwellings, access drives, sidewalks and utility work.

THIS PERMIT IS SUBJECT TO THE FOLLOWING PROJECT-SPECIFIC CONDITIONS:

1. In accordance with Env-Wt 307.16 and Env-Wt 524.05(b), all work shall be done in accordance with plans by Pathways Consulting, LLC., dated April 5, 2024 and revised through July 18, 2024, as received by NHDES on July 23, 2024.
2. The permittee shall submit a construction notice with the department at least one week prior to commencing work, per Env-Wt 314.03(a) and Env-Wt 524.05(a).
3. In accordance with Env-Wt 307.11(b), limits of fill shall be clearly identified prior to commencement of work and controlled in accordance with Env-Wt 307.03 to ensure that fill does not spill over or erode into any area where filling is not authorized.
4. In accordance with Env-Wt 307.11(a), fill shall be clean sand, gravel, rock, or other material that meets the project's specifications for its use; and does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used.
5. In accordance with Env-Wt 307.11(e), fill shall be not placed so as to direct flows onto adjacent or down-current property.
6. In accordance with Env-Wt 307.03(g), the person in charge of construction equipment shall: (1) Inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands; (2) Repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands; (3) Maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site so as to be readily accessible at all times during construction; and (4) Train each equipment operator in the use of the spill kits.
7. In accordance with Env-Wt 307.05(e), to prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow Best Management Practices for the Control of Invasive and Noxious Plant Species (Invasive Plant BMPs).

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

TDD Access: Relay NH 1 (800) 735-2964

MONITORING

8. Within 60 days of completion of construction, the applicant shall submit a post-construction report that has been prepared by a certified wetland scientist, or qualified professional, as applicable, and contains photos and a description of the stability of and status of jurisdictional impact areas, per Env-Wt 307.18.

THIS PERMIT IS SUBJECT TO THE FOLLOWING GENERAL CONDITIONS:

1. Pursuant to RSA 482-A:12, a copy of this permit shall be posted in a secure manner in a prominent place at the site of the approved project.
2. In accordance with Env-Wt 313.01(a)(5), and as required by RSA 482-A:11, II, work shall not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.
3. In accordance with Env-Wt 314.01, a standard permit shall be signed by the permittee, and the principal contractor who will build or install the project prior to start of construction, and will not be valid until signed.
4. In accordance with Env-Wt 314.03(a), the permittee shall notify the department in writing at least one week prior to commencing any work under this permit.
5. In accordance with Env-Wt 314.08(a), the permittee shall file a completed notice of completion of work and certificate of compliance with the department within 10 working days of completing the work authorized by this permit.
6. In accordance with Env-Wt 314.06, transfer of this permit to a new owner shall require notification to, and approval of, the NHDES.
7. The permit holder shall ensure that work is done in a way that protects water quality per Env-Wt 307.03; protects fisheries and breeding areas per Env-Wt 307.04; protects against invasive species per Env-Wt 307.05; meets dredging activity conditions in Env-Wt 307.10; and meets filling activity conditions in Env-Wt 307.11.
8. This project has been screened for potential impact to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or only cursory surveys have been performed, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species. This permit does not authorize in any way the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.
9. In accordance with Env-Wt 307.06(a) through (c), no activity shall jeopardize the continued existence of a threatened or endangered species, a species proposed for listing as threatened or endangered, or a designated or proposed critical habitat under the Federal Endangered Species Act, 16 U.S.C. §1531 et seq.; State Endangered Species Conservation Act, RSA 212-A; or New Hampshire Native Plant Protection Act, RSA 217-A.
10. In accordance with Env-Wt 307.02, and in accordance with federal requirements, all work in areas under the jurisdiction of the U.S. Army Corps of Engineers (USACE) shall comply with all conditions of the applicable state general permit.

APPROVED:



Emmanuel UWIZEYE
Wetlands Specialist, Wetlands Bureau
Land Resources Management, Water Division

THE SIGNATURES BELOW ARE REQUIRED TO VALIDATE THIS PERMIT (Env-Wt 314.01).

PERMITTEE SIGNATURE (required)

PRINCIPAL CONTRACTOR SIGNATURE (required)



Ecosystem Management Consultants, LLC
c/o Rick Van de Poll, Ph.D.
30 No. Sandwich Rd.
Center Sandwich, NH 03227

June 28, 2024

Rod Finley
Lebanon City Engineer
51 North Park Street
Lebanon, NH 033766

Dear Rod;

I've reviewed the RFMI letter from NHDES dated May 24, 2024, and upon your request, have supplied some information below in response to their concerns. I have also filled out form NHDES-W-06-049, the Wetland Functional Assessment Worksheet according to the Federal Highway Methodology. Hopefully this information will assist you in your letter of response to Mr. Uwizeye.

1. **Avoidance and Minimization** – the new plan set dated June 27, 2024 includes a significant reduction in impacts to wetland function by placing the proposed buildings farther from the edge of the main wetland swamp system, notably by removing them from the bank areas adjacent to this system. The concentration of the buildings away from this wetland will also allow for more capacity for sediment and erosion control.
2. **Application Package** – a revised Standard Dredge & Fill Wetland Permit Application is being submitted along with updated project impact calculations, Attachment A, and Wetland Functional Assessment Sheets. Specific to Attachment A, the following summary provides a review of the proposed actions of items of concern:
 - a. **Alternatives** - based on the site conditions and availability of buildable land in the neighborhood, there is no other practicable alternative to develop this lot for affordable housing. The proposal utilizes the only buildable portion of the lot, avoids to the maximum extent practicable the isolated, low-functioning wetland in its center, and avoids any further impacts to the created banks along the main wetland to the north.
 - b. **Mashes** - there are no marshes at the project site or anywhere nearby to the construction area
 - c. **Hydrologic Connection** – the isolated wetland that will be impacted has no hydrologic connection to the main wetland. This smaller unit acts as a 'sink' for the surrounding run-off from back yards, driveways and streets. There may be some groundwater infiltration in this isolated wetland, although the substrate is mostly stone fill from pre-jurisdictional time periods.
 - d. **Jurisdictional Impacts** – the project avoids to the extent practicable the isolated forested swamp in the central part of the buildable portion of the lot. The swamp itself is comprised of mostly invasive plants (e.g. glossy buckthorn) and appears to have been filled in over 50 years ago based on the age of the trees

present on the property. There are no exemplary natural communities, rare species, or other habitats of note that will be affected by the project. Even the main swamp lacks these features, nor does it contain any vernal pools, fisheries habitat, or reproduction areas for any species of concern.

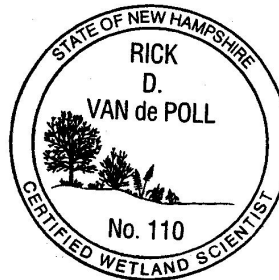
- e. **Public Commerce, Navigation, or Recreation** - there will be no impacts to any public thoroughfares and there is no recreational activities at the project site
 - f. **Floodplain Wetlands** – the isolated wetland that is being impacted is not a floodplain wetland and lies outside of any A, AE, or X FIRM zone.
 - g. **Riverine Forested Wetland Systems and Scrub-Shrub Marsh Complexes** – N/A
 - h. **Drinking Water Supply & Groundwater Aquifers** - there are no drinking water supply wetlands anywhere near the site and it lies outside of any NHDES stratified drift aquifer area
 - i. **Stream Channels** – there are no streams at the project site
 - j. **Shoreline Structures** - there are no shorelines at the project site
 - k. **Wetland Functional Assessment Narrative** – the U.S. Federal Highways Methodology was used to fill out the attached Wetland Functional Assessment Sheets. The site in question has no primary functions normally associated with wetland since it has been largely filled over 50 years ago, includes a shallow surface water basin that receives run-off from the surrounding residential development, is entirely comprised on invasive plants between the tree canopy and has little no wildlife habitat value. Most of the site has been previously impacted by trash deposition and water-borne pollution, wherein the cul-de-sac at the end of Barrows Road appears to have been a favorite dumping site for many generations. This small, isolated unit is < .02 acres, lacks any riparian zone value, and is completely surrounded by houses and Interstate-89.
3. **Hydrologic Connectivity** – as noted above there is no hydrologic connection between the isolated wetland being impacted and the nearest surface water wetland nearby.

Let me know if you have any questions or if Pathways needs any other data associated with the upgraded wetland application.

Sincerely;



Rick Van de Poll, Ph.D., CWS #110
Ecosystem Management Consultants





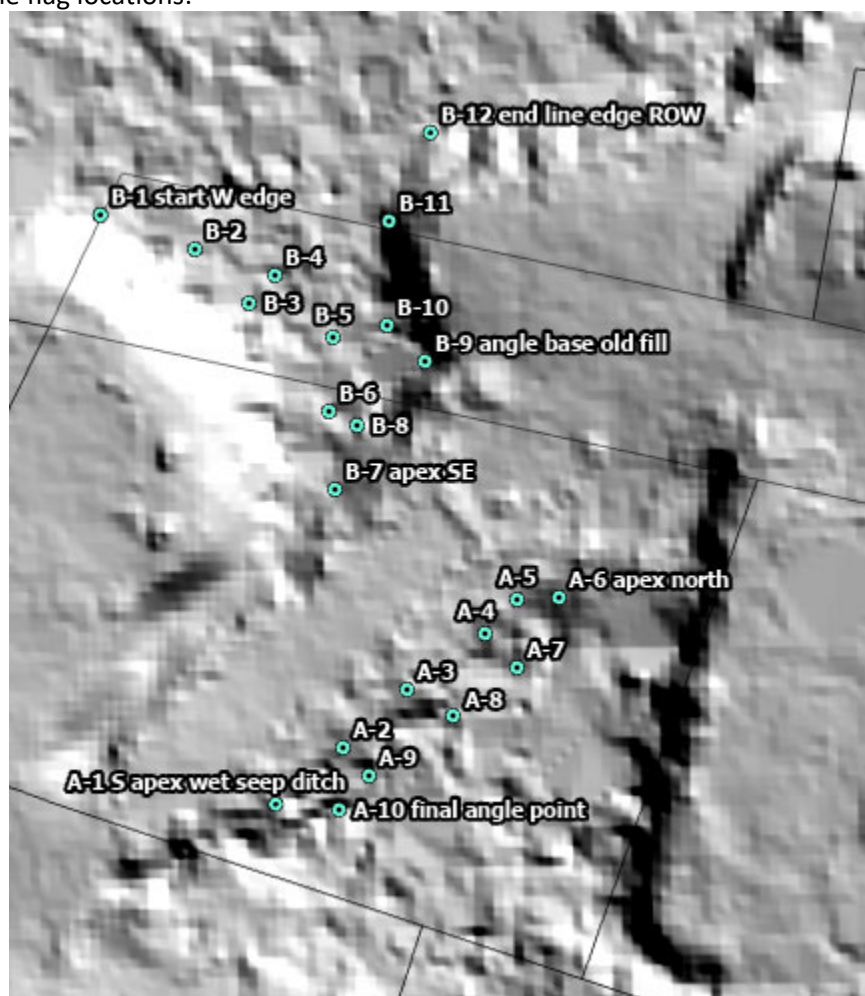
Ecosystem Management Consultants, LLC
c/o Rick Van de Poll, Ph.D.
30 No. Sandwich Rd.
Center Sandwich, NH 03227

December 11, 2023

David Brooks
Senior City Planner
51 North Park Street
Lebanon, NH 033766

Dear David;

Good to see you the other day. I completed the wetland delineation at 0 Barrows Street by 11:15. I hung 10 flags (A-1 to A-10) around the wet ditch south of the hammerhead and 12 flags (B-1 to B-21) along the edge of the black ash swamp off the end of the cul-de-sac. Here's the sketch of the flag locations:



Above: sketch of wetland flag locations (approx.); scale 1" = ca 90 ft.

Flag A-1 is at the southern apex of the ditch and flag A-6 is at the northerly apex. As you know, there are a lot of boulders that have been filled in along the edge of this ditch and it was difficult (if not impossible) to get any good soil test pits except in a few locations. Dutch auger pits showed a modified hydric fsl soil matching an F3 designation. The ditch is about 122 – 125 feet in length and the total proposed future impact was estimated at about 1500 s.f.¹

The 12 wetland B flags were set at the toe of slope, which again, was somewhat prescribed by very old fill. Flag B-1 was placed at the west end of the edge and flag B-7 at the southeast apex. Given the conformity of the edge with the base of old fill, it is probable that virtually all of the flags would have been inside the original wetlands prior to 1950. The black ash seepage swamp that still exists on the site is severely compromised and lacks much of its original function. There is some wildlife value and limited groundwater recharge value, but otherwise the suite of functions that are normally a part of this system are absent entirely.

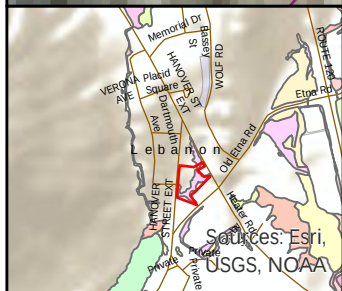
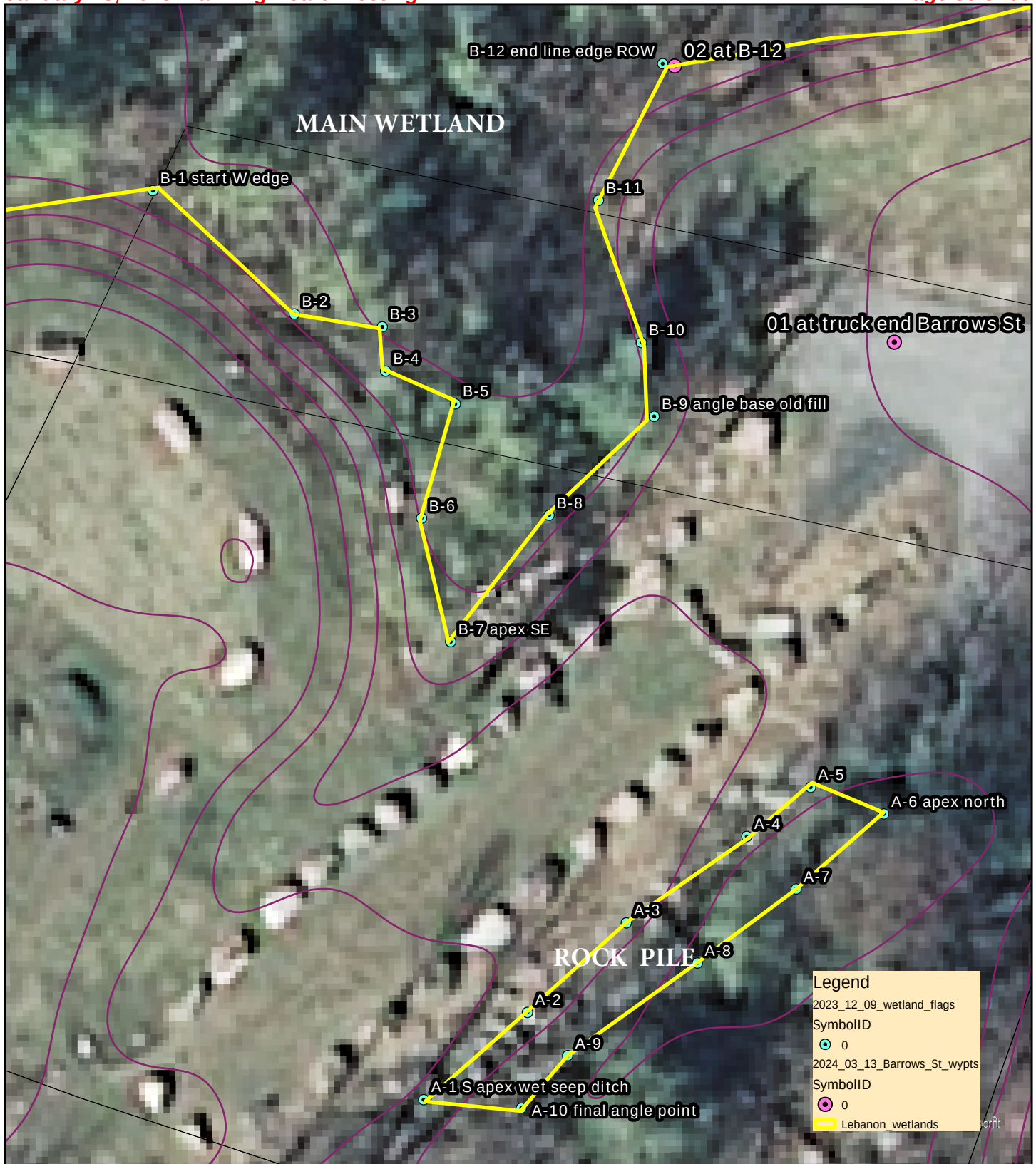
Let me know if you have any questions or if Pathways need to get my shapefile of the wetland points.

Sincerely;



Rick Van de Poll, Ph.D.
Ecosystem Management Consultants

¹ Please keep in mind that this impact only represents what was estimated to be post-jurisdictional (1969) impacts.

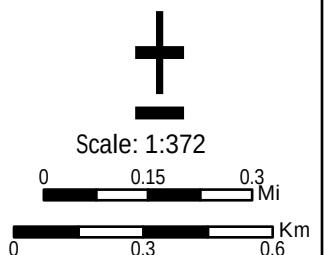
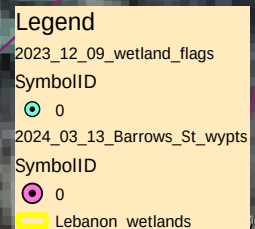


Barrows Street Wetlands

Boundaries for the Goodwin Town Forest were derived from Hanover tax maps, a preliminary survey completed by Butternut Hollow Forestry, and by GPS using a hand-held GPS unit. All boundaries but the southern edge were locatable in the field and informed the final estimation of 564 acres. Wetlands compiled by R. Van de Poll, CWS and James Kennedy, CWS.

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

Updated
August 2020





WETLANDS FUNCTIONAL ASSESSMENT WORKSHEET

Water Division/Land Resource Management Wetlands Bureau



[Check the Status of your Application](#)

RSA/Rule: RSA 482-A / Env-Wt 311.03(b)(10); Env-Wt 311.10

APPLICANT LAST NAME, FIRST NAME, M.I.:

As required by Env-Wt 311.03(b)(10), an application for a standard permit for minor and major projects must include a functional assessment of all wetlands on the project site as specified in Env-Wt 311.10. This worksheet will help you compile data for the functional assessment needed to meet federal (US Army Corps of Engineers (USACE); if applicable) and NHDES requirements. Additional requirements are needed for projects in tidal area; please refer to the [Coastal Area Worksheet \(NHDES-W-06-079\)](#) for more information.

Both a desktop review and a field examination are needed to accurately determine surrounding land use, hydrology, hydroperiod, hydric soils, vegetation, structural complexity of wetland classes, hydrologic connections between wetlands or stream systems or wetland complex, position in the landscape, and physical characteristics of wetlands and associated surface waters. The results of the evaluation are to be used to select the location of the proposed project having the least impact to wetland functions and values (Env-Wt 311.10). This worksheet can be used in conjunction with the [Avoidance and Minimization Written Narrative \(NHDES-W-06-089\)](#) and the [Avoidance and Minimization Checklist \(NHDES-W-06-050\)](#) to address Env-Wt 313.03 (Avoidance and Minimization). If more than one wetland/ stream resource is identified, multiple worksheets can be attached to the application. All wetland, vernal pools, and stream identification (ID) numbers are to be displayed and located on the wetlands delineation of the subject property.

SECTION 1 - LOCATION (USACE HIGHWAY METHODOLOGY)

ADJACENT LAND USE: Residential

CONTIGUOUS UNDEVELOPED BUFFER ZONE PRESENT? ☐ Yes ☒ No

DISTANCE TO NEAREST ROADWAY OR OTHER DEVELOPMENT (in feet): 80

SECTION 2 - DELINEATION (USACE HIGHWAY METHODOLOGY; Env-Wt 311.10)

CERTIFIED WETLAND SCIENTIST (if in a non-tidal area) or QUALIFIED COASTAL PROFESSIONAL (if in a tidal area) who prepared this assessment: Rick Van de Poll

DATE(S) OF SITE VISIT(S): 12/9/23,
3/13/24

DELINEATION PER ENV-WT 406 COMPLETED? ☒ Yes ☐ No

CONFIRM THAT THE EVALUATION IS BASED ON:

- ☒ Office and
☒ Field examination.

METHOD USED FOR FUNCTIONAL ASSESSMENT (check one and fill in blank if "other"):

- ☒ USACE Highway Methodology.
☐ Other scientifically supported method (enter name/ title):

irm@des.nh.gov or (603) 271-2147

NHDES Wetlands Bureau, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095

www.des.nh.gov

SECTION 3 - WETLAND RESOURCE SUMMARY (USACE HIGHWAY METHODOLOGY; Env-Wt 311.10)

WETLAND ID: Rock Pile	LOCATION: (LAT/ LONG) 43.649425/-72.256706
WETLAND AREA: 945 s.f.	DOMINANT WETLAND SYSTEMS PRESENT: Palustrine
HOW MANY TRIBUTARIES CONTRIBUTE TO THE WETLAND? 0	COWARDIN CLASS: PFO1E
IS THE WETLAND A SEPARATE HYDRAULIC SYSTEM? ☒ Yes ☐ No if not, where does the wetland lie in the drainage basin? []	IS THE WETLAND PART OF: ☐ A wildlife corridor or ☐ A habitat island? IS THE WETLAND HUMAN-MADE? ☒ Yes ☐ No
IS THE WETLAND IN A 100-YEAR FLOODPLAIN? ☐ Yes ☒ No	ARE VERNAL POOLS PRESENT? ☐ Yes ☒ No (If yes, complete the Vernal Pool Table)
ARE ANY WETLANDS PART OF A STREAM OR OPEN-WATER SYSTEM? ☐ Yes ☒ No	ARE ANY PUBLIC OR PRIVATE WELLS DOWNSTREAM/ DOWNGRADIENT? ☐ Yes ☒ No
PROPOSED WETLAND IMPACT TYPE: Fill for housing	PROPOSED WETLAND IMPACT AREA: 945 s.f.

SECTION 4 - WETLANDS FUNCTIONS AND VALUES (USACE HIGHWAY METHODOLOGY; Env-Wt 311.10)

The following table can be used to compile data on wetlands functions and values. The reference numbers indicated in the "Functions/ Values" column refer to the following functions and values:

1. Ecological Integrity (from RSA 482-A:2, XI)
2. Educational Potential (from USACE Highway Methodology: Educational/Scientific Value)
3. Fish & Aquatic Life Habitat (from USACE Highway Methodology: Fish & Shellfish Habitat)
4. Flood Storage (from USACE Highway Methodology: Floodflow Alteration)
5. Groundwater Recharge (from USACE Highway Methodology: Groundwater Recharge/Discharge)
6. Noteworthiness (from USACE Highway Methodology: Threatened or Endangered Species Habitat)
7. Nutrient Trapping/Retention & Transformation (from USACE Highway Methodology: Nutrient Removal)
8. Production Export (Nutrient) (from USACE Highway Methodology)
9. Scenic Quality (from USACE Highway Methodology: Visual Quality/Aesthetics)
10. Sediment Trapping (from USACE Highway Methodology: Sediment /Toxicant Retention)
11. Shoreline Anchoring (from USACE Highway Methodology: Sediment/Shoreline Stabilization)
12. Uniqueness/Heritage (from USACE Highway Methodology)
13. Wetland-based Recreation (from USACE Highway Methodology: Recreation)
14. Wetland-dependent Wildlife Habitat (from USACE Highway Methodology: Wildlife Habitat)

First, determine if a wetland is suitable for a particular function and value ("Suitability" column) and indicate the rationale behind your determination ("Rationale" column). Please use the rationale reference numbers listed in Appendix A of USACE *The Highway Methodology Workbook Supplement*. Second, indicate which functions and values are principal ("Principal Function/value?" column). As described in *The Highway Methodology Workbook Supplement*, "functions and values can be principal if they are an important physical component of a wetland ecosystem (function only) and/or are considered of special value to society, from a local, regional, and/or national perspective". "Important Notes" are to include characteristics the evaluator used to determine the principal function and value of the wetland.

irm@des.nh.gov or (603) 271-2147

NHDES Wetlands Bureau, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095

www.des.nh.gov

FUNCTIONS/ VALUES	SUITABILITY (Y/N)	RATIONALE (Reference #)	PRINCIPAL FUNCTION/VALUE? (Y/N)	IMPORTANT NOTES
1	☐ Yes ☒ No		☐ Yes ☒ No	Highly impacted site in all directions
2	☐ Yes ☒ No		☐ Yes ☒ No	Except perhaps for teaching about how to impair wetland function!
3	☐ Yes ☒ No		☐ Yes ☒ No	none present
4	☒ Yes ☐ No	3,4,5,6,9,15	☐ Yes ☒ No	very limited storage capacity
5	☐ Yes ☒ No		☐ Yes ☒ No	impervious base to pocket wetland
6	☐ Yes ☒ No		☐ Yes ☒ No	none present
7	☒ Yes ☐ No	3,4,5,7,10	☐ Yes ☒ No	important receiving basin but limited in size
8	☐ Yes ☒ No		☐ Yes ☒ No	no habitat characteristics present
9	☐ Yes ☒ No		☐ Yes ☒ No	mostly trash & invasive species present
10	☒ Yes ☐ No	1,2,4,6	☐ Yes ☒ No	some sediment trapping potential but limited ability to reach wetland due to large boulders
11	☐ Yes ☒ No		☐ Yes ☒ No	N/A
12	☒ Yes ☐ No	2	☐ Yes ☒ No	very little applies
13	☐ Yes ☒ No		☐ Yes ☒ No	N/A
14	☒ Yes ☐ No	7,8,17	☐ Yes ☒ No	Very limited wildlife habitat value

irm@des.nh.gov or (603) 271-2147

NHDES Wetlands Bureau, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095

www.des.nh.gov

SECTION 5 - VERNAL POOL SUMMARY (Env-Wt 311.10)

Delineations of vernal pools shall be based on the characteristics listed in the definition of “vernal pool” in Env-Wt 104.44. To assist in the delineation, individuals may use either of the following references:

- *Identifying and Documenting Vernal Pools in New Hampshire 3rd Ed.*, 2016, published by the New Hampshire Fish and Game Department; or
- The USACE *Vernal Pool Assessment* draft guidance dated 9-10-2013 and form dated 9-6-2016, Appendix L of the USACE New England District *Compensatory Mitigation Guidance*.

All vernal pool ID numbers are to be displayed and located on the wetland delineation of the subject property.

“Important Notes” are to include documented reproductive and wildlife values, landscape context, and relationship to other vernal pools/wetlands.

Note: For projects seeking federal approval from the USACE, please attach a completed copy of The USACE “Vernal Pool Assessment” form dated 9-6-2016, Appendix L of the USACE New England District *Compensatory Mitigation Guidance*.

VERNAL POOL ID NUMBER	DATE(S) OBSERVED	PRIMARY INDICATORS PRESENT (LIST)	SECONDARY INDICATORS PRESENT (LIST)	LENGTH OF HYDROPERIOD	IMPORTANT NOTES
1					
2					
3					
4					
5					

SECTION 6 - STREAM RESOURCES SUMMARY

DESCRIPTION OF STREAM:	STREAM TYPE (ROSGEN):
HAVE FISHERIES BEEN DOCUMENTED? ☐ Yes ☐ No	DOES THE STREAM SYSTEM APPEAR STABLE? ☐ Yes ☐ No

OTHER KEY ON-SITE FUNCTIONS OF NOTE:

The following table can be used to compile data on stream resources. “Important Notes” are to include characteristics the evaluator used to determine principal function and value of each stream. The functions and values reference number are defined in Section 4.

FUNCTIONS/ VALUES	SUITABILITY (Y/N)	RATIONALE	PRINCIPAL FUNCTION/VALUE? (Y/N)	IMPORTANT NOTES
1	☐ Yes ☐ No		☐ Yes ☐ No	
2	☐ Yes ☐ No		☐ Yes ☐ No	
3	☐ Yes ☐ No		☐ Yes ☐ No	
4	☐ Yes ☐ No		☐ Yes ☐ No	
5	☐ Yes ☐ No		☐ Yes ☐ No	
6	☐ Yes ☐ No		☐ Yes ☐ No	
7	☐ Yes ☐ No		☐ Yes ☐ No	
8	☐ Yes ☐ No		☐ Yes ☐ No	
9	☐ Yes ☐ No		☐ Yes ☐ No	
10	☐ Yes ☐ No		☐ Yes ☐ No	
11	☐ Yes ☐ No		☐ Yes ☐ No	
12	☐ Yes ☐ No		☐ Yes ☐ No	
13	☐ Yes ☐ No		☐ Yes ☐ No	
14	☐ Yes ☐ No		☐ Yes ☐ No	

SECTION 7 - ATTACHMENTS (USACE HIGHWAY METHODOLOGY; Env-Wt 311.10)

- ☐ Wildlife and vegetation diversity/abundance list.
- ☐ Photograph of wetland.
- ☐ Wetland delineation plans showing wetlands, vernal pools, and streams in relation to the impact area and surrounding landscape. Wetland IDs, vernal pool IDs, and stream IDs must be indicated on the plans.
- ☐ For projects in tidal areas only: additional information required by Env-Wt 603.03/603.04. Please refer to the [Coastal Area Worksheet \(NHDES-W-06-079\)](#) for more information.



December 19, 2024

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

Request for Extension: #PB2018-34-SPA

Members of the Lebanon Planning Board,

Based on newly available information provided to the Board herein, Lyme Properties operating as the development agent for XYZ Dairy, LLC hereby requests a 2-year extension of the River Park West Lebanon Site Plan (#PB2010-25-SPR) as most recently amended on September 9, 2019 (#PB2018-34-SPA) and extended by this Board on October 12, 2021 (#PB2021-29-EXT). This request for Site Plan extension follows the November 12, 2024 vote by the Lebanon Planning Board to reject XYZ's previous request for extension as submitted on July 8, 2024.

The Planning Board's decision was made prior to the Grafton County Superior Court's issuance of its November 25, 2024 Omnibus Order granting a Preliminary Injunction to XYZ Dairy, LLC. In its November 25th decision, the Court granted XYZ's request for an extension of the River Park Site Plan approvals in addition to re-instating the Building Permit, on the basis that XYZ had demonstrated a "likelihood of success on the merits" of its municipal estoppel claim against the City of Lebanon.

Following three days of evidentiary hearings, the Court's determination differs from that of the Planning Board and the City's argument in both venues that XYZ should have continued investing in Site Plan work while the building permit matter was unresolved.

As the Court stated in its *Omnibus Order on Pending Motions XYZ Dairy, LLC v. City of Lebanon, New Hampshire* as recommended by Peter H. Bornstein, Judicial Referee, and as approved and so ordered by Laurence A. MacLeod Jr., Associate Judge, New Hampshire Superior Court on November 25, 2024 (**Appendix A**, note pages 24-28):

"The Court is unpersuaded by the City's argument that XYZ should have completed the Phase 1 infrastructure work without a building permit. As Chet and David Clem testified, the City cannot reasonably expect a developer to pursue infrastructure work without a building permit for the associated building project."

With this judicial injunction now available to the Planning Board—which directly rejects the reasoning of the Staff Memorandum to the Board and the Board's November 19, 2024 decision—XYZ returns to the Lebanon Planning Board seeking an extension of the River Park West Lebanon Site Plan. The



Court's decision overrules the Staff's February 1, 2024 action and "re-set" the approvals to the status quo as of January 31, 2024.

This decision substantiates XYZ's position that the delays were beyond our control. As such, XYZ hereby requests that a 2-year extension of all relevant dates in the Site Plan approval be granted in accordance with "the extension standard set forth in the current Site Plan Review Regulations [as] reflected in Condition #3 and #29 of the September 9, 2019 Planning Board Notice of Actions for PB2018-34-SPA."

NOTICE OF ACTION

PB2024-34-EXT

Page 4 of 8

one extension for any site plan, unless it determines, based on legal advice, that such extension is required in order to prevent a violation of constitutional rights.

The extension standard set forth in the current Site Plan Review Regulations is reflected in Conditions #3 and #29 of the September 9, 2019 Planning Board Notice of Action for PB2018-34-SPA which provide as follows:

- Condition 3: "In determining whether to grant any requested extensions, the Board shall consider the totality of the circumstances, including the extent and complexity of the conditions-precedent, and whether the need for more time is attributable to circumstances beyond the control of the applicant, rather than to the applicant's neglect or failure to proceed with reasonable promptness."
- Condition 29: "It is the intent and effect of this approval [...] that upon completion of the Phase 1 infrastructure improvements within 5 years of the final subdivision approval [...] the subdivision as a whole, including all phases, shall vest as provided in RSA 674:39, II [...] provided that the applicant and its successors-in-interest continue to comply with all conditions of this approval and of the Planning Board's approval of Final Major Subdivision application #PB2011-01-FMAJ, including the time limits set forth in the phasing plan, **unless such a limit is extended for good cause by the Planning Board**, acting upon an application submitted prior to the expiration of such limit." (emphasis added)

(Excerpted from Page 4 of 8, *Notice of Action Lebanon Planning Board PB2024-34-EXT 11/19/2024*, Attachment 1 within Appendix A herein).

This application does not include a request for Subdivision extension, as that has been determined to not be required. This is per the written opinion in the Planning Department's August 12, 2024 Staff Memorandum (Page 3), and the written determination in the Planning Board decision signed by the Planning Board chair on November 19, 2024 (Page 4) that, "the Board finds that once the subdivision plat was recorded, the timelines in the subdivision approval were satisfied. Since there are not timelines in the Subdivision approval for the Board to extend, the applicant's request for an extension of the Subdivision approval is moot."



Respectfully,

Chet Clem
Lyme Properties

Attached:

Appendix A: Omnibus Order

Appendix B: Compendium of legal filings by XYZ Dairy, LLC v. City of Lebanon

Appendix C: September 23, 2024 supplemental memo from XYZ regarding "Appeal of Administrative Decision: #PB2024-40-AAD"

Cc:

David Clem, XYZ Dairy, LLC

Angela McCanna, Lyme Properties

Attorney Philip Hastings, Cleveland, Waters and Bass, P.A.

Attorney Robert Miller, Sheehan Phinney, P.A.

CITY OF LEBANON APPLICATION FOR

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

☒ OTHER Extension _____

PROPERTY OWNER (APPLICANT):

NAME: XYZ Dairy, LLC TEL.#: (603) 676-7800
MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784
E-MAIL ADDRESS: dclem@lymeproperties.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Lyme Properties 2, LLC TEL.#: (603) 676-7106
MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784
E-MAIL ADDRESS: chet@lymeproperties.com

PROJECT LOCATION:

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

STREET ADDRESS OF PROJECT:

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

SCOPE OF PROJECT:

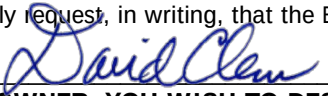
Request for extension of River Park West Lebanon Site Plan Approvals

TYPE OF OCCUPANCY:

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

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on January 13 or soonest available, 20²⁵, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER:  DATE: 12/19/2024

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

PROPERTY OWNER:  DATE: 12/19/2024

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

CERTIFIED NOTIFICATION LIST

Notice shall be sent by certified mail to the Owner; Applicant, if different from Owner; Abutters; Holders of conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property; the holders of easements, rights-of-way, and other restrictions; and every engineer, architect, land surveyor, or soil or wetlands scientist whose seal appears on any plan submitted to the Board; and any other persons required by RSA 676:4, I(d). The names and mailing addresses shall be furnished by the Applicant.

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

Map & Lot Number: 44-21 - 44-30 & 44-7	Map & Lot Number: 44-21 - 44-30 & 44-7
Property Owner: XYZ DAIRY, LLC 57 MAIN STREET WEST LEBANON, NH 03784	Applicant, Co-Applicant, Agent, or Lessee: LYME PROPERTIES 2, LLC 57 MAIN STREET WEST LEBANON, NH 03784
Map & Lot Number: 44-13 & 50-28-E	Map & Lot Number: 44-5
DARTMOUTH COLLEGE TRUSTEES PO BOX 5188 HANOVER, NH 03755	DOWNES, ROBIN C TTEE 187 NORTH MAIN ST WEST LEBANON, NH 03784
Map & Lot Number: 44-6	Map & Lot Number: 44-9 & 58-97
193 NMWL LLC 57 MAIN ST WEST LEBANON, NH 03784	CAESD LLC 57 MAIN ST WEST LEBANON, NH 03784

Map & Lot Number: 44-10	Map & Lot Number: 44-15
DVG VENTURES LLC 10 BENNING ST #160-255 WEST LEBANON, NH 03784	CHURCHILL, WAYNE & TINA M 194 NORTH MAIN ST WEST LEBANON, NH 03784
Map & Lot Number: 44-12	Map & Lot Number: 58-12
GRAHAM, DOUGLAS 10 BENNING ST #160-255 WEST LEBANON, NH 03784	TOWNSEND III, WINTHROP I 1823 US ROUTE 5 NORTH WINDSOR, VT 05089
Map & Lot Number: 44-14	Map & Lot Number: 59-18
BURNS, TRACY A & SALLY J 198 NORTH MAIN ST WEST LEBANON, NH 03784	STENGER-CRAFT PROPERTIES LLC 112 N MAIN ST WEST LEBANON, NH 03784
Map & Lot Number: 44-19-5700	Map & Lot Number: 58-91
HOMEOWNERS AT THE FALLS ATTN: DAN CHASE, COMM MGR PO BOX 1051 NORWICH, VT 05055	JONES, BECKY P TTEE 67 CRAFTS AVE WEST LEBANON, NH 03784
Map & Lot Number: 44-4	Map & Lot Number: 58-93
SALAZAR-KISH, JOLIN M TTEE 32 LEBANON ST, STE A HANOVER, NH 03755	CUMMINGS, LAUREN H & SANDRA L 66 CRAFTS AVE WEST LEBANON, NH 03784
Map & Lot Number:	Map & Lot Number:
Map & Lot Number:	Map & Lot Number:

(Revised 2/8/2024)

FEE SCHEDULE LEBANON PLANNING BOARD

Adopted January 24, 2022

LOT LINE ADJUSTMENT (Boundary Line Adjustment)		
		TOTALS
FILING FEE	\$25.00	\$25.00
ADVERTISING FEE	\$100	\$100
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE		\$ _____

MINOR SUBDIVISION		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE AT TIME OF FILING		\$ _____

**Engineering Review fees may also be required. See note on page 2.

PRELIMINARY REVIEW OF A MAJOR SUBDIVISION		
		TOTALS
FILING FEE	\$200.00	\$200.00
NUMBER OF LOTS* _____	\$30.00 per lot*	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE AT TIME OF FILING		\$ _____

*Or units when the subdivision does not create individual lots.
**Engineering Review fees will also be required. See note on page 2.

FINAL REVIEW OF A MAJOR SUBDIVISION		
		TOTALS
FILING FEE	\$500.00	\$500.00
FIRST FIVE (5) LOTS*	\$75.00 per lot*	
NUMBER OF LOTS 6+*	\$150.00 per lot*	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE TIME OF FILING		\$ _____

*Or units when the subdivision does not create individual lots.
**Engineering Review fees will also be required. See note on page 2.

SITE PLAN REVIEW		
		TOTALS
FILING FEE	\$250.00	\$250.00
SQUARE FOOTAGE	\$75.00 per 1,000 sq. ft. (gross floor area)	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note on page 2)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)

SITE PLAN REVIEW		
TOTAL DUE AT TIME OF FILING		\$
**Engineering Review fees will also be required. See note on page 2.		

SITE PLAN REVIEW AMENDMENT (WITH STRUCTURAL CHANGES)		
		TOTALS
FILING FEE	\$250.00	\$250.00
SQUARE FOOTAGE	\$75.00 per 1,000 sq. ft. (gross floor area)	
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note below)	\$5.00 + Current USPS rate per certified notice (see below) X _____ notices	\$5.00 \$ _____ (abutter certified)
TOTAL DUE AT TIME OF FILING		\$
**Engineering Review fees may also be required. See note below.		

OTHER		
-SITE PLAN REVIEW AMENDMENT (WITH NO STRUCTURAL CHANGES) -EXTENSION REQUESTS -CONDITIONAL USE PERMITS		
		TOTALS
FILING FEE	\$250.00	\$250.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (see note below)	\$5.00 + Current USPS rate per certified notice (see below) X 16 _____ notices	\$5.00 \$ 88.64 (abutter certified)
TOTAL DUE AT TIME OF FILING		\$ 443.64
**Engineering Review fees may also be required. See note below.		

MINOR SITE PLAN REVIEW		
		TOTALS
FILING FEE	\$150.00	\$150.00
NOTIFICATION FEE (see note below)	Current USPS rate per certified notice (see below) X _____ notices	\$ _____ (abutter certified)
TOTAL DUE		\$

ENGINEERING REVIEW FEES:

After an application to the Planning Board is submitted and the filing fees identified above have been paid, the Planning & Development Department will determine the scope of required engineering review and will obtain an estimated cost from the reviewing engineer. A cost estimate of the review fees will usually be generated within two (2) – three (3) business days. Once conveyed to the applicant, the estimated review fees shall be paid by the applicant within five (5) business days, and an escrow account shall be established by the Planning & Development Department. No plans will be reviewed unless and until the review fee estimate is paid, if required.

Please note that escrow fees are only an estimate of what services will cost and actual costs of review may be less or more than the amount initially estimated. Any unused portion of the escrow will be returned to the applicant at the end of the approval process if such a surplus remains. Additionally, in the event the escrow amount does not cover the full cost of services the Applicant shall pay any remaining costs as a condition of approval. See also Section 4.7 of the Site Plan Review Regulations and Section 7.7 of the Subdivision Regulations.

NOTIFICATION FEE: CURRENT FEE as of January 2024 is \$5.54 per certified notice

THE CERTIFIED NOTIFICATION FEE IN ALL SECTIONS ABOVE INCLUDES THE FOLLOWING: ALL ABUTTERS, THE APPLICANT, PROPERTY OWNER, HOLDER OF CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTION(S); AND EVERY ENGINEER, ARCHITECT, LAND SURVEYOR OR SOIL SCIENTIST WHOSE PROFESSIONAL SEAL APPEARS ON ANY PLAT SUBMITTED TO THE BOARD AND ANY OTHER PERSONS REQUIRED BY RSA 676:4, I(d).

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

No. 215-2024-CV-00311

XYZ Dairy, LLC

v.

City of Lebanon, New Hampshire

OMNIBUS ORDER ON PENDING MOTIONS

The plaintiff, XYZ Dairy, LLC ("XYZ"), brings this action against the defendant, the City of Lebanon ("the City") seeking injunctive relief in connection with the defendant's declaration that the plaintiff's building permit was expired. (See Index #1.) This matter is before the Court on the plaintiff's Motion for Preliminary Injunction.¹ (Indices ##3–4.) The defendant objects (Index #12), to which Objection the plaintiff filed a Motion to Strike. The Court denied the plaintiff's Motion to Strike. (See Index #17.) The Court held a three-day evidentiary hearing on the matter on October 17 and 25, and November 6. The parties also made offers of proof. The Court requested memoranda on the material representation and adequate remedy elements. Only the plaintiff filed a Memorandum. (Index #19.)

Also before the Court is the defendant's motion to dismiss (Index #18), to which the plaintiff objects (Index #21), and the defendant responds. (Index #25.) Finally, the plaintiff filed an assented-to motion for a status conference. (Index #24.) Having considered the parties' arguments, evidence, offers of proof, and the applicable law, the Court finds and rules as follows.

¹ The plaintiff also filed a Motion for Temporary Restraining Order With Notice (Indices ##2, 4) which the Court denied following the October 17 and 25 hearings. (Indices ##13, 16.)

Factual Background

The Court takes the following facts from the parties' memoranda and the hearing. (See Indices ##4, 12.) Three witnesses testified at the hearing: Chet Clem, the President of Lyme Properties who acted as XYZ's agent at all times relevant; David Clem, the manager of XYZ and a real estate developer; and Calvin Hunnewell, who served as the City's Building Inspector during all times relevant to this dispute. The City also made offers of proof as to two witnesses, David Brooks, Director of Planning and Development and later Deputy City Manager, and Nathan Reichert, Director of Planning and Development after Mr. Brooks. The parties agree on the facts except where otherwise noted.

XYZ owns a parcel off Route 10 in West Lebanon, where it has pursued a mixed-use development ("River Park") since 2007. In 2011, the City Planning Board granted XYZ site plan approval for a multi-phase development. In December 2019, the City granted Building Permit #2016-00293 to XYZ for a 63,000-square-foot commercial building on Lot 1. (Ex. 1.) XYZ intends this building to be primarily a life science research facility with restaurant and retail spaces on the lower level and asserts that the building reflects features unique to life science tenants (e.g., a double air-handling system). The building permit is only for the core and shell of the building; tenants must apply for permits to build out to their needs.

The State of New Hampshire has adopted the International Building Code (IBC) as the state building code. See RSA 155-A:1, IV. Section 105.5 of the IBC required XYZ to commence work within 180 days after the City issued the building permit. (See Ex. 2.) The COVID pandemic, however, thwarted XYZ's plans to begin construction in the spring of 2020.

In 2021, Mr. Hunnewell brought to XYZ's attention the 180-day expiration period. Under Section 105.5 of the IBC, a "building official is authorized to grant, in writing, one or more extensions for time, for periods not more than 180 days each." (See Ex 2.) If a party needs an extension, it must be requested in writing and "justifiable cause demonstrated." See id. XYZ thus applied for and received two 180-day extensions to the building permit. (Exs. 3–6.) The first extension ran through July 17, 2022, and the second extension ran through January 13, 2023. In both cases, Mr. Hunnewell found that the COVID pandemic and resulting economic challenges were "adequate justification" for an extension. The second extension noted that if XYZ requested another extension, "this office may not be able to justify granting additional extensions and will require the applicant to submit revised and updated plans and specifications for the development to demonstrate compliance with the 2018 edition of the IBC." (Ex. 6.) At that point, XYZ had already updated its plan set to comply with the 2018 IBC.

On November 29, 2022, XYZ began excavating the building's foundation. Work stopped that same day when the excavator uncovered a City stormwater pipe. XYZ expected to encounter the pipe as it knew that a stormwater pipe existed in the general area (see Ex. 7); however, the City was unable to produce documentation showing the pipe's exact location or specifications. On December 9, 2022, XYZ alerted Mr. Brooks that the pipe's depth posed a conflict with the building's foundation. (Ex. 8.) XYZ told the City that excavation would stop until the parties could reach a mutually agreeable solution. On February 2, 2023, Mr. Brooks wrote back to XYZ that the City would approve a temporary stormwater line with certain conditions. (Ex. 9.) Alternatively, XYZ could delay construction until the City completed Route 10 improvements that would render the stormwater pipe redundant.

On February 15, 2023, a month after the second extension would have expired on January 13, Mr. Hunnewell requested information from XYZ to determine whether work had commenced under Section 105.5. (Ex. 10.) Mr. Hunnewell's letter included nine "examples" of documentation that XYZ could provide to prove commencement of work (hereinafter referred to as the "nine items"). Mr. Hunnewell further stated that if he could not verify that XYZ had "actively prosecuted the permit," he would retroactively revoke the permit as of January 13, 2023. Mr. Hunnewell testified that these nine items were not burdensome, particularly to a developer about to begin construction.

On March 7, 2023, XYZ responded to Mr. Hunnewell, explaining that work started with the foundation excavation on November 29, 2022, and attached a summary of work to date. (Ex. 11.) XYZ also requested that Mr. Hunnewell direct it to a policy or definition about what constitutes "commencement of construction." Mr. Hunnewell does not recall responding to this letter, although he testified that his practice would have been to respond timely. XYZ asserts that it did not receive a response. On March 16, 2023, XYZ met with City staff (Mr. Hunnewell, Mr. Reichert, and Tim Corwin, Deputy Director of Planning & Development) largely to review the information XYZ provided in the March 7 letter about its work to date. After the meeting, XYZ provided Mr. Hunnewell or another City employee with receipts for approximately \$300,000 of material it ordered for the Phase 1 infrastructure associated with the building. (Ex. 12.)

On March 24, 2023, Mr. Hunnewell notified XYZ that he determined XYZ had "commenced work" within the meaning of Section 105.5. (Ex. 13.) Mr. Hunnewell wrote, "As a result of the meeting and your follow up e-mail sent later the same day, we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in

accordance with City of Lebanon Building Permit #2016-00293.” (Id.) The letter further stated, “The following additional steps need to be completed in order to maintain activation of the building permit without jeopardizing the 180-day allowance from November 29, [2022] . . .” The “additional steps” required XYZ to provide documentation about the same nine items that Mr. Hunnewell listed in his February 15 letter. (Id.)

Mr. Hunnewell testified that the IBC does not define “work” within the meaning of Section 105.5. Mr. Hunnewell estimated that he had processed around 10,000 building permit applications during his career, and this is the only permit he remembers lapsing due to inactivity. He further testified that most projects start physical work on site within a few months, and no other permit holder had gone six years without starting construction.

On April 10, 2023, XYZ wrote back to Mr. Hunnewell, in part to ask for the “ordinance/requirement/documentation” supporting information requests in the nine items. (Ex. 14.) Mr. Hunnewell initially testified that Section 105.5’s “justifiable cause” standard was the source of authority for the nine items. After XYZ suggested that “justifiable cause” only pertained to extensions, Mr. Hunnewell said that perhaps Section 105.5 was not the right source of authority, but all nine items dealt with requirements elsewhere in the code. When pressed, Mr. Hunnewell acknowledged that some of the nine items related to infrastructure were under another department’s jurisdiction and outside his authority. Mr. Hunnewell further testified that his source of authority for the items was his role as building inspector.

XYZ did not receive a response from Mr. Hunnewell about his authority to impose the information requests in the nine items. Consequently, it appealed the nine items to the City’s Building Code Board of Appeals (BCBA). (Ex. 15.) On July 11, 2023, the City

BCBA confirmed that the building permit was active but did not opine on the items. (Ex. 16.)

On August 3, 2023, XYZ wrote to Mr. Hunnewell seeking permission to connect the temporary stormwater line so that it could continue excavation for the Lot 1 building. (Ex. 17.) XYZ also wrote that it had "restarted conversations with project partners" after receiving confirmation from the City BCBA that the permit was active. Mr. Brooks responded that he had directed Department of Public Works staff to work with XYZ to resolve the matter. (Ex. 18.) The City asserts that the documentation XYZ provided for the temporary line did not adequately portray the design. The City further asserts it could not "just approve" the relocation because it had no security that XYZ would ultimately build a permanent stormwater solution.

While XYZ and the City attempted to resolve the stormwater line issue, XYZ continued preparatory work with its construction partners. On January 5, 2024, XYZ wrote to Mr. Hunnewell that it had named a new construction manager and was "diligently pursuing construction" in anticipation of the 2024 season. (Ex. 20.) Chet Clem testified that between the July 2023 BCBA hearing and the January 5, 2024 letter, XYZ did not send further information about its progress because XYZ was "confident" it was in compliance with Section 105.5 and Mr. Hunnewell had not pressed the issue of the nine items.

On February 1, 2024, XYZ received a letter from Mr. Hunnewell declaring that the building permit "has expired and is invalid" because XYZ had not conducted work on site for more than 180 days. (Ex. 21.) XYZ was "very surprised" because it understood "work" within the meaning of Section 105.5 to include preparatory work, based on Mr. Hunnewell's March 24, 2023 letter. Between March 2023 and February 2024, XYZ

undertook preparatory work with project partners, including obligating itself to \$870,000 of contracts. Mr. Hunnewell testified that he did not know about this preparatory work and contracts. Mr. Hunnewell further testified that he never contacted XYZ to find out whether it was conducting any work, preparatory or otherwise, before declaring the permit expired and invalid; however, he felt that he had no duty to solicit information from builders as generally they contacted him for inspections. Mr. Hunnewell testified that the focus of his job was to promote life safety via code enforcement; when pressed, he did not identify what harm he sought to prevent by invalidating XYZ's permit.

Accordingly, XYZ appealed Mr. Hunnewell's invalidation of the building permit to the City BCBA. (Ex. 22.) On May 6, 2024, the BCBA held that "work" included preparation work, reversed Mr. Hunnewell's February 1, 2024 determination, and reinstated the building permit. (Ex. 24.) The City then appealed the City BCBA's decision to the State Building Code Review Board (BCRB). On July 31, 2024, the State BCRB reversed the City BCBA, holding that "work" refers only to "physical work authorized by the permit and conducted at the site." (Ex. 25.) However, the State BCRB noted that "we do [not] review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials concerning the types of conduct that would qualify as work under Subsection 105.5." (Id.) In other words, the state BCRB recognized that XYZ may have a municipal estoppel claim.

While XYZ and the City engaged in this back and forth over permitting, XYZ worked behind the scenes to attract and retain a "unicorn" anchor tenant. This tenant is a local life sciences company owned by a publicly traded corporation. The tenant is unique because it is the only company of its type that stayed local after licensing

intellectual property to a for-profit entity. Further, the tenant has its own capital to outfit its facility beyond the building's core and shell. The tenant refuses to enter a lease without an active building permit in place. XYZ asserts that without that lease, it will not be able to secure the financing it needs to move forward with the Lot 1 building and the rest of the River Park development.

Analysis

I. Preliminary Injunctive Relief

XYZ seeks a preliminary injunction (1) reinstating Building Permit #2016-00293 and (2) extending the Planning Board site plan approvals by two years. (Index #4 at 24–25; Index #5 ¶¶1–2.) The City argues that XYZ is not entitled to a preliminary injunction reinstating the building permit because it has no likelihood of success on the merits of its municipal estoppel claim. (Index #12 at 3.) The City further argues that even if the Court does order the City to reinstate the building permit, the Court should not extend the Planning Board approval because estoppel with respect to the building permit has no bearing on planning approvals. (Index #12 at 3 n.2.)

“A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits.” DuPont v. Nashua Police Dep’t, 167 N.H. 429, 434 (2015) (quotation omitted). The party requesting the injunction must show that (1) it is likely to succeed on the merits; (2) it has no adequate remedy at law; and (3) there is an immediate danger of irreparable harm to the party if the court does not grant injunctive relief. Pike v. Deutsche Bank Nat’l Trust Co., 168 N.H. 40, 45 (2015).

A. Preliminary Injunction to Reinstate Building Permit

As a threshold matter, the City argues that injunctive relief is inappropriate because XYZ seeks to alter, not maintain, the status quo. (Index #12 at 11.) The “status quo” in the context of a preliminary injunction is the “last uncontested status which preceded the pending controversy.” Crowley v. Loc. No. 82, 679 F.2d 978, 995 (1st Cir. 1982), rev’d on other grounds, 467 U.S. 526 (1984) (quotation omitted).

Here, the “pending controversy” is whether Mr. Hunnewell properly invalidated XYZ’s building permit on February 1, 2024. (Ex. 21.) Consequently, the last uncontested status is that of January 31, 2024. At that time, XYZ held a valid building permit subject to Mr. Hunnewell’s March 24, 2023 “approval of work,” with the nine contested items attached. (Ex. 13). The permit was also subject to the July 11, 2023 City BCBA decision, which confirmed the permit was active but did not decide the validity of the nine items. (Ex. 16.) Thus, the “status quo” as of January 31, 2024, where XYZ held a valid permit subject to the nine contested items, would be the appropriate status for the Court to restore if it were to grant a preliminary injunction.

i. Likelihood of Success on the Merits

The first element a plaintiff must prove in its case for a preliminary injunction is that it is likely to succeed on the merits. Pike, 168 N.H. at 45. XYZ claims municipal estoppel, arguing that the City is estopped from terminating XYZ’s building permit because XYZ reasonably relied on Mr. Hunnewell’s representation that XYZ’s preparatory work constituted “work” within the meaning of Section 105.5 of the IBC. (Index #4 at 25–29.) The City responds that XYZ acted unreasonably when it never provided any of the information described in the nine items Mr. Hunnewell laid out in the same representation. (Index #12 at 11–12.)

The doctrine of municipal estoppel prevents “unjust enrichment” and ensures “fairness to those who bargain with the agents of municipalities for the promises of the municipalities.” Town of Atkinson v. Malborn Realty Tr., 164 N.H. 62, 67 (2012). In order for a plaintiff to prevail on a municipal estoppel claim, the plaintiff must show that (1) the municipality, by the words or conduct of an authorized official, misrepresented a material fact with knowledge of the fact; (2) the plaintiff was ignorant of the truth of the matter; (3) the representation was made with the intention of inducing the plaintiff to rely upon it; and (4) the plaintiff was induced to and reasonably relied upon the representation to the plaintiff’s detriment. Sutton v. Town of Gilford, 160 N.H. 43, 58 (2010). Courts apply the doctrine of municipal estoppel “with caution and only in exceptional cases under circumstances clearly demanding its application to prevent manifest injustice.” Town of Seabrook v. Vachon Mgmt., Inc., 144 N.H. 660, 666 (2000) (quotations omitted).

1. *Actionable Misrepresentation*

The first element of municipal estoppel is that a municipality, by the words or conduct of an authorized official, misrepresented a material fact with knowledge of the fact. Sutton, 160 N.H. at 58. XYZ makes two arguments that Mr. Hunnewell’s March 24, 2023 statement that XYZ’s preparatory work constituted “work” under Section 105.5 is an actionable misrepresentation. First, XYZ argues that the representation regards “then-existing facts” and is more than a mere, nonactionable, statement of law. (Index #19 at 11–13.) Second, XYZ argues that even if Mr. Hunnewell’s representation is a statement of law, basic fairness weighs in favor of estopping the City. (Index #19 at 13–16.) In response, the City contends that Mr. Hunnewell’s communications were “statements [of] his legal position vis-à-vis avoiding expiration of the building permit,”

i.e., mere statements of law. (Index #12 at 12.) The parties agree that as long as Mr. Hunnewell acted with authority, his actions can be imputed to the City. XYZ asserts, and the City does not dispute, that Mr. Hunnewell acted within his authority to make the representation about “work.”

The general rule is that municipal estoppel “applies only to misstatements of fact, not misstatements of law.” See Bosonetto v. Town of Richmond, 163 N.H. 736, 743 (2012) (noting that New Hampshire case law has not yet addressed misstatements of fact versus law). Mere representations of law are not actionable because “every person is presumed to know the law and, therefore, to organize his or her conduct and affairs accordingly.” See Lennartz v. Oak Point Assocs., P.A., 167 N.H. 459, 464 (2015). Bosonetto offers an example of a clear misstatement of the law. The law at issue concerned the 30-day period to move for a Zoning Board of Appeals (ZBA) rehearing. RSA 677:2 starts the period the day after the ZBA votes on the application, but the town incorrectly told the plaintiff that the period began when the ZBA filed its decision. Bosonetto, 163 N.H. at 743. There, the town made a general statement of law that the plaintiff could have researched on his own. Id. Further, the town’s statement was not specific to the facts of the plaintiff’s case. See id.

However, a municipal official’s representations are not always a clear statement of fact or a statement of law. Where officials apply the law to the facts of a party’s case, representations are often statements of mixed law and fact. Mixed statements may or may not be actionable. City of Concord v. Tompkins offers an example of a non-actionable mixed statement. 124 N.H. 463 (1984). There, the city misstated the law when it told the plaintiff that “there was no time limit for construction of the sign” under his building permit. Id. at 467. In fact, a building code provision—which the plaintiff could

have read—required that construction begin within six months or else the permit would expire. Id. The city involved the facts of the case when it applied the law to the plaintiff's permit to build a sign; however, like the Bosonetto representation, the city's opinion did not turn on the facts of the plaintiff's situation. Rather, the city made a general misstatement of the law that referenced "the sign" but was not otherwise specific to the plaintiff's project. See id. at 473–74.

In contrast, Aranosian Oil Co. v. City of Portsmouth presents an actionable statement of mixed law and fact. 136 N.H. 57 (1992). There, the city issued a building permit to the plaintiff to expand a prior non-conforming use, then revoked the permit when it realized that the expanded use was also non-conforming. Id. at 58–59. The building permit was the city's statement of law (it implies compliance with zoning regulations) as applied to specific facts (the plaintiff's project). See id. at 60. Unlike the City of Concord statement, which did not turn on the facts of the plaintiff's sign project, the Aranosian Oil permit approval relied heavily on the details of the project, i.e., its facts. Taken together, these New Hampshire cases suggest that a mixed statement of law and fact is most actionable where the official's application of the law turns closely on facts specific to the case.

Here, the alleged misrepresentation is Mr. Hunnewell's March 24, 2023 statement "we agree that" XYZ "justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive." (Ex. 13.) Like the City of Concord and Aranosian Oil statements, Mr. Hunnewell's statement mixes law and fact. The legal part of the statement is Mr. Hunnewell's determination that "preparation work" constitutes "commencement of work" within the

meaning of Section 105.5.² The factual part of the statement occurs where Mr. Hunnewell references XYZ's work specifically, i.e., where he determines that "the preparation work **you have been preparing** with your construction partners" is "preparation work" (emphasis added).

The evidence reflects that City staff called the March 16, 2023 meeting to learn more about the facts of XYZ's situation and that the information XYZ provided at the meeting heavily informed Mr. Hunnewell's March 24, 2023 determination. Mr. Hunnewell's March 24 letter begins with a list of topics discussed at the March 16 meeting. It continues, "As a result of the meeting and your follow up e-mail . . . we agree that you have justified the preparation work . . ." Just as the Aranosjan Oil permit approval turned closely on that project's details, the language of the March 24 letter shows that so too did Mr. Hunnewell's determination about XYZ's work. Thus, Mr. Hunnewell's representation is actionable as a mixed statement of law and fact that turns closely on facts specific to the case.

The Court is further persuaded by XYZ's arguments about basic fairness. Generally, "representations or opinions as to matters of law do not ordinarily base or create an estoppel unless made under circumstances that render a repudiation inequitable." 31 C.J.S. Estoppel and Waiver § 115. In the municipal context, one such extenuating circumstance occurs where an official makes a misstatement "so closely connected to the basic fairness of the administrative decision making process that the government may be estopped from disavowing the misstatement." Sunapee Difference, LLC v. State, 164 N.H. 778, 795 (2013) (quoting City of Concord, 124 N.H. at 472).

² The March 24, 2023 letter does not specifically reference Section 105.5, but the parties do not dispute that Mr. Hunnewell was referring to "work" in the context of Section 105.5.

Other jurisdictions have identified another extenuating circumstance where the party making a statement of law has "special knowledge," including legal skill. See, e.g., Waugh v. Lennard, 69 Ariz. 214, 227–228 (1949) (plaintiff relied on lawyer's statement of law); Shamrock Dev. Co. v. City of Concord, 656 F.2d 1380, 1386 (9th Cir. 1981) (special knowledge may be a basis for estoppel).

Here, even if Mr. Hunnewell's representation was a mere statement of law, basic fairness weighs in favor of finding his statement actionable. When XYZ first raised questions about Section 105.5's meaning, XYZ, its architect, and its lawyers conducted their own research. Finding nothing, XYZ turned to and relied on Mr. Hunnewell because, as he testified, Mr. Hunnewell is the person at the City with authority to apply and enforce the building code under RSA 155-A:7. Where XYZ had no other resource to establish Section 105.5's meaning, Mr. Hunnewell was the person with "special knowledge." See Shamrock Dev. Co., 656 F.2d at 1386.

To the extent that Mr. Hunnewell's job involves statutory interpretation of the building code, Mr. Hunnewell also has unique legal skills. Accordingly, the need for basic fairness in the administrative permitting process renders inequitable Mr. Hunnewell's February 1, 2024 repudiation of XYZ's continued preparatory work, where Mr. Hunnewell approved the same type of work less than a year earlier. Thus, the Court rules that whether Mr. Hunnewell's March 24, 2023 representation is a qualifying statement of mixed law and fact or a mere statement of law but from an official with special knowledge, the representation is actionable. See id.

2. Plaintiff's Ignorance

The second element of municipal estoppel is that the plaintiff was ignorant of the truth of the matter. Sutton, 160 N.H. at 58. Here, the "truth of the matter" is that contrary

to Mr. Hunnewell's March 24, 2023 statement, XYZ's preparatory work did not actually constitute "work." Simply, XYZ had no way to know the "true" meaning of "work." Mr. Hunnewell testified that the building code does not define "work" and XYZ further notes that the code does not define "commencement," "suspension," or "abandonment" of work. Further, the City BCBA reached one conclusion as to the meaning of "work" while the State BCRB reached the opposite conclusion; this back and forth shows that the meaning of "work" under Section 105.5 is hardly obvious, even to those tasked with interpreting the building code. Thus, the Court finds that XYZ was ignorant of the truth of the matter.

3. Representation Made to Induce Reliance

The third element of municipal estoppel is that the official must have made the representation with the intention of inducing the plaintiff to rely upon it. Sutton, 160 N.H. at 58. XYZ argues that its long history of communication with Mr. Hunnewell, including the March 16 meeting, leads to no other conclusion than that Mr. Hunnewell intended that XYZ rely on his March 24, 2023 "work" representation. (Index #4 at 28.) The context of the March 24 letter also includes the fact that XYZ was at risk of losing its building permit, per Mr. Hunnewell's February 15, 2023 letter. Given how high the stakes were at the time, Mr. Hunnewell must have intended any further communication to induce XYZ to act according to Mr. Hunnewell's directions. Thus, the Court finds that Mr. Hunnewell made the "work" representation intending for XYZ to rely on it.

4. Plaintiff's Reasonable Reliance

The fourth element of municipal estoppel is that the plaintiff was induced to and reasonably relied upon the representation to the plaintiff's detriment. Sutton, 160 N.H. at 58. XYZ argues that it reasonably relied on Mr. Hunnewell's March 24, 2023 "work"

representation because it had no reason to doubt whether continued preparatory work, of the same type and scope as the work approved by Mr. Hunnewell, would suffice to keep the permit active. (Index #4 at 28–29.) Based on its assumption that it could continue business as usual, XYZ obligated itself to \$870,000 of contracts from March 2023 through January 2024. The City does not dispute that that XYZ reasonably relied on Mr. Hunnewell’s representation about “work,” and the Court finds that it did so.

The City contends that Mr. Hunnewell’s representation also included the nine items, and because XYZ never provided information to satisfy the nine items, it did not rely reasonably on the March 24, 2023 letter. (Index #12 at 11–12; Index #18 at 11–12.) The City further argues that to the extent XYZ claims to have relied on Mr. Hunnewell’s March 24 letter, XYZ acted unreasonably when “it did not follow his instructions” and “believed that its January 5, 2024 letter, without more, could keep its permit active.” (Index #12 at 12.)

Any reliance by the party asserting municipal estoppel must have been reasonable. Thomas v. Town of Hooksett, 153 N.H. 717, 722 (2006). “Reliance is unreasonable when the party asserting estoppel, at the time of his or her reliance or at the time of the representation or concealment, knew or should have known that the conduct or representation was improper, materially incorrect or misleading.” Id. “Incorporated into the concept of reasonable reliance is the requirement that the moving party exercise due diligence to learn the truth of a matter relied upon.” Cadle Co. v. Bourgeois, 149 N.H. 410, 418 (2003).

Here, XYZ’s reliance on Mr. Hunnewell’s representation that its preparatory work constituted “work” under Section 105.5 was reasonable. XYZ exercised due diligence to research the meaning of Section 105.5 and through that research learned that there

was little to no law interpreting the term “work.” Accordingly, XYZ reasonably—and wisely—turned to Mr. Hunnewell as the official with jurisdiction to interpret and enforce the code. After the March 24, 2023 letter, XYZ continued to act reasonably when it assumed that it could continue the same type of preparatory work without jeopardizing its permit status. The City BCBA decision affirming Mr. Hunnewell’s representation further shows XYZ’s reasonableness in relying on Mr. Hunnewell’s opinion.

Turning to the nine items, the parties dispute whether they were part of Mr. Hunnewell’s “representation” and, if so, whether XYZ responded reasonably. XYZ characterizes the items as “conditions” and argues that because Mr. Hunnewell acted outside his authority to impose the nine items, they are void. (Index #4 at 8–9.) XYZ contends that at least several of the items are retroactive, and therefore illegal, because they ask for information XYZ already provided in the permit application process. XYZ further contends that to the extent the items implied that XYZ had violated some aspect of the building code, those items were void for not citing the applicable code provision as required by RSA 155-A:7, V. Finally, XYZ asserts that “several other steps” imposed in the letter beyond the nine items relate to the Phase 1 infrastructure, which was not under Mr. Hunnewell’s jurisdiction.

The City characterizes the items as “examples” and alleges that XYZ “did not provide any information at all.” (Index #12 at 11.) Mr. Hunnewell testified that his intent was to help XYZ by providing nine examples of preparatory work documentation so it could prove that physical work was starting soon. Mr. Hunnewell further testified that Section 105.5 was likely not the source of authority for the nine items and that he was not sure what code provision was the source of his authority. He testified that several of

the items do have a basis in other code provisions, such as the provisions regarding special inspections or cost estimates.

Assuming without deciding that the nine items were part of Mr. Hunnewell's March 24, 2023 representation, the Court leaves the issue of whether Mr. Hunnewell's had authority to impose the items for a hearing on the merits. At this stage, the issue is whether XYZ responded reasonably to the nine items. The Court determines that XYZ did respond reasonably because XYZ had a good-faith basis to question the items, it provided some if not all of the requested information, and it diligently pursued a resolution to the question of Mr. Hunnewell's authority to impose the items.

XYZ had a good-faith basis to question the nine items because Mr. Hunnewell had no obvious source of authority to request the additional information. Mr. Hunnewell's testimony reflects as much; while he asserts that he did have authority as the building inspection to impose conditions, he could not testify to the precise source of that authority. After first reviewing the nine items in Mr. Hunnewell's February 15, 2023 letter (Ex. 10), XYZ questioned the items in its March 7 response. (Ex. 11.) In that letter, XYZ asked Mr. Hunnewell to define "commencement of construction" and share a "policy on what is required to meet that burden of proof." After Mr. Hunnewell reiterated the nine items in the March 24, 2023 letter, XYZ asked again in its April 10 email for the authority behind the requests. (Ex. 14.) In both its March 7 and April 10 communications, XYZ explained that it was asking for more information "so that I can ensure sufficient information is relayed" and because "that would be helpful in ensuring we provide sufficient information to be in compliance," respectively. (Exs. 11, 14.)

Further, XYZ provided some information and acted diligently to resolve its concerns. Contrary to the City's assertion that XYZ provided no information whatsoever

in response to the nine items, XYZ attached to its March 7 letter a two-page narrative of work to date; in its April 10 email, XYZ answered two of the nine items, stated that two more items were “pending,” and asked Mr. Hunnewell to define the information it sought with respect to the other five items. (Exs. 11, 14.) The language XYZ used—that it sought to provide “sufficient information”—and the fact that it provided some, if not all, information shows that while XYZ did not rush to comply strictly with all nine items, neither did it seek to avoid or subvert the items.

Finally, when XYZ did not receive an answer from Mr. Hunnewell about his authority or further definition of the items, XYZ followed up on the issue by appealing the items to the City BCBA. (Ex. 15.) Thus, in light of the confusion over whether the nine items were examples or conditions, Mr. Hunnewell’s authority to impose the nine items, and the requirements for each item, and given Mr. Hunnewell’s nonresponse to XYZ’s second request for clarification on April 10, XYZ acted reasonably with respect to the “nine items” portion of Mr. Hunnewell’s representation. Further, XYZ continued to rely reasonably on Mr. Hunnewell’s March 24, 2023 representation as to what constituted “work” under Section 105.5.

ii. *No Adequate Remedy at Law*

Having determined that XYZ has established its likelihood of success on the merits, the Court turns to the second element of XYZ’s claim for a preliminary injunction. A plaintiff must prove that it has no other adequate remedy at law. Pike, 168 N.H. at 45. XYZ argues that it has no adequate remedy because equitable relief is the only appropriate remedy where real estate is concerned. (Index #4 at 30.) XYZ further argues that if the building permit remains expired, it faces irreparable harm because it will lose its “unicorn tenant,” have no ability to secure financing, ultimately need to

"scrap" the entire seven-phase River Park project, and suffer ensuing reputational damage. (Indices ##4 at 29–30, 19 at 16–17.) The City argues that XYZ has an adequate remedy because it could seek damages for an alleged breach of duty by the City. The City contends that XYZ should have a business plan sufficient to establish damages and that reputational harm is irrelevant because it would accrue to David and Chet Clem as individuals and not to XYZ Dairy, LLC.

Whether an adequate remedy at law exists "necessarily depends upon the factual circumstances in each case." Sands v. Stevens, 121 N.H. 1008, 1011 (1981) (quotation omitted). Courts may exercise "considerable discretion in determining whether equity should intervene to aid litigants in the protection of their legal rights." Id. (quotation omitted). Further, "superior courts should not limit their inquiry solely to the question of the adequacy of the remedy at law; they should also consider whether the remedy at law is plain and complete." Id. Where rights in real estate are concerned, courts generally presume a lack of an adequate alternative remedy at law due to the "unique character of real estate." See Moore v. Sterling Warner Indus. Inv. Corp., 114 N.H. 520, 522 (1974); Soukup v. Brooks, No. 215-2006-EQ-141, 2006 N.H. Super. LEXIS 35 at *5–6 (Jul. 31, 2006).

Here, XYZ has established that it has no adequate remedy at law because real estate is at issue and any damage recovery would arrive too late to prevent irreparable harm. Although the building permit at issue is not "real estate," permits may confer a vested right on the property owner. Winn v. Lamoy Realty Corp., 100 N.H. 280, 281 (1956). In turn, that right to build is part of the "group of rights" that comprise "property." See Burrows v. City of Keene, 121 N.H. 590, 597 (1981). The River Park parcel is unique in its size, central location within the Upper Valley, and how much XYZ has

already invested in the property to date. XYZ cannot simply find another piece of shovel-ready land in the Upper Valley for a mixed-use development of this type and scale. See Bacon v. Town of Enfield, 150 N.H. 468, 482 (2004) (Nadeau, J., dissenting) (“Each piece of real property possesses characteristics which contribute to its uniqueness.”).

The City argues that XYZ is an entity that exists solely to make money off of River Park. In contrast, both David Clem and Chet Clem testified to their personal desire to give back to the community via the River Park project. If XYZ sought merely to turn a profit, it likely would have turned to other real estate opportunities to do so. To the extent that the unique connections between parties and their real property undergird the tradition of affording equitable relief in such cases, the Court is persuaded that such a connection exists here.

Even if XYZ sought damages for lost revenue and property value, as the City contends it could, those damages would come too late to prevent irreparable harm. In this way, irreparable harm is a central consideration to the “adequate remedy” element, in addition to an element in its own right. A remedy where XYZ secures damages but still suffers irreparable harm would hardly be “plain and complete.” See Sands, 121 N.H. at 1011. Given that real estate is at issue and that XYZ faces irreparable harm not compensable by damages, the Court determines that XYZ has shown that it has no adequate remedy at law.

iii. Irreparable Harm

Accordingly, the Court turns to the third element of a preliminary injunction. A plaintiff must prove that it faces an immediate danger of irreparable harm without

injunctive relief. Pike, 168 N.H. at 45. The parties' arguments about irreparable harm are largely the same as their arguments about adequate remedies.

When evaluating irreparable harm, a court must balance the significance of the threat of irreparable harm to the party requesting injunctive relief against the potential harm that granting an injunction would inflict on the other party. Kukene v. Genuardo, 145 N.H. 1, 4 (2000). Even in cases where damages may be quantifiable, irreparable harm exists "where the potential economic loss is so great as to threaten the existence of the movant's business." NACM-New England, Inc. v. Nat'l Ass'n of Credit Mgmt., Inc., 927 F.3d 1, 5 (1st Cir. 2019) (quotations omitted).

Here, the Court finds credible XYZ's assertion that it may have to "scrap" the River Park project if the Court denies immediate injunctive relief. XYZ explained the domino effect that the City's refusal to reinstate its building permit will likely precipitate. Without a building permit, XYZ will lose its anchor life science tenant. Without the anchor tenant, XYZ cannot secure financing. Without financing, XYZ cannot continue building out River Park. XYZ's loss of its anchor tenant, and potentially the entire development opportunity, constitutes irreparable harm under the circumstances. To the extent that River Park is XYZ's business, losing the anchor tenant threatens the existence of the business. See NACM-New England, 927 F.3d at 5.

XYZ articulated this chain of harm routinely throughout its pleadings and testimony. In contrast, the City articulated only one harm it may suffer if the Court awards XYZ its requested relief: the possibility that future permittees may sue to reinstate invalidated permits. The Court is unpersuaded by this argument, as any decision would not expand or otherwise change the rights that other City permittees already have. Having decided the adequate remedy and irreparable harm issues on

other grounds, the Court declines to address XYZ's argument about reputational harm. Thus, the Court finds that XYZ establishes an immediate threat of irreparable harm.

Because XYZ establishes that it is likely to succeed on the merits of its municipal estoppel claim, it has no adequate remedy at law, and it faces an immediate threat of irreparable harm, the Court rules that XYZ is entitled to a preliminary injunction reinstating Building Permit #2016-00293.

B. Preliminary Injunction to Extend Planning Board Approval

Although the building permit is the focus of XYZ's case against the City, the site plan approval is also at issue. The City Planning Board first approved XYZ's site plan in 2011 and most recently extended that approval in October 2021, requiring XYZ to complete Phase 1 infrastructure by January 2, 2025. (Ex. 29.) Among other improvements, the Phase 1 infrastructure includes extending municipal water and sewer service to the Lot 1 building. XYZ concedes that it would have been physically possible to undertake the Phase 1 infrastructure work while waiting on the City to reinstate the building permit; however, XYZ contends it would have been unreasonable and a breach of duty to its investors to do so. XYZ asserts that without a building permit, any infrastructure work would have accrued only to the City's benefit with no benefit to XYZ. XYZ further asserts that, even if the Court reinstated the building permit via this order, it could not meet the January 2 deadline because "work has now been suspended for approximately nine months and . . . the City's seasonal moratorium on excavation [is] impending." (Index #19 at 16.)

Accordingly, XYZ requested from the Planning Board a two-year extension to the January 2, 2025 Phase 1 deadline. The matter went before the Planning Board on November 12, 2024, and the Planning Board denied the extension. (Index #24.)

Consequently, XYZ seeks a preliminary injunction not only to reinstate its building permit but also to extend the Planning Board's site plan approval deadlines by two years. (Index #19 at 16.) XYZ argues that it would be within the Court's expansive equitable powers to afford such relief, and further contends that extending site plan approval deadlines is necessary to restore the building permit status quo as of January 31, 2024. The City argues that it would be inappropriate for the Court to interfere with Planning Board jurisdiction; XYZ responds that the Planning Board has no jurisdiction over a municipal estoppel claim and this Court is the proper venue to determine such relief. The City further contends that XYZ should have been working on Phase 1 infrastructure while pursuing reinstating the building permit; XYZ argues that it made no economic or common sense to do so without a valid building permit.

The Court finds persuasive XYZ's argument that reinstating the building permit alone would afford incomplete relief. See Sands, 121 N.H. at 1011. The Lot 1 building at issue in this case is reasonably related to the Phase 1 infrastructure deadline because that infrastructure, e.g., sewer and water, is necessary for the building to operate. The Court did not receive testimony suggesting that the building permit delay has affected site plan approval phases other than the Phase 1 infrastructure deadline. The Phase 1 infrastructure approval expires on January 2, 2025. (Ex. 29.) Even if XYZ was unaffected by the winter excavation moratorium, David Clem testified that the Phase 1 infrastructure work will take about three months; consequently, XYZ cannot complete the work by January 2.

The Court is unpersuaded by the City's argument that XYZ should have completed the Phase 1 infrastructure work without a building permit. As Chet and David Clem testified, the City cannot reasonably expect a developer to pursue infrastructure work

without a building permit for the associated building project. Further, as David Clem testified, starting Phase 1 infrastructure without a building permit in hand may have breached XYZ's fiduciary obligations to its investors, which are four trusts with a variety of beneficiaries. Because XYZ cannot reasonably work on the Lot 1 building without a feasible timeline to complete Phase 1 infrastructure, complete relief requires extending the Phase 1 infrastructure approval.

Likewise, the Court finds persuasive XYZ's argument that extending the January 2, 2025 infrastructure deadline is necessary to restore the status quo as of January 31, 2024. At that time, XYZ held a valid permit, subject to the dispute over the nine items. XYZ also then anticipated the first site plan deadline for Phase 1 infrastructure work on January 2, 2025. The January 2, 2025 deadline would have been 11 months and two days after the January 31, 2024 "status quo" date. Although XYZ requests a two-year extension because two years is the customary Planning Board extension period, the Court will extend the site plan deadline only to the extent necessary to restore the parties to their "status quo" positions, which is 11 months and two days from the date of the Clerk's notice of this order and specified in the conclusion. XYZ anticipates completing Phase 1 infrastructure within three months of reinstated site plan approval, or four months to account for unexpected delays. Accordingly, 11 months and two days—even considering the winter excavation moratorium—should provide more than enough time for XYZ to complete the Phase 1 infrastructure during the 2025 construction season. XYZ has not, however, shown that it is in immediate danger of irreparable harm as to the other Planning Board approval deadlines.

Turning to the parties' dispute over jurisdiction, the Court agrees with XYZ, for the reasons XYZ lays out in its Bench Memorandum, that the Court has jurisdiction over XYZ's

request to extend the January 2, 2025 Planning Board site plan approval deadline. (Index #19 at 17–20.) See also Hatch v. Hillsgrove, 83 NH 91, 93 (1927) (“No jurisdiction can be more ample and unqualified than that of this court in cases of injunction.”). However, the Court limits its jurisdiction to only the extent necessary to afford complete relief in this case; that is, to Phase 1 only and limited to XYZ’s position as of January 31, 2024. Therefore, because extending the Phase 1 site plan approval entitlement is necessary to afford XYZ complete relief and restore the parties to the January 31, 2024 status quo, and it is within the Court’s equitable powers to do so, the Court GRANTS XYZ’s motion for a preliminary injunction extending the Phase 1 site plan approval by 11 months and two days from the date of the Clerk’s notice this order.

C. Attorneys’ Fees and Costs

XYZ is not requesting an award of attorneys’ fees and costs at this time but only “in connection with the trial on the merits.” (Index #5 at 2.) Accordingly, the Court does not act on XYZ’s request for attorneys’ fees and costs.

II. Defendant’s Motion to Dismiss

The City filed a motion to dismiss (Index #18), to which XYZ objects (Index #21), to which the City responds. (Index #25.) When ruling on a motion to dismiss, the court must determine whether the plaintiff’s allegations stated in the complaint “are reasonably susceptible of a construction that would permit recovery.” Plourde Sand & Gravel, Co. v. JGI Eastern, Inc., 154 N.H. 791, 793 (2007). In doing so, the Court must “assume all facts [pled] in the plaintiff’s writ are true, and . . . construe all reasonable inferences drawn from those facts in the plaintiff’s favor.” *Id.* The court need not, however, “assume the truth of statements . . . that are merely conclusions of law[]” not supported by “predicate facts[.]” Gen. Insulation Co. v. Eckman Constr., 159 N.H. 601,

611–12 (2010). The court should test these facts against the applicable law and deny the motion to dismiss “[i]f the facts as alleged would constitute a basis for legal relief[.]” Starr v. Governor, 148 N.H. 72, 73 (2002). Dismissal is appropriate if the facts alleged in the complaint do not constitute a basis for relief. See Jay Edwards, Inc. v. Baker, 130 N.H. 41, 46–47 (1987) (finding dismissal appropriate where plaintiff’s complaint failed to plead sufficient facts supporting the elements of the claims).

Construing the facts in XYZ’s complaint as true, the Court finds that the XYZ’s allegations are “reasonably susceptible of a construction that would permit recovery.” See Plourde Sand & Gravel, Co., 154 N.H. at 793. As set forth above, XYZ has not only stated a municipal estoppel claim but also proved a likelihood of success. Therefore, the Court DENIES the City’s motion to dismiss.

III. Plaintiff’s Motion for Status Conference

XYZ filed an assented-to motion for a status conference. (Index #24.) XYZ seeks to discuss how the Planning Board’s November 12 denial affects XYZ’s request for a preliminary injunction. The Court determines that the relief issued in this order extending the Phase 1 deadline renders XYZ’s motion for a status conference MOOT.

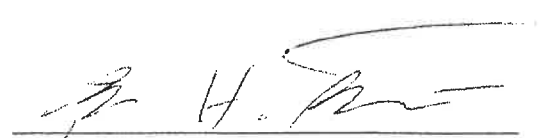
Conclusion

The Court **GRANTS** XYZ’s motion for a preliminary injunction to reinstate Building Permit #2016-00293 as of the date of this order. The Court further **GRANTS** XYZ’s motion to extend the Planning Board’s site plan approval deadlines with respect to the Phase 1 deadline by 11 months and two days from the date of the Clerk’s notice of this order. The new Phase 1 deadline will be October 27, 2025, if this Order is issued on November 25, 2024. The Court **DENIES** the City’s motion to dismiss. XYZ’s motion for a status conference is **MOOT**. This order conveys the Court’s view on the merits of

the parties' respective claims and legal arguments only to the extent necessary to decide the limited questions presented.

Recommended by:

Dated: 11/25/2024

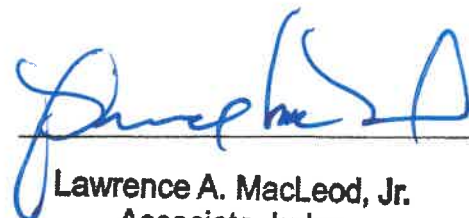

Peter H. Bornstein
Judicial Referee

Approved and so ordered.

I certify that I have read the recommendations of the Judicial Referee and agree that the Judicial Referee has applied the correct legal standard to the facts determined by the Judicial Referee.

So ordered.

Date: 11/25/2024


Lawrence A. MacLeod, Jr.
Associate Judge
New Hampshire Superior Court

Clerk's Notice of Decision
Document Sent to Parties
on 11/26/2024

STATE OF NEW HAMPSHIRE
GRAFTON COUNTY, SS.

SUPERIOR COURT

XYZ Dairy, LLC

v.

The City of Lebanon, New Hampshire

and

Calvin Hunnewell, in his official capacity as
Building Inspector for the City of Lebanon, New Hampshire

Docket No. 215-2024-CV-00311

**COMPLAINT FOR TRO AND PRELIMINARY AND PERMANENT INJUNCTION ON
THE BASIS OF MUNICIPAL ESTOPPEL**

(Jury Trial Demanded)

(Evidentiary Hearing Requested)

The Parties

1. Plaintiff XYZ Dairy, LLC (“XYZ”), is a Delaware Limited Liability Company, with a physical address of 57 Main Street, West Lebanon, New Hampshire, 03784.
2. XYZ Dairy, LLC is engaged in the business of real estate development.
3. Defendant City of Lebanon, New Hampshire (“City of Lebanon”) is a municipal corporation with a physical address of 51 North Park Street, Lebanon, New Hampshire, 03766.
4. Defendant Calvin Hunnewell (the “Building Inspector”) is the former Building Inspector of the City of Lebanon, New Hampshire, and, sued here in his official capacity, has a

physical address of 51 North Park Street, Lebanon, New Hampshire, 03766.

Jurisdiction and Venue

5. This Court has jurisdiction pursuant to N.H. RSA 491:7
6. Venue is proper in Grafton County Superior Court pursuant to N.H. RSA 507:9.

Facts

7. The City of Lebanon's Building Inspector Calvin Hunnewell issued Building Permit #2016-00293 (the "Building Permit") to XYZ on December 31, 2019. *See Exh. 1.*

8. The Building Permit authorized XYZ to develop a "[n]ew mixed use commercial building within Lot #1 of the River Park subdivision" located at 1 River Park Drive (Tax Map 44, Lot 21) in West Lebanon, New Hampshire (hereinafter "River Park"). *See id.*

9. XYZ paid the City of Lebanon \$90,492.00 for the Building Permit. *See id.*

10. The "Description of Work" on the Building Permit states: "New mixed-use commercial building within Lot #1 of the River Park subdivision." *See id.* The planned use was a complicated life sciences building with research laboratory space, requiring a multi-faceted planning and development process.

11. The Building Permit contained only the following five standard conditions of approval to be satisfied at various points during the construction process, with no stated deadlines for completion or other requirements except that "work shall not proceed until the City inspectors have approved the following stages of construction:

- (1) Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not set and the setbacks cannot be verified, the construction will not be approved or allowed to continue. Mistakes in the location of boundary lines are the sole responsibility of the owner. **DO NOT POUR CONCRETE UNTIL THE ABOVE HAS BEEN APPROVED!**
- (2) Foundation insulation, waterproofing, and drainage, prior to backfilling.
- (3) Structural rough frame, rough electrical and rough plumbing, prior to covering.

- (4) Prior to concealing any work authorized under this permit.
- (5) Final inspection for Certificate of Occupancy, to include plumbing, heating, electrical, and any other code issue or miscellaneous item as applicable to the project, including site improvements. **PLEASE SCHEDULE THIS AT LEAST 5 DAYS IN ADVANCE. A building or structure shall not be used or occupied in whole or in part until a CERTIFICATE OF OCCUPANCY has been issued.**

See id.

12. Section 105.5 of the New Hampshire Building Code, which adopts the language of the International Building Code, states, in its entirety:

“Every permit issued shall become invalid **unless the work on the site authorized by such permit is commenced** within 180 days after its issuance, or if **the work authorized on the site by such permit is suspended or abandoned** for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions for time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.”

13. In response to a written extension request from XYZ dated December 9, 2021 necessitated by the Covid-19 pandemic, the Building Inspector approved a 180-day extension of the Building Permit by memo dated January 18, 2022.

14. The Building Inspector’s January 18, 2022 approval memo acknowledged that the COVID-19 pandemic represented adequate justification for granting an extension of the Building Permit through July 17, 2022.

15. The Building Inspector’s January 18, 2022 approval memo also clarified that the Building Inspector was granting the multiple retroactive extensions required to date back to the original issuance of the Building Permit on December 31, 2019. *See Exh. 2.*

16. On May 3, 2022, XYZ submitted a written request for a second 180-day extension of the Building Permit, again citing various Covid-19-related justifications.

17. The Building Inspector granted this second 180-day extension of the Building Permit by letter dated May 27, 2022.

18. The Building Inspector’s May 27, 2022 letter again noted that the COVID-19

pandemic represented adequate justification for granting XYZ's request and extended the Building Permit through January 13, 2023. *See id.*

19. The 2022 construction season was adversely impacted by an exceptionally tight labor market, and supply chain issues were rampant due to the lingering effects of the Covid-19 pandemic. XYZ experienced months-long delays in sourcing the materials needed to proceed. XYZ was finally able to begin construction activities at River Park on November 29, 2022. *See Exh. 3 at 4.*

20. These construction activities included the staking out of the foundation area and excavation of a portion of the basement area of the planned mixed-use commercial building on Lot #1 at River Park. *See id.*

21. This excavation work was also done to locate the City's stormwater line running from catch basins on Route 10 to a ravine on the River Park site for which the city neither had an easement nor sufficient documentation as to its location or construction.

22. During the course of this excavation work, XYZ's excavation contractor encountered the City's stormwater line. *See id.*

23. The depth of the stormwater drainage pipe put the pipe in direct conflict with XYZ's foundation excavation of the planned mixed-use commercial building on Lot #1 at River Park and as such, the pipe could not simply be abandoned in place. Best construction practices called for the removal of the City's stormwater drainage pipe and accommodating the stormwater runoff through some other temporary means of stormwater management. *See Exh. 4 at ¶7.*

24. XYZ's excavation contractor also expressed significant concern that the pipe was made of clay, posing significant additional risk of crushing the pipe, and increasing both the

process required, and the cost to move it.

25. XYZ's civil engineer sought and received permission from the State of New Hampshire to install a temporary bypass line in compliance with all code and regulatory requirements, and amended XYZ's alteration of terrain permit to reflect those changes.

26. With the State's permission in place, all that remained was for the City of Lebanon to grant permission to XYZ to disconnect the stormwater drainage line and permit XYZ to make the connection to the temporary bypass line that XYZ had already installed for this purpose. The temporary line was entirely contained on XYZ's property and did not require any disturbance of state or municipal property.

27. In furtherance of this outcome, on December 9, 2022, XYZ sent a letter to Deputy City Manager David Brooks, DPW Engineer Brian Vincent, and Building Inspector Calvin Hunnewell, stating that XYZ had "commenced construction on 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293." The letter specified that "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022," but that XYZ's contractor had located and unearthed the City of Lebanon's stormwater drainage pipe and solicited feedback from the City of Lebanon as to how to handle the stormwater runoff issue on a temporary basis, as the pipe itself was considered to be municipal infrastructure. *See Exh. 5.*

28. The City of Lebanon did not respond to XYZ's December 9, 2022 letter for nearly *two months* – importantly until *after* the Building Permit's January 13, 2023 expiration date

29. Finally, on February 2, 2023, Deputy City Manager David Brooks sent an email back to XYZ addressing the stormwater management issue and providing additional information regarding options for addressing the conflict. He then added that "[w]ith respect to the

commencement of the construction on Lot 1, I understand that the Planning Department will be reaching out separately to request additional information” on that issue. *See Exh. 6.*

30. Two weeks later, on February 15, 2023, 68 days after XYZ’s December 9, 2022 initial communication on the issue, the Building Inspector sent a letter to XYZ addressing XYZ’s November 29, 2022 “commencement of construction” and attempted to unlawfully impose retroactive conditions on the Building Permit in order for the permit to “remain active.” *See Exh.*

7. Among those conditions were requirements that XYZ produce:

- “contract agreements with description of the project, the scope of work, and construction schedule”
- A “Construction schedule, including the project’s intended completion date, and start and finish times for each phase of the project;” and
- “cost estimates” and other financial information

31. The Building Inspector’s memo also added “several other steps that need to be completed prior to the resumption of construction activities (and which should have been completed prior to the commencement of any construction).” Those “steps,” however, were NOT related to the Building Permit in question, but rather to the Phase 1 Infrastructure work that was subject to a *different* permitting process and, per the written conditions of approval from the City of Lebanon, only needed to be completed prior to requesting the Certificate of Occupancy for 1 River Park. *See id.*

32. The Building Inspector, however, stated in his February 15, 2023 letter that without this additional information, I “will revoke the permit as of January 13, 2023.” This letter from the Building Inspector, however, was dated nearly a month *after* the date that he threatened to revoke the permit. *See id.*

33. By letter dated March 7, 2023, XYZ provided additional information to the Building Inspector, but also asked the Building Inspector to provide the source of the authority, either in the Building Code or in the City of Lebanon’s regulations, that supported the additional

conditions the Building Inspector was attempting to place on XYZ in order to for its Building Permit to “remain active.” *See Exh. 8.*

34. The Building Inspector never provided XYZ with any source authorizing him to impose retroactive conditions on an already issued and active building permit.

35. On March 16, 2023, the Building Inspector met with representatives of XYZ to discuss the situation.

36. The Building Inspector did not accept XYZ’s physical work on the River Park site as evidence of work having commenced under the Building Permit. Instead, the Building Inspector requested that additional evidence in the form of receipts for project materials be provided to substantiate the preparatory work that XYZ claimed to be doing. XYZ provided those receipts later that same day.

37. The Building Inspector memorialized the subject matter covered at this meeting in a March 24, 2023 letter from the Building Inspector to XYZ. *See Exh. 9.*

38. The Building Inspector’s March 24, 2023 letter to XYZ acknowledges that the following topics were discussed at the meeting:

- Determination of commencement of work
- Timing and continuance of work
- Existing stormwater situation
- Inability to complete the excavation of the building
- TF Moran designing potential solutions
- Meetings with project partners
- Project expenses and requested documentation

39. None of these eight topics discussed, involved, or established that the City was relying on any actual physical on-site construction work at River Park to establish that “work” had occurred under the Building Permit. To the contrary – all of these topics involved work preparatory to any further actual, on-site construction. *See id.*

40. The Building Inspector’s March 24, 2023 letter to XYZ concluded as follows:

“we agree that you have justified [that] the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

See id. (emphasis supplied).

41. Accordingly, in his March 24, 2023 letter to XYZ, the Building Inspector took the position that it was “the preparation work” that XYZ had “been preparing with [its] construction partners” that constituted “commencement of work” under the Building Permit.

42. The Building Inspector acted within the scope of his authority in making such a finding as it was his duty to administrate building permits in the City of Lebanon – including XYZ’s Building Permit.

43. In the very next paragraph of his March 24, 2023 letter to XYZ, however, the Building Inspector re-introduced the unlawful conditions that he again claimed “need to be completed in order to maintain activation of the building permit.” These unlawful conditions included:

- “Design of the storm water solution”
- “Confirmation that the registered design professionals are in your hire and ready to proceed
- “contract agreements with description of the project, the scope of work, and construction schedule
- Construction schedule, including the project’s intended completion date and start and finish times for each phase of the project
- “Scope of work, including which contractors and subcontractors are responsible for each component of work,” and
- “Cost estimates”

See id.

44. The Building Inspector’s March 24, 2023 letter contained no reference to the authority permitting him to impose these additional retroactive requirements on XYZ after he had already concluded that the preparatory work that XYZ had been engaging in with its construction partners was sufficient to constitute the “commencement of work” under the

Building Permit.

45. By email dated April 10, 2023, XYZ again sought a response from the Building Inspector seeking clarity about (1) the date that the Building Inspector was using to determine the “commencement of work” under the Building Permit; (2) the need for the City’s permission to make the bypass line connection; (3) the re-started work on the Civil Engineering; and (4) the legal basis for the Building Inspector’s demand for this additional information as a condition of maintaining the Building Permit’s “activation.” *See Exh. 10.*

46. The Building Inspector did not respond to XYZ’s April 10, 2023 email.

47. XYZ was concerned, given the lack of a response from the Building Inspector, the four months of uncertainty that had already transpired, and the Building Inspector’s ongoing attempt to improperly impose retroactive conditions on the issued and active Building Permit, that the Building Inspector would again attempt to revoke the Building Permit.

48. As such, on April 25, 2023, XYZ took an administrative appeal of the Building Inspector’s retroactive imposition of these additional requirements on its Building Permit to the City of Lebanon’s Building Code Board of Appeals (the “BCBA”) (Docket #BCBA2023-01). XYZ took this action in order to (1) protect its investment-backed interests; (2) get clarification as to XYZ’s obligation to comply with these requirements; and (3) determine the source of authority, if any, for the Building Inspector’s imposition of these requirements. *See Exh. 11.*

49. The BCBA held a hearing on July 11, 2023 and *dismissed* XYZ’s appeal, holding that the Building Inspector’s March 24, 2023 letter to XYZ imposing the additional conditions on XYZ did not constitute an official “administrative decision.” In so doing, the BCBA concluded that the Building Permit remained in full force and effect without the additional conditions. *See Exh. 12.*

50. Immediately following the BCBA's July 11, 2023 decision, XYZ re-started its development activities in furtherance of the work authorized by the Building Permit.

51. XYZ memorialized the re-initiation of these efforts in an August 3, 2023 letter to the Building Inspector. *See Exh. 13.*

52. XYZ's actions included (1) reengaging with XYZ's contractors, architects, engineers, and consultants; (2) meeting with officials from the City of Lebanon to arrive at a plan with respect to the drainage pipe; and (3) taking steps to adequately secure the River Park construction site by expanding the construction fencing on the site. *See id.; Exh. 14.*

53. In parallel with these efforts, XYZ re-started negotiations with prospective tenants to obtain leasing commitments for the completed building. *See Exh. 15 (names redacted).*

54. The Building Inspector did not respond to XYZ's August 3, 2023 letter.

55. On August 17, 2023, XYZ held an on-site meeting with engineers from the City of Lebanon's Department of Public Works with respect to the connection of the temporary stormwater line to allow work on the site to continue – reflecting that XYZ was actively engaged in work on the site. The City of Lebanon's Department of Public Works engineers had no issues with XYZ's proposed temporary solution, but XYZ could never get permission to proceed with the temporary solution from officials in the City of Lebanon's Planning and Development Department. These delays, and the City of Lebanon's moratorium on winter excavation, are what pushed XYZ's commencement of construction out of the 2023 construction season.

56. On January 5, 2024, XYZ provided another written update to the Building Inspector, documenting that its contracted architects, Elkus Manfredi, and its General Contractor, Engleberth Construction, were actively and diligently working on the plans and specifications for the commencement of construction activities in the Spring of 2024 as soon as the City's seasonal

excavation moratorium was lifted. *See Exh. 16.*

57. Then, despite having heard nothing from the Building Inspector since his March 24, 2023 letter, and despite the Building Inspector's failure to respond to multiple communications from representatives of XYZ, on February 1, 2024, the Building Inspector sent a letter to XYZ stating that:

"It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid."

See Exh. 2 at 1.

58. In the 180-day period preceding the Building Inspector's February 1, 2024 determination that the Building Permit had expired, XYZ had been actively engaged in additional preparatory activities for the River Park site. In connection with those preparations, XYZ spent \$221,838 in direct costs for the site and entered into contractual obligations to pay another \$652,303 in professional and contracting fees. *See Exh. 17 (Affidavit of David Clem); Exh. 18 (Findings of Fact of City of Lebanon Building Code Board of Appeals at Finding of Fact #8)*

59. During that same 180-day period, XYZ also formally re-engaged three subject-specific engineering firms and one architectural firm in an effort to move the River Park project forward in the Spring of 2024. *See id.*

60. The amount of money XYZ invested in the River Park project in the 180 days immediately preceding the Building Inspector's revocation of the Building Permit equates to more than *nine times* the original cost of the Building Permit and more than *seven percent* of the original \$12,296,100 budget for the entire 1 River Park project. *See id.*

61. This decision by the Building Inspector was totally inconsistent with the position taken in his March 24, 2023 letter that preparatory work undertaken within a 180-day window

was sufficient to maintain an active Building Permit.

62. The Building Inspector's unexpected decision required XYZ to once again suspend the work of its contractors, architects, engineers, and consultants in order to protect the investment-backed interests of its investors. The timing of this appeal also jeopardized XYZ's ability to move forward with the River Park project during the 2024 construction season. *See Exh. 19 at ¶11.*

63. The Building Inspector's decision also interfered with XYZ's leasing activity, since the disruption of XYZ's construction activities affected XYZ's ability to project the completion of the space for lease, jeopardizing time-sensitive tenant needs and expectations, and the overall financial viability of the River Park project. *See id.*

64. XYZ timely filed its administrative appeal of the Building Inspector's decision with the City of Lebanon's BCBA pursuant to NH RSA 674:34 on February 29, 2024. *See Exh. 20.*

65. In an effort to mitigate its rapidly accruing financial damages caused by the Building Inspector's actions, however, XYZ, through XYZ's prior counsel contacted the Building Inspector and Planning Director via the City's attorney and asked the Building Inspector to either rescind his February 1, 2024 decision, or to permit work to continue under the Building Permit on a temporary basis. The Building Inspector refused. *See Exh. 19 at ¶13.*

66. The City of Lebanon BCBA held hearings on April 1, 2024 and April 18, 2024. The Board heard testimony from XYZ representatives David Clem and Chet Clem, and legal argument from XYZ's prior counsel. The Board also heard legal argument from the City's attorney, and from the Building Inspector himself. All parties were invited to submit additional briefing and any information that they wanted to provide to refute, rebut, or clarify any

arguments.

67. On May 17, 2024, the City of Lebanon BCBA issued its written decision, **REVERSING** the decision of the Building Inspector that XYZ’s Building Permit had expired on February 1, 2024 due to inactivity on the site, and granted XYZ’s request to reinstate the Building Permit. *See Exh. 18.*

68. In its written decision, the City of Lebanon BCBA made several factual findings relevant to the claim at Bar. First, the BCBA found that:

“[t]he development of a new building on a previously undeveloped site is a complex, multi-part endeavor. This endeavor requires engineering, architectural planning, multi-agency coordination, materials procurement, and contractor scheduling. Although not unusual for any major construction project, these complex activities are distinguishable from common, single-action activities that also require permits, such as a minor residential electrical upgrade or heating furnace installation.”

See id. at ¶5 (emphasis added).

69. Second, the BCBA found that:

“the Building Official issued a letter to XYZ on March 24, 2023. That letter identified 8 bullet-pointed topics discussed on March 16, 2023. None of the eight topics discussed involved actual completed physical work at the building site.”

See id. at ¶6. Finally, the BCBA observed, the written determination of the Building Inspector in his March 24, 2023 letter, after reviewing those 8 bullet-pointed topics, was that:

“... we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

making it clear that the Building Inspector had previously considered the engineering, architectural planning, multi-agency coordination, materials procurement, and contractor scheduling that XYZ had been engaged to constitute “work” sufficient to keep its Building Permit active. *See id.*

70. Third, the BCBA found that the City *conceded* ALL of the following points in the hearings:

- a. “Section 105.5 does not set a high bar for ‘work’
- b. That it is “obvious that there are aspects of construction projects that are supported by offsite operations and preparation to perform”
- c. That “‘one day of work every 179’ would be sufficient to keep the permit active”
- d. That the “City believes that it ‘must do what the law says even when it makes no sense’”
- e. That “there are items of work that could occur offsite that the City would accept as work”
- f. That Section 105.5 of the IBC “does not purport to regulate the intensity or pace of work progress”

See id. at ¶9.

71. Amazingly, at 4:30pm on June 5, 2024, the very last day of the appeal period, the City of Lebanon appealed *its own BCBA’s decision* to the State Building Code Review Board (the “New Hampshire BCRB”). *See Exh. 21.*

72. The City of Lebanon did not provide its BCBA with independent counsel to defend its decision at the New Hampshire BCRB.

73. As such, XYZ was required to intervene in the proceeding to defend its rights under the Building Permit that the City of Lebanon’s BCBA had reinstated.

74. The City of Lebanon’s appeal from its own Building Code Board of Appeals was based on the interpretation of the word “work” in the New Hampshire Building Code – specifically, what actions qualify as “work” sufficient to keep an issued building permit active under Section 105.5 of the International Building Code as adopted by the New Hampshire Building Code.

75. As the New Hampshire BCRB observed in its Final Order, *see Exh. 22*, an ordinary reading of the relevant code sections provides a member of the public with no clarity on the subject:

“[s]ubsection 105.5 uses the term ‘work’ three times. And Section 105, Permits, as a whole uses the term ‘work’ nineteen times. Yet the term is undefined in this section and throughout the Code.”

76. The New Hampshire BCRB’s decision thus, would turn on a question of statutory construction – specifically, whether the Lebanon BCBA **incorrectly interpreted** the language of Section 105.5 of the IBC – which states, in its entirety:

“Every permit issued shall become invalid **unless the work on the site authorized by such permit is commenced** within 180 days after its issuance, or if **the work authorized on the site by such permit is suspended or abandoned** for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions for time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.”

(emphasis added). *See id.*

77. No part of the IBC, the New Hampshire Building Code, or any other provision of the City of Lebanon’s ordinances, rules, or regulations sets forth definitions or standards for what constitutes “work,” or the “commencement,” “abandonment” or “suspension” of such work under a building permit.

78. In the absence of specific provisions in the IBC, the New Hampshire Building Code, or the City of Lebanon’s Code of Ordinances, New Hampshire’s well-established common law rules of statutory construction applied. *See Trottier v. Lebanon*, 117 N.H. 148, 150 (1977); *see also* Loughlin, O., 15 New Hampshire Practice, Land Use Planning and Zoning (4th Ed.) § 6.01.

79. Pursuant to New Hampshire’s rules of statutory construction, “words and phrases must be given their ordinary meaning unless it appears from the context that a different meaning was intended. *Greenland v. Bunker*, 118 N.H. 783, 785 (1978). “Doubt about the meaning of an ordinance is determined **in accordance with the intent of the ... body that enacted it**, and any ambiguity is to be resolved by reference to the apparent object of the provision.” *Id. citing Storms v. Eaton*, 131 N.H. 50 (1988)(emphasis added).

80. Thus, in undertaking a proper legal analysis of this question, the New Hampshire

BCRB first determined the *object* of Section 105.5 of the IBC. As the City of Lebanon Building Code Board of Appeals had correctly found, the intent of Section 105.5 of the IBC is “primarily administrative” in nature. *See Exh. 18 (Ruling of Law #1)*

81. The City of Lebanon’s Director of Planning and Development admitted in testimony before the City of Lebanon’s BCBA that the Planning and Development Office has to contend with how to dispose of the “voluminous numbers of permits that are applied for and never acted upon” – in other words, to administratively dispose of those permits where *no work at all* is undertaken in pursuit of the permit within the 180-day timeframe. *That*, as the City of Lebanon’s BCBA concluded, is the object of Section 105.5.

82. There is nothing in Section 105.5, however, to suggest that its object is to regulate the *pace* of construction pursuant to a building permit where activities in pursuit of that permit, whatever their pace, have actually been undertaken by the permit holder within the 180-day timeframe.

83. Instead, as the City of Lebanon BCBA concluded:

“It is possible that one developer may believe it to be economically advantageous to hyper-accelerate a project and complete a project quickly, paying substantial overtime and expedite fees in doing so. Conversely, it is also possible that a different developer could elect to proceed at a more leisurely pace.

See Exh. 18 (Ruling of Law #1)

84. Pursuant to New Hampshire’s rules of statutory construction, then, “words and phrases must be given their ordinary meaning unless it appears from the context that a different meaning was intended. *Bunker*, 118 N.H. at 785. The plain and ordinary meaning of the word “work” is broad. According to Black’s Law Dictionary, “work” is “physical and mental exertion to attain an end.” *Black’s Law Dictionary* (11th Ed. 2019), or as the City of Lebanon BCBA defined it, “effort, exertion, or activity.” *See Exh. 18 (“Ruling of Law #4).*

85. In seeking to develop a reasonable interpretation of “work” under Section 105.5, the City of Lebanon BCBA, as New Hampshire law directed them to do, looked at the *purpose* for which the Building Permit was issued. *See Bunker*, 118 N.H. at 785 (in defining words, a Board should refer to the apparent “object” of the provision). The approved “Description of Work” in the Building Permit states that the Building Permit is for a “New mixed-use commercial building within Lot #1 of the River Park Subdivision.” Therefore, the BCBA concluded, when the project is completed, the resulting “New mixed-use commercial building” would be the product of the “effort, exertion, or activity” required to bring it about. Based on this working definition, the BCBA stated, a reasonable interpretation of the “work” contemplated by Section 105.5 would be “any effort, exertion, or activity directed to accomplish the “New mixed-use commercial building.” *See Exh. 18 (“Ruling of Law #4).*

86. Importantly, the Building Inspector’s March 24, 2023 letter to XYZ completely *supports* the City of Lebanon BCBA’s interpretation of Section 105.5.

87. In that March 24, 2023 letter, the Building Inspector interpreted the word “work” in Section 105.5, and acknowledged to XYZ that “the **preparation work** you have been preparing with your construction partners **constitutes commencement of work** at 1 River Park Drive in accordance with the City of Lebanon Building Permit #2016-00293.” (emphasis added).

88. As the City of Lebanon’s BCBA properly observed, in order not to be arbitrary and capricious, the decisions of the building inspector must either adhere to precedent or state a compelling and valid reason why a different result must be reached on essentially the same set of facts. Here, since the Building Inspector in this case had already concluded that XYZ’s “preparation work” constituted “work” under Section 105.5, XYZ’s later, nearly identical preparatory work, which occurred in the 180-day window prior to the Building Inspector

declaring the Building Permit expired, must *also* count as “work” under Section 105.5. As the City of Lebanon BCBA determined in its May 6, 2024 decision:

“we hold that since “work” as previously found by the City in the March 2023 letter includes “preparation work”, similar “preparation work” must also count as work in the absence of a valid justification of a different approach.”

See Exh. 18 (“Ruling of Law #2).

89. There is nothing obvious in the language of Section 105.5 that required XYZ to engage in specific, physical, on-site construction activities in order to keep its Building Permit from expiring. The approved “Description of Work” in the Building Permit simply states that the Building Permit is for a “New mixed-use commercial building within Lot #1 of the River Park Subdivision.” The City of Lebanon BCBA found that the “work” contemplated by that Building Permit was any action taken that advances the project toward the end result of the creation of that “New mixed-use commercial building.” XYZ had assumed the same to be true because the Building Inspector had so concluded in his March 24, 2023 letter. There was no way for XYZ to know or learn otherwise.

90. As noted above, in the 180-day period preceding the Building Inspector’s February 1, 2024 determination that the Building Permit had expired, XYZ incurred direct costs relative to the development of the site totaling \$221,838, and incurred contractual obligations totaling an additional \$652,303, for a total financial outlay during that six-month period of \$874,141.

91. In that same six-month period, XYZ also contractually engaged three subject-specific engineering firms and one architectural firm in an effort to move the River Park project forward.

92. The amount of money XYZ invested in the River Park project during this six-

month period immediately prior to the Building Inspector revoking the Building Permit for “inactivity” equates to more than nine times the original cost of the permit and constitutes more than seven percent of the original \$12,296,100 total estimated cost of construction of the entire 1 River Park project.

93. XYZ also engaged in inter-departmental and inter-agency communication and activity to advance the River Park project during these 180 days.

94. It defies credulity to suggest that all of these activities undertaken by XYZ in furtherance of the River Park project did not constitute “work” under Section 105.5 sufficient to maintain its Building Permit as active.

95. The City of Lebanon BCBA found, in its review of the record of this case, that the City had conceded this point several times, and had recognized that there are multiple off-site activities that could constitute “work” under Section 105.5. *See Exh. 18 (Finding of Fact #9)*

96. The New Hampshire BCRB disagreed with the City of Lebanon BCBA’s analysis of Section 105.5, and **REVERSED** the BCBA’s decision, holding that “the BCBA incorrectly interpreted the word “work” given the context and use of the word throughout Section 105 of the Code.

97. As the New Hampshire BCRB stated:

the term “work” refers to activities that are regulated by the Code. The activities range from constructive acts to destructive acts and vary from large to small. But it does not include all efforts, exertions, or activities directed toward an ultimate end result. Nor does the term “work” encompass efforts and activities that occur beyond the identified and definitively located site listed in the permit and where the permit must be posted... the BCBA interpreted the term “work” as used within Subsection 105.5 to encompass more than physical activities and favorably cited a North Carolina decision holding the word “work” includes the mental effort to overcome obstacles... We conclude this interpretation of “work” goes too far. We find the meaning of the term “work” within Section 105 to be more limited.... Qualifying activities are those that are authorized by the permit

and occur at the identified location, i.e., physical acts that take place at the physical site where the permit must be posted.

See Exh. 22 at 4.

98. The New Hampshire BCRB, however, recognized the fact that the City of Lebanon BCBA had based its interpretation and ultimate holding, at least in part, on the fact that the Building Inspector and other City Officials had made representations to XYZ about what qualified as “work” in the earlier stages of the River Park Project. The New Hampshire BCRB recognized that:

Because the City previously communicated in a March 2023 letter to XYZ that “preparation work” was sufficient to meet the requirements of “work” under Subsection 105.t, the BCBA held similar “preparation work” must also suffice as “work” in 2024. It is beyond our jurisdiction to opine on whether there are equitable claims against the City of Lebanon for representations to XYZ. Here, our authority is limited to reviewing the interpretation of the text of the Code by the BCBA. And it is beyond our authority to waive or grant variances to requirements of the code. Accordingly, we do [not] review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials concerning the types of conduct that would qualify as work under Subsection 105.5.

See Exh. 22 at 5.

99. As the New Hampshire BCRB decision demonstrates, this is *not* a case where XYZ could have simply looked up Section 105 of the New Hampshire Building Code and determined that the Building Inspector had given XYZ an improper reading of that Code section in his March 24, 2023 letter. Here, as already established, neither the New Hampshire Building Code, nor the International Building Code defines what “work” or the “commencement” or “suspension,” or “abandonment” of “work” is. No local ordinance provision provides any greater clarity. And the only recorded judicial decision interpreting Section 105.5’s definition of

“work” found that a local permit had *not* expired simply because there had not been on-site work. See *Morris Communications Corp. v. City of Bessemer Zoning Board of Adjustment*, 365 N.C. 152, 157 (2011).

100. In the *Morris Communications* case, the North Carolina Supreme Court held that the fact that the zoning administrator did not observe construction-like activities on the site was not dispositive, because the term “work” had a broader meaning than mere visible evidence of on-site construction. The City of Lebanon’s BCBA seized on this, observing:

“[a]lthough out-of-state rulings have no precedential value over us, the Board references the highly informative ruling from the North Carolina Supreme Court in *Morris Communs. Corp v City of Bessemer*... ruling in favor of the landowner who argued that “work” encompasses the border range of activities necessary [to complete a project]... and Webster’s Dictionary defines ‘work’ to include ‘sustained physical or mental effort to overcome obstacles and achieve an objective or result...’ Applying this definition to the Bessemer City ordinance, the term “work” has a broader meaning than mere visible evidence of construction.”

101. Here, XYZ has never demonstrated, either by any overt act, or by any failure to act, any intention *whatsoever* to stop or abandon or suspend “work” on the River Park project for 180 days. To the contrary, XYZ has, at all times, continuously, diligently, and in good faith pursued completion of the “work” authorized by the Building Permit.

102. XYZ completed two Code Compliance reports and has made all necessary updates and adjustments to its building plans to bring those plans into full compliance with the updated IBC and submitted those changes to the City of Lebanon. XYZ’s building plans are fully up to date with the latest code requirements, and its development of River Park should be allowed to continue under the existing Building Permit.

COUNT I MUNICIPAL ESTOPPEL

103. Plaintiff restates and incorporate herein by reference all of the preceding

paragraphs as if fully set forth herein.

104. Municipal corporations, like natural persons, are subject to estoppel. *Concord v. Tompkins*, 124 N.H. 463, 469 (1984).

105. Here, the City of Lebanon Building Inspector, Calvin Hunnewell, made an affirmative written representation in his March 24, 2023 letter to XYZ that “... we agree that you have justified that the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

106. The Building Inspector was acting within the scope of his authority in making this determination, as it was his duty to both interpret and enforce the NH Building Code in the City of Lebanon.

107. The Building Inspector’s representation was made, in writing, in a March 24, 2023 letter to XYZ.

108. Not only was XYZ ignorant of the truth of the matter – XYZ had *absolutely no way of knowing or of possibly discovering* that “preparatory work” did not actually constitute work under Section 105.5 of the Building Code. “Work” is not defined anywhere in the Building Code, or anywhere else in the City of Lebanon’s ordinances – and the only recorded legal case in the county interpreting Section 105.5 interpreted “work” the way that both XYZ and the City of Lebanon BCBA did – to include offsite preparatory work.

109. The Building Inspector made this representation to XYZ with the intent that XYZ would rely on his ruling that the Building Permit was still valid. The Building Inspector’s March 24, 2023 letter to XYZ makes that abundantly clear.

110. Given the interpretation of “work” that the Building Inspector made in his March

24, 2023 letter to XYZ, XYZ acted reasonably in subsequently relying on that interpretation later in 2023 and in the beginning of 2024, in assuming that the continuing preparatory work XYZ was engaged in - investing in professional contracts, purchasing materials, engaging with City officials to design a workaround for the drainage pipe, and engaging in all manner of preparatory work in anticipation of the Spring 2024 construction season – was sufficient “work” to keep the Building Permit active.

111. XYZ was induced by the Building Inspector’s March 24, 2023 interpretation to rely on that interpretation, and did so, and XYZ has been financially damaged as a result of that reliance.

112. The City of Lebanon has conceded that “there are aspects of construction projects that are supported by offsite operations and preparation to perform.” *See Exh. 18 (Finding of Fact #9)*.

113. The City of Lebanon has also conceded that “there are items of work that could occur offsite that the City would accept as work.” *See id.*

114. Finally, the City of Lebanon has conceded that Section 105.5 of the IBC “does not purport to regulate the intensity or pace of work progress. *See id.*

WHEREFORE, XYZ Dairy, LLC respectfully requests that this Honorable Court:

- A. Schedule an Evidentiary Hearing on the Plaintiff’s Request for a Preliminary Injunction if the Court deems it necessary prior to providing the relief requested; and
- B. Enter a temporary restraining order, and a preliminary and permanent

injunction reinstating the Building Permit to allow XYZ to continue to timely develop the River Park project and enter into leasing arrangements with prospective tenants; and

- C. Enter judgment against the Defendants, City of Lebanon Building Inspector Calvin Hunnewell, and the City of Lebanon; and
- D. Award XYZ their reasonable attorneys' fees incurred in taking this action – which should never have been required as XYZ was forced to defend a clearly defined right; and
- E. Enter such other and further relief as this Court deems just and proper under the circumstances of this case.

Respectfully submitted,
XYZ DAIRY, LLC

By and through its attorneys,
SHEEHAN PHINNEY, P.A.

Date: September 13, 2024

/s/ Robert H. Miller
Robert H. Miller, Esquire
1000 Elm Street, 17th Floor
Manchester, New Hampshire 03105-3701
Telephone: 603.627.8145
Email: rmiller@sheehan.com

EXHIBIT 1

CITY OF LEBANON
Building Permit

Lebanon, NH 03766
603-448-1524
www.lebanonNH.gov

Permit Number
2016-00293

Date of Issue
12/31/2019

Owner: XYZ DAIRY LLC
Applicant: XYZ DAIRY LLC

Location of Work: 173 N MAIN ST/WEST LEBANON
(No. and Street) (Unit or Building)

Description of Work: New mixed use commercial building within LOT #1 of the River Park subdivision

ZONING DATA: District: R3 - R3 Map/Lot: 44-3
CONTRACTOR: CONSIGLI CONSTRUCTION

REMARKS:

**THIS PERMIT IS BEING ISSUED WITH THE FOLLOWING CONDITIONS:
SEE ATTACHED CONDITIONS LIST**

**WORK SHALL NOT PROCEED UNTIL THE CITY INSPECTORS HAVE APPROVED THE FOLLOWING STAGES OF
CONSTRUCTION:**

1. Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not there, the setback cannot be verified, the construction will not be approved or allowed to continue. Mistake in the location of boundary lines are the sole responsibility of the owner. **DO NOT POUR CONCRETE UNTIL THE ABOVE HAS BEEN APPROVED!**
2. Foundation insulation, water proofing and drainage, prior to backfilling.
3. Structural rough frame, rough electrical and rough plumbing, prior to covering.
4. Prior to concealing any work authorized under this permit.
5. Final Inspection for Certificate of Occupancy, to include plumbing, heating, electrical, and any other code issue or miscellaneous item as applicable to the project including site improvements. **PLEASE SCHEDULE THIS AT LEAST 5 DAYS IN ADVANCE.**

A building or structure shall not be used or occupied in whole or in part until a **CERTIFICATE OF OCCUPANCY** has been issued.

APPROVED PLANS MUST BE KEPT AT THE JOB SITE – THIS CARD MUST BE KEPT UNTIL POSTED UNTIL FINAL INSPECTIONS HAVE BEEN COMPLETED

Permit Holder: XYZ DAIRY, LLC

(Taking Responsibility for the work)

Company/Affiliation: XYZ DAIRY, LLC

Job Site Phone Number:

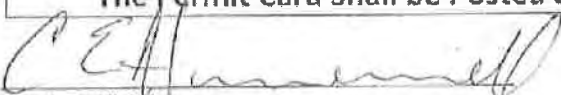
Constr Cost: \$12,296,100.00

Permit Fee: \$90,492.00

Check No.:

Cash: \$0.00

The Permit Card Shall be Posted and Visible From the Street During Construction


Code Official

12/31/2019
Date

CONDITIONS LIST FOR PERMIT 2016-293 (44-3)

Calvin Hunnewell, Building Inspector, 603 448 1457 x1446

B1. The plans show the foundation drain discharging into leaching catch basin LCB-13. The foundation engineering report recommends the basement space be protected against groundwater intrusion with the installation of a perimeter and under slab drainage systems. The drainage systems are recommended to drain to a storm drain which is not subject to surcharge. The code requires the subsoil drainage system to discharge into an approved location. The code requires buildings subject to backwater of the subsoil drain be protected by an accessible located backwater valve. Additionally, subsoil sump and pumping systems may be required. Request additional engineering documentation be provided demonstrating LCB-13 will not subject the foundation drainage systems to a surcharge/backwater. 2009 IBC 1805.4, IPC Sections 1111, 1112 & 1113

B2. The code requires accessible routes within the site be provided from public transportation stops; accessible parking; accessible passenger loading zones; and public streets or sidewalks to the accessible building entrance served. Request accessible routes be identified on the site plans with sufficient detail to demonstrate compliance with the accessibility standards. 2009 IBC Sec 1104.1

B3. Accessible parking spaces are required to be located on the shortest accessible route of travel from the adjacent access aisle to the accessible building entrance. Buildings with multiple accessible entrances with adjacent parking, requires accessible parking to be dispersed and located near the accessible entrances. The submitted plans do indicate some disbursement of accessible parking; however, they are not located on the shortest accessible route to the building entrance. The submitted plans show an excessive amount of accessible parking for lot 1 and an insufficient amount of parking for Lot 2. Request clarification be provided explaining how compliance with the accessibility standards is being achieved. 2009 IBC Section 1106 & 1106.6

B4. The submitted plans and documentation provided show a proposed new building at 173 North Main Street, West Lebanon, NH. According to the submitted documents the building is 3 story with a full basement approximately 45 feet in height with a total building area of approximately 62,185 square feet. The aggregate basement area is approximately 14,180 square feet, first floor area is approximately 14,084 square feet, second floor area is approximately 15,769 square feet, third floor area is approximately 15,499 square feet and the penthouse approximately 2,653 square feet.

B5. The building review will be considered as a non-separated mixed-use building of Storage Group S-1 Moderate-hazard Occupancy, Mercantile Group M, Assembly Group A-2 and Business Group B.

B6. The submitted plans and documents indicate that a sprinkler system is installed throughout the building in accordance with NFPA 13. The building is indicated to have a fire protective signaling system in accordance with NFPA 72. The type of construction indicated for the building is Type IIB.

B7. Project manual section 014320 Part 3.1-C-4-b., notes in part that the testing agency shall include submission of reports to the following: Owner, Architect, Structural Engineer, General Contractor and Inspectional Services. Submission of reports required to be distributed as part of the Statement of Special Inspections include submission to the Building Official. 2009 IBC Sections 1704.1.2 & 1705

B8. The submitted Statement of Structural Special Inspections dated 12/18/15 does not indicate the independent testing agency. Request the approved agency and or agencies performing the inspections be identified, in place of the independent testing agency (TBD), as part of the Statement of Structural Special Inspections.

B9. Drawing A021 indicates the basement requires one exit. The code requires a minimum 2 exits for the basement space. Request plans indicate appropriate required number of exits. 2009 IBC Section 1021

B10. Drawing A025 does not indicate the roof required number of exits. The code requires a minimum 2 exits for the roof space. Request plans indicate appropriate required number of exits. 2009 IBC Section 1021

- B11. Clarify support of shafts and bottom enclosure. Shafts are required to be supported by fire rating consistent with shaft rating.
- B12. Drawing A021 indicates the basement requires one exit. The code requires a minimum 2 exits for the basement space. Request plans indicate appropriate required number of exits. 2009 IBC Sections 1015.1 & 1021
- B13. Drawing A025 does not indicate the number of required exits on the roof. The code requires a minimum 2 exits for the roof space. Request plans indicate appropriate required number of exits. 2009 IBC Section 1021
- B14. Request additional details be provided for shaft continuity and top and bottom enclosure. 2009 IBC Section 708
- B15. Drawings A101 indicate the two hour exit stairways exiting through corridor 111 and lobby 101 on the main level. The drawings do not clearly indicate the fire rating of corridor 111 the exit passageway. The code required the exit passageway be protected with the same rating as the exit stairway. The code requires the entire area of the level of exit discharge be separated from the area below by construction conforming to the fire-resistance rating for the exit enclosure. Request clarification be provided detailing the design intent for exit continuity, termination and discharge. 2009 IBC Section 1020 through 1023
- B16. The life safety drawings indicate fire rated assemblies for some walls, detail drawings do not specify fire rated assemblies consistent with the life safety drawings. Request plans be revised for consistency.
- B17. Prior to installation of fire safety and smoke seal at the void created at the intersection of exterior wall assembly and floor assembly approval of the systems is required. 2009 IBC Section 714.4

Duane Egner, Fire Inspector, 603 488 8811

- F1. Fire alarm plans need to be submitted that include system detection in all common areas and in the means of egress as required by Local Ordinance.
- F2. Per City of Lebanon Fire Prevention Ordinance 72-10(E), carbon monoxide detection shall be installed in the vicinity of all propane fueled heating appliances.
- F3. Per the 2015 Edition of the International Fire Code, Appendix J, a building information sign shall be installed on a wall surface at the interior of the main entrance to the building.
- F4. Per Lebanon Fire Department requirements, three (3) sets of automatic fire sprinkler plans shall be submitted for review. The design of the automatic fire sprinkler system shall be based upon the 2016 Edition of NFPA 13 and shall include provisions for the removal of trapped air from the system and be designed with a minimum safety margin of 10 psi. Floor control valves shall also be provided.
- F5. Per the Lebanon Fire Department Rules & Regulations, the fire department connection for the automatic fire sprinkler system shall be a four (4) inch Stortz type connection with a 30-degree downturned elbow and shall be located near the main entrance to the building.
- F6. Per City of Lebanon Fire Prevention Ordinance 72-10(G), the fire alarm system for the building shall be connected to the municipal fire alarm system using a Gamewell Master Box. The master box shall be located adjacent to the main entrance to the building and have a red jelly jar light above the box.
- F7. Per the 2015 International Fire Code Section 506.1, a Knox box is required for the building. The Knox box shall be located adjacent to the master box at the main entrance of the building. A copy of all master keys to the building and at least one elevator key shall be placed in the Knox Box.
- F8. Per the 2015 International Fire Code, Section 906.1, fire extinguishers are required for the building. The fire extinguishers shall have a minimum of a 2A rating and shall be located so that they are reached within 75 feet of travel. An architect or engineer shall determine the proper locations of the fire extinguishers.
- F9. Per the 2015 International Fire Code, Section 3313.1, at least one standpipe shall be installed in a stair tower during the construction phase. This standpipe is allowed to be dry with a temporary fire department connection.

F10. All above ground propane gas lines shall be either painted yellow or have identification stickers/labels permanently affixed to the piping for identification by emergency responders.

F11. Prior to the start of construction, the general contractor shall meet with the Lebanon Fire Department to discuss the requirements of the 2015 International Fire Code, Chapter 33, Fire Safety During Construction and Demolition.

F12. The building shall be a no smoking site throughout the construction process. Approved smoking locations shall be determined with the general contractor and approved smoking receptacles shall be provided.

F13. Per the 2015 International Fire Code, Section 3304.2.3, where rubbish containers with a capacity of greater than 40 gallons are used inside of the building during construction, they shall be of non-combustible material with a tightfitting lid.

F14. An alarm user permit for the building shall be completed and all fees paid to the City of Lebanon Dispatch Center prior to acceptance testing of any fire protection system.

F15. A minimum of two (2) weeks' notice shall be provided for connection of the master box to the municipal fire alarm system.

F16. Prior to issuing any type of certificate of occupancy, all means of egress shall be installed and unobstructed and all fire protection systems shall be in a normal operating condition.

F17. Sheet A101, Corridor 111 and Elevator Lobby 101 shows a one-hour fire resistance rated assembly. Per the 2016 Edition of NFPA 101:7.2.6.3 Stair Discharge. An exit passageway that serves as a discharge from a stair enclosure shall have not less than the same fire resistance rating and opening protective fire protection rating as those required for the stair enclosure. In Elevator Lobby 101, there is section of wall between Toilet Rooms 102 & 104 that is shared with the lobby that does not have any rating shown.

F18. Per the 2016 Edition of NFPA 101:7.2.5.5.8 Emergency Exit Symbol. An emergency exit symbol with a luminescent background shall be applied on a door serving the exit enclosure that swing out from the enclosure in the direction of egress travel. The emergency exit symbol shall also meet both of the following requirements: (1) The emergency exit symbol shall meet the requirements of NFPA 170, Standard for Fire Safety and Emergency Symbols. (2) The emergency exit symbol applied on the door shall be a minimum of 4 in. (100 mm) in height and shall be applied on the door, centered horizontally, with the top of the symbol not higher than 18 in. (455 mm) above the finished floor.

F19. Sheet A101 shows the symbol for a 2-hour rated enclosure around the shafts for supply and return risers however the wall type listed is for a 1-hour assembly (1A3) or a non-rated assembly (A5) as shown on Sheet A005. This condition exists on all floors, if wall partition type A5 is a rated partition, please revise and resubmit.

Win Spencer, Electrical Inspector 603 448 1457 x 1448

E1. Meet with the electrical contractor when one is picked to go over the scheduling of inspections.

E2. Need to provide details on the electrical service (location of the pad transformer if there is one) and the location of the service lateral to the building.

David Brooks, Planning Director, 603 448 1457 x 1472

PLN1. Condition #6 of the original October 24, 2011 Planning Board Site Plan approval required that "The applicant shall be required to have at least one fire hydrant operational within the development prior to the issuance of any Building Permit for structural improvements (excluding the building foundation) to the satisfaction of the Lebanon Fire Department." This requirement was repeated as Condition #6 of the Planning Board's September 9, 2019 Site Plan Amendment for the River Park project. On November 8, 2016, the Fire Department issued a letter to the applicant (attached) indicating that the "installation of the fire hydrant proposed for the new Crafts Avenue cul-de-sac would meet the needs of the Lebanon Fire Department." The applicant shall be required to comply with all requirements of the Fire Department letter and with Condition #6 of the Planning Board's 9/9/19 approval prior to the commencement of structural improvements on Lot 1, excluding the building foundation.

EXHIBIT 2



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

February 1, 2024

Sent Via Certified Mail, copy via E-Mail (chet@lymeproperties.com)

Chet Clem

XYZ Dairy, LLC / Lyme Properties

57 Main Street

West Lebanon, NH 03784

MAR 1 2024

Re: Expiration of 1 River Park Drive Building Permit #2016-00293

Dear Mr. Clem,

Please be advised that Building Permit #2016-00293, originally issued on December 31, 2019, has expired and is no longer valid. Section 105.5 ("Expiration") of the applicable 2009 International Building Code ("IBC"), provides as follows:

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or *if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced.* The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated. (emphasis added)

It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of greater than 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid.

Permit History & Commencement of Work

By way of background, a building permit application for 1 River Park Drive (formerly 100 River Park Drive) was originally filed on July 28, 2016. The building permit was issued on December 31, 2019, as Building Permit #2016-00293. In response to a written request from Lyme Properties dated December 9, 2021, a 180-day extension of Building Permit #2016-00293 was approved by memo from the Building Inspector dated January 18, 2022. The approval memo acknowledged that the COVID-19 pandemic represented adequate justification for granting an extension until July 17, 2022. The memo also acknowledged that, in effect, the Building Inspector was granting multiple retroactive extensions since no work at the site had commenced within the nearly two (2) years between the issuance of the permit and the December 9, 2021 request for an extension.

In response to a written request dated May 3, 2022, from Lyme Properties, a second 180-day extension of Building Permit #2016-00293 was approved by letter from the Building Inspector dated May 27, 2022. At that time, the Building Inspector again found that the COVID-19 pandemic represented adequate justification to grant your request and, therefore, an extension of the Building Permit was granted until January 13, 2023. In the May 27, 2022 letter, you were advised that, due to changes in the State Building Code since the original building permit application, "in the event the applicant is required or elects to request an additional extension or extensions of

time beyond the State's formal adoption of the 2018 edition of the IBC as the State Building Code, this office may not be able to justify granting additional extensions and will require the applicant to submit revised and updated plans and specifications for the development to demonstrate compliance with the 2018 edition of the IBC and other applicable local regulations in place at the time of such request before the City will grant additional extensions of time."

On December 9, 2022, I received a copy of your letter to Deputy City Manager David Brooks stating that "XYZ Dairy, LLC commenced construction on 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293." The only information provided in your letter relative to the commencement of work was that "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022." In response, by letter dated February 15, 2023, the Building Inspector requested additional information needed to determine that work had commenced for purposes of demonstrating compliance with Section 105.5 of the 2009 IBC (which, as cited above, provides that a permit "shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance[.]")

In a letter from Lyme Properties dated March 7, 2023, some of the requested additional information was provided. Following receipt of your March 7, 2023 letter, the Building Inspector determined, as set forth in a letter dated March 24, 2023, that work pursuant to building permit #2016-00293 had commenced as of November 29, 2022. In the March 24th letter, XYZ/Lyme was also advised that it would need to complete certain additional steps in order to maintain activation of the building permit and avoid a determination that work was suspended or abandoned for a period of 180 days following the November 29, 2022 commencement of work.

On April 10, 2023, you e-mailed a response to the March 24, 2023 letter, and on April 25, 2023, you filed an application to the Building Code Board of Appeals appealing "the Building Inspector's *ultra vires* request for information related to building permit #2016-00293." On July 11, 2023, the Building Code Board of Appeals dismissed the appeal for lack of subject matter jurisdiction, finding that no decision had been made in the March 24, 2023 letter.

Following the dismissal of your appeal, you wrote in a letter dated August 3, 2023, that "[t]he only thing that remains to allow work to continue on the excavation for 1 River Park is the connection of the existing line to the temporary line on Lot 1." By e-mail sent on the same date, Deputy City Manager David Brooks explained that your questions regarding the Route 10 stormwater connection issue should be addressed to the Department of Public Works and not to the Building Inspector. By e-mail sent to Mr. Brooks on August 4, 2023, you reiterated your position that your proposed Route 10 stormwater connection "temporary solution is within the City's jurisdiction to approve the temporary re-routing under the building permit".

Finally, by letter dated January 5, 2024, you told me that "XYZ Dairy, LLC is actively and diligently pursuing the construction of 1 River Park," and in support thereof you stated that "Engleberth Construction as our Construction Manager, and along with Elkus Manfredi Architects and the rest of the project team are working toward the Spring, 2024 construction season."

Suspension or Abandonment of Work

In your letter dated December 9, 2022, you wrote that, "we have encountered a conflict with existing City of Lebanon infrastructure that has suspended construction until a solution can be reached." Since that time, you have repeatedly stated that work at 1 River Park Drive has been suspended. Such statements include the following:

MAR 1 2024

February 1, 2024
Page 3 of 4

- Per your March 7, 2023 letter to the Building Inspector: "Once the pipe was located work ceased to avoid potentially damaging the existing, active line that was initially reported to be clay."
- Per the draft July 11, 2023 Building Code Board of Appeals meeting minutes: "Work has been suspended because of this hearing."
- Per your August 3, 2023 letter to the Building Inspector: "Following the determination of the Appeal Board, we have restarted conversations with project partners that were suspended because of your February 15, 2023 communication."
- Per your August 4, 2023 e-mail to David Brooks: "the City's pipe is preventing work on 1 River Park from continuing".

In your December 9, 2022 letter, you did not specify the date when work was suspended. Assuming the work ceased on the date of your letter (*i.e.* on December 9, 2022), then the 180-day deadline to re-commence work would have been June 7, 2023. If you wish to argue that your appeal to the Building Code Board of Appeals tolled the 180-day period, then the 180-day period would have resumed running as of the date that the ZBA dismissed your appeal on July 11, 2023 and expired on or about August 24, 2023. Furthermore, a full 180-day period has also now run between July 11, 2023 and January 7, 2024. However, as noted above, you have stated on multiple occasions that work has been suspended since at least December 9, 2022. Also, I have observed no work occurring at, or changes to, the site on multiple drive-by inspections conducted throughout 2023. It appears there can be no dispute that work has indeed been suspended for a period of significantly greater than 180 days, and remains suspended as of the date of this letter.

I also note that there has been no effort to address the items identified in my letter of March 24, 2023, as needing to be completed prior to the resumption of construction activities (and which should have been completed prior to the commencement of any construction). These include:

- Providing a cost estimate of remaining Phase 1 infrastructure improvements for review by the City Engineer, and providing security for such and entering into a new Performance Bond/Security Agreement.
- Providing a construction schedule to the City Engineer for purposes of retaining a third-party inspector, providing payment of estimated third party review costs, and entering into a third party inspection and water & sewer extension agreement.
- Installing edge-of-disturbance fencing on site to be reviewed by the City Engineer.
- Confirming that all state permits have been obtained or have been updated, as needed.

To my knowledge, none of the above have been accomplished as of the date of this letter.

For all of the foregoing reasons, your Building Permit #2016-00293 is declared expired and invalid. If you desire, you may submit an application for a new building permit. As a courtesy, the fee paid for the expired permit may be credited towards the new application fee provided the application is filed within six (6) months of the date of this letter. Please note that as part of such application, you will be required to submit revised and updated plans and specifications for your project to demonstrate compliance with the 2018 edition of the IBC and other local regulations currently in effect.

CR039

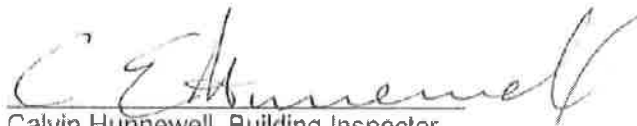
February 1, 2024

Page 4 of 4

This is a decision of the Building Inspector, which you have the right to appeal to the Building Code Board of Appeals. Should you wish to appeal this decision relative to the application and interpretation of the State Building Code, you have thirty (30) days from the date of this letter to file an appeal. See Chapter 36 of the Code of the City of Lebanon, Section 36-13.

Should you have any questions, please contact the City's legal counsel, Christine Johnston, at (603) 792-7417 or by e-mail at cjohnston@dwmlaw.com.

Sincerely,



Calvin Hunnewell, Building Inspector

Attachments

- Building Permit #2016-00293 (marked "expired" as of the date of this notice)
- Letter from Lyme Properties dated December 9, 2021
- Memo from the Building Inspector dated January 18, 2022
- Letter from Lyme Properties dated May 3, 2022
- E-mail from the Planning & Development Director sent May 27, 2022
- Letter from the Building Inspector dated May 27, 2022
- Letter from Lyme Properties dated December 9, 2022 (without attachments)
- Letter from the Building Inspector dated February 15, 2023
- Letter from Lyme Properties dated March 7, 2023
- Letter from the Building Inspector dated March 24, 2023
- E-mail from Chet Clem sent April 10, 2023
- Appeal of Administrative Decision by Lyme Properties dated April 25, 2023
- Draft 7/11/23 Building Code Board of Appeals Meeting Minutes
- Letter from Lyme Properties dated August 3, 2023
- E-mail from Chet Clem sent August 4, 2023
- Letter from Lyme Properties dated January 5, 2024

cc: Shaun Mullholland, City Manager
David Brooks, Deputy City Manager
Nathan Reichert, Planning & Development Director
Tim Corwin, Deputy Planning & Development Director
Christine Johnston, Esq., Drummond Woodsum
File

CR040

EXHIBIT 3



March 5, 2024
revised March 27, 2024

Building Code Board of Appeals
City of Lebanon
51 N Park Street
Lebanon, NH 03766

**Appeal of Administrative Decision: Lebanon Building Inspector's February 1, 2024
determination that Building Permit #2016-00293 has expired and is invalid**

Members of the Lebanon Building Code Board of Appeals,

In follow-up to our February 29, 2024 appeal of the Lebanon Building Inspector's February 1, 2024 decision that Building Permit #2016-00293 for the building at 1 River Park Drive "has expired and is no longer valid," we submit the following in support of our position that the Building Permit should remain in full force and effect and that the Building Inspector's decision is erroneous.

It should be noted that XYZ Dairy, LLC and Lyme Properties 2, LLC have received no substantive communication from the Lebanon Building Inspector– or any member of the Lebanon Planning and Development Department– regarding this Permit since the conclusion of the BCBA2023-01 Appeal on this same permit on July 11, 2023 other than the cursory communications referenced herein.

1. On January 5, 2024 Lyme Properties sent a memo to City of Lebanon Building Inspector Calvin Hunnewell regarding Lebanon Building Permit #2016-00293 (the "Permit"), stating: "XYZ Dairy, LLC is actively and diligently pursuing the construction of 1 River Park per City of Lebanon Building Permit #2016-00293 that was affirmed as "active" by the Lebanon Building Code Board of Appeals on July 11, 2023."

The memo states that Engelberth Construction has been named the Construction Manager and Elkus-Manfredi Architects continue to provide construction management services, in addition to the other consultants on the project team.

2. As it relates to the 180 Days in IBC 105.5, 180 days from the July 11, 2023 determination by the BCBA was Sunday, January 7, 2024. Lyme submitted the communication to Mr. Hunnewell ahead of the 180 day deadline, in so much as there was a requirement to do so.
3. Other than a cursory acknowledgement of receipt of the January 5 memo: "Thanks for your letter. We will get back with you next week." by Mr. Hunnewell on January 12, 2024, no additional communication was received by XYZ or Lyme until February 1, 2024.
4. In the February 1, 2024 memo received via email and certified mail Mr. Hunnewell declared the Permit expired and invalid:

It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of greater than 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid.

Figure 1: Excerpt of determination in February 1, 2024 memo from City of Lebanon Building Inspector

A. 180 Days and Expiration under Section 105.5 of International Building Code

5. The Building Inspector's determination that the Permit is expired is in conflict with the actions and intent of XYZ Dairy, LLC (XYZ) and Lyme Properties 2, LLC (Lyme), and is based upon incomplete information and an erroneous determination by the Building Inspector that work had been suspended or abandoned for a period of greater than 180 days.
6. The City's 2/1/2024 memo states "Section 105.5 ("Expiration") of the applicable 2009 International Building Code ("IBC"), provides as follows:"

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or *if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced.* The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated. (emphasis added)

Figure 2: Section 105.5 of the 2009 International Building Code as included [and emphasis added] in the City's February 1, 2024 memo

At no point since the commencement of work on Building Permit #2016-00293 on November 29, 2022 has work on the project been suspended or abandoned for a period of 180 days.

During XYZ's February – July, 2023 effort to defend the Permit against *ultra vires* conditions and the threat of revocation by the same Building Inspector under the same Section 105.5 of the IBC, Attorney Hastings for Lyme and XYZ provided a Statement of Facts and Law to the Planning Department and Building Code Board of Appeals on June 1, 2023¹ that laid out the interpretation of the 180 day period, and references relevant case law that substantiates what constitutes abandonment. That analysis of relevant case law has been

¹ Note: Attorney Hastings Statement of Facts and Law was submitted to the Lebanon Planning Department on June 1, 2023 in advance of the first BCBA hearing. The Planning Staff omitted XYZ's legal document from inclusion in the BCBA2023-01 Staff Memorandum and package of information that was posted the following day on June 2, 2023. That Staff Memo was delivered to the Building Code Board of Appeals and to the Appellant, and was posted publicly to the City's website, in advance of the June 5, 2023 hearing.



updated in Attorney Hastings' March 27, 2024 Statement of Facts and Law for BCBA2024-01:

19. This is consistent with New Hampshire case law involving the relinquishment or abandonment of permit for the use of real property. In those cases, there must be both an intention to abandon or relinquish the permit and an overt failure to act which carries the implication the holder of the permit neither claims nor retains any interest in the permit. *See Lawlor v. Town of Salem*, 116 N.H. 61, 62 (1976); *Pike Industries v. Woodward*, 160 N.H. 257, 261 (2010).

20. Similarly, in cases involving a developer's vested right to complete a project, New Hampshire courts "tend to construe the vesting of rights liberally." *AWL Power, Inc. v. City of Rochester*, 148 N.H. 603, 606 (2002).

Figure 3: Statement of Facts and Law, BCBA2024-01, March 27, 2024. Attorney Philip Hastings for XYZ Dairy

The record reflects that at no point from July 11, 2023 to January 5, 2024 did XYZ Dairy show any "**intention to abandon or relinquish the permit,**" nor was there any "**overt act or failure to act**" that would justify the determination that the permit has been abandoned.

Quite the contrary, XYZ was working continuously, diligently, and in good faith to re-start and to advance the work approved under the Permit following the Staff-caused delays in 2022-2023.

An overview of XYZ's actions to this effect from July, 2023 to February, 2024 are provided herein in Section D.

7. Any **temporary** suspensions of work have been due to actions beyond the control of XYZ Dairy or Lyme Properties, and the delays from 2022-present are specifically due to the decisions and actions of the Lebanon Planning Department.

This matches the long pattern of delays that XYZ has suffered in the course of Lyme's effort to construct 1 River Park under building permit #2016-00293.

- a. The 2016 mobilization was stopped by Municipal issues.
- b. The 2018 mobilization was stopped by Municipal issues.
- c. The 2020 mobilization was stopped by the NH Governor's declaration of emergency during the Covid-19 pandemic.
- d. The 2022 mobilization was stopped by Municipal issues, resulting in the Appeal BCBA2023-1 before the Lebanon Building Code Board of Appeals.
- e. The 2024 mobilization has now been put at risk by Municipal issues again, given the Building Inspector's determination that our permit has expired.

B. Addressing Building Inspector's arguments of suspension and/or abandonment

8. The Building Inspector's February 1 memo provides four (4) excerpts from Lyme Properties' past communications regarding the status of work on Permit #2016-00293, to purportedly



establish that a suspension or abandonment of work has occurred. Those four excerpts are addressed as follows:

9. **Example #1** provided in Building Inspector's February 1, 2024 memo:

- Per your March 7, 2023 letter to the Building Inspector: "Once the pipe was located work ceased to avoid potentially damaging the existing, active line that was initially reported to be clay."

Figure 4: Item #1 on Page 3 of 4 of City of Lebanon Feb. 1, 2024 Memo

The March 7, 2023 letter from Lyme referenced here is in response to the Building Inspector's February 15, 2023 communication— after 68 days— in response to the December 9, 2022 communication that XYZ had commenced construction on the work under Permit #2016-00293.

Broader context of the sentence excerpted by the Building Inspector helps inform the reason behind the cessation of work at that time:

After repeat delays encountered during 2022, we commenced excavation of the 1 River Park foundation in good faith and in earnest on November 29, 2022. The foundation had been staked prior to commencement of work by Nott's Excavating using their GPS system loaded with the approved River Park plans. Nott's began carefully excavating along the east side of the foundation to daylight the pipe. Once the pipe was located work ceased to avoid potentially damaging the existing, active line that was initially reported to be clay.

As my December 9, 2022 memo outlined I cannot proceed any further on the 1 River Park excavation until the conflict is addressed, and given that it is municipal infrastructure that solution must be coordinated with the City of Lebanon. The first meeting with City officials from the Department of Public Works was on December 15, 2022, and David Brooks' February 2, 2023 memo outlines potential solutions. I have subsequently been working with TF Moran, our engineer of record, to develop potential solutions in response.

Figure 5: Excerpt from March 7, 2023 memo from Lyme Properties in response to City of Lebanon Building Inspector's February 15, 2023 communication .

There is no question that the work that commenced on November 29, 2022 ceased upon the locating of the pipe, as it was XYZ's legal obligation to seek and obtain direction and approval from the City of Lebanon for the handling and proposed temporary relocation of the municipal stormwater line in question.

The March 7, 2023 memo provides two pages of "Additional information regarding efforts to commence construction of 1 River Park" to substantiate Lyme's work in defense of the



Building Inspector's threat, in his February 15, 2023 memo, to retroactively revoke the Permit effective January 13, 2023.

At no point from the commencement of work on November 29, 2022 and the communication to that effect on December 9, 2022 to the City of Lebanon would the "work ceased" be reasonably assumed intentional or permanent.

In fact, it was XYZ/Lyme waiting two months for a response from the City of Lebanon while continuing to advance work on the Permit, conversations with tenants for the building in question, and potential partners at the State and Federal level in the pursuit of the River Park plan.

10. As Attorney Hastings' June 1, 2023 Statement of Facts outlines in item A.13, no substantive response related to the Building Permit was received for **68 days** following XYZ's letter notifying the City:

13. Other than cursory acknowledgements of the Appellant's December 9 letter, the City did not respond substantively with regard to the Building Permit until February 15, 2023 (i.e., 68 days later), at which time the Building Inspector requested additional information "in order to make a determination as to whether work has commenced for purposes of demonstrating compliance with Section 105.5 of the IBC [International Building Code] (which provides that, '[e]very permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance[.]'"

Figure 5: Factual Background Item A.13, "Statement of Facts and Law," Attorney Philip Hastings for XYZ, June 1, 2023

11. 13 days prior to the Building Inspector's memo of February 15, 2023 and 55 days after receiving the Commencement memo from XYZ on December 9, 2022, on February 2, 2023, an email from Deputy City Manager David Brooks was received— with apologies for delay— that provided clear direction for dealing with the pipe in question. Until that point, no further action could be taken on the pipe by XYZ.

Additionally, the City's moratorium on excavation during winter months factored into the timing of any potential solution, supporting XYZ's position that there was no additional construction effort that could have been undertaken in the City's R.O.W. to end the temporary suspension.

12. It should be noted that Lyme Properties had raised the issue of the municipal stormwater line proactively and repeatedly, including its inclusion in the March 25, 2022 memo to City Manager and in resultant conversations with then Director of Planning David Brooks and members of the Lebanon Department of Public Works in the Summer of 2022, with no resolution.
13. Upon receipt of Mr. Brooks' email on February 2, 2023, the City's instructions were then forwarded to TF Moran (the Engineer of record) and a Zoom meeting to discuss the

engineering solutions was scheduled for February 17, 2023. A follow-up email that day to TF Moran memorializes the discussion, which resulted in a Professional Service Order from TF Moran for additional services to design and engineer an alternative permanent solution for the off-site stormwater.

That proposed work by TF Moran was temporarily suspended by XYZ during the 2023 delays resulting in BCBA Case 2023-01

14. The aforementioned information provided is indicative of the work that was underway to address the underlying and unresolved issue, and disproves the Building Inspector's insinuation that Lyme's March 7, 2023 memo reflected any true suspension.

15. **Example #2** provided in Building Inspector's February 1, 2024 memo:

- Per the draft July 11, 2023 Building Code Board of Appeals meeting minutes: "Work has been suspended because of this hearing."

Figure 7: Item #2 on Page 3 of 4 of City of Lebanon Feb. 1, 2024 Memo

16. Lyme's testimony at the July 11, 2023 Building Code Board of Appeals– which the Building Inspector was not present for– related to the *temporary* suspension of efforts due to the ongoing discussions between the City and XYZ that resulted in the Appeal before the BCBA.

17. By the time of the July 11th hearing, the Building Permit had been in limbo for **226 days** due to the threat of revocation and work had been temporarily suspended accordingly while Lyme awaited a determination regarding the *ultra vires* conditions. Per Attorney Hastings' June 1, 2023 Statement of Facts and Law submitted in the course of BCBA2023-1:

20. Without such information from the Building Inspector, continuation of the construction work under the Building Permit is practically and economically unfeasible, as it would entail substantial investment of resources and efforts without assurances that the Building Permit will not be revoked.

Figure 8: Factual Background Item A.20, "Statement of Facts and Law," Attorney Philip Hastings, June 1, 2023

At no point between December 9, 2022 and July 11, 2023 did XYZ permanently suspend or abandon Building Permit #2016-00923. Rather, work could not continue until the disagreement with the Building Inspector's new conditions and the subsequent Appeal had run its course.

18. Upon the BCBA's determination on July 11, 2023 that the Building Permit was in-fact in effect, XYZ worked to re-start the project after 226 days of delay, of which 77 days were spent on the BCBA appeal.

19. Of particular importance to the status of the Permit and the outcome of the July 11, 2023 hearing, in the June 2, 2023 Staff Memo from the Planning Department on BCBA2023-01 Planning Director Nathan Reichert the Permit "was allowed to expire by the Applicant"

- An Appeal of the Building Officials Determination was filed on April 25th 2023.
- May 29th 2023 without the benefit of an extension request the permit was allowed to expire by the Applicant.

PROPOSAL

The applicant is appealing the Notice of Violation Dated April 19th 2023 and May 16th 2023.

Figure 9: Staff Memorandum for June 5, 2023 BCBA2023-01 hearing of the BCBA.

This erroneous statement, along with the subsequent errors that XYZ was appealing two Notices of Violations, further jeopardized the Permit, confused the Appeal process, and put additional false statements about XYZ/Lyme into the public record.

20. **Example #3** provided in Building Inspector's February 1, 2024 memo:

- Per your August 3, 2023 letter to the Building Inspector: "Following the determination of the Appeal Board, we have restarted conversations with project partners that were suspended because of your February 15, 2023 communication."

Figure 10: Item #3 on Page 3 of 4 of City of Lebanon Feb. 1, 2024 Memo

21. Mr. Hunnewell makes reference to an August 3, 2023 memo in which XYZ, again, requested that the Building Inspector approve the connection to the *temporary* stormwater bypass line that had been previously installed by XYZ under means and methods of the 1 River Park building permit to enable the temporary re-routing of the conflicting stormwater line.

The purpose of that memo is excerpted here:

Now that the Building Code Appeals Board confirmed on July 11, 2023 that we have commenced construction on 1 River Park Drive, we seek your approval of the temporary relocation of the municipal/NH DOT stormwater line that impacts our property without benefit of an easement.

Please note that this request is distinctly related to connecting to the temporary connection that has already been designed and installed under means and methods of the 1 River Park building permit (#2016-00293). It is independent from the final stormwater design as presently approved, and can proceed independent from the ongoing conversations about an alternative solution as memorialized in the February 2, 2023 communication from Deputy City Manager David Brooks. The temporary solution is under the jurisdiction of building permit #2016-00293.

Figure 11: Excerpt from August 3, 2023 memo from Lyme requesting permission to connect temporary bypass line

22. The August 3, 2023 memo was relevant to concurrent conversations that XYZ was having with Engelberth Construction (see Section D) as to whether any of the 2023 construction season could be salvaged by proceeding with excavation of the 1 River Park foundation after the 7 months of delay caused by the City of Lebanon.

XYZ's attempt to seek this approval was stymied by the City's decision to reject the request to make the temporary connection, against the advice of XYZ's Engineer and Construction Manager.

23. **Example #4** provided in Building Inspector's February 1, 2024 memo:

- Per your August 4, 2023 e-mail to David Brooks: "the City's pipe is preventing work on 1 River Park from continuing".

Figure 12: Item #4 on Page 3 of 4 of City of Lebanon Feb. 1, 2024 Memo

It is not clear the Inspector's intent in including this excerpt as it references the ongoing conversations between XYZ and the City of Lebanon to address the municipal stormwater line interfering with 1 River Park construction.

The communication itself documents that XYZ was actively pursuing work on the Permit in August, 2023 following the July, 2023 BCBA determination. The very same work that XYZ had set out to accomplish on November 29, 2022, and was then seeking to restart.

Again, a review of the communication from which this single sentence is pulled provides context that disproves the Inspector's position that no work was underway as of August 4, 2023:

David,

The City was Cc'd on all the communications regarding the AOT permit when it was extended back in 2020, and TF Moran addressed this issue with NHDEP.

Additionally, the applicant is proposing a minor plan change to the approved drawings. The change consists of relocating the city-owned discharge of an existing 18" stormwater culvert on the property in order to construct the foundation of 100 River Park Drive on Lot 1. The proposed change meets all the requirements under Env Wq 1503.21 (d) under changes that can be made without applying for an amended permit or new permit. As such, we believe these changes meet the intent of the regulations to permit modifications to the Approved Project.

I understand the additional requirements as it relates to a permanent solution, but it remains our position that the temporary solution is within the City's jurisdiction to approve the temporary re-routing under the building permit. The connection can happen on River Park property, outside the right of way.

The present condition is in fact also a temporary solution as the pipe was redirected to its current route after the former City Engineer approved site work that blocked the pipe, requiring the current re-routing after it backed up.

How the City wishes to handle this is your prerogative, but the City's pipe is preventing work on 1 River Park from continuing. As we've both now noted, this pipe does not serve River Park whatsoever and is exhausting on our property without easement.

I look forward to receiving the City's proposed solution for moving its pipe out of the way so our work can continue.

Thank you,
Chet

Figure 13: Response from Chet Clem of Lyme Properties to Deputy City Manager David Brooks on August 4, 2023 regarding the City's rejection of XYZ's request to connect the temporary bypass line

This communication from Lyme goes to substantiate that the ongoing delays in August, 2023 are due to XYZ/Lyme waiting on the City of Lebanon to make a determination on how to handle the City's pipe, and that the City's position is in conflict with the project team's recommendations, and that the proposed solution by XYZ was in fact approved by the NHDES in the 2020 extension of the Alteration of Terrain permit and was communicated to the City in 2020.

Mr. Hunnewell's February 1, 2024 letter provides summary of the same back-and-forth communication on August 3rd and 4th, 2023 between Lyme and the City, which confirms that efforts were underway in August, 2023 to re-start and continue the work authorized by the Permit.

24. The Deputy City Manager communicated that the temporary stormwater line was not under the jurisdiction of the Permit and must instead be taken up with the City's Department of Public Works. XYZ continued to object to that determination, but proceeded as directed to take up the issue with the DPW.

Following the dismissal of your appeal, you wrote in a letter dated August 3, 2023, that "[t]he only thing that remains to allow work to continue on the excavation for 1 River Park is the connection of the existing line to the temporary line on Lot 1." By e-mail sent on the same date, Deputy City Manager David Brooks explained that your questions regarding the Route 10 stormwater connection issue should be addressed to the Department of Public Works and not to the Building Inspector. By e-mail sent to Mr. Brooks on August 4, 2023, you reiterated your position that your proposed Route 10 stormwater connection "temporary solution is within the City's jurisdiction to approve the temporary re-routing under the building permit".

Figure 14: Excerpt from Page 2 of 4 of City of Lebanon's February 1, 2024 communication.

25. A subsequent meeting between Lyme and member of the Lebanon Department of Public Works occurred at the River Park site on August 17, 2023 to review the temporary stormwater connection and efforts to connect it, as well as discuss the long-term solutions proposed by XYZ and under analysis by TF Moran.

In keeping with the City Manager Shaun Mulholland's April 24, 2023 communication of his new policy that all meetings between the City and Lyme be recorded, that on-site meeting was audio recorded by the Lebanon DPW and subsequently shared with Lyme upon request.²

² Audio recording of August 17, 2023 site visit by Lebanon DPW is accessible online via link in Appendix F



C. Lack of evidence and changes to the project site

26. The Inspector's February 1, 2024 memo, in his arguments that work has been abandoned, goes on to state: "Also, I have observed no work occurring at, or changes to, the site on multiple drive-by inspections conducted throughout 2023."

The statement "no work occurring at, or changes to, the site...throughout 2023" is factually incorrect.

XYZ would request that any notes and/or photographic evidence to that effect made by the Building Inspector during these "multiple" inspections be provided to substantiate that claim.

27. By example to the contrary of the Building Inspector's claim that no changes had occurred, on both September 12, 2023 and September 26, 2023, significant changes occurred to the River Park site, specifically including Lot 1 and the surrounding area.

The construction fence was relocated and expanded to secure the site, and was specifically erected in a manner to provide security for the construction efforts on 1 River Park and the remaining Phase 1 Infrastructure.

Previously, the fence had not included the Route 10 Southern Entrance area so as to allow ongoing public access to the trails and riverfront at River Park.

28. The elimination of the previous public access provided was in response to the Staff's actions and determinations during the Appeal of Administrative Decision PB2023-23-AAD before the Planning Board that XYZ had made "unpermitted site improvements."

XYZ believes that the Staff's statements in writing in Staff Memo PB2023-23-AAD and as reiterated in testimony were incorrect, and sought clarification in testimony at multiple hearings as to the legal justification(s) of those statements.

Absent those statements being rescinded by the Staff, documents submitted to the Planning Board and Building Code Board of Appeals and recorded statements in the public record claimed that XYZ was in violation of City laws. That created a liability issue for XYZ, and negated the insurance policy that XYZ and Lyme had paid for every year in order to provide public access through the construction site to the publicly accessible trails and the waterfront parcel owned by the Friends of River Park.

Given the loss of liability insurance, and on advice of Counsel, the "attractive nuisance" was eliminated and the active construction site secured while XYZ/Lyme determined next steps, and worked to re-start the work for Permit #2016-00293.



D. XYZ's Actions to Actively and Diligently Pursue Permit #2016-00293 since July 11, 2023

29. Following the BCBA decision on July 11, 2023 XYZ Dairy initiated the process to re-start the development of 1 River Park under Permit #2016-00293 that had been put in limbo for seven (7) months by the actions of the Lebanon Planning & Development Department.

30. On June 1, 2023, XYZ and Engelberth Construction met via Zoom to discuss 1 River Park, Phase 1 Infrastructure, and how to salvage the 2023 construction season. This was in follow-up to a phonecall on May 17, 2023 between David Clem of XYZ and Chris Yandow of Engelberth Construction.

Engelberth was engaged to perform pre-construction services with the initial task– given the ongoing BCBA2023-01 Appeal case and the perceived hesitance of the market given past false-starts– to provide internal estimating of the remaining work, to inform XYZ's decision making on 1 River Park and Phase 1 Infrastructure, and to inform the request by XYZ for Amendments to the River Park approvals that were before the Planning Board simultaneously.

31. On June 21, 2023, Engelberth provides XYZ with initial pricing based upon internal analysis and budgeting.^A

32. June 27, 2023 Elkus Manfredi delivers the 2023 Code Review prepared by sub-contractor Commercial Construction Consulting, Inc. (C3), updating the the 2019 Code Review C3 had previously conducted under the direction of Elkus Manfredi for the 2020 mobilization.^B

This was in response to the changes in the relevant codes related to 1 River Park that had been adopted by the City of Lebanon since the Permit was applied for in 2016 and issued in 2019.

These code changes, and the City's concerns that they be incorporated into Permit 2016-00293, were outlined in the Building Inspector's May 27, 2022 letter granting an extension of the 1 River Park permit.^C

33. At the July 11, 2023 hearing of the BCBA, the Board confirms that the Permit is active and in effect, eliminating the confusion caused by the June 2, 2023 Staff Memo (Item 21, Figure 9) and previous communications.

34. July 17, 2023 XYZ met with Engelberth Construction at 57 Main Street to review the June 19, 2023 estimates, and discuss re-commencement of work in 2023 to complete foundation before winter, the cost of incurring Winter Conditions, and the challenge of completing changes in the Route 10 R.O.W. prior to the excavation moratorium in local ordinances that had been invoked in 2018 to halt construction efforts at River Park.

35. On July 31, 2023, David Clem of XYZ Dairy, LLC emails the 1 River Park project team (Elkus Manfredi Architects, AHA Engineers, TF Moran, McNamara Salvia) to inform them that XYZ has engaged Engelberth Construction as CM and requests any updated fee proposals as necessary.^D
36. On August 3, 2023 Lyme sent a memo to Building Inspector Calvin Hunnewell, and Cc-ing members of the Lebanon Planning & Development Department and Department of Public Works, seeking "approval of the temporary relocation of the municipal/NH DOT stormwater line that impacts our property without benefit of an easement" under Permit #2016-00293.^E

Now that the Building Code Appeals Board confirmed on July 11, 2023 that we have commenced construction on 1 River Park Drive, we seek your approval of the temporary relocation of the municipal/NH DOT stormwater line that impacts our property without benefit of an easement.

Please note that this request is distinctly related to connecting to the temporary connection that has already been designed and installed under means and methods of the 1 River Park building permit (#2016-00293). It is independent from the final stormwater design as presently approved, and can proceed independent from the ongoing conversations about an alternative solution as memorialized in the February 2, 2023 communication from Deputy City Manager David Brooks. The temporary solution is under the jurisdiction of building permit #2016-00293.

Figure 15: Excerpt from email from Chet Clem to Calvin Hunnewell, August 3, 2023.

37. On August 3 and 4, 2023 there is the exchange between Lyme and the City of Lebanon pertaining to XYZ's August 3rd request. Deputy City Manager David Brooks' response that the connection cannot be made on a temporary basis to enable work to re-commence on the 1 River Park permit creates an additional hurdle for work on 1 River Park to continue in the Summer/Fall of 2023.

Lyme's August 3, 2023 memo outlines the distinction between the temporary connection and the final stormwater design.

The August 3, 2023 communication from Deputy City Manager David Brooks makes reference to Mr. Brooks' February 2, 2023 email outlining steps for XYZ's previous proposal to turn the temporary connection into an alternative final stormwater design.

It was then, and remains now, XYZ's position that the temporary connection was permitted to be completed under Permit 2016-00293, allowing the 1 River Park construction to proceed and the final stormwater solution to be determined.

Mr. Brooks February 2, 2023 email was helpful in providing guidance as it relates to the alternative final design, and was forwarded to XYZ's Civil Engineer at the time and discussed via conference call on February 17, 2023. However, the February 15, 2023 memo received two days prior, and the subsequent actions of the Planning & Development



Department related to BCBA2023-01, delayed further action on completing the engineering work in response to Mr. Brooks' February 2, 2023 communication.

38. XYZ's Civil Engineer TF Moran had previously communicated the temporary bypass line to the NH DES on August 4, 2020 in a request for extension of the Alteration of Terrain permit (AoT-0994).

Additionally, the applicant is proposing a minor plan change to the approved drawings. The change consists of relocating the city-owned discharge of an existing 18" stormwater culvert on the property in order to construct the foundation of 100 River Park Drive on Lot 1. The proposed change meets all the requirements under Env Wq 1503.21 (d) under changes that can be made without applying for an amended permit or new permit. As such, we believe these changes meet the intent of the regulations to permit modifications to the Approved Project.

Figure 16: "River Park, AoT-0994, Tax Map 44 Lot 3 & 7, Tax Map 57 Lot 27, West Lebanon, NH" Letter from Jason Hill, P.E, TF Moran on behalf of XYZ Dairy, LLC. to Ridgely Mauck, P.E. NHDES – Water Division, August 4, 2020.

The extension of the AoT was approved by the NHDES in the October 30, 2020 Alteration of Terrain permit extension (AoT-0994A). The City of Lebanon was copied on both the August 4, 2020 communication from TF Moran and the October 30, 2020 response from NHDES.

The temporary bypass line was installed in December, 2021 by Nott's Excavating from plans provided by TF Moran. Nott's was mobilized on-site for punch list work on Crafts Avenue Extension, and given the challenge of securing contractors in the Upper Valley in the Covid-19 era, XYZ had the bypass line installed in advance of work on 1 River Park that was anticipated for 2022.

39. At the suggestion of Mr. Brooks, on August 17, 2023, Chet Clem of Lyme Properties meets with Rod Finley and Brian Vincent from the City of Lebanon Department of Public Works on-site at River Park to discuss the temporary stormwater connection, as well as the proposed permanent connections that TF Moran is developing.

In keeping with City Manager Shaun Mulholland's April 24, 2023 policy determination that all meetings between City Staff and Lyme Properties be recorded, the meeting was audio recorded.^F

40. On August 21, 2023, in a Zoom meeting with Engelberth Construction following confirmation that the City would not permit the connection of the temporary stormwater line under Building Permit #2016-00293, XYZ and Engelberth determine that attempting to re-start the work on the foundation of 1 River Park in 2023 is not feasible.

The decision is made that the 2023 Construction season has been lost due to the delay caused by the Planning Department, and that any further progress was stymied by the inability to temporarily bypass the Municipal Stormwater line.



XYZ engages Engelberth to re-price the entire building and infrastructure for the Spring, 2024 construction season and to develop a GMP Contract to that effect.

41. On September 8, 2023, Engelberth Construction and Elkus Manfredi memorialize their communications to make the necessary changes to project documents to re-bid the project, pending XYZ's ongoing amendments before the Lebanon Planning Board.^G
42. On September 12, 2023, following the re-affirmation by the Planning Staff that "unpermitted site improvements" were in violation of the River Park Site Plan, access to River Park is closed due to the resultant liability issue the supposed violations pose to XYZ, Lyme, and the Clems. Over the course of that week, the improvements are removed and a temporary fence is erected
43. On September 26, 2023, Round Hill Fence adjusts the Construction Fencing at River Park to secure the site in a configuration that allows for construction of 1 River Park and Phase 1 Infrastructure work, and secures the construction site from public access.^H
44. On October 1, 2023 XYZ authorizes Elkus Manfredi to release C3 to make necessary Code updates.^I
45. On October 6, 2023 XYZ executes the updated Elkus Manfredi Architects Contract.^J
46. On October 11, 2023 XYZ directs Engelberth to go to the street on Phase 1 Infrastructure, and requests that Engelberth prepare a Tenant Improvement budget for the 3rd floor space in support of the leasing conversations.^K
47. On October 16, 2023 XYZ submits a formal Lease Proposal and Letter of Intent to advance ongoing discussions with a prospective Life Science tenant interested in the Third Floor laboratory space at 1 River Park.^L
48. On December 13, 2023 Elkus Manfredi supplies updated Code Report to XYZ and Engelberth Construction.^M
49. On December 18, 2023, at a regularly scheduled meeting of the West Lebanon Revitalization Committee^N, WLRAC member Kim Chewning and Lebanon Planning Board member and NH State Representative Laurel Stavis asked question of the Lebanon Planning Department regarding the status of River Park.

Deputy City Manager David Brooks states (at 18:33) "Note for the record there is still a building permit in their hands."



Lebanon Planning and Development Director Nathan Reichert goes on to state (at 21:09):
"The building permit still is in place, the planning approvals are all still in place, they would have to meet the standards laid out in those planning approvals in order to move forward."

Of note, no communication of these questions or that there was a public conversation about the River Park property status, was ever made to XYZ/Lyme by the City.

50. On December 29, 2023 Elkus Manfredi sends proposal for updated drawings for 1 River Park.^Q
51. On January 5, 2024 Lyme submits a Memo to the Lebanon Building Inspector updating him on XYZ's ongoing work on the 1 River Park project.^P
52. On January 12, 2024 Calvin Hunnewell responds that the Staff will be back in touch the following week.^Q
53. On January 17, 2024, Lyme submits a letter to the Lebanon City Council regarding the discussion of a West Lebanon Tax Increment Finance (TIF) District and the role that River Park can play in it, as expressed in numerous previous communications to the City of Lebanon.^R
54. On January 26, 2024, Lyme communicates to the Lebanon DPW that AHA Engineers in seeking updated water flow data for the purpose of updating 1 River Park drawings.^S
55. On January 29, 2024, David and Chet Clem have a teleconference with Elkus Manfredi to review updated interior finishes for 1 River Park.^T
56. On February 1, 2024, David and Chet Clem travel to Massachusetts to meet with a potential tenant for 1 River Park that specifically addresses a critical need in West Lebanon and the Upper Valley.

Following that productive meeting and site tour, the mutual decision is made to advance architectural work to determine the feasibility of this user in 1 River Park.

57. Later on February 1, 2024, the Lebanon Planning Department sends the expiration and invalidation memo, 27 days after receiving Lyme's update as to the status of the project.
58. An updated set of Construction Documents incorporating the aforementioned work was provided by Elkus Manfredi on February 23, 2024.^U
59. A project update was provided by Engelberth Construction on March 26, 2024 outlining the work underway to re-bid the project and coordinate with necessary parties.^V

E. Filing of BCBA Appeal BCBA2024-01

60. On February 29, 2024 XYZ and Lyme submitted Appeal BCBA2024-01 to the Lebanon Planning and Development Department via email, and Cc-ing all Lebanon representatives that were included on the Building Inspector's February 1, 2024 memo: City Manager Shaun Mulholland, Deputy City Manager David Brooks, Planning Director Nathan Reichert, Deputy Planning Director Tim Corwin.
61. On February 29, 2024, Planning Director Reichert responded, suggesting that the Appeal would need to be filed in person at City Hall the following Monday:

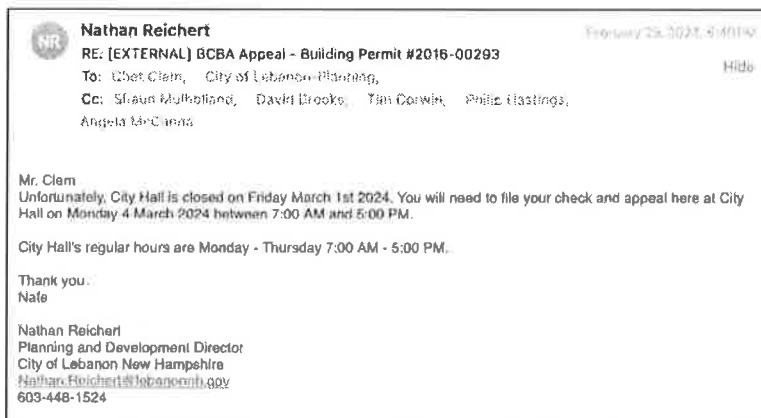


Figure 17: Email from Nathan Reichert to Chet Clem, February 29, 2024.

62. This determination was a departure from XYZ/Lyme's previous experience in which electronic submission of Applications was accepted practice. The calculation of the Application Fee has been determined by the Planning Department's Administrative staff subsequent to submittal due to past issues with the City's records and determination of appropriate abutters.
63. Mr. Reichert's instruction that "You will need to file your check and appeal here at City Hall on Monday 4 March 2024 between 7:00 AM and 5:00 PM" meant that the Appeal would not be filed ahead of the 30-day deadline to Appeal.

Given that Mr. Reichert sought to have #BCBA2023-01 dismissed on grounds of "timeliness," XYZ/Lyme exhausted all efforts to ensure the Application was received in a timely fashion, as outlined in Attorney Hastings' follow-up email on March 6, 2024 when XYZ/Lyme had received no response for 1 week:

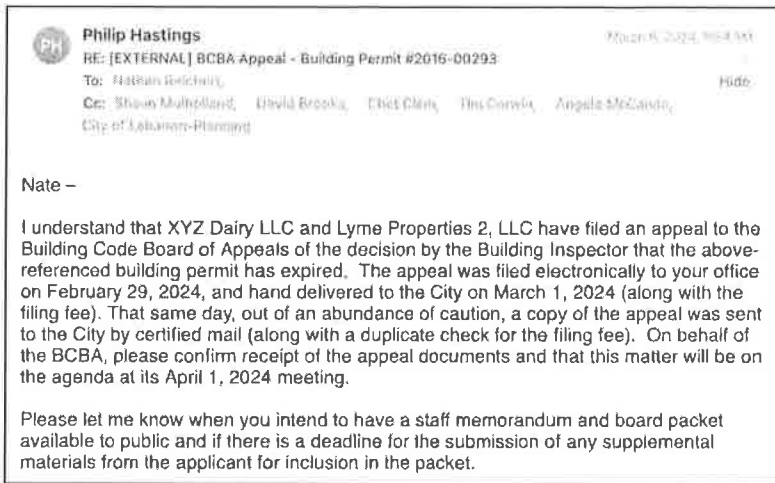


Figure 18: Email from Attorney Hastings to Planning Director Reichert on March 6, 2024.

64. No substantive response to XYZ/Lyme's Appeal Application or Attorney Hastings' subsequent March 6 email was ever received from the Lebanon Planning Department.

Per Attorney Hastings' March 19, 2024 to the City's Attorney Matthew Decker: "The City has had nearly three weeks to review the appeal. During that time, no effort has been made by the City to reach out to XYZ to explore the possibility of finding a productive resolution. The City has not even bothered to respond to my March 6 email asking to confirm its receipt of the appeal documents."

65. It was not until March 20, 2024— three (3) weeks after submission of the Appeal— that XYZ/Lyme finally received confirmation via the BCBA's Attorney Cordell Johnston that the Appeal had been accepted and was to be considered for inclusion on the April 1, 2024 BCBA Agenda.

A request was made that XYZ agree to have the hearing postponed until May 6, 2024, another 4-weeks of indecision and uncertainty, which would push the BCBA hearing until after the intended start of construction.

66. Attorney Hastings made repeat requests that the Building Inspector temporarily rescind the February 1, 2024 decision, a practical compromise that respected the Inspector's authority and the Appeal process without jeopardizing the progress that XYZ/Lyme was making. Those requests were summarily rejected by the City.
67. At the time of the advertised April 1, 2024 hearing of the BCBA, it will be **60 days** since the Building Inspector's February 1, 2024 determination that the Permit was invalid. In those two months, XYZ/Lyme has been unable to advance work on 1 River Park, leasing discussions with prospective tenants have been jeopardized, and XYZ/Lyme has been put at risk of being in violation of numerous executed contracts.



APPENDIXES:

- O. Overview of Key Dates since July 11, 2023 BCBA hearing.
- ^A 20230621 Engelberth – River Park Lot 1 construction documents cost estimate.pdf
- ^B 20230623 Elkus Manfredi Architects (EMA) - River Park 2023 Code Review
- ^C 20220527 Letter from the City of Lebanon - Building Permit #2016-00293 Extension
- ^D 20230731 Email from David Clem to the River Park Design Team - 1 River Park Drive.pdf
- ^E 20230803 Request for temporary stormwater connection
- ^F 20230817 River Park Site Meeting Audio Recording
- ^G 20230908 River Park Code Review coordination between Engelberth and EMA
- ^H 20230829 Fence estimates and communications with Round Hill Fence
- ^I 20231031 Email to EMA Authorizing them to Hire C3 for updated code report
- ^J 20231003 Proposal from EMA for Construction Admin
- ^K 20231016 River Park - Phase 1 and Tenant Improvements
- ^L 20231016 Lease Proposal and LOI
- ^M 20231211 River Park Lot 1 Code Report
- ^N 20231218 Link to December 18, 2023 WLRAC meeting
- ^O 20240117 EMA Conformed Drawings Package Contract
- ^P 20240105 Memo to Lebanon Building Inspector
- ^Q 20240201 Expiration of 1 River Park Drive Building Permit #2016-00293 Letter from Lebanon Building Inspector
- ^R 20240117 Request to be included in a West Lebanon Tax Increment Finance TIF District to the Lebanon City Council
- ^S 20240126 Email from AHA Consulting Engineers to Lebanon DPW regarding hydrant flow test data
- ^T 20240126 1 River Park Interior Finishes Meeting with EMA
- ^U 20240223 1 River Park – Lot 1 Construction Documents and Specs
- ^V 20240326 River Park site and infrastructure bidding update from Engelberth

Work on 1 River Park • Permit #2016-00293

Since July 11, 2023 Building Code Board of Appeals

June 1, 2023 – River Park meets with Engelberth Construction prior to first BCBA2023-01 hearing.

June 27, 2023 – Elkus Manfredi delivers Code Review

July 11, 2023 – Building Code Board of Appeals determines Permit #2016-00293 is Active, 224 days after commencement

July 17, 2023 – Meeting with Engelberth Construction to discuss how/if we could salvage the construction season after 7 months of delay dealing with Permit issue.

July 31, 2023 – Re-engaged Elkus Manfredi Architects, AHA Engineers, TF Moran Engineers, McNamara Salvia Engineers and requested updated contracts.

August 3, 2023 – Emailed City requesting permission to connect temporary bypass line under Means and Methods of Building Permit as had been approved by the State of New Hampshire.

August 4, 2023 – City rejects solution, requires meeting with DPW and additional engineering work to be completed, work that is only relevant to the permanent solution that isn't required to be done until the Building is completed.

August 17, 2023 – On-site meeting with DPW. Audio recording in keeping with City Manager's new policy that all communications with Lyme Properties are to be recorded.

August 21, 2023 – Meeting with Engelberth Construction, decide it is procedurally unlikely project can re-commence on-time given pipe issue, and would incur additional cost of Winter Conditions.

September 12, 2023 – In parallel matter, Planning Staff reaffirms that "unpermitted site improvements" are in violation of the River Park Site Plan. River Park/Lyme put at liability risk, closing site to public access.

September 28, 2023 – Round Hill Fence Co. adjusts River Park construction fence to secure the project site, and to enable Phase 1 Infrastructure (Route 10 entrance road, Municipal Stormwater solution, etc.) to be completed.

- Planning Staff argued against River Park's proposed 2023 Amendments that would have allowed project to proceed in a more efficient manner.

October 1, 2023 – XYZ authorizes Elkus Manfredi to do another Code Report for any updates to 1 River Park plans, as City had been promised.

October 6, 2023 – XYZ executes updated E-M Architectural Services contract, for the fourth time.

October 16, 2023 – Lease Proposal and Letter of Intent to prospective Life Science tenant interested in entire Third Floor.

December 13, 2023 – Code Report delivered.

December 29, 2023 – Elkus Manfredi sends proposal for updating drawings.

January 5, 2024 – Prior to 180 days from 7/11/2023, Lyme submits update memo to Lebanon Building Inspector.

"We have named Engelberth Construction as our Construction Manager, and along with Elkus Manfredi Architects and the rest of the project team are working toward the Spring, 2024 construction season."

January 26, 2024 – Lyme and AHA Engineers communicate with City of Lebanon DPW about updated water flow data.

January 29, 2024 – Teleconference with Elkus Manfredi to update and finalize Building Interiors.

February 1, 2024 – Travel to Massachusetts to meet with prospective tenant.

February 1, 2024 – Lebanon Planning Department sends Expiration and Invalidation Memo, outlines options to appeal, and directs Lyme to direct any questions to the City Attorney.

February 29, 2024 – XYZ/Lyme files Appeal.

April 1, 2024 – Building Code Board of Appeals Hearing on BCBA2024-01.

EXHIBIT 4

LYME PROPERTIES, AGENT FOR XYZ DAIRY, LLC

**In Re: Appeal of Administrative Decision of Building Inspector
River Park
West Lebanon, New Hampshire**

MAY - 1 2024

STATEMENT OF FACTS AND LAW

This Statement of Facts and Law is submitted on behalf of Lyme Properties, development agent for XYZ Dairy, LLC (together, the "Appellant"), the owner of Tax Map 44, Lot 21 at River Park in West Lebanon, New Hampshire (the "Property"), in connection with its appeal of an administrative decision of the Lebanon Building Inspector (the "Appeal").

All testimony, statements, representations, evidence, plans, reports, studies, exhibits and other information submitted or to be submitted by or on behalf of the Applicant in connection with the Application at or prior to the public hearing on the Application are incorporated by reference hereto.

The Applicant requests that the Building Code Board of Appeals (the "Board") approve this Statement of Facts and Law as the specific findings required pursuant to RSA 676:3, I.

A. Factual Background.

1. By Building Permit dated December 31, 2019 (Permit #2016-00293; the "Building Permit"), the Appellant was authorized to commence construction on a mixed used commercial building on the Property, which is Lot 1 in the River Park Subdivision.

2. The Building Permit contained five (5) relatively standard conditions of approval, to be satisfied at various points during the construction process, with no expressly stated expiration date.

3. Due to the Covid-related public health emergency, the deadline to commence construction under the Building Permit was extended to January 13, 2023.

4. On or before November 29, 2022, the Appellant's contractor staked the foundation of the proposed building on the Property in accordance with the approved site plan and began initial excavation within the building footprint.

5. In the course of the initial excavation work, the contractor encountered the City's stormwater line from Route 10 to the ravine on the River Park site.

MAR - 1 2024

6. The City's stormwater line apparently was originally constructed to manage stormwater from Main Street/Route 10. According to plans provided by the City to the Appellant, it has additionally accommodated stormwater runoff from at least one private development (the Falls) on the easterly side of Main Street/Route 10.

7. The depth of the pipe is in direct conflict with the foundation excavation and cannot be abandoned in place; best construction practices is to remove the pipe and accommodate the stormwater runoff from the public street and other properties through some other means of stormwater management.

8. The conflict with the pipe, associated costs, and questions regarding responsibility of maintenance, were brought to the City's attention in Item #30 of the Appellant's March 25, 2022 comprehensive memorandum "A Framework For Public Private Partnership At River Park," which was submitted to the City in an effort to address past challenges and propose a collaborative, cost-saving path forwards.

9. A subsequent meeting between the Appellant and the City's Department of Public Works confirmed the assumption that the project had been over-engineered but nevertheless the Appellant would bear full responsibility for any re-engineering and cost-saving efforts to address the municipal stormwater line.

10. Since the initial excavation work, the Appellant has been working diligently with the City's engineering and planning staff to develop a plan to properly remove and dispose of the pipe, manage the City's stormwater, and fairly allocate the cost of those efforts. To date, all associated costs have been borne by the Appellant.

11. At the same time, the Appellant and the City have been engaged in communications regarding the status of the Building Permit.

12. By letter dated December 9, 2022, the Appellant formally notified the City of the commencement of construction under the Building Permit.

13. Other than cursory acknowledgements of the Appellant's December 9 letter, the City did not respond substantively with regard to the Building Permit until February 15, 2023 (i.e., 68 days later), at which time the Building Inspector requested additional information "in order to make a determination as to whether work has commenced for purposes of demonstrating compliance with Section 105.5 of the IBC [International Building Code] (which provides that, '[e]very permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance[.]'"

14. The Building Inspector's February 15 notice went on to: (a) list nine (9) specific "examples" of the information he required, none of which are set forth in Building Permit or otherwise in any applicable law, rule or regulation; (b) threaten to "revoke the permit as of January 13, 2023" if such additional information was not provided; and (c) set forth four specific actions

that, if the Building Permit was not revoked, the Appellant would need to take “prior to the resumption of construction activities,” none of which are conditions of the Building Permit or otherwise required by any applicable law, rule or regulation and two of which that fall entirely outside of the building inspection and permit process.

15. By letter dated March 7, 2023, the Appellant provided additional information to the Building Inspector and asked him to provide the Appellant with the City’s standards and policies with respect to the commencement of construction under a building permit and what specific information is required by the IBC and other applicable law with respect to the same.

16. Following subsequent discussions between the Appellant and City staff on March 16, 2023 and additional information supplied by the Appellant at the City’s request (in the form of invoices for project materials and cover letter dated March 24, 2023), the Building Inspector agreed that the Appellant’s work constituted commencement of work pursuant to the Building Permit as of November 29, 2022. At the same time, however, the Building Inspector set forth several “additional steps” that need to be completed “to maintain activation of the building permit without jeopardizing the 180-day allowance from November 29, 2023 [sic].”

17. The list of additional steps in the Building Inspector’s March 24 letter was substantially the same as the list provided in his February 15 notice, with an additional requirement with respect to the solution for the City’s drainage issue.

18. The Building Inspector’s March 24 letter contained no reference to the basis for the requirement for “additional steps” in either the Building Permit, the IBC or any other applicable law, rule or regulation or provide any specific deadline for the completion of such additional steps.

19. By email dated April 10, 2023, the Appellant sought a response from the Building Inspector for clarity as to the date of the commencement of work for purposes of the Building Permit and again for specification as to the legal basis for the Building Inspector’s request for additional steps as condition of maintain the permit’s “activation.”

20. Without such information from the Building Inspector, continuation of the construction work under the Building Permit is practically and economically unfeasible, as it would entail substantial investment of resources and efforts without assurances that the Building Permit will not be revoked.

21. Having received no response from Building Inspector, the Appellant filed this appeal of an administrative decision by the Building Inspector on April 25, 2023.

B. Applicable Law and Legal Findings.

22. Building permits in Lebanon are required under the Lebanon Code of Ordinances (the “LCO”), Chapter 36. Building Construction, §36-2.A.

MAY - 1 2024

23. No part of the Chapter 36 of the LCO, or any other provision of the City's ordinances, rules or regulations, set forth specific requirements governing the commencement or continuation of work under a building permit.

24. Section 36-2.A of the LCO incorporates by reference the requirements of the State Building Code as defined in RSA 155-A.

25. The State Building Code adopts by reference the International Building Code of 2018 (the "IBC"). RSA 155-A:1, IV; RSA 155-A:2, I.

26. Section 105.5 of the IBC provides in full:

"Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated."

27. No part of the State Building Code or the IBC set forth specific requirements governing the commencement or continuation of work under a building permit.

28. In the absence of specific provisions in the LCO, the State Building Code, the IBC, and any other applicable law, ordinance, code, rule or regulations, the Building Inspector's requests for the Appellant to provide additional information or take additional steps not set forth in the Building Permit itself in order to maintain the Building Permit in effect is arbitrary, capricious, unreasonable and unlawful.¹

29. Having commenced construction under the Building Permit in a timely fashion prior to its expiration under Section 105.5 of the IBC, and having continued construction-related activity continuously, diligently and in good faith since that time (including working with the City to resolve conditions in the field, *i.e.*, the effect of the municipal stormwater infrastructure on the site, and bringing this Appeal), under Section 105.5 of the IBC, the Building Permit shall remain in effect from the date hereof unless and until the work authorized by the Building Permit is suspended or abandoned for a period of 180 days. *Cf. City of Kalispell v. Schaffer*, 700 P.2d 1000 (Mont. 1985).²

¹ The Building Inspector's requests effectively constitute the retroactive imposition of conditions on the issuance of the Building Permit not authorized by applicable law.

² In the absence of specific language in the IBC regarding what constitutes abandonment of a building permit, abandonment requires both an intention to abandon or relinquish the permit and an overt act or failure to act which carries the implication that the holder of the permit neither claims nor retains any interest in the permit. See *Lawlor v. Town of Salem*, 116 N.H. 61, 62 (1976); *Pike Industries v. Woodward*, 160 N.H. 257, 261 (2010).

MAR - 1 2024

The Applicant reserves the right to amend, modify and supplement this Statement of Facts and Law.

Respectfully submitted,
on behalf of XYZ Dairy, LLC
By Cleveland, Waters and Bass, P.A.

Date: June 1, 2023

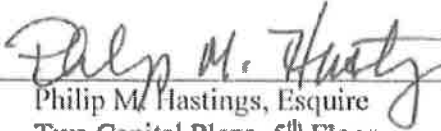
By: 
Philip M. Hastings, Esquire
Two Capital Plaza, 5th Floor
P.O. Box 1137
Concord, NH 03302-1137
Telephone: (603)224-7761
Email: hastingsp@cwbp.com

EXHIBIT 5



December 9, 2022

David Brooks
Deputy City Manager
City of Lebanon
51 N Park Street
Lebanon, NH 03766

Re: Commencement of 1(00) River Park Drive (Building Permit #2016-00293), conflict with City's existing municipal stormwater line

Mr. Brooks,

This memo is to provide official notice to the City of Lebanon that XYZ Dairy, LLC commenced construction on 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293, and that we have encountered a conflict with existing City of Lebanon infrastructure that has suspended construction until a solution can be reached.

Initial excavation within the building footprint began on Tuesday, November 29, 2022 by Nott's Excavating who returned to the site following the delayed conclusion of the Cross Country Connector work that was performed in August, 2022 but not deemed substantially complete until October 25, 2022.

Lebanon Build Inspector Calvin Hunnewell's May 27, 2022 memo outlines the status of Building Permit #2016-00293.

Excavation work on 1 River Park was stopped upon encountering the City's stormwater line running from Route 10 to the ravine on the River Park property. Work has now ceased accordingly, until there is a solution for this municipal utility obstructing the foundation of 1 River Park Drive. As XYZ Dairy, LLC does not own or control the pipe on our property, we cannot address it without City approval.

I reported the uncovering of the pipe to Brian Vincent, City Engineer on November 29, 2022 following the report from Nott's. Brian and I spoke on November 30, 2022 and agreed that he complete a file review to determine what, if any, information the City had available.

On December 2, 2022 I received a follow-up communication from Brian along with a PDF of a 1999 Bruno Associates Inc. P.C. plan showing the existing stormwater line as part of a permit set for "Project 98221 Maple Street." I subsequently requested additional information about that project, and Sheet S-3 which was referenced in the construction notes as containing "off-site drain & sewer profile" information which was provided on December 5, 2022. Brian and I are working to schedule a field visit next week, and a conversation to follow between the City and XYZ will be required to determine potential solutions and a path forwards.



The line in question is shown on the existing condition plan only as an "18" cast iron pipe." Nott's reports that the pipe they uncovered may in fact be clay. Either way, the depth of the pipe is in direct conflict with the foundation excavation and thus cannot be abandoned in place. Also, given the condition of the pipe and the additional future infrastructure that will be installed atop its current route, we believe that the best practice is to remove the deteriorating pipe so as to avoid future sink-holes, etc. That excavation work and disposal represents another additional development cost to XYZ Dairy, LLC to address a municipal issue.

The issues and costs associated with this pipe were outlined in Item #30 of the March 25, 2022 "A Framework For Public-Private Partnership" prepared by Lyme Properties for City Manager Shaun Mulholland.

Sincerely,

A handwritten signature in cursive script that reads "Chet Clem".

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

Cc:

Brian Vincent, City of Lebanon
Calvin Hunnewell, City of Lebanon
David Clem, XYZ Dairy, LLC

EXHIBIT 6

From: David Brooks David.Brooks@lebanonnh.gov
Subject: RE: [EXTERNAL] Commencement of 100 River Park Drive (Building Permit #2016-00293), conflict with City's existing municipal stormwater line
Date: February 2, 2023 at 12:22 PM
To: Chet Clem chet@lymeproperties.com, David Clem dclem@lymeproperties.com, Angela McCanna amccanna@lymeproperties.com
Cc: Brian Vincent brian.vincent@lebanonnh.gov, Calvin Hunnewell Calvin.Hunnewell@lebanonnh.gov, Nathan Reichert Nathan.Reichert@lebanonnh.gov, Tim Corwin Tim.Corwin@lebanonnh.gov, Nik Coates Nik.Coates@lebanonnh.gov, Jay Cairelli Jay.Cairelli@lebanonnh.gov, Rod Finley rod.finley@lebanonnh.gov



Chet

My apologies for the delay in responding to your letter of December 9, 2022.

I am aware that City Engineers Brian Vincent and Rod Finley met you at the site on December 15th to review the current situation with the existing storm drain pipe. It is understood that the existing drain pipe is in conflict with the proposed building and that options discussed on December 15th included: 1) relocating the existing line, at least temporarily, or 2) delaying building construction until after the Route 10 intersection work is completed, which, as approved, will include installation of new drainage improvements thereby making the existing drainage pipe obsolete.

As an alternative, I understand that you discussed with the City Engineers on December 15th relocating the drainage pipe along the southerly side of Lots 1 and 2 to reach the ravine. You previously provided the City with a copy of an August 4, 2020 cover letter request from TF Moran to NHDES for a "proposed amendment extension to AoT-0994", which referenced the change of relocating the city-owned discharge of an existing 18" stormwater culvert on the property in order to construct the foundation of 100 River Park Drive on Lot 1. I believe TF Moran prepared a layout of the changed location, but I don't know if any revised drainage calculations were prepared or provided to NHDES. The subsequent AoT permit amendment (AoT-0994A) issued by NHDES on October 30, 2020 does not appear to explicitly reference or approve the proposed relocation, but does reference the recent request of August 4th, and is presumed to include and incorporate the changed drain pipe alignment, which in any event has been installed, but is not yet connected to the catch basin in Route 10.

The City has no issues with the use of the alternative drainage pipe alignment on a temporary basis, or perhaps even on a permanent basis, as long as the alternative alignment and design is approved by NHDES. The City would like a complete copy of the AOT amendment request, including any information that hasn't previously been provided. In addition, the City would need documentation that the alternative drainage pipe was properly sized and installed to handle only the existing stormwater flows currently handled by the existing pipe. The City would also require additional details and an as-built plan of the installed drain pipe, including confirmation that there are no conflicts with the recently-installed cross-country water and sewer mains extending from Crafts Avenue Extension into the commercial portion of the site. (The sketch plan prepared by TF Moran, which was presumably included with the 8/4/20 request to NHDES, appears to depict potential conflicts with water and/or sewer mains in the southeast corner of Lot 2, but any such conflicts could have been resolved in the field during installation of the cross-

conflicts could have been resolved in the field during installation of the cross-country water and sewer mains). Finally, the City would require a conveyance of the alternative drainage pipe and an easement for access, maintenance, repair, replacement, etc. Such easements normally extend 15 feet on each side of the centerline of the pipe, and depending on the final installed location, could include parts of Lot 24, which has since been conveyed to Lauren Cummings. An as-built plan of the installed pipe would confirm whether Mr. Cummings needs to grant an easement for the alternative drainage pipe.

With the above information, the City would then be prepared to issue an excavation permit (if necessary and upon application) for work within the City's right-of-way to disconnect the existing drainage pipe from the Route 10 catch basin and to connect the new drainage pipe. Following disconnection of the existing pipe from the catch basin, the remainder of the existing drainage pipe may be abandoned and removed to allow for construction of the building on Lot 1.

With respect to the commencement of the construction on Lot 1, I understand that the Planning Department will be reaching out separately to request additional information that could support a determination on that issue.

David

David R. Brooks

Deputy City Manager – Administrative Services

City of Lebanon

(603)-448-4220 (Office)

(603) 442-6134 (Direct)

David.Brooks@LebanonNH.gov

From: David Brooks

Sent: Monday, December 12, 2022 2:57 PM

To: Chet Clem <chet@lymeproperties.com>

Cc: Brian Vincent <brian.vincent@lebanonnh.gov>; Calvin Hunnewell <Calvin.Hunnewell@lebanonnh.gov>; David Clem <dclem@lymeproperties.com>; Angela McCanna <amccanna@lymeproperties.com>

Subject: RE: [EXTERNAL] Commencement of 1(00) River Park Drive (Building Permit #2016-00293), conflict with City's existing municipal stormwater line

Chet

I'm acknowledging receipt of your letter from last week. I will follow up with Brian on the latest inspections and discussions.

David

David R. Brooks

DAVID H. BROOKS

Deputy City Manager – Administrative Services

City of Lebanon

(603)-448-4220 (Office)

(603) 442-6134 (Direct)

David.Brooks@LebanonNH.gov

From: Chet Clem <chet@lymeproperties.com>

Sent: Friday, December 9, 2022 11:47 AM

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

Cc: Brian Vincent <brian.vincent@lebanonnh.gov>; Calvin Hunnewell

<Calvin.Hunnewell@lebanonnh.gov>; David Clem <dclem@lymeproperties.com>;

Angela McCanna <amccanna@lymeproperties.com>

Subject: [EXTERNAL] Commencement of 1(00) River Park Drive (Building Permit #2016-00293), conflict with City's existing municipal stormwater line

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

Mr. Brooks et al,

Please find the attached memo regarding the status of 1 River Park Drive construction and a conflict with municipal infrastructure.

Sincerely,

Chet Clem

President

Lyme Properties

chet@lymeproperties.com

(603) 676-7106 (direct)

(207) 576-1410 (mobile)

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

[Lyme Properties](#)

[River Park West Lebanon](#)

[Action Plan for West Leb](#)

[A Green Vision for West Leb](#)

[Humor & Downtowns?](#)

[Decriminalize Development](#)

EXHIBIT 7



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

February 15, 2023

Sent Via E-Mail (chet@lymeproperties.com)

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

Dear Mr. Clem,

I'm following up from my letter dated May 27, 2022, regarding your request for an extension of Building Permit #2016-00293 issued for 1 River Park Drive (formerly 100 River Park Drive), originally issued on December 31, 2019. As noted in my letter, this office found that the COVID-19 pandemic represented adequate justification to grant your request and, therefore, I approved an extension of the Building Permit until January 13, 2023.

On December 9, 2022, I received a copy of your letter to Deputy City Manager David Brooks providing "official notice to the City of Lebanon that XYZ Dairy, LLC commenced construction on 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293."

Please be advised that I will need additional information in order to make a determination as to whether work has commenced for purposes of demonstrating compliance with Section 105.5 of the IBC (which provides that, "[e]very permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance[.]") The only information provided in your letter relative to the commencement of work is that "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022."

In order to make a determination with respect to Section 105.5, please provide us with more information as to what work was completed and what other steps were taken to effectuate the Building Permit and to commence construction in good faith and in earnest. For example:

1. Date that building footprint was staked and surveyor confirmation.
2. Confirmation that the statement of special inspections is approved by a registered design professional and the inspection agency has verification of notice to proceed.
3. Confirmation that the registered design professionals were and are in your hire as of November 29, 2022, and are ready to proceed.
4. Redacted copies of contract agreements with description of the project, the scope of work, and construction schedule.
5. Construction schedule including the project's intended completion date, and start and finish times for each phase of the project.
6. Scope of work including which contractors and subcontractors are responsible for each component of work.
7. Detailed cost estimates.
8. Additional information as to the nature and extent of the work performed.
9. Verification of notice to proceed.

Please provide all pertinent documents so that I can make a determination and, if adverse to your position, establish a date by which the determination can be appealed.

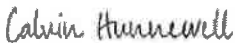
Without additional information and verification that you have actively prosecuted the permit, I cannot justify the continuance of the Building Permit and will revoke the permit as of January 13, 2023.

If I am able to confirm that the Building Permit has not expired, please be aware that there are several other steps that need to be completed prior to the resumption of construction activities (and which should have been completed prior to the commencement of any construction). These include:

- Providing a cost estimate of remaining Phase 1 Infrastructure improvements for review by the City Engineer, and providing security for such and entering into a new security agreement.
- Providing a construction schedule to the City Engineer for purposes of retaining a third-party inspector, providing payment of estimated third party review costs, and entering into a third party inspection and water & sewer extension agreement.
- Installing edge-of-disturbance fencing on site to be reviewed by the City Engineer.
- Confirming that all state permits have been obtained or have been updated, as needed.

If you have any questions, I can be reached at (603) 448-1524 or by e-mail at calvin.hunnewell@lebanonnh.gov.

Sincerely,

DocuSigned by:
 2/15/2023
A22F5A1BEE6D49E
Calvin Hunnewell, Building Inspector

cc: Nathan Reichert, Director of Planning & Development
Tim Corwin, Deputy Director of Planning & Development

EXHIBIT 8



March 7, 2023

Calvin Hunnewell
Building Inspector
City of Lebanon
51 N. Park Street
Lebanon, NH 03766

Re: Commencement of Building Permit #2016-00293

Mr. Hunnewell,

The first step in the construction of 1 River Park is addressing the City's stormwater line that is in conflict with the building's foundation. The pipe services Route 10 (NHDOT and Urban Compact) and *The Falls* development across the street and runs diagonally through Lot 1 at River Park and the footprint of the building before draining into the ravine on the River Park property.

After repeat delays encountered during 2022, we commenced excavation of the 1 River Park foundation in good faith and in earnest on November 29, 2022. The foundation had been staked prior to commencement of work by Nott's Excavating using their GPS system loaded with the approved River Park plans. Nott's began carefully excavating along the east side of the foundation to daylight the pipe. Once the pipe was located work ceased to avoid potentially damaging the existing, active line that was initially reported to be clay.

As my December 9, 2022 memo outlined I cannot proceed any further on the 1 River Park excavation until the conflict is addressed, and given that it is municipal infrastructure that solution must be coordinated with the City of Lebanon. The first meeting with City officials from the Department of Public Works was on December 15, 2022, and David Brooks' February 2, 2023 memo outlines potential solutions. I have subsequently been working with TF Moran, our engineer of record, to develop potential solutions in response.

I have provided additional information attached outlining the work that has been done in good faith and in earnest to initiate— for the fourth time, following suspensions in 2016, 2018, 2020— construction of 1 River Park.

If you feel that the information provided herein is insufficient to meet the standard of commencing construction in good faith and in earnest then I would ask that you provide me with the City's definition of Commencement of Construction and direct me to the City's policy on what is required to meet that burden of proof. You provided nine examples in your February 11, 2023 memo, but I'd like to know what is specifically required by the IBC or the Lebanon code so that I can ensure sufficient information is relayed.

Since initiating excavation on 1 River Park in November, 2022— and having heard no response for over 60 days to my December 9, 2022 memo to that effect other than my meeting with City officials



on December 15, 2022– I have been engaged in the requisite conversations with project partners that must be restarted every time we attempt to initiate work on any phase of River Park.

If you elect to revoke the building permit as of January 13, 2023 per your February 15, 2023 memo, I would ask that it be done promptly so that I do not continue to incur costs related to the development of River Park.

Sincerely,

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



Additional information regarding efforts to commence construction of 1 River Park

Prior to excavating the 1 River Park foundation, XYZ Dairy completed the Cross Country Connector (CCC) to bring municipal water and sewer service to 1 River Park (Phase 1). The CCC scope was delayed by material shortages, delivery delays, and manpower issues, as well as engineering and permitting issues brought to light by the City the week prior to commencement of construction. Thanks to the effort of the Lebanon DPW and TF Moran, that issue was resolved in time for work to continue.

However, as a result the CCC work was not completed until August 26, 2022, and was not signed off on by the City as substantially complete until October 25, 2022. After that two-month delay, Nott's re-mobilized to return to the site to begin excavation on the 1 River Park foundation when they were next available.

Relatedly, we are still awaiting delivery of the ductile pipe required by the City to connect 1 River Park to the Cross Country Connector. This pipe was part of a substantial material order placed by our contractor in January, 2022 for the anticipated Summer, 2022 construction on both Phase 1 infrastructure and 1 River Park. I have been informed by Nott's Excavating that it has arrived at the Ferguson yard as of February, 2023, approximately 1 year after placing the order.

The November, 2022 excavation confirmed the depth and material of the stormwater pipe in question, as the limited information we had available to us has caused confusion in the past—including when the pipe was mistakenly blocked during previous site work that had been approved by the City Engineer at the time. The pipe crosses the foundation at approximately waist-height above finished grade of the basement floor, creating a direct and unavoidable conflict. From my December, 2022 memo: "given the condition of the pipe and the additional future infrastructure that will be installed atop its current route, we believe that the best practice is to remove the deteriorating pipe so as to avoid future sink-holes, etc. That excavation work and disposal represents another additional development cost to XYZ Dairy, LLC to address a municipal issue."

The unprecedented rise in construction costs and the ongoing challenges of the supply chain and labor markets resulting from Covid-19, and ongoing costs and associated challenges of inflation, have a significant financial impact on River Park. This is on top of the costly delays incurred when construction mobilizations in 2016 and 2018 for 1 River Park were suspended for reasons beyond our control. The price escalations need to be offset with cost-savings wherever possible.

As such, I have been in communication with City Manager Mulholland and Dep. City Manager Brooks since providing them with a framework for public-private partnership in March, 2022 that outlines cost-saving, coordination, and collaborative efforts that could facilitate economic development at River Park and in West Lebanon. That document coalesces conversations from 2020-2022 about how to efficiently advance municipal infrastructure at River Park.

The solution for the City's stormwater line is one obvious area for cost savings. The cost of the engineering solution approved in 2011 has ballooned to an estimated \$900,000+, and presently



the upfront cost and long-term maintenance of that solution falls entirely on the River Park project. As I have communicated to the City, I believe there is a better way to solve this problem for both parties, and one that does not unduly burden River Park. Those value-engineering efforts are being advanced by TF Moran in response to the criteria set forth by Mr. Brooks in his February 2, 2023 response.

A point of clarification in response to your February 15, 2023 memo: "1 River Park" and "Phase 1 Infrastructure" are two separate and distinct scopes of work. Phase 1 infrastructure serves the entire project, whereas 1 River Park is solely related to River Park Phase 1/Lot 1 and covered by Permit #2016-00293 in question. There is a distinction between the temporary redirecting of the existent conflicting line done under means and methods of the 1 River Park building permit as is already underway, and the permanent solution— which is now under review— under Phase 1 infrastructure. The installation of the temporary bypass line was done to facilitate construction on 1 River Park.

In the past, we had intended to do Phase 1 Infrastructure and 1 River Park simultaneously. However, in the course of past delays on 1 River Park, XYZ Dairy, LLC completed three of five segments of the Phase 1 infrastructure. Crafts Avenue Sewer and Roadway Improvements (CASRI, completed 2018) and Crafts Avenue Extension (CAE, completed 2020) brought municipal water and sewer to the River Park development site. The Cross Country Connector (CCC, completed 2022) brought municipal water and sewer to service 1 River Park. That was done in good faith and in earnest towards initiating construction on 1 River Park.

Per our approvals, Phase 1 infrastructure must be complete by the Certificate of Occupancy for 1 River Park, not ahead of construction. Similar to the Crafts Avenue Extension not needing to be complete prior to the issuance of building permits for houses on those subdivision lots, I believe it's logical for building construction to commence prior to the final roadway work. Accordingly, I do not believe a cost estimate, security agreement, and third-party inspection for the Southern Entrance and River Park Drive were required prior to advancing the 1 River Park construction.

The Route 10 Southern Entrance (SE) and River Park Drive Segment 1 (RPD-1) are the two outstanding segments of Phase 1 infrastructure. The scope and timing of those phases are also dependent on solving the stormwater line and ongoing conversations with the City. For example, if we can successfully re-route the existing stormwater line we can limit the necessary excavation and disruption in Route 10— which was just repaved by the City and State last year. Unfortunately, repeat efforts to coordinate Route 10 work with the NHDOT and Lebanon Planning Department were unsuccessful.

Additionally, as outlined in my May, 2022 memo, it's my hope that XYZ Dairy and the City can reach an agreement that would allow the entirety of the River Park Drive/Lyman Street loop to be completed at once for the sake of efficiency, and more importantly to facilitate the relocation of the Advance Transit transit hub from Kilton Library in keeping with City plans since 2010 and the 2021 Memorandum of Understanding to that effect between XYZ Dairy and Advance Transit.

EXHIBIT 9



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

March 24, 2023

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

Thank you for attending the meeting last Thursday March 16, 2023, to further discuss your commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

Topics discussed included:

- Determination of commencement of work.
- Timing and continuance of work.
- Existing stormwater situation.
- Inability to complete the excavation for the building.
- TF Moran designing potential solutions.
- Meetings with project partners.
- Project expenses.
- Requested documentation.

As a result of the meeting and your follow up e-mail sent later the same day, we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

The following additional steps need to be completed in order to maintain activation of the building permit without jeopardizing the 180-day allowance from November 29, 2023, which is the date you began construction:

- Stormwater design:
 - Design of the storm water solution by TF Moran submitted to the City.
 - Provide expected construction commencement and completion of the storm water system including demolition of the existing pipe in the footprint of the building.
- Provide the following additional documents relating to the commencement of construction:
 1. Date that building footprint was staked, after placement of concrete provide licensed surveyors certification of building placement.
 2. Completed statement of special inspections is approved by a registered design professional and the inspection agency has verification of notice to proceed.
 3. Confirmation that the registered design professionals are in your hire and are ready to proceed.

4. Redacted copies of contract agreements with description of the project, the scope of work, and construction schedule.
5. Construction schedule including the project's intended completion date and start and finish times for each phase of the project.
6. Scope of work including which contractors and subcontractors are responsible for each component of work.
7. Cost estimates.
8. Additional pertinent information as to the nature and extent of work performed.
9. Verification of notice to proceed.

EXHIBIT 10

From: [Chet Clem](#)
To: [Calvin Hunnewell](#)
Cc: [Nathan Belchert](#); [Tim Corwin](#); [David Brooks](#)
Subject: [EXTERNAL] Re: 1 River Park Drive/ Permit 2016-00293
Date: Monday, April 10, 2023 5:27:12 PM
Attachments: [2023-03-24 Commenced Work.pdf](#)

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

Calvin et al,

1. I would suggest that the 180 day clock should start from the date (3/24/23) the City finally issued the decision that we had commenced, putting the 180 days at September 20, 2023. Otherwise, 107 days out of the 180 days I was held in limbo awaiting the City's response on commencement of construction and next-steps regarding the municipal stormwater line.

2. We will need City permission to connect the bypass line before work can proceed further, and that is dependent upon the engineering from TF Moran in response to David Brooks' February 2, 2023 memo.

3. As discussed in our March 16, 2023 meeting the delayed response from the City and the threat of building permit revocation caused me to pause consultant spend on the project. The TF Moran contract is in the works, and it will take some time for them to execute the design and coordinate with the NHDES and City of Lebanon. For the sake of efficiency I would like to have TFM do the temporary Diner connection work (per my 4/7/23 email) simultaneously.

4. Regarding the additional 9 items mentioned in your March 24, 2023 communication, as I wrote in my March 7, 2023 memo and as discussed in our 3/16 meeting, if you can direct me to the ordinance/requirement/documentation where the information defining these requirements are, that would be helpful in ensuring we provide sufficient information to be in compliance. Our attorney is on vacation so I have not had the opportunity to review this list with him.

1. Date that building footprint was staked, after placement of concrete provide licensed surveyors certification of building placement.

The Contractor (Nott's Excavating) utilized the existing plans approved by the City in their GPS system to stake the building footprint ahead of initial excavation for the purposes of addressing the municipal pipe. The stakes are visible in the photos I provided to the City in Nov/Dec. I was not aware a licensed surveyor was required at this stage; per the building permit conditions that requirement isn't until footings/forms/reinforcements.

2. Completed statement of special inspections is approved by a registered design professional and the inspection agency has verification of notice to proceed.

Pending

3. Confirmation that the registered design professionals are in your hire and are ready to proceed.

As explained in our 3/16 meeting, the full architectural services contract with Elkus Manfredi from 2015 included construction oversight. That underlying contract is still in force, despite the three previous false-starts. The construction management portion, which we have already renewed and paid for (at least in part) for the 2018 and 2020 mobilizations, has been updated and has a contract value of approximately \$400,000.

4. Redacted copies of contract agreements with description of the project, the scope of work, and construction schedule.

Please define requirement.

5. Construction schedule including the project's intended completion date and start and finish times for each phase of the project.

Please define requirement.

6. Scope of work including which contractors and subcontractors are responsible for each component of work.

Pending.

7. Cost estimates.

Please define requirement.

8. Additional pertinent information as to the nature and extent of work performed.

What specific additional pertinent information are you requesting?

9. Verification of notice to proceed.

Please define requirement.

All of this is dependent upon on the City's response to my April 7 "[A More Productive Path Forward](#)" email, based on my March 24, 2022 memo to the City Manager entitled [A Framework For Public Private Partnership](#).

I look forward to what I hope will be productive conversations about how the city staff can support the development of River Park akin to projects elsewhere in the City, with the goal of facilitating an approved mixed-use project that represents sufficient tax base to make considerable contributions to the ongoing revitalization of West Leb.

And as offered multiple times previously, I'd welcome the planning staff to come to the Lyme office to discuss River Park and broader West Leb efforts at any time.

Chat Clem
President

Lyme Properties

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

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

[Lyme Properties](#)

[The UV Observer](#)

[River Park West Lebanon](#)

[Action Plan for West Leb](#)

[A Green Vision for West Leb](#)

[Humor & Downtowns?](#)

[Decriminalize Development](#)

On Mar 24, 2023, at 12:20 PM, Calvin Hunnewell
<Calvin.Hunnewell@lebanonnh.gov> wrote:

Chet, see attached approval of commenced work.

If you have any questions please let me know.

Calvin Hunnewell

Building Inspector

City of Lebanon

EXHIBIT 11

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR
AN APPEAL OF AN ADMINISTRATIVE DECISION**

A cover application, abutters list, filing fee and ten copies of the site plan (if applicable) must accompany this support statement.

City of Lebanon Zoning Ordinance:

APPEALS:

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 set forth in RSA 676:5. 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.

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 knew 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.

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.

- A. **Majority Vote:** The concurring vote of 3 members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant or any matter on which it is required to pass.

I am appealing the decision of: Calvin Hunnewell, Lebanon Building Inspector
(Name/Title of Official)

made on this date: 3/24/2023.

(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: Per the attached correspondence, XYZ Dairy LLC is appealing the Building Inspector's ultra vires request for information related to building permit #2016-00283.

In Relation to Article(s): _____, Section(s): _____ of the City of Lebanon Zoning Ordinance.



April 25, 2023

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

Appeal of Administrative Decision by Lebanon Building Inspector

Members of the Lebanon Zoning Board of Adjustment,

Lyme Properties serves as the development agent on behalf of XYZ Dairy, LLC, the owner of record of the River Park West Lebanon development. We are hereby respectfully appealing the February 15, 2023 request, and subsequent, slightly edited request on March 24, 2023, by the Lebanon Building Inspector for additional documentation to substantiate the commencement of construction of 1 River Park under Lebanon Building Permit #2016-00293.

For those unfamiliar with the history of the project or curious about the 2016 date of the permit, this represents the 4th attempted mobilization of 1 River Park construction following municipal delays in 2016 and 2018 and Covid-related suspension in 2020. This permit, issued at the end of 2019 for the 2020 mobilization, has been extended previously by the Building Inspector.

The February 15, 2023 memo, specifically the threat to declare the building permit retroactively expired on January 13, 2023, came as a surprise to Lyme Properties. We have sought to address the stormwater line issue proactively for over a year now, and that work is still underway. However, with the 1 River Park building permit put at risk and the resultant limbo created, I have communicated to the City staff that Lyme Properties is hesitant to incur further engineering costs to address a pipe that may no longer be in issue if the 1 River Park building is abandoned.

As expressed in writing on March 7, 2023, in a meeting between Lyme Properties and the Lebanon Planning Department on March 16, 2023, and again in writing on April 10, 2023, Lyme believes that the 9-item list of additional information requested by the Building Inspector falls outside the requirements of the Lebanon ordinance(s) and the State Building Code. Our attorney Philip Hastings agrees with Lyme's assessment that this *ultra vires* request has not been substantiated and is without precedent.

Unfortunately, as we have outlined publicly at www.riverparkwestlebanon.com/path-forwards this is not the first time we have encountered such delays and confusion. Lyme's April 6, 2020 memo and the April 10, 2020 response from then-Planning and Zoning Director David Brooks (both included) summarizes a past example of the Lebanon Building Inspector's decision being outside the bounds of the Lebanon ordinances, and the lost revenue to XYZ Dairy, LLC that was a direct result of that erroneous decision. We would like to avoid a similar issue again, with even more financial impact to XYZ Dairy, LLC.

XYZ Dairy LLC. Developed by Lyme Properties. 57 Main Street, West Lebanon, NH 03784
Phone: 603-676-7800 • Fax: 603-676-7810 • Email: info@riverparkwestlebanon.com

000000 Appeal of Administrative Decision

CR138



Of specific importance to this timely matter, this stems from a December 9, 2022 memo from Lyme Properties regarding the commencement of construction on 1 River Park, and the conflict encountered with a municipal stormwater line serving Route 10 and, as I only recently learned, "The Falls" development across the street. It was 68 days before I received the Building Inspector's initial communication on February 15, 2023. As of the date of this memo, it has been a total of 137 days since this matter was brought to the City's attention.

Throughout that time, the development of 1 River Park and other River Park infrastructure has been put on hold and jeopardized awaiting the City's determination. I have now waited 15 days for a response to my last communication on April 10, 2023, again requesting clarification and substantiation of the information requested. The Deputy Planning and Development Director helpfully communicated in response on April 10th that the Building Inspector was on vacation that week. I will be on vacation the remainder of this week.

Lyme cannot proceed without this matter being addressed, so I now respectfully appeal this decision to the Lebanon Zoning Board of Adjustment.

Sincerely,

A handwritten signature in cursive script that reads "Chet Clem".

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

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

EXHIBIT 12

DRAFT

LEBANON BUILDING CODE BOARD OF APPEALS
MONDAY, July 11, 2023 7:30 PM
(Meeting Begins Immediately Following
Zoning Board of Adjustment)
Council Chambers, City Hall or
Remote Via Virtual Platform
LebanonNH.gov/LIVE

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Dan Nash, Paul McDonough, Dave Newlove, Catherine Hembree (Alt)

MEMBERS ABSENT: Jennifer Barkley (Alt)

STAFF PRESENT: Nathan Reichert – Zoning Administrator
Tim Corwin – Deputy Planning and Development Director

1. CALL TO ORDER

The meeting was called to order at 7:55 PM by Chair Koppenheffer.

2. APPROVAL OF MINUTES

A. June 5, 2023

Mr. Nash MOVED to approve the June 5, 2023, Minutes as presented in the July 11, 2023 packet, with amendments with amendment.

Seconded by Mr. Katz.

Amendments. Page 2, Line 35; Remove 'code' and Add 'office'.

**The Vote on the Motion was approved (4-0-1).*

Mr. Newlove abstained.

3. PUBLIC REHEARING ITEMS

- A. XYZ Dairy, LLC, 1 River Park Dr (Tax Map 44, Lots 21-30 & Map 44, Lot 7), zoned R-3, CBD & IND-L: An appeal of the Building Official's determination pursuant to Lebanon Zoning Ordinance section §801.1 Administrative Appeals, and sections §674:34 Powers of Building Code Board of Appeals that additional documentation is required to substantiate the commencement of construction of 1 River Park under Lebanon Building Permit #2016-00293. BCBA2023-01 - Consideration of Jurisdiction Continued from June 5, 2023 Meeting**

Chet Clem, President of Lyme Properties and David Clem, manager of XYZ Dairy appeared on behalf of the application. A subsequent filing was made by June 19th. The applicant was asked if there was anything he wanted to add. He had a couple of questions and offered a presentation.

Lyme Properties has provided documentation and the question of the timeliness is a matter of interpretation. There is some missing information about the dates and there are numerous errors that are outlined in the subsequent facts. The matter of timeliness was not on their radar until it was brought forth by the City.

1 Mr. Katz said the sum total of what they need is in the February, 2023 Document where the
2 applicants were asked to provide documentation to allow the City to make a determination and to
3 establish a date when it can be appealed. In the March 24, documents there was no decision made
4 and no date of appeal was established. He believes this indicates this is an ongoing dialogue, and he
5 does not believe a decision was made and he believes the Board therefore does not have jurisdiction
6 because no decision has been made. Other members were in agreement.

7
8 David Clem spoke with all due respect; he cannot help but hark back to the previous hearing. Work
9 has been suspended because of this hearing. The excavation of the stormwater sewer has been a part
10 of the problem. He asked if the last extension is still in effect at this time.

11
12 Mr. Katz clarified what he sees. At the start of June, Mr. Clem essentially said there had been a lot of
13 conversations. Because he worried there was going to be a decision against him, he filed an appeal.
14 Attorney Hastings presented the opinion that this is not a decision and should not be held against the
15 applicants. There are two alternatives, there was no decision rather a discussion with no finality. Or
16 has this gone over the number of days. He believes the Board can agree that no decision has been
17 made and therefore there cannot be an appeal.

18
19 Mr. Clem asked if the building permit is still active and is it subject only to the conditions of the
20 original building permit or is it subject to the additional information asking for proof that any
21 construction is occurring.

22
23 *Mr. Katz MOVED, relative to the XYZ Dairy, LLC appeal of the Building Official's determination*
24 *pursuant to Lebanon Zoning Ordinance section §801.1, the Lebanon Building Code Boards of*
25 *Appeals determines that this appeal be dismissed on the grounds that no decision has been made.*

26
27 *Seconded by Mr. Newlove.*

28
29 **The Vote on the Motion was unanimously approved (4-1).*
30 *Mr. Nash voted nay.*

31
32 Mr. Katz asked about having a nonpublic meeting prior to the August 7 meeting. It would have to be
33 noticed, but it can be done in private session. It would be helpful if there was a document with a
34 decision.

35
36 **4. ADJOURNMENT**

37
38 *Vice Chair Katz MOVED to adjourn the meeting at 8:35 PM.*

39 *Seconded by Mr. Nash.*

40 **The Vote on the Motion was unanimously approved (5-0).*

41
42 Respectfully submitted,
43 Linda Billings
44 Recording Secretary

EXHIBIT 13



August 3, 2023

Calvin Hunnewell, Inspector
City of Lebanon
Planning & Development
51 N Park Street
Lebanon, NH 03766

Re: 1 River Park Drive (Building Permit #2016-00293)

Calvin,

Now that the Building Code Appeals Board confirmed on July 11, 2023 that we have commenced construction on 1 River Park Drive, we seek your approval of the temporary relocation of the municipal/NH DOT stormwater line that impacts our property without benefit of an easement.

Please note that this request is distinctly related to connecting to the temporary connection that has already been designed and installed under means and methods of the 1 River Park building permit (#2016-00293). It is independent from the final stormwater design as presently approved, and can proceed independent from the ongoing conversations about an alternative solution as memorialized in the February 2, 2023 communication from Deputy City Manager David Brooks. The temporary solution is under the jurisdiction of building permit #2016-00293.

As you are aware, the current stormwater line does not serve any building footage at River Park. Moreover, the permanent relocation of this stormwater line falls under the jurisdiction of the Lebanon Department of Public Works, the Lebanon City Engineer, and has been approved by the Lebanon Planning Board as part of their Site Plan Approval for the Phased Development of River Park. The permanent solution is to be completed prior to the Certificate of Occupancy of 1 River Park, and the construction plans have previously been approved by the City of Lebanon.

The building permit for 1 River Park (#2016-00293) does not include the off-lot infrastructure work for the entire site. The stormwater requirements for 1 River Park/ Lot 1 have been properly designed by TF Moran, Civil Engineer for this project, and were approved by your office when the permit was issued for the mixed-use building on Lot 1.

This temporary stormwater line was included in the August 4, 2020 request for amendment to NH Alteration of Terrain permit #AoT-0994 sent on behalf of XYZ Dairy, LLC by TF Moran to the NHDES – Water Division, Alteration of Terrain Program. The resultant permit extension (AoT-0994A) was issued on October 30, 2020. The City of Lebanon was copied on both communications.

The temporary line is consistent with best practices and means and methods ordinarily involved in the execution of a building permit and the discovery of unknown conditions. In this case the unknown conditions were the size and precise location of the stormwater line, the extent of the



catch basins in Lebanon and the NH DOT that feed into this stormwater line, and the disclosure that The Falls stormwater design also feeds into this municipal stormwater line.

The temporary solution was engineered by TF Moran and installed by Nott's Excavation, the subcontractor hired by XYZ Dairy to complete Crafts Avenue improvements, Crafts Avenue Extension improvements, and the Cross Country Connector. Nott's is an approved contractor within the City of Lebanon. The installed pipe is a 24" HDPE, more than sufficient to handle the existing municipal/state/private stormwater flows presently running through the existing 18" line. There is no issue or conflict with the Cross Country Connector, per the as-builts provided to the City of Lebanon following the completion of the Cross Country Connector work in 2022.

The only thing that remains to allow work to continue on the excavation for 1 River Park is the connection of the existing line to the temporary line on Lot 1. This can be accomplished without any excavation in the City's Right of Way of North Main or Route 10 outside the compact area.

We respectfully ask that you allow us to proceed with his work so that excavation can continue as soon as practicable. Your favorable decision will allow XYZ Dairy and Lyme Properties to market the completion of 1 River Park according to a realistic time frame and schedule. It will also dictate the completion schedule for the off-site infrastructure work necessary for the issuance of a certificate of occupancy upon 100% completion of the building.

Following the determination of the Appeal Board, we have restarted conversations with project partners that were suspended because of your February 15, 2023 communication. When the Construction Management contract is finalized, XYZ Dairy will again notify your office in writing as we did when Consigli was terminated due to the Covid emergency.

Time is of the essence for this decision. I look forward to your favorable response.

Sincerely,

A handwritten signature in black ink that reads "Chet Clem".

Chet Clem
Lyme Properties
on behalf of XYZ Dairy, LLC

Cc: David Brooks, Deputy City Manager, City of Lebanon
Nik Coates, Deputy City Manager, City of Lebanon
Brian Vincent, City Engineer, City of Lebanon
Jay Cairelli, Acting Public Works Director, City of Lebanon
Rod Finley, City Engineer, City of Lebanon
Nathan Reichert, Director of Planning & Development, City of Lebanon
Tim Corwin, Deputy Director of Planning and Development, City of Lebanon

EXHIBIT 14

From: Chet Clem
To: David Brooks
Cc: Calvin Hunnewell; Nik Coates; Brian Vincent; Jay Calrelli; Rod Finley; Nathan Reichert; Tim Corwin; David Clem; Angela McCanna
Subject: Re: [EXTERNAL] Temp Stormwater connection - Permt #2016-00293
Date: Friday, August 4, 2023 1:28:57 PM

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

David,

The City was Cc'd on all the communications regarding the AOT permit when it was extended back in 2020, and TF Moran addressed this issue with NHDHP.

Additionally, the applicant is proposing a minor plan change to the approved drawings. The change consists of relocating the city-owned discharge of an existing 18" stormwater culvert on the property in order to construct the foundation of 100 River Park Drive on Lot 1. The proposed change meets all the requirements under Env Wq 1503.21 (d) under changes that can be made without applying for an amended permit or new permit. As such, we believe these changes meet the intent of the regulations to permit modifications to the Approved Project.

I understand the additional requirements as it relates to a permanent solution, but it remains our position that the temporary solution is within the City's jurisdiction to approve the temporary re-routing under the building permit. The connection can happen on River Park property, outside the right of way.

The present condition is in fact also a temporary solution as the pipe was redirected to its current route after the former City Engineer approved site work that blocked the pipe, requiring the current re-routing after it backed up.

How the City wishes to handle this is your prerogative, but the City's pipe is preventing work on 1 River Park from continuing. As we've both now noted, this pipe does not serve River Park whatsoever and is exhausting on our property without easement.

I look forward to receiving the City's proposed solution for moving its pipe out of the way so our work can continue.

Thank you,
Chet

On Aug 3, 2023, at 12:24 PM, David Brooks <David.Brooks@lebanonnh.gov> wrote:

Chet

I saw that Nate Reichert has already alerted you that Calvin Hunnewell is out of the office until next week. However, it is my feeling that the Building Inspector is not the correct venue for addressing the Route 10 stormwater connection issue, which, as you noted, does not handle stormwater generated on Lot 1 or elsewhere within River Park.

I have asked DPW representatives, who were also copied on your email below, to engage with you about the Route 10 stormwater connection request so that the existing stormwater pipe can be moved out of the way. As a reminder, the February 2, 2023 email, which is referenced in your letter, outlines several pieces of information that the City needs to ensure the temporary, alternate storm drainage system is adequate.

Again, I have asked the City Engineers or other DPW staff to contact you to open a dialogue in order to get the matter resolved.

David

DAVID R. BROOKS
DEPUTY CITY MANAGER
CITY OF LEBANON, NH
(603) 448-2220 (OFFICE)
(603) 442-6134 (DIRECT)
DAVID.BROOKS@LEBANONNH.GOV

From: Chet Clem <chet@lymeproperties.com>

Sent: Thursday, August 3, 2023 10:11 AM

To: Calvin Hunnewell <Calvin.Hunnewell@lebanonnh.gov>

Cc: David Brooks <David.Brooks@lebanonnh.gov>; Nik Coates

<Nik.Coates@lebanonnh.gov>; Brian Vincent <brian.vincent@lebanonnh.gov>; Jay

Calrelli <jay.calrelli@lebanonnh.gov>; Rod Finley <rod.finley@lebanonnh.gov>; Nathan

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

<Tim.Corwin@lebanonnh.gov>; David Clem <dclem@lymeproperties.com>; Angela

McCanna <amccanna@lymeproperties.com>

Subject: [EXTERNAL] Temp Stormwater connection - Permit #2016-00293

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

Calvin,

Please find the attached memo regarding the temporary solution for the Municipal

stormwater line in conflict with the 1 River Park foundation, and requesting approval under Building Permit #2016-00293 to make the connection so that the foundation excavation and construction may proceed.

Following delays incurred earlier this year, your prompt response and approval would be appreciated.

Thank you,
Chet

chet@lymeproperties.com
603-676-7106

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

<20230803 Request for temporary stormwater connection.pdf>

EXHIBIT 15



Lease Proposal: 1 River Park Drive, West Lebanon, NH 03784

Proposal Date: October 16, 2023

Prepared For:



Prepared By: David Clem, Manager
XYZ Dairy, LLC
57 Main Street
West Lebanon, NH 03784

Tenant:



Landlord: XYZ Dairy, LLC, or Nominee ("Landlord")

Building: 1 River Park Drive, a three-story building with a full height basement (the "Building") consisting of approximately 59,804 rentable square feet ("RSF"), in West Lebanon, NH, located on the parcel of land known as River Park Lot 1 (the Building and such parcel of land hereinafter being collectively referred to as the "Property"). See Attachment A.

Appendix L

RIVER PARK West Lebanon

 RIVER PARK



1 River Park Drive
West Lebanon, NH 03784
603-676-7800
info@riverparkwestlebanon.com
www.riverparkwestlebanon.com
www.lymeproperties.com



Welcome to River Park

Along the banks of the Connecticut River in West Lebanon, New Hampshire, River Park is a 38-acre master-planned, mixed-use development just minutes from Dartmouth College and its growing research, technology, and life science cluster.

River Park will be the Upper Valley's finest research park, an extension of historic West Lebanon, and it will provide public access to the Connecticut River. The mixed-use development will include over 850,000 S.F. of life science research and office space, service retail, restaurants, single family homes and multi-family housing in a pedestrian friendly environment.

We invite you to join us at the next center of the Upper Valley's innovation ecosystem

River Park is envisioned as the future home for companies building upon the innovation and technology coming out of **Dartmouth College**, the **Tuck School of Business**, the **Thayer School of Engineering**, and the **Geisel School of Medicine**, as well as **Dartmouth-Hitchcock Medical Center**, New Hampshire's only Level 1 Trauma Center and academic medical center.

River Park is fully permitted, and ideally positioned to serve the existing and future companies that call the Upper Valley home.

Lyme Properties has built over 4 million square feet of life science research space in Cambridge, Boston, and beyond. River Park is our latest project, creating a campus of innovation just *Downstream from Dartmouth*.

Table of Contents

About River Park

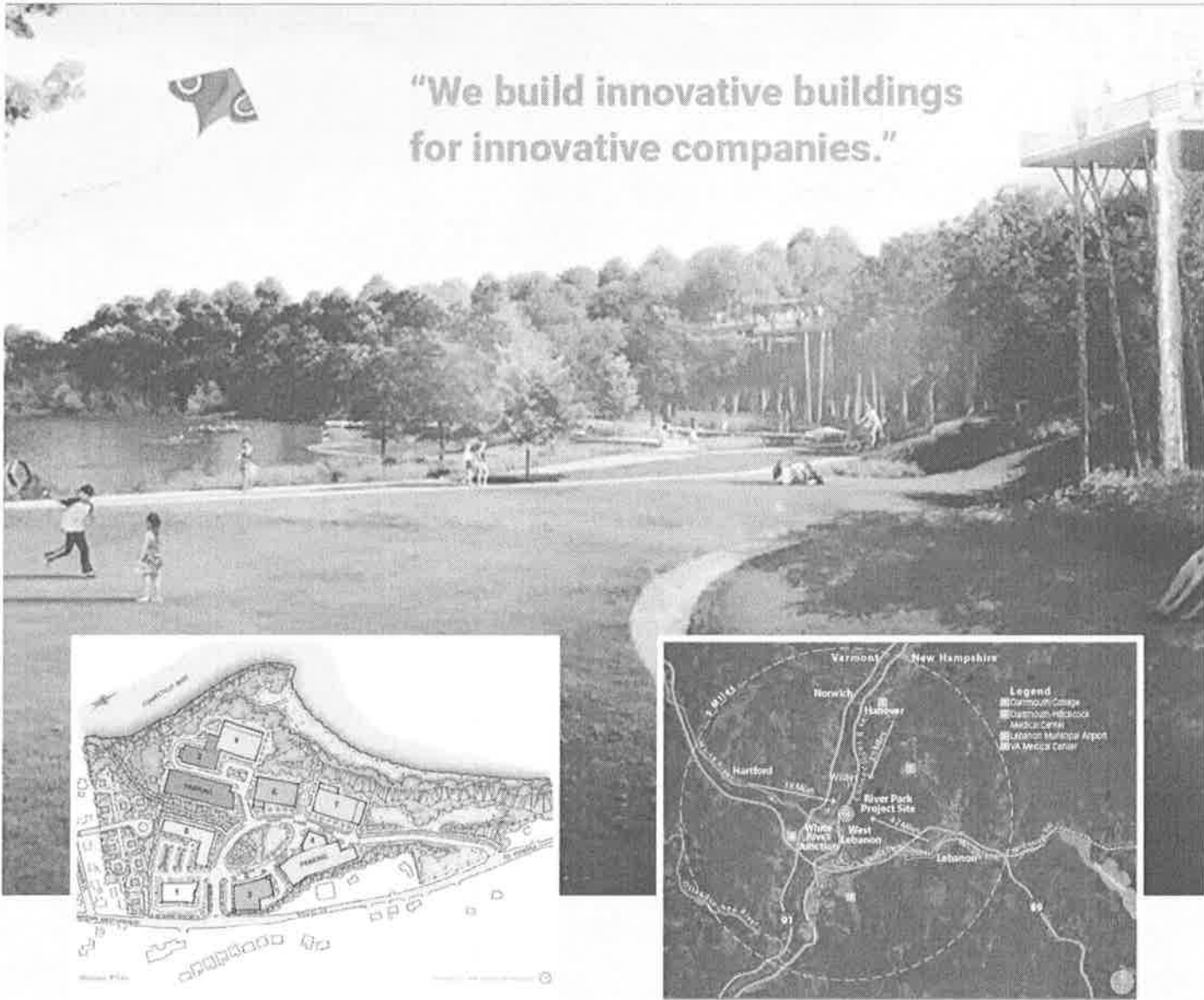
Leasing Plans

Project Team



Unmatched Architecture

1 River Park Drive was designed by Howard Elkus of Elkus-Manfredi Architects. Inspired by the steel bridges spanning the Connecticut River, the building facade is designed for a blend of restaurant, retail, office and laboratory users, and will be an anchor of activity at River Park.



A Riverfront Campus

The project is designed as a walkable, green campus with a mix of life science research, office, retail, restaurants, and housing to create an active live/work/play development with unprecedented access to the Connecticut River, Dartmouth College, and the Upper Valley. For more, visit www.friendsofriverpark.org

Central to the Upper Valley

Located on Route 10, just minutes from Hanover and Lebanon, and the Interstate highway system, the River Park location avoids the congestion of other local commerce centers. An Advance Transit hub will be located at the site, with four free-ride regional bus lines connecting at River Park.



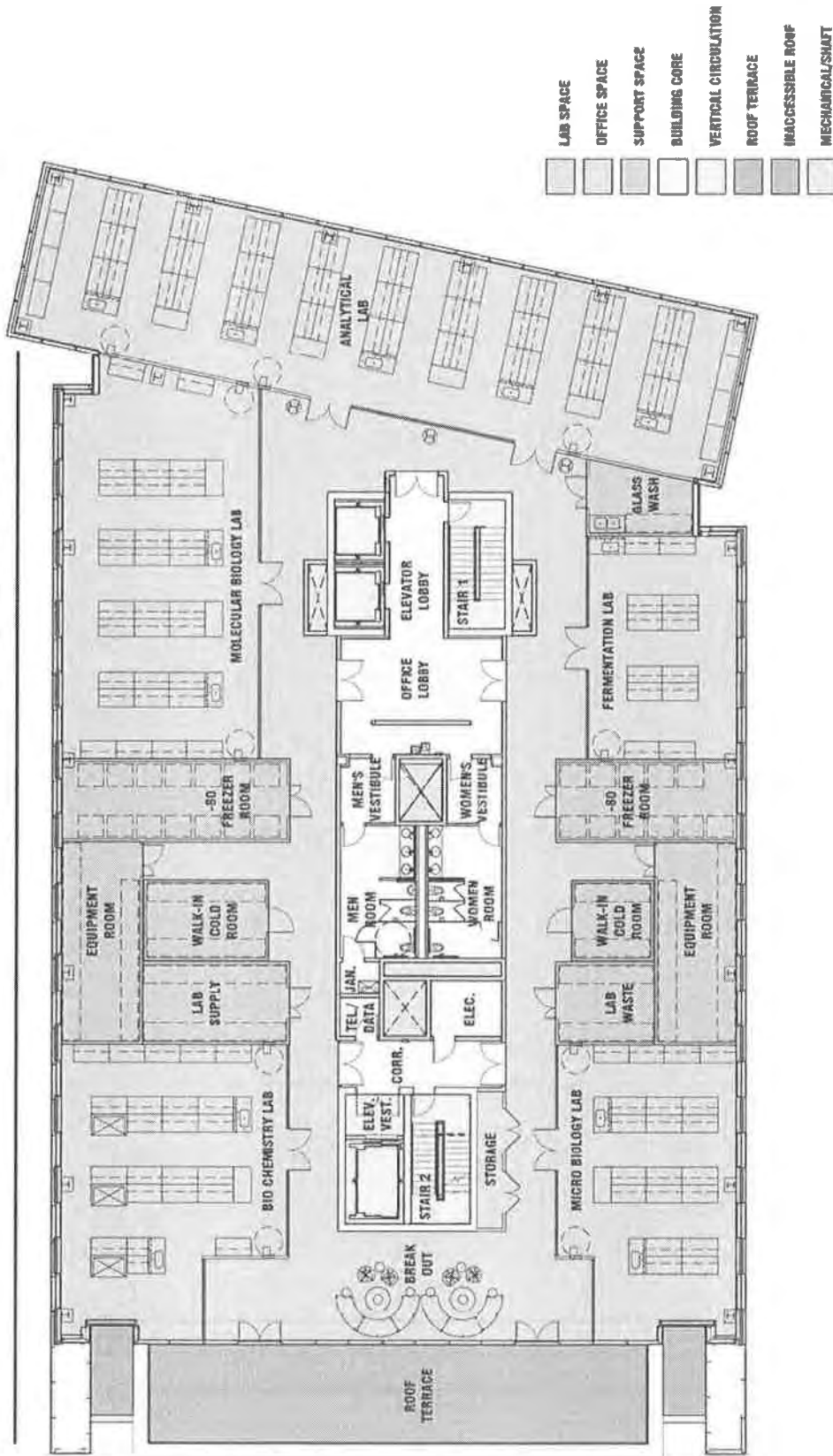


1 RIVER PARK

Building:
1 River Park Drive

Test Fit: Option 2
Life-Science Lab/Office

Space:
3rd Floor





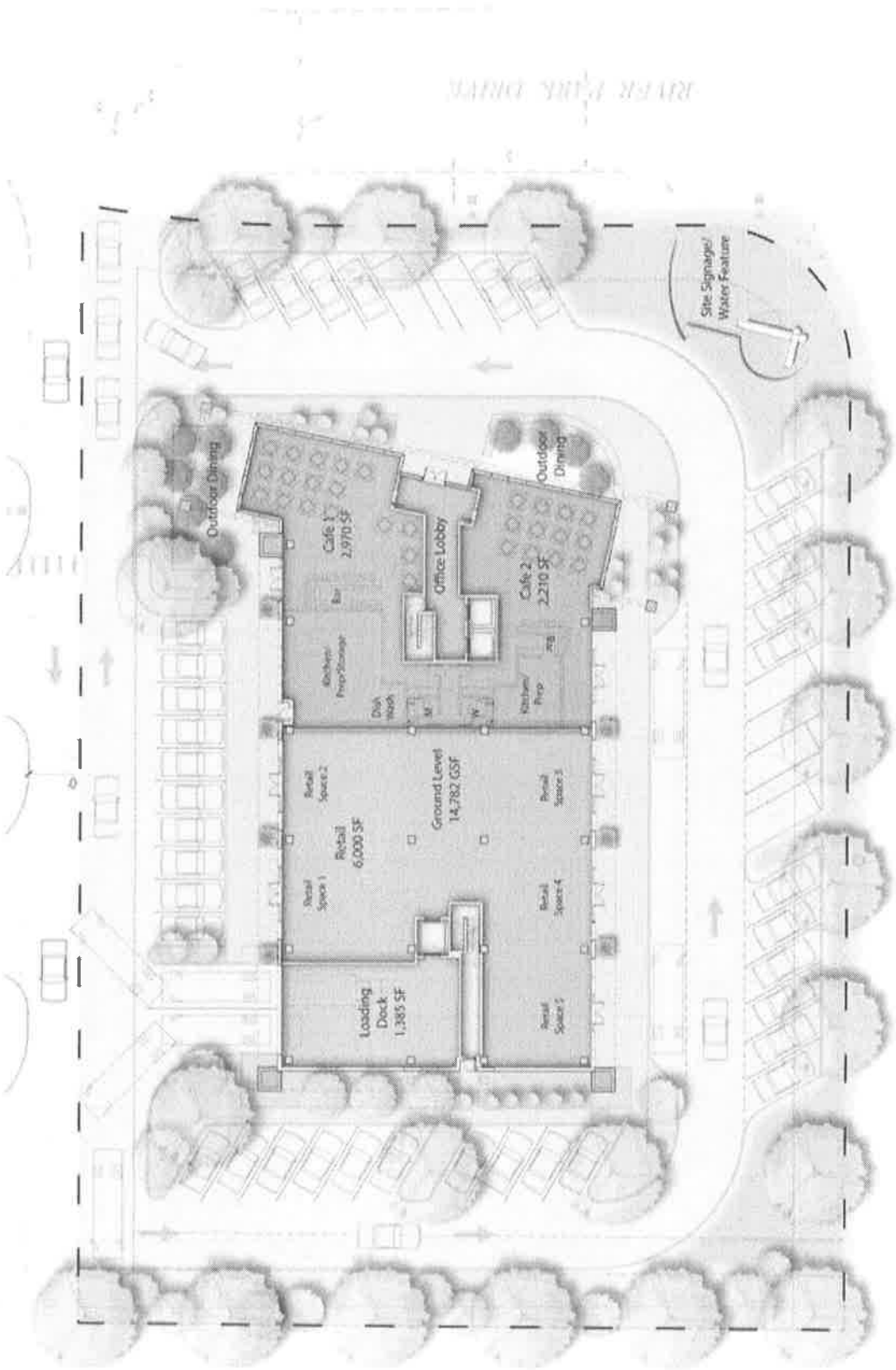
1 RIVER PARK

Building:

1 River Park Drive

Space:

Ground Floor





Project Team

01

**Owner**

XYZ Dairy, LLC

57 Main Street
West Lebanon, NH 03784**Contact:**

David Clem

dclem@lymeproperties.com
603-676-7800 ext. 1

02

**Architect**

Elkus-Manfredi

25 Drydock Avenue
Boston, MA 02210**Contact:**

John Martin

jmartin@elkus-manfredi.com
617-426-1300

03

**Structural Engineer**

McNamara Salvia

101 Federal St, Suite 1100
Boston, MA 02110**Contact:**

Mark Aho

aho@mcsal.com
617-737-0040

04

**M/E/P/FP Engineer**

AHA Consulting Engineers

24 Hartwell Avenue, 3rd Floor
Lexington, MA 02421**Contact:**

Robert Andrews

Robert_Andrews@aha-engineers.com
781-402-6000

05

**Construction Management**

Engelberth Construction

150 Water Tower Circle, #101
Colchester, VT 05446**Contact:**

Chris Yandow

chris.yandow@engelberth.com
802-846-2386

06

**Civil Engineer**

TF Moran

48 Constitution Drive
Bedford, NH 03110**Contact:**

James Robinson

jrobinson@tfmoran.com
603-472-4488

07

**Development & Leasing**

Lyme Properties

57 Main Street
West Lebanon, NH 03784**Contact:**

Chet Clem

chet@lymeproperties.com
603-676-7800 ext. 2

08

**Municipality**

City of Lebanon

51 N Park Street
Lebanon, NH 03766**Contact:**

Shaun Mulholland

City Manager
mulholland@lebanonnh.gov
603-448-4220



The Developer: Lyme Properties

57 Main Street
West Lebanon, NH 03784
603-676-7800

Info@riverparkwestlebanon.com
www.riverparkwestlebanon.com
www.lymeproperties.com

— Our Past Portfolio

Lyme brings a proven track record of award-winning development for leading life science companies and institutions.



- Forbes Magazine named Genzyme Center one of "The Five Most Important Green Buildings."
- 2008 Harleston Parker Medal for "Most Beautiful Building in Boston" Awarded to Genzyme Center.
- Lyme's Kendall Square development received the 2006 EPA Phoenix Award for Excellence in Brownfield Redevelopment
- American Institute of Architects named Genzyme Center one of its Top Ten Projects of 2004
- Genzyme Center was the first privately financed *LEED Platinum* office building in the United States.
- Center For Life Science Boston was the first *LEED Gold* high-rise laboratory

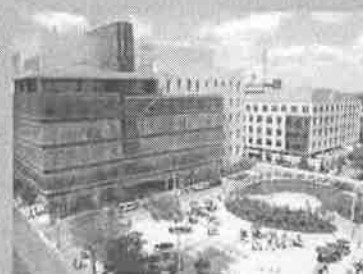
— It's Easy Being Green

Lyme Properties is nationally known for excellence in urban design, green buildings, and adaptive re-use with a portfolio of mixed-use projects that have established pioneering standards for architecture, land-use, and conservation. We focus on the master planning, permitting, and execution of transformative real estate projects, grounded in a philosophy of community-conscious development.

www.lymeproperties.com



Genzyme Center



Kendall Square



200 Sidney Street



Center for Life Science

EXHIBIT 16



January 5, 2024

Calvin Hunnewell
Building Inspector
City of Lebanon
51 N. Park Street
Lebanon, NH 03766

Re: Building Permit #2016-00293

Calvin,

An update that XYZ Dairy, LLC is actively and diligently pursuing the construction of 1 River Park per City of Lebanon Building Permit #2016-00293 that was affirmed as "active" by the Lebanon Building Code Board of Appeals on July 11, 2023.

We have named Engleberth Construction as our Construction Manager, and along with Elkus Manfredi Architects and the rest of the project team are working toward the Spring, 2024 construction season.

Additional information will be provided by the project team in due course.

Sincerely,

A handwritten signature in black ink that reads "Chet Clem".

Chet Clem
President, Lyme Properties

EXHIBIT 17

EXHIBIT A

AFFIDAVIT

I, David Clem, do depose and state that:

1. I am over 18 years of age, possess personal knowledge of the facts contained herein, and am competent to testify thereto.
2. I am the Manager of XYZ Dairy, LLC.
3. In connection with building permit issued by the City of Lebanon for the construction on the property of XYZ Dairy, LLC located at 1 River Park in West Lebanon, New Hampshire (Building Permit #2016-00293), since July 11, 2023, XYZ Dairy, LLC has incurred direct costs of \$221,838, has paid \$378,600 in materials currently on-site for the project, and is contractually obligated to pay another \$652,303. These expenditures do not include any of the overhead costs of XYZ Dairy, LLC or its affiliates.

I HEREBY SWEAR, under pains and penalties of perjury, that the contents of this affidavit are true and accurate to the best of my knowledge and recollection.

Date: April 17, 2024


David Clem

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this 17th day of April, 2024, before me, the undersigned officer, appeared David Clem, known to me (or satisfactorily proven) to be the person whose name appear above, and he subscribed his name to the foregoing instrument for the purposes contained therein.


Notary Public/Justice of the Peace
Name:

My Commission expires: TODD D. HESS, Notary Public
State of New Hampshire
My Commission Expires May 1, 2024

TODD D. HESS, Notary Public
State of New Hampshire
My Commission Expires May 1, 2024

EXHIBIT 18



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF DECISION LEBANON BUILDING CODE BOARD OF APPEALS BCBA2024-01

The Lebanon Building Code Board of Appeals, at a regular meeting held on **May 6, 2024**, approved the following motion made by Jeremy Katz, seconded by Dave Newlove, by a vote of **4-1**:

On March 6, 2024, XYZ Dairy, LLC ("XYZ"), 1 River Park Dr (Tax Map 44, Lots 21-30 & Map 44, Lot 7) Zoned R-3, CBD and IND-L. Pursuant to City of Lebanon Code 36-13. A Building Code Board of Appeals, an appeal of the Building Official's determination that Lebanon Building Permit #2016-00293 has expired and is deemed to be invalid. BCBA2024-01

On **May 6th, 2024**, duly-noticed hearings were held on April 1st and 18th, 2024. Testimony and legal argument were taken from Appellant, represented by Attorney Philip Hastings and XYZ representatives David Clem and Chet Clem. Testimony and legal argument were taken from the City, represented by Attorney Matthew Decker and Building Official Calvin Hunnewell. XYZ and the City were provided the opportunity to submit additional briefing or information; as well as to refute, rebut and clarify until both rested their cases. Dan Nash, a member of the public, spoke in favor of granting the appeal.

This Board has jurisdiction over this matter pursuant to NH RSA 674:34. Lebanon's Building Official, interpreting Section 105.5 of the 2009 International Building Code ("IBC"), ruled that permit 2016-00293 has expired and is no longer valid. XYZ is the landowner and is aggrieved by that decision. In this matter, our jurisdiction is derived from XYZ's claim that the true intent of the code has been incorrectly interpreted.

The positions of the parties are summarized as follows:

The Building Official, through the City Attorney, argues that IBC section 105.1 defines what activities require a permit and section 105.2 defines what activities are exempt. The Building Official further argues that if XYZ's activities require a permit (105.1), then the activity required to ensure the permit's continued validity must be activities identical to those that required the permit in the first place. The City advocated for denying XYZ's appeal based on its belief that Section 105.5 requires that work be physical, on the approved site, and any such work be the type that would [if considered individually] require a permit.

XYZ, through its attorney, argues that the position taken by the City is overly constrained and not reflective of the true intent of the code. XYZ argues that its continued investment in the project, and development efforts over the relevant six-month period constitute "work." XYZ also argues that it is entitled to rely upon prior interpretations of Section 105.5 of the Code made by the City.

Interpretations of the IBC are a question of law, and our review is de novo.

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Building Code Board of Appeals makes the following findings of fact:

NOTICE OF DECISION

1 River Park Dr (44-21-30 & 44-7)

BCBA2024-01

May 6, 2024

Page 2 of 3

We find the following facts in this matter:

1. The Building Official issued XYZ Permit #2016-00293 on December 31, 2019*.
2. XYZ paid a fee of \$90,492 for the permit.
3. The Building Permit is for the development of a new mixed-use commercial building.
4. The building permit states:

Description of Work: New mixed-use commercial building within Lot #1 of the River Park Subdivision

5. The development of a new building on a previously undeveloped site is a complex, multi-part endeavor. This endeavor requires engineering, architectural planning, multi-agency coordination, materials procurement and contractor scheduling. Although not unusual for any major construction project, these complex activities are distinguishable from common single action activities that also require permits, such as a minor residential electrical upgrade or heating furnace installation.
6. The Building Official issued a letter to XYZ on March 24, 2023. That letter identified 8 bullet-pointed topics discussed on March 16, 2023. None of the eight topics discussed involved actual completed physical work at the building site. The written determination of the Building Official states as follows (emphasis added)[†]:

As a result of the meeting and your follow up e-mail sent later the same day, we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

7. The Building Official issued a letter to XYZ on February 1, 2024. The written determination of the Building Official states as follows:

It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of greater than 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid.

8. In the six-month period preceding the Building Official's February 1, 2024, determination of expiration, XYZ incurred direct costs relative to the development of the site totaling \$221,838 and incurred contractual obligations to pay another \$652,303.[‡] In that same time period XYZ engaged three engineering firms and one architect to move the project forward. The amount of money invested in the project within the relevant six-month period equates to more than nine times the original cost of the permit and exceeds seven percent of the \$12,296,100 total estimated cost of construction.
9. The City conceded the following points in the hearings: that Section 105.5 does not set a high bar for "work"[§], that it is "obvious that there are aspects of construction projects that are supported

NOTICE OF DECISION

1 River Park Dr (44-21-30 & 44-7)

BCBA2024-01

May 6, 2024

Page 3 of 3

by offsite operations and preparation to perform”^{**}, that “one day of work every 179” would be sufficient to keep the permit active⁺⁺, that the City believes that it “must do what the law says even when it makes no sense,”⁺⁺ that there are items of work that could occur offsite that the City would accept as work⁵⁵. The City furthermore conceded that Section 105.5 does not purport to regulate the intensity or pace of work progress^{***}.

10. The Building Official testified that the instant case is unusual and the only time that he can remember expiring a building permit in this manner. The City’s Director of Planning and Development also added that the Planning and Development Office must contend with how to dispense with voluminous numbers of permits that are applied for and never acted upon.

II. RULINGS OF LAW

We make the following rulings of law in this matter:

1. The true intent of Section 105.5 of the Code is primarily administrative in nature. The Board finds that this section exists primarily to dispose of numerous permits that are applied for and never acted upon, rather than to be an enforcement lever in adjudicating active permit disputes or regulating the pace of construction. Section 105.5 does not purport to regulate “not inactive, but not really active enough” activities in construction.

It is possible that one developer may believe it to be economically advantageous to hyper-accelerate a project and complete a project quickly, paying substantial overtime and expedite fees in doing so. Conversely, it is possible that a different developer could elect to proceed at a more leisurely pace. To the extent that the City is concerned about “slow rolling” projects or “system gaming” and wishes to enact a policy to regulate construction intensity, this is best pursued through legislative process.

2. Section 202 of the IBC (“Definitions”) does not define “work.” Nonetheless, section 105.5 uses the term “work” thrice. See below with emphasis added:

Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the work is commenced.

Whatever “work” happens to be, the Board believes that the three instances of “work” within this section should be read harmoniously with each other.

The March 24, 2023, letter from the City to XYZ interpreted the first and third appearances of “work” when it opined “we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

NOTICE OF DECISION

1 River Park Dr (44-21-30 & 44-7)

BCBA2024-01

May 6, 2024

Page 4 of 3

As a general rule, decisions must either adhere to precedent or indicate a valid reason why a different result is reached on essentially the same set of facts. The City's explanations that it previously provided "charitable treatment" and a "longer leash" to the landowner are not valid explanations for a different result on the same facts. Accordingly, we hold that since "work" as previously found by the City in the March 2023 letter includes "preparation work", similar "preparation work" must also count as work in the absence of a valid justification for a different approach.

3. Furthermore, the Board disagrees with the City's position that, in order to keep a permit active, Section 105.5 mandates very specific physical site activities identical to those that required the original permit. It is correct that the developer has items in the project that, individually, would require permits. However, the approved "Description of work" in the permit is for the end result and not the individual, unbundled components. The end result of the permitted work is to be a "New mixed use commercial building." The proper question is not "did you perform a physical activity on the site that would, if applied for individually, need a permit" but rather "did you engage in effort, exertion or activity to produce a new mixed use commercial building on the site."

The City, several times in the hearings, conceded as much. Despite advocating for its constrained reading of the code, the City repeatedly conceded that there were multiple off-site activities that could constitute "work" under section 105.5.

4. If the project was completed the "new mixed use commercial building" on the site would be seen by a reasonable person as "a product of effort, exertion or activity^{†††}." Based upon this, the reasonable definition of "work" prior to a project's completion would be "effort, exertion or activity directed to produce or accomplish something^{†††}." In this case, the "something" to be accomplished by the "work on the site authorized by the permit" is the "new mixed use commercial building."

XYZ has spent hundreds of thousands of dollars, committed to spending hundreds of thousands more, and retained at least four licensed and qualified professional service providers to promote the completion of the described work - all within the six-month period preceding the appealed decision. XYZ has also engaged in inter-departmental and inter-agency communication and activity to advance its project.

We recognize that the City believes that these activities fall far short of an optimal level of diligence and intensity, but Section 105.5 does not purport to regulate either diligence or intensity. We also recognize that the City finds the interaction with XYZ to be extremely difficult. XYZ may, in fact, be pursuing its project through antagonistic and confrontational means. If true, that would be unfortunate, but it is also unfortunately outside of the parameters of Section 105.5 to impose or develop a policy on preferred manners of developer-municipal interaction.

The Board finds that the true intent of Section 105.5 of the code is to require effort, exertion or activity to accomplish the goal of developing the site. The City previously ruled that a minor breaking of ground at the site, possibly performative, was sufficient to satisfy the requirements of 105.5. "Work" does not necessarily mean that a physical alteration must occur at the site^{§§§}. The

NOTICE OF DECISION

1 River Park Dr (44-21-30 & 44-7)

BCBA2024-01

May 6, 2024

Page 5 of 3

efforts, exertions and activities testified to by XYZ to pursue the development of the site are substantially in excess of the "low bar" set by the City. Those efforts, including the substantial expenditure of investment capital, advanced the "work authorized on the site", and need not have actually occurred on the land itself in order to qualify under Section 105.5.

5. Finally, the Board issues two clarifications. First, not every activity identified by XYZ qualifies as "work" pursuant to 105.5. A lease proposal to a prospective tenant for a building that is not yet built is not "work" as contemplated in the IBC. Second, nothing in this ruling diminishes the very extensive power of the Building Official to enforce compliance with the Code, as well as other ordinances and regulations through IBC 2009 Section 105.6.

III. DECISION

For all of the reasons set forth above, including but not limited our findings of fact and rulings of law, the City of Lebanon Building Code Board of Appeals on this 6th Day of May 2024 hereby **GRANTS** the appeal of XYZ Dairy, LLC.

Notice of Decision prepared by: Tiffany Adams, Administrative Secretary, Amay 15, 2024

NOTE: (NH RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.



May 17, 2024

EXHIBIT 19

LYME PROPERTIES 2, LLC, AGENT FOR XYZ DAIRY, LLC

**In Re: Appeal of Administrative Decision of Building Inspector
River Park
West Lebanon, New Hampshire**

STATEMENT OF FACTS AND LAW

This Statement of Facts and Law is submitted on behalf of Lyme Properties 2, LLC, development agent for XYZ Dairy, LLC (together, the “Appellant”), the owner of Tax Map 44, Lot 21 at River Park in West Lebanon, New Hampshire (the “Property”), in connection with its appeal of an administrative decision of the Lebanon Building Inspector (the “Appeal”).

All testimony, statements, representations, evidence, plans, reports, studies, exhibits and other information submitted or to be submitted by or on behalf of the Appellant in connection with the Appeal at or prior to the public hearing on the Application are incorporated by reference hereto. All testimony, statements, representations, evidence, plans, reports, studies, exhibits and other information submitted by or on behalf of the Appellant in connection with any prior proceedings before the Building Code Board of Appeals (the “Board”) with respect to the Property (including Docket #BCBA2023-01) are incorporated by reference hereto.

The Appellant requests that the Board approve this Statement of Facts and Law as the specific findings required pursuant to RSA 676:3, 1.

A. Factual Background.

1. By Building Permit dated December 31, 2019 (Permit #2016-00293; the “Building Permit”), the Appellant was authorized to commence construction on a mixed used commercial building on the Property, which is Lot 1 in the River Park Subdivision.

2. Following several extensions of the deadline to commence construction under the Building Permit, work under the permit was timely commenced on November 29, 2022.

3. In the winter and spring of 2023, work was interrupted by the Building Inspector’s unlawful attempt to impose retroactive conditions on the Building Permit in order to keep the permit active.

4. The Building Inspector’s actions necessitated the Appellant’s first appeal to the Board (Docket #BCBA2023-01), seeking clarification as to the status of the Building Permit.¹

¹ Reference is specifically made to the facts of the first appeal, which support a pattern of mistreatment of the Appellant on the part of the Building Inspector and the City’s Planning Department. For example, the Staff Memorandum received by the Appellant on June 2, 2023 for the first BCBA hearing on June 5, 2023 contained

5. At its hearing on July 11, 2023, the Board dismissed the Appellant's first appeal, determining that the communication of the Building Inspector from which the appeal was taken did not constitute an appealable decision. The Board's dismissal effectively constituted a finding that the Building Permit remained in full force and effect, ending an unnecessary and unwarranted 224 delay for the Appellant.

6. Promptly following that hearing, the Appellant re-started its activities in furtherance of the construction work authorized by the Building Permit. As set forth in the material and other testimony submitted to the Board in connection with this Appeal, these activities included re-engaging with the Appellant's contractors, architects, engineers and other consultants; meeting with City officials to coordinate construction efforts; and taking steps to adequately secure the construction site.

7. Hand in hand with these activities, the Appellant has been in negotiations for several months with prospective tenants of the building to obtain leasing commitments which further support the construction efforts.

8. By memorandum dated January 5, 2024, the Appellant provided an update to the Building Inspector on the status of construction, affirming that Engleberth Construction and Elkus Manfredi Architects were actively engaged in preparation for the Spring 2024 construction season.

9. At no time since March 24, 2023 has the Building Inspector, or any official of the Lebanon Planning Department, engaged in any meaningful dialogue with the Appellant or requested further information from the Appellant regarding activity on the site related to the Building Permit.

10. Notwithstanding the lack of any inquiry, by letter dated February 1, 2024, the Building Inspector notified the Appellant of his determination that "the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid."

11. The Building Inspector's decision has, once again, delayed the Appellant's efforts to mobilize the numerous contractors and consultants for the upcoming construction season, adversely impacted and put at risk the Appellant's leasing activity, and jeopardized the completion of River Park and the River Park project overall.

numerous errors and false accusations, including that the Building Permit "was allowed to expire by the Applicant" and that the Applicant was subject to a Notice of Violation. Neither of which were accurate but imposed additional financial risk and reputational damage to the Appellant.

In addition to the errors contained within the June 2, 2023 Staff Memorandum, the Planning Department failed to include the Appellant's June 1, 2023 Statement of Facts and Law from the Agenda Packet that was provided to the Board, Appellant, and posted to the City of Lebanon Agenda Center for public access. This omission of a legal filing deprived the Appellant of equal consideration before the Board on June 5, 2023, contributing to the continuation of the hearing for a month and further delaying the matter to the detriment of the Appellant's business.

12. The Appellant timely filed this appeal of an administrative decision by the Building Inspector on February 29, 2024.²

13. Since then, in an effort to mitigate the damage to the project caused by the Building Inspector's action, the Appellant, through counsel, asked the Building Inspector to temporarily rescind its February 1, 2024 determination. The Building Inspector has refused.

B. Applicable Law and Legal Findings.

14. Fundamentally, this Appeal turns on a question of statutory construction,³ specifically the terms of Section 105.5 of the International Building Code of 2018 (the "IBC"),⁴ which states in full:

"Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated

15. No part of the Chapter 36 of the Lebanon Code of Ordinances, the State Building Code or the IBC, or any other provision of the City's ordinances, rules or regulations, set forth specific standards for what constitutes the "abandonment" or "suspension" of "work" under a building permit.

16. In the absence of specific provisions in the Lebanon Code of Ordinances, the State Building Code, the IBC, and any other applicable law, ordinance, code, rule or regulations, the well-established rules of statutory construction apply. *Cf. Trotter v. Lebanon*, 117 N.H. 148, 150 (1977); *see also* Loughlin, P., 15 New Hampshire Practice, Land Use Planning and Zoning (4th Ed.), §6.01. "Words and phrases in [an ordinance] must be given their ordinary meaning unless it appears from the context that a different meaning was intended." *Greenland v. Bunker*, 118 N.H. 783, 785 (1978). "Doubt about the meaning of an ordinance is determined in accordance with the intent of the municipal body that enacted it, and any ambiguity is to be resolved by reference to the apparent object of the provision." *Id.* (citing *Storms v. Eaton*, 131 N.H. 50 (1988)).

² Despite multiple inquiries through counsel, the Appellant failed to receive confirmation of the Appeal's acceptance until March 21, 2024. This delay deprived the Appellant of any opportunity for a speedy resolution or productive dialogue with the City.

³ The Building Inspector's decision also implicates the Appellant's rights to due process, equal protection and fundamental fairness under the United States and New Hampshire Constitutions. The Appellant reserves the right to more fully develop these arguments as this matter proceeds, together with all other rights and remedies with respect thereto.

⁴ The IBC is incorporated by reference under the State Building Code, RSA ch. 155-A, which is in turn incorporated by reference pursuant to Chapter 36 of the Lebanon Code of Ordinances.

17. The plain and ordinary meaning of the term “work” is broad. According to multiple dictionaries, the term includes both physical and non-physical efforts. *See, e.g., merriam-webster.com/dictionary/work* (work is a “sustained physical or mental effort to overcome obstacles and achieve an objective or result”); *Black’s Law Dictionary* (11th ed. 2019) (work is “physical and mental exertion to attain an end”).

18. At least one court has relied on similar dictionary definitions to find that a local permit had not expired. *See Morris Communications Corp. v. City of Bessemer City Zoning Board of Adjustment*, 365 N.C. 152, (2011).⁵ In that case, the fact that the zoning administrator did not observe construction-like activities on the site was not dispositive, and the North Carolina Supreme Court found that the term “work” has “a broader meaning than mere visible evidence of construction.” *Id.* at 157. The Court further relied on the interpretative rule that government restrictions on the use of land are “construed strictly in favor of the free use of real property.” *Id.*

19. This is consistent with New Hampshire case law involving the relinquishment or abandonment of permit for the use of real property. In those cases, there must be both an intention to abandon or relinquish the permit and an overt failure to act which carries the implication the holder of the permit neither claims nor retains any interest in the permit. *See Lawlor v. Town of Salem*, 116 N.H. 61, 62 (1976); *Pike Industries v. Woodward*, 160 N.H. 257, 261 (2010).

20. Similarly, in cases involving a developer’s vested right to complete a project, New Hampshire courts “tend to construe the vesting of rights liberally.” *AWL Power, Inc. v. City of Rochester*, 148 N.H. 603, 606 (2002).

21. Here, at no point has the Appellant demonstrated, by any overt act or failure to act, any intention to stop or abandon the work (as that term is properly construed in accordance with accepted principles of statutory construction) for 180 days. Instead, it has at all times continuously, diligently and in good faith pursued completion of the work authorized by the Building Permit.

22. Based on the foregoing, the Building Inspector’s determination that the Building Permit has expired is arbitrary, capricious, erroneous, unreasonable, and unlawful and the Building Permit remains in full force and effect.

⁵ The parallel citation is 712 S.E. 2d 868.

The Appellant reserves the right to amend, modify and supplement this Statement of Facts and Law.

Respectfully submitted,
on behalf of Lyme Properties 2, LLC,
development agent for XYZ Dairy, LLC
By Cleveland, Waters and Bass, P.A.

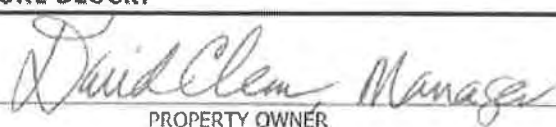
Date: March 27, 2024

By: Philip M. Hastings
Philip M. Hastings, Esquire
Two Capital Plaza, 5th Floor
Concord, NH 03302-1137
Telephone: (603)224-7761
Email: hastingsp@cwbp.com

EXHIBIT 20

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☒	☐	OTHER ()

PROPERTY OWNER (APPLICANT):			
NAME: XYZ Dairy, LLC		TEL.#: (603) 676-7800	
MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784			
E-MAIL ADDRESS: dclem@lymeproperties.com			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME: Lyme Properties 2, LLC		TEL.#: (603) 676-7106	
MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784			
E-MAIL ADDRESS: chet@lymeproperties.com			
PROJECT LOCATION:			
TAX MAP #: 44	LOT#: 21	PLOT #:	ZONE: CBD
STREET ADDRESS OF PROJECT: 1 River Park Drive, West Lebanon			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO			
FLOOD PLAIN ☐ YES ☒ NO			
SCOPE OF PROJECT:			
Phase 1 of River Park, 64,000 SF Mixed-Use Building. Lebanon Building Permit #2016-00293			
TYPE OF OCCUPANCY:			
EXISTING ☒ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL			
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL			
IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE : Life Science Research, Office, Childcare, Retail			
SIGNATURE BLOCK:			
 PROPERTY OWNER		DATE: 2/29/24	
NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.			
 PROPERTY OWNER		DATE: 2/29/24	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
3/4/24					

(12/07/07)

CR007

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR
AN APPEAL OF AN ADMINISTRATIVE DECISION**

A cover application, abutters list, filing fee and ten copies of the site plan (if applicable) must accompany this support statement.

City of Lebanon Zoning Ordinance:

APPEALS:

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 set forth in RSA 676:5. 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.

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.

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.

- A. **Majority Vote:** The concurring vote of 3 members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant or any matter on which it is required to pass.

I am appealing the decision of: Calvin Hunnewell, Building Inspector,
(Name/Title of Official)
made on this date: February 1, 2024.

(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: Determination that 1 River Park Drive Building Permit #2016-00293 has
expired and been deemed invalid related to case BCBA 2023-1

In Relation to Article(s): _____, Section(s): _____ of the City of Lebanon Zoning Ordinance.



February 29, 2024

Building Code Board of Appeals
City of Lebanon
51 N Park Street
Lebanon, NH 03766

**Re: Appeal of Administrative Decision: Building Inspector's February 1, 2024 determination
"Building Permit #2016-00293 has expired and is invalid."**

Members of the Building Code Board of Appeals,

Lyme Properties (Lyme) serves as the development agent on behalf of XYZ Dairy, LLC (XYZ), the owner of record of the River Park West Lebanon development. We are hereby appealing the February 1, 2024 decision of Lebanon Building Inspector Calvin Hunnewell in the Lebanon Planning & Development Department:

It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of greater than 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid.

*Excerpt 1: "Expiration of 1 River Park Drive Building Permit #2016-00293," City of Lebanon - Planning & Development Office"
February 1, 2024, Page 1 of 4.*

Since the July 11, 2023 determination during the Building Code Board of Appeals case BCBA2023-01 (BCBA2023-01) that Building Permit #2016-00293 (the "Permit") was active and in effect—correcting the June, 2, 2023 Staff Memo that declared it expired—XYZ and Lyme have been working to re-start the various contracts that were affected by the Staff's actions from December 9, 2022 to July 11, 2023.

This includes the numerous consultants and contractors that constitute the 1 River Park project team under the direction of Elkus Manfredi Architects and Engelberth Construction, which were re-engaged on July 31, 2023 (attached) and as memorialized in our January 5, 2024 memo (attached) to Lebanon Building Inspector Calvin Hunnewell.

The development work on the Permit was done in conjunction with re-starting leasing conversations that were suspended by the Staff's actions in 2023, conversations that have now been jeopardized again by the Staff's February 1, 2024 memo.

The record reflects that not only has there never been a 180-day suspension of work as Section 105.5 of the International Building Code dictates, but that any delays are due to the previous actions of the Lebanon Planning & Development department.



It is disingenuous that this permit be revoked given what has transpired over the past 14 months. Mr. Hunnewell was not in attendance at the BCBA hearing on July 11, 2023. Neither the Building Inspector, the Planning Director, or the Deputy Planning Director have communicated directly with XYZ or Lyme about this Permit in any material way since.

XYZ/Lyme are prepared to address and refute the Building Inspector's February 1, 2024 decision as it relates to Building Permit #2016-00293 and the Conditions of Approval as included upon issuance on December 29, 2019.

Prior to the April 1, 2024 hearing, the Board of Appeals should be aware that the conditions on Page 4 of 4 in the February 1, 2024 memo from Mr. Hunnewell are incorrect, unrelated, and *ultra vires* and thus irrelevant to the Permit and this Appeal.

These conditions inappropriately included in this matter by the Building Inspector are related to the Phase 1 Infrastructure improvements spelled out in the River Park Subdivision and Site Plan Approvals (the "Approvals"), which are separate and distinct from Building Permit #2016-00293.

I also note that there has been no effort to address the items identified in my letter of March 24, 2023, as needing to be completed prior to the resumption of construction activities (and which should have been completed prior to the commencement of any construction). These include:

- Providing a cost estimate of remaining Phase 1 infrastructure improvements for review by the City Engineer, and providing security for such and entering into a new Performance Bond/Security Agreement.
- Providing a construction schedule to the City Engineer for purposes of retaining a third-party inspector, providing payment of estimated third party review costs, and entering into a third party inspection and water & sewer extension agreement.
- Installing edge-of-disturbance fencing on site to be reviewed by the City Engineer.
- Confirming that all state permits have been obtained or have been updated, as needed.

To my knowledge, none of the above have been accomplished as of the date of this letter.

Excerpt 2: "Expiration of 1 River Park Drive Building Permit #2016-00293," City of Lebanon - Planning & Development Office" February 1, 2024, Page 4 of 4.

The first two bullet items are specifically referenced in the Subdivision Approvals (originally Condition #15 in the October 11, 2011 Notice of Action), the December 15, 2017 Subdivision Agreement (Sections D.1, G.I.1), and the September 9, 2019 Notice of Action (Conditions 4, 5). There is no deadline given, no timeline tied to the Building Permit, and no practical reading that this must be completed before the commencement of the Building. Simply put, these are not conditions precedent to the Building Permit.

The deadline for the commencement and completion of the remaining Phase 1 Infrastructure is otherwise unrelated to the Building Permit in question. The deadline for completion is established

by Condition 14-2 of the September 9, 2019 Notice of Action, and as was extended by two years in the October 12, 2021 Notice of Action.

Bullet #3, inasmuch as it relates to the work entitled under the Building Permit and not the unrelated infrastructure work, will be installed by the Construction Manager in due course.

Bullet #4 is addressed in Condition 14-4 of the September 9, 2019 Notice of Action, wherein it is noted that these requirements have been satisfied, and the City has been kept aware of the status and any requisite extensions of #AoT-0994 and #D2015-0802 throughout the numerous delays and project suspensions.

There is an important distinction between the infrastructure work serving the entire phased development and the conditions relevant to the Permit, which has been communicated numerous times previously to the Lebanon Planning & Development Department:

1. in a memo from Lyme on March 7, 2023 in response to the Department's February 15, 2023 memo;
2. in person at the meeting between Lyme and the Department on March 16, 2023;
3. in the April 10, 2023 email from Lyme in response to the March 24, 2023 communication from the Department in which the erroneous conditions were repeated;
4. in the June 1, 2023 "Statement of Facts and Law" from Attorney Philip Hastings on behalf of XYZ and Lyme;
5. in the June 19, 2023 "Supplemental Statement of Facts and Law" from Attorney Philip Hastings on behalf of XYZ and Lyme;
6. and, in the August 3, 2023 memo from Lyme and XYZ to the Department.

Put simply, there is no requirement that these items be completed prior to commencement of work on the Permit. As such, the Building Inspector's suggestion in the February 1, 2024 communication that "there has been no effort to address these items" by XYZ and Lyme is disingenuous and serves only to confuse matters and cast doubt upon Lyme and XYZ's efforts.

Attorney Philip Hastings June 1, 2023 "Statement of Facts and Law" and June 19, 2023 "Supplemental Statement of Facts and Law" prepared for the BCBA2023-01 are attached for reference by the Board and constitute XYZ/Lyme's position on the previous attempts of the Building Inspector to apply these additional conditions- and more- to an already issued permit.

We request that this matter be included on the agenda for the April 1, 2024 regularly scheduled hearing of the Lebanon Zoning Board of Appeals/Building Code Board of Appeals so that resolution may be reached as soon as possible without further delay, cost, and financial risk to XYZ/Lyme and associated parties.

This appeal is being filed in accordance with Article III, Section 36-13 Building Code Board of Appeals, and XYZ Dairy, LLC and Lyme Properties 2, LLC reserve all rights to amend, modify, and supplement this appeal.

MAR -1 2024

Sincerely,



Chet Clem
President, Lyme Properties 2, LLC



David Clem
Manager, XYZ Dairy, LLC

Attached:

3/24/2023: Memo from City with *ultra vires* conditions
6/1/2023: Statement of Facts and Law, Attorney Philip Hastings
6/19/2023: Supplemental Statement of Facts and Law, Attorney Philip Hastings
7/31/2023: Email to Project Team about re-commencement following 7/11/23 hearing
8/3/2023: Memo from Lyme to Building Inspector re: temporary connection
1/5/2024: Memo from Lyme to Building Inspector re: update on work underway
2/1/2024: Cover letter (no attachments) from Building Inspector to Lyme

CC:

Shaun Mullholland, City Manager
David Brooks, Deputy City Manager
Nathan Reichert, Planning & Development Director
Tim Corwin, Deputy Planning & Development Director
Philip Hastings, Esq., Cleveland, Waters and Bass

CERTIFIED NOTIFICATION LIST

Notice shall be sent by certified mail to the Owner; Applicant, if different from Owner; Abutters; Holders of conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property; the holders of easements, rights-of-way, and other restrictions; and every engineer, architect, land surveyor, or soil or wetlands scientist whose seal appears on any plan submitted to the Board; and any other persons required by RSA 676:4, I(d). The names and mailing addresses shall be furnished by the Applicant.

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

Map & Lot Number: 44-21	Map & Lot Number: 44-21
Property Owner: XYZ DAIRY LLC 57 MAIN ST WEST LEBANON, NH 03784	Applicant, Co-Applicant, Agent, or Lessee: LYME PROPERTIES 57 MAIN ST WEST LEBANON, NH 03784
Map & Lot Number: 58-27, 44-22 - 44-30 & 44-7	Map & Lot Number: 59-18
XYZ DAIRY LLC 57 MAIN ST WEST LEBANON, NH 03784	STENGER-CRAFT PROPERTIES LLC 112 N MAIN ST WEST LEBANON, NH 03784
Map & Lot Number: 58-93	Map & Lot Number: 58-97 & 44-9
CUMMINGS, LAUREN H & SANDRA L 66 CRAFTS AVE WEST LEBANON, NH 03784	CAESD LLC 57 MAIN ST WEST LEBANON, NH 03784

Map & Lot Number: 44-6	Map & Lot Number: 44-14
193 NMWL, LLC PO BOX 137 CONCORD, NH 03302	BURNS, TRACY A & SALLY J 198 NORTH MAIN ST WEST LEBANON, NH 03784
Map & Lot Number: 44-15 & 44-16	Map & Lot Number: 58-98
CHURCHILL, WAYNE & TINA M 194 NORTH MAIN ST WEST LEBANON, NH 03784	CITY OF LEBANON 51 NORTH PARK ST LEBANON, NH 03766
Map & Lot Number: 44-4	Map & Lot Number: 44-3
SALAZAR-KISH, JOLIN M TTEE 32 LEBANON ST, STE A HANOVER, NH 03755	FRIENDS OF RIVER PARK 57 MAIN STREET WEST LEBANON, NH 03784
Map & Lot Number: 44-5	Map & Lot Number: 44-10
DOWNES, ROBIN C TTEE 187 NORTH MAIN ST WEST LEBANON, NH 03784	DVG VENTURES LLC 10 BENNING ST #160-255 WEST LEBANON, NH 03784
Map & Lot Number: 44-13	Map & Lot Number: 58-91
DARTMOUTH COLLEGE TRUSTEES PO BOX 5188 HANOVER, NH 03755	JONES, BECKY P TTEE 67 CRAFTS AVE WEST LEBANON, NH 03784
Map & Lot Number: 44-19-5600	Map & Lot Number: 44-19-5700
FALLS AT RIVERS EDGE HOA PO BOX 1051 NORWICH, VT 05055	HOMEOWNERS AT THE FALLS ATTN: DAN CHASE, COMM MGR PO BOX 1051 NORWICH, VT 05055
Map & Lot Number:	Map & Lot Number:

(Revised 2/8/2024)

EXHIBIT 21

June 5, 2024

Via Hand Delivery and Electronic Mail

NH State Building Code Review Board
c/o Roxie Beall, Administrative Supervisor
NH State Fire Marshal's Office
Department of Safety
110 Smokey Bear Blvd
Concord, NH 03301
Bldgcodebrd@dos.nh.gov

RE: Appeal of Lebanon Building Code Board of Appeals Decision

Dear Ms. Beall,

My firm represents the building inspector in Lebanon, NH. Pursuant to RSA 674:34, II, RSA 155-A:10, IV(e), RSA 155-A:11-b and the NH State Building Code Review Board administrative rules, Bcr 200, I am enclosing an original and 16 copies of a Notice of Appeal and Petition seeking the State Building Code Review Board's review of a decision of the local Lebanon Building Code Board of Appeals (BCBA).

The written decision that is the subject of the building inspector's appeal, adopted by the Lebanon BCBA at a meeting on May 6, is attached to the Petition as Attachment A.

I am hand delivering these documents to 110 Smokey Bear Blvd. on your instruction that nobody is physically present at 33 Hazen Road to receive hand delivery.

Please do not hesitate to contact my office with any questions or concerns. I am grateful for your assistance in this matter.

Sincerely,



Matthew C. Decker

Enclosures

cc: Lebanon City Manager (e-mail only)
Lebanon Building Inspector (e-mail only)
Lebanon Building Code Board of Appeals,
c/o Lebanon Planning & Development Director N. Reichert
Philip Hastings, Esq. (e-mail only)

**State of New Hampshire
State Building Code Review Board**

**APPEAL OF CITY OF LEBANON'S
BUILDING CODE BOARD OF APPEALS DECISION
Pursuant to RSA 674:34, II, RSA 155-A:10, IV(e), and RSA 155-A:11-b**

Docket # _____

(In Re: Appeal of Administrative Decision of Building Inspector
by Lyme Properties, 2, LLC, Agent for XYZ Dairy, LLC
River Park Development
West Lebanon, New Hampshire)

NOTICE OF APPEAL / PETITION

Now comes the Building Inspector for the City of Lebanon, NH, by and through his attorneys, Drummond Woodsum & MacMahon, and hereby appeals a decision of the Lebanon Building Code Board of Appeals, reversing the Building Inspector's administrative determination under 2009 International Building Code §105.5 that a building permit had become invalid because the work authorized on the site by such permit was suspended for a period of more than 180 days after the time the work was commenced. In support of his appeal, the Building Inspector alleges as follows:

Introduction

1. This appeal concerns the correct interpretation of Section 105.5 of the 2009 International Building Code (IBC), as adopted by the New Hampshire legislature as the state building code under RSA 155-A for the time period relevant to this appeal.¹
2. On February 1, 2024, the Building Inspector issued to property owner XYZ Dairy, LLC ("XYZ") a written notice that building permit #2016-00293 pertaining to XYZ's property at 1 River Park Drive (Tax Map 44, Lot 21) had expired and is deemed to be invalid due to a period of inactivity at the site in excess of 180 days prior to February 1 pursuant to 2009 IBC §105.5.
3. 2009 IBC §105.5 (Expiration) provides, in relevant part, that **"[e]very permit issued shall become invalid... if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced"**.
4. XYZ appealed the Building Inspector's decision to the Lebanon Building Code Board of Appeals (BCBA). XYZ did not materially contest that physical work on the site had been suspended for a period of more than 180 days, but argued that it had been making off-site

¹ The text of 2009 IBC Section 105.5 is identical to Section 105.5 in the 2018 IBC, the currently-effective version of the state building code per RSA 155-A:1, IV.

preparations that it had vaguely described in a January 5, 2024 letter to the Building Inspector as “working toward the Spring, 2024 construction season”.

5. On May 6, 2024, the BCBA issued a decision reversing the Building Inspector’s determination that the building permit had expired. A copy of the BCBA’s written decision is attached hereto as **Attachment A**.

6. The Building Inspector is hereby appealing the BCBA’s decision because, *inter alia*, the BCBA incorrectly interpreted the term “work authorized on site by such [building] permit” in IBC §105.5, and improperly ruled that conclusory evidence of unspecified off-site “efforts” related to the development, not submitted to the Building Inspector before February 1, was sufficient to establish that work authorized on site by the building permit had not been suspended for 180+ days and, therefore, the building permit had not expired.

Parties

7. The Building Inspector a/k/a Building Official a/k/a Code/Health Inspector is the City official given authority under RSA 676:11 and Lebanon City Code Ch. 36, §36-1(C), “to issue building permits as provided in RSA 676:11-13, and any required certificates of use and occupancy, and to perform inspections as may be necessary to assure compliance with the State Building Code”. At the time of the BCBA decision that is the subject of this appeal, the Building Inspector was Calvin Hunnewell. The current Building Inspector, advancing this appeal in Mr. Hunnewell’s stead, is Leigh Hays. The Building Inspector’s mailing address is City Hall, 51 N. Park Street, Lebanon NH 03766.

8. The appellee is the Lebanon Building Code of Appeals. Lebanon City Code Ch. 36, §36-13(A) designates the Lebanon Zoning Board of Adjustment to act as the Building Code Board of Appeals per RSA 673:1. The BCBA’s mailing address is City Hall, c/o Planning & Development Dept., 51 N. Park Street, Lebanon NH 03766.

9. The property owner/building permittee before the BCBA was XYZ Dairy, LLC, c/o Lyme Properties, 57 Main Street, West Lebanon, NH 03784. XYZ is represented by Attorney Philip M. Hastings of Cleveland, Waters and Bass, P.A., Two Capital Plaza, 5th Floor, Concord, NH 03302-1137. It is anticipated that XYZ will seek to intervene in this appeal.

Jurisdiction and Venue

10. The NH State Building Code Review Board has jurisdiction over this appeal and is the proper venue for this appeal pursuant to RSA 674:34, II, RSA 155-A:10, IV(e), and RSA 155-A:11-b, because this appeal concerns a dispute over the correct interpretation of IBC §105.5.

11. RSA 674:34, II provides: “Appeals of decisions of any local building code board of appeals shall be made within 30 days of the board’s decision to the state building code review board as outlined under RSA 155-A:10, IV(c).”

12. RSA 155-A:10, IV(e) [*formerly IV(c)*] provides: “The [state building code review] board may hear appeals of final decisions of any local building code board of appeals

established under RSA 674, provided that the appeal shall be based on a claim that the intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or there is an alternative construction. The board shall not have authority to waive or grant variances to requirements of the code.”

13. RSA 155-A:11-b, I and II, provide: “I. The board shall hear appeals of final decisions of any local building code board of appeals established under RSA 674. II. An application for appeal shall be based on a claim that the intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an alternative construction is proposed. The board shall not have authority to waive or grant variances to requirements of the code.”

Procedural Background

14. The Building Inspector issued to XYZ a building permit #2016-00293 (the “Permit”) on December 31, 2019. The Permit was for the construction of a new mixed-use commercial building at XYZ’s property referenced above, a/k/a Lot #1 at the so-called River Park subdivision.

15. Due to the date of application for the Permit, the parties agreed that it is governed by the 2009 version of the International Building Code.

16. On February 1, 2024, the Building Inspector issued to XYZ a notice that the Permit had expired under 2009 IBC §105.5, upon his determination that the work on the site authorized by the Permit was suspended or abandoned for a period of greater than 180 days.

17. XYZ appealed the Building Inspector’s February 1 notice to the BCBA. After a public hearing held on April 1 and April 18, 2024, the BCBA issued a written decision on May 6, 2024 (**Attachment A**) reversing the Building Inspector’s decision.

18. This appeal of the BCBA final decision is being filed within 30 days of the final decision per RSA 674:34.

Facts Common to All Counts

19. Permit #2016-00293 was issued to XYZ on December 31, 2019.

20. The Building Inspector granted XYZ a number of extensions to its 180-day deadline to commence work on the site authorized by the permit, per IBC §105.5.

21. XYZ commenced work on the site authorized by the permit on November 29, 2022, when XYZ began excavation within the building footprint.

22. XYZ stopped work on the site on November 29, 2022, when it encountered a stormwater pipe, the relocation of which was included in XYZ’s approved plans for the River Park development.

23. Between November 29, 2022 and February 1, 2024, no further work authorized by the permit was performed on the site.

24. Between November 29, 2022 and February 1, 2024, XYZ did not request any extension of time from the Building Inspector, as allowed under IBC §105.5.

25. The Building Inspector issued XYZ a notice of expiration of the Permit pursuant to IBC §105.5 on February 1, 2024.

26. At the April 1 and April 18 public hearing on XYZ's appeal to the BCBA, the Building Inspector asserted through counsel that his intent in declaring the Permit expired was not to "kill" the project, but rather that he assumed XYZ would apply for a new permit when it was ready to proceed with construction, XYZ's prior permit fees would be applied to the new permit, and that the new permit would be issued under the current (2018) IBC rather than the two-versions-old 2009 IBC, simplifying the task of constructing and inspecting the project in accord with the current version of the code rather than in accordance with an outdated code version.

27. At the April 1 and April 18 public hearing on XYZ's appeal to the BCBA, XYZ did not assert that any physical work had been performed on the Lot #1 construction site in the 180 days prior to February 1, 2024, nor did XYZ assert that the Building Inspector had failed to observe such work.

28. At the April 1 and April 18 public hearing, XYZ submitted brief testimony and a short affidavit in support of its allegation that it had incurred off-site costs and entered into contractual obligations relating to future development of the site.

29. XYZ did not present evidence or argument supporting a conclusion that the acts to incur off-site costs, or enter into contractual obligations, could only occur pursuant to an active building permit. In other words, these acts were not "authorized by" the Permit under the meaning of IBC §105.5.

30. Prior to the public hearing, the Building Inspector was not aware of the costs and contractual obligations allegedly incurred by XYZ, and XYZ did not assert at the hearing that the Building Inspector was aware or had notice of such prior to February 1.

31. The Building Inspector's counsel was not permitted to cross-examine XYZ's representatives concerning their proffered evidence for off-site preparations.

COUNT I:

The BCBA Incorrectly Interpreted 2009 IBC Section 105.5

32. The Building Inspector repeats and realleges each foregoing paragraph as if fully set forth here.

33. The entire text of 2009 (and 2018) International Building Code Section 105.5 is as follows:

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

34. The term “work” or “work authorized on the site by such permit” is not defined in the IBC.

35. Per IBC §201.4, “[w]here terms are not defined through the methods authorized by this section [201], such terms shall have ordinarily accepted meanings such as context implies.”

36. Where a term or phrase is clear and unambiguous, its plain meaning must be applied without inquiry as to whether a different meaning may have been intended.

37. The BCBA incorrectly interpreted the meaning of 2009 IBC §105.5 by substituting the clear, unambiguous and plain meaning of the phrase “work authorized on the site by such permit” with the BCBA’s own interpretation of the word “work”.

38. Alternatively, even if, *arguendo*, the phrase “work authorized on the site by such permit” is ambiguous and subject to legal interpretation, the BCBA also incorrectly interpreted the meaning of “work” when it did not weigh the modifying words “authorized on the site by such permit”, and did not consider the implied context of the rest of the IBC, as required by IBC §201.4.

39. The BCBA’s interpretation of 2009 IBC §105.5 was also not in accord with the canons of statutory construction applied by New Hampshire courts to interpret legislative intent. When examining the language of a statute or code, the BCBA was required to ascribe the plain and ordinary meaning to the words used. See New Hampshire Alpha of SAE Trust v. Town of Hanover, 174 N.H. 269, 274 (2021) (“SAE II”). The BCBA was also required to interpret legislative intent from the code as written and could not consider what the legislature might have said or add language that the legislature did not see fit to include. *Id.* The BCBA was required to interpret a code section in the context of the overall statutory scheme and not in isolation. *Id.* In other words, the BCBA was required discern the intent of the legislature as expressed in the words of the code considered as a whole. Dembiec v. Town of Holderness, 167 N.H. 130, 134 (2014).

40. The BCBA erroneously cherry-picked the word “work” out of the phrase “work authorized on the site by such permit” and erroneously adopted an overly-broad dictionary definition of the word: “effort, exertion or activity directed to produce or accomplish something”.

41. The BCBA erroneously substituted its own equitable opinion for the plain meaning of black letter law when it held that “[t]he true intent of Section 105.5... is primarily administrative in nature” and that Section 105.5 “does not purport to regulate ‘not inactive, but

not really active enough' activities in construction." This interpretation is nowhere to be found in the plain text of the IBC.

42. The BCBA erroneously substituted its own equitable opinion for the plain meaning of black letter law when it held that the Building Inspector's "generous" determination that work on the site had commenced on November 29, 2022 could estop the Building Inspector from applying the plain meaning of §105.5 after no further work was performed on the site between November 29, 2022 and February 1, 2024. The BCBA had no authority to lessen the requirements of the IBC on equitable grounds.

43. The BCBA erroneously concluded that "the true intent of Section 105.5 of the [IBC] is to require effort, exertion or activity to accomplish the goal of developing the site" and "'Work' does not necessarily mean that a physical alteration must occur at the site."

44. The BCBA's interpretation of IBC §105.5 makes it effectively impossible for the Building Inspector to enforce the section, as he cannot know when some "effort" has commenced off-site, or whether some "effort" is occurring on an ongoing basis to avoid suspension or abandonment of a building permit, and he cannot evaluate the quality or quantity of such "effort".

45. To the extent the the BCBA's interpretation of IBC §105.5 implies that a building inspector must make inquiries to a permittee regarding off-site "effort", this interpretation improperly shifts an evidentiary burden to the building inspector, while "work authorized on the site by such permit" should generally evident from simply observing or inspecting a building site.

46. Accordingly, the State Building Code Review Board should reverse the BCBA and order that the plain meaning of the phrase "work authorized on the site by such permit" applies to the facts before the BCBA and, where no work on the site occurred for 180 days prior to February 1, 2024, the Permit was duly declared expired.

COUNT II:

After-the-Fact Affidavits and Testimony of Off-Site Work Cannot Be Evidence of "Work Authorized on the Site by a Building Permit"

47. The Building Inspector repeats and realleges each foregoing paragraph as if fully set forth here.

48. Separate from its erroneous interpretation of the term "work authorized on the site by a building permit", the BCBA also erred in accepting testimony and affidavits presented at the hearing as evidence of "work".

49. Work that is performed on a work site to construct a new building, pursuant to a building permit, may be observed by a building inspector in real time simply by visiting the site, but the evidence of "work" submitted by XYZ to the BCBA was not information observable by the Building Inspector or made available to him before his February 1 determination that the Permit had expired.

50. The BCBA's decision incorrectly interprets IBC §105.5 by impliedly holding that a permittee can resuscitate an expired permit by making an after-the-fact assertion of unspecified off-site efforts to advance a project.

51. The BCBA's decision also incorrectly interprets IBC §105.5 by impliedly holding that a building inspector cannot determine that a building permit has expired without first contacting the permittee and requesting information about off-site efforts over the past 180 days.

52. The BCBA's decision also incorrectly interprets IBC §105.5 by allowing a permittee to substantiate its off-site efforts with conclusory testimony and affidavits, without disclosing the specific details of where and why money is being spent, what retained professionals might be working on, or how and to what extent all this relates to or constitutes "work authorized on the site by a building permit".

53. Accordingly, the State Building Code Review Board should reverse the BCBA and order that IBC §105.5 may be enforced by the Building Inspector through his observations of the construction site.

WHEREFORE, the Lebanon Building Inspector, by and through his counsel, respectfully requests that the Honorable New Hampshire State Building Code Review Board:

- A. Issue an Order of Notice and schedule a hearing under Bcr 200;
- B. Reverse the decision of the local Lebanon Building Code Board of Appeals;
- C. Hold that Building Permit #2016-00293 is expired and invalid because, pursuant to 2009 IBC Section 105.5, the work authorized on the site by the Building Permit was suspended or abandoned for a period of 180 days after the time the work on site authorized by the permit was commenced; and
- D. Grant such other and further relief as is fair and just.

DATED this 5th day of June, 2024.

Respectfully Submitted,
On behalf of the Lebanon Building Inspector
By his Attorneys,

A handwritten signature in cursive script, reading "Matthew C. Decker", written in dark ink over a horizontal line.

Matthew C. Decker, NH Bar #267540
DRUMMOND WOODSUM &
MACMAHON
1 Court Street, Suite 320
Lebanon, New Hampshire 03766-1727
(603) 792-7421
mdecker@dwmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal/Petition was served this day upon the Lebanon Building Code Board of Appeals, c/o Lebanon Planning & Development Director Nathan Reichert, by hand delivery and by e-mail, and upon Philip Hastings, Esq., attorney for XYZ Dairy, LLC, by U.S. Mail and by e-mail.

Date: June 5, 2024

By: Matthew C. Decker

ATTACHMENT A

XYZ Dairy, LLC ("XYZ"), 1 River Park Dr (Tax Map 44, Lots 21-30 & Map 44, Lot 7) Zoned R-3, CBD and IND-L. Pursuant to City of Lebanon Code 36-13.A Building Code Board of Appeals, an appeal of the Building Official's determination that Lebanon Building Permit #2016-00293 has expired and is deemed to be invalid. BCBA2024-01

Duly noticed hearings were held on April 1st and 18th, 2024. Testimony and legal argument were taken from Appellant, represented by Attorney Philip Hastings and XYZ representatives David Clem and Chet Clem. Testimony and legal argument were taken from the City, represented by Attorney Matthew Decker and Building Official Calvin Hunnewell. XYZ and the City were provided the opportunity to submit additional briefing or information; as well as to refute, rebut and clarify until both rested their cases. Dan Nash, a member of the public, spoke in favor of granting the appeal.

This Board has jurisdiction over this matter pursuant to NH RSA 674:34. Lebanon's Building Official, interpreting Section 105.5 of the 2009 International Building Code ("IBC"), ruled that permit 2016-00293 has expired and is no longer valid. XYZ is the landowner and is aggrieved by that decision. In this matter, our jurisdiction is derived from XYZ's claim that the true intent of the code has been incorrectly interpreted¹.

The positions of the parties are summarized as follows:

The Building Official, through the City Attorney, argues that IBC section 105.1 defines what activities require a permit and section 105.2 defines what activities are exempt. The Building Official further argues that if XYZ's activities require a permit (105.1), then the activity required to ensure the permit's continued validity must be activities identical to those that required the permit in the first place. The City advocated for denying XYZ's appeal based on its belief that Section 105.5 requires that work be physical, on the approved site, and any such work be the type that would [if considered individually] require a permit.

XYZ, through its attorney, argues that the position taken by the City is overly constrained and not reflective of the true intent of the code. XYZ argues that its continued investment in the project, and development efforts over the relevant six month period constitute "work." XYZ also argues that it is entitled to rely upon prior interpretations of Section 105.5 of the Code made by the City.

Interpretations of the IBC are a question of law, and our review is de novo.

FINDING OF FACTS:

We find the following facts in this matter:

¹ Neither party introduced the 2009 IBC into the record, but it is undisputed and a public document adopted by New Hampshire State Law.

- 1) The Building Official issued XYZ Permit #2016-00293 on December 31, 2019².
- 2) XYZ paid a fee of \$90,492 for the permit.
- 3) The Building Permit is for the development of a new mixed-use commercial building.
- 4) The building permit states:

Description of Work: New mixed-use commercial building within Lot #1 of the River Park Subdivision

5) The development of a new building on a previously undeveloped site is a complex, multi-part endeavor. This endeavor requires engineering, architectural planning, multi-agency coordination, materials procurement and contractor scheduling. Although not unusual for any major construction project, these complex activities are distinguishable from common single action activities that also require permits, such as a minor residential electrical upgrade or heating furnace installation.

6) The Building Official issued a letter to XYZ on March 24, 2023. That letter identified 8 bullet-pointed topics discussed on March 16, 2023. None of the eight topics discussed involved actual completed physical work at the building site. The written determination of the Building Official states as follows (emphasis added)³:

As a result of the meeting and your follow up e-mail sent later the same day, we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

7) The Building Official issued a letter to XYZ on February 1, 2024. The written determination of the Building Official states as follows:

It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of greater than 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid.

8) In the six month period preceding the Building Official's February 1, 2024 determination of expiration, XYZ incurred direct costs relative to the development of the site totaling \$221,838 and incurred contractual obligations to pay another \$652,303.⁴ In that same time period XYZ engaged three engineering firms and one architect to move the project forward. The amount of money invested in the project within the relevant six month period equates to more than nine

² The Building Permit file was not submitted in this case but is undisputed, in possession of both the City of Lebanon and XYZ, and a public record.

³ This communication is unsigned, but neither party disputes its authenticity and the Building Official confirmed that he authored and sent it.

⁴ Testimony in April 1 and 18 hearings and sworn affidavit of David Clem.

times the original cost of the permit and exceeds seven percent of the \$12,296,100 total estimated cost of construction.

9) The City conceded the following points in the hearings: that Section 105.5 does not set a high bar for “work”⁵, that it is “obvious that there are aspects of construction projects that are supported by offsite operations and preparation to perform”⁶, that “one day of work every 179” would be sufficient to keep the permit active⁷, that the City believes that it “must do what the law says even when it makes no sense,”⁸ that there are items of work that could occur offsite that the City would accept as work⁹. The City furthermore conceded that Section 105.5 does not purport to regulate the intensity or pace of work progress¹⁰.

10) The Building Official testified that the instant case is unusual and the only time that he can remember expiring a building permit in this manner. The City’s Director of Planning and Development also added that the Planning and Development Office must contend with how to dispense with voluminous numbers of permits that are applied for and never acted upon.

RULINGS OF LAW

We make the following rulings of law in this matter:

1) The true intent of Section 105.5 of the Code is primarily administrative in nature. The Board finds that this section exists primarily to dispose of numerous permits that are applied for and never acted upon, rather than to be an enforcement lever in adjudicating active permit disputes or regulating the pace of construction. Section 105.5 does not purport to regulate “not inactive, but not really active enough” activities in construction.

It is possible that one developer may believe it to be economically advantageous to hyper-accelerate a project and complete a project quickly, paying substantial overtime and expedite fees in doing so. Conversely, it is possible that a different developer could elect to proceed at a more leisurely pace. To the extent that the City is concerned about “slow rolling” projects or “system gaming” and wishes to enact a policy to regulate construction intensity, this is best pursued through legislative process.

2) Section 202 of the IBC (“Definitions”) does not define “work.” Nonetheless, section 105.5 uses the term “work” thrice. See below with emphasis added:

⁵ See meeting media, video tape of April 18, 2024 Hearing at minute 11

⁶ Ibid at minutes 34-35

⁷ Ibid at minutes 41-42, the amount of work is not an issue and a hole in the ground suffices

⁸ Ibid at minute 45

⁹ Ibid at minutes 48-51, for instance “a signed notice to proceed from a contractor”, see also minutes 35-36

¹⁰ Ibid at minutes 41-42

Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the work is commenced.

Whatever “work” happens to be, the Board believes that the three instances of “work” within this section should be read harmoniously with each other.

The March 24, 2023 letter from the City to XYZ interpreted the first and third appearances of “work” when it opined “we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

As a general rule, decisions must either adhere to precedent or indicate a valid reason why a different result is reached on essentially the same set of facts. The City’s explanations that it previously provided “charitable treatment” and a “longer leash” to the landowner are not valid explanations for a different result on the same facts. Accordingly, we hold that since “work” as previously found by the City in the March 2023 letter includes “preparation work”, similar “preparation work” must also count as work in the absence of a valid justification for a different approach.

3) Furthermore, the Board disagrees with the City’s position that, in order to keep a permit active, Section 105.5 mandates very specific physical site activities identical to those that required the original permit. It is correct that the developer has items in the project that, individually, would require permits. However, the approved “Description of work” in the permit is for the end result and not the individual, unbundled components. The end result of the permitted work is to be a “New mixed use commercial building.” The proper question is not “did you perform a physical activity on the site that would, if applied for individually, need a permit” but rather “did you engage in effort, exertion or activity to produce a new mixed use commercial building on the site.”

The City, several times in the hearings, conceded as much. Despite advocating for its constrained reading of the code, the City repeatedly conceded that there were multiple off-site activities that could constitute “work” under section 105.5.

4) If the project was completed the “new mixed use commercial building” on the site would be seen by a reasonable person as “a product of effort, exertion or activity¹¹.” Based upon this, the reasonable definition of “work” prior to a project’s completion would be “effort, exertion or activity directed to produce or accomplish something¹².” In this case, the “something” to be accomplished by the “work on the site authorized by the permit” is the “new mixed use commercial building.”

¹¹ See, for instance, the definition of “work” at www.dictionary.com, definition #8

¹² See, for instance, the definition of “work” at www.dictionary.com, definition #1

XYZ has spent hundreds of thousands of dollars, committed to spending hundreds of thousands more, and retained at least four licensed and qualified professional service providers to promote the completion of the described work - all within the six month period preceding the appealed decision. XYZ has also engaged in inter-departmental and inter-agency communication and activity to advance its project.

We recognize that the City believes that these activities fall far short of an optimal level of diligence and intensity, but Section 105.5 does not purport to regulate either diligence or intensity. We also recognize that the City finds the interaction with XYZ to be extremely difficult. XYZ may, in fact, be pursuing its project through antagonistic and confrontational means. If true, that would be unfortunate, but it is also unfortunately outside of the parameters of Section 105.5 to impose or develop a policy on preferred manners of developer-municipal interaction.

The Board finds that the true intent of Section 105.5 of the code is to require effort, exertion or activity to accomplish the goal of developing the site. The City previously ruled that a minor breaking of ground at the site, possibly performative, was sufficient to satisfy the requirements of 105.5. "Work" does not necessarily mean that a physical alteration must occur at the site¹³. The efforts, exertions and activities testified to by XYZ to pursue the development of the site are substantially in excess of the "low bar" set by the City. Those efforts, including the substantial expenditure of investment capital, advanced the "work authorized on the site", and need not have actually occurred on the land itself in order to qualify under Section 105.5.

5) Finally, the Board issues two clarifications. First, not every activity identified by XYZ qualifies as "work" pursuant to 105.5. A lease proposal to a prospective tenant for a building that is not yet built is not "work" as contemplated in the IBC. Second, nothing in this ruling diminishes the very extensive power of the Building Official to enforce compliance with the Code, as well as other ordinances and regulations through IBC 2009 Section 105.6.

¹³ Although out-of-state rulings have no precedential value over us, the Board references the highly informative ruling from the North Carolina Supreme Court in *Morris Communs. Corp. v. City of Bessemer* 365 NC 152, ruling in favor of the landowner who argued that "'work" encompasses the border range of activities necessary [to complete a project]." and "Webster's Dictionary defines "work" to include "sustained physical or mental effort to overcome obstacles and achieve an objective or result"....Applying this definition to the Bessmer City ordinance, the term "work" has a broader meaning than mere visible evidence of construction."

DECISION

For all of the reasons set forth above, including but not limited our findings of fact and rulings of law, the City of Lebanon Building Code Board of Appeals on this 6th Day of May 2024 hereby GRANTS the appeal of XYZ Dairy, LLC.

Seconded by _____

Vote _____

EXHIBIT 22



State of New Hampshire
State Building Code Review Board

Physical Address:
NH State Fire Marshal's Office
Department of Safety
110 Smokey Bear Blvd
Concord, NH 03301

Mailing Address:
Office of the Commissioner,
Department of Safety,
33 Hazen Road
Concord, NH 03305

(603) 223-4315

Docket No. 24-3

Appeal of the City of Lebanon Building Code Board of Appeals
in Re: Appeal of Administrative Decision of Building Inspector

FINAL ORDER

This is an appeal from the City of Lebanon's Building Code Board of Appeals based on the interpretation of the word "work." Specifically, what actions qualify as "work" sufficient to keep an issued building permit active under the New Hampshire Building Code, specifically Subsection 105.5 of the International Building Code.¹ In applying this subsection of the Code, the City of Lebanon Building Inspector determined a building permit was rendered invalid due to a period of physical inactivity at the proposed building site. XYZ Dairy, LLC, the permittee (and Intervenor), appealed this decision to the City of Lebanon Building Code Board of Appeals (BCBA). The BCBA reversed, holding that "work" under Subsection 105.5 encompassed a broad realm of activities and therefore had been misapplied by the building inspector. This appeal followed.

On July 12, 2024, we held a hearing and heard arguments from the City of Lebanon Building Inspector and XYZ Dairy, LLC. After hearing the arguments and reviewing the record of the BCBA, we hold that the BCBA incorrectly interpreted the word "work" given the context and use of the word throughout Section 105 of the Code. We therefore reverse the BCBA's decision and remand.

MATERIAL FACTS

The material facts, as found by the Lebanon Building Code Board of Appeals,² include the following:

¹ The "New Hampshire Building Code" includes the adoption of the of the International Building Code 2018, as published by the International Code Council Inc. *See* RSA 155-A:1, IV. The parties agree, however, that the permit at issue here should be reviewed under the 2009 edition of the International Building Code. The provision subject to review, Subsection 105.5 of the International Building Code, is the same under the 2009 and 2018 editions of the International Building Code.

² These material facts were uncontested by the parties and we, as a body with limited appellate review authority focused on questions of law, give deference to the local building code board of appeals as the fact-finder. *See* RSA 155-A:10, IV(e) and RSA 155-A:11-b.

1. The City of Lebanon Building Inspector issued XYZ Dairy, LLC (XYZ) a building permit on December 31, 2019, based on the 2009 edition of the International Building Code. CR170, CR176.³
2. The permit is for the development of a new mix-use commercial building. CR171, CR176.
3. Under “Description of Work” the building permit states: “New mixed-use commercial building within Lot#1 of the River Park Subdivision.” *Id.*
4. The development of a new building on a previously undeveloped site is a complex, multipart endeavor, requiring engineering, architectural planning, multi-agency coordination, materials procurement, and contractor scheduling. *Id.*
5. On March 24, 2023, the Lebanon Building Inspector issued a written determination via letter to XYZ regarding the commencement of “work” at the building site. That letter identified eight topics discussed with XYZ, but none of these involved physical work at the building site. Nevertheless, the Building Inspector determined, “[a]s a result of the meeting and your follow-up e-mail sent later the same day, we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with [the issued building permit].” *Id.*
6. On February 1, 2024, the Building Inspector issued a letter to XYZ Dairy, LLC containing a written determination that its building permit was invalid. Specifically, the letter states, in part: “It is my determination that the work on the site authorized by [the building permit] has been suspended or abandoned for a period of greater than 180 days. Consequently, [the building permit] has expired and is invalid.” *Id.*
7. In the six-month period preceding the Building Inspector’s February 1, 2024, determination, XYZ incurred direct costs in excess of \$220,000 and entered into contractual obligations in excess of \$650,000 in furtherance of the development of the new, mixed-use commercial building for which the permit was issued. *Id.*
8. In the six-month period preceding the Building Inspector’s February 1, 2024, XYZ also engaged three engineering firms and one architect in support of developing the new, mixed-use commercial building. *Id.*

STANDARD OF REVIEW

This matter is before us pursuant to RSAs 155-A:10, IV(e); 155-A:11-b; and 674:34, II. The singular claim is that the New Hampshire Building Code, specifically Subsection 105.5 of the International Building Code, has been incorrectly interpreted by the Lebanon Building Code Board

³ “CR” refers to the Certified Record of the Lebanon Building Code Board of Appeals, which was bates numbered and provided to this Board. The decision of the BCBA is contained in the record twice, at CR 170-174 and CR175-179.

of Appeals. As the New Hampshire Building Code has been adopted by the General Court—RSA 155-A:1, IV—this appeal is focused on the interpretation of a statute.

The interpretation and application of a statute presents questions of law, which as an appellate body, this Board reviews *de novo*. *Bennett v. Town of Hampstead*, 157 N.H. 477, 483 (2008). Accordingly, we use the record of the local building code board of appeals but review the board’s interpretation and application of the Code without deference to the board’s decision.

ANALYSIS & CONCLUSIONS OF LAW

The issue before us is the interpretation of the State Building Code of New Hampshire Subsection 105.5 and its use of the term “work.” Subsection 105.5 uses the term “work” three times. And Section 105, Permits, as a whole uses the term “work” nineteen times. Yet the term is undefined in this section and throughout the Code.

Subsection 105.5 states, in full, the following:

105.5 Expiration

Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

In interpreting this provision, the Lebanon Building Code Board of Appeals (BCBA) held that engagement in any effort, exertion, or activity directed to accomplish the goal completing the permitted building on the site qualified as “work” sufficient for a permit to remain active. See CR178-179. We conclude that such an expansive interpretation of the term “work” is unsupported by the context.

When reviewing the interpretation of the New Hampshire Building Code, we apply the rules of statutory construction. See *Harrington v. Town of Warner*, 152 N.H. 74, 79 (2005). Under these rules, words and phrases must be given their ordinary meaning unless it appears from the context that a different meaning was intended. *Greenland v. Bunker*, 118 N.H. 783, 785 (1978); see also, Subsection 201.4 of the International Building Code (mandating that undefined terms must have ordinarily accepted meanings such as the context implies). We interpret the intended meaning of the Code from the words used and enacted; we do not consider what the legislature might have said or add language that was not included. *N. H. Alpha of SAE Trust v. Town of Hanover*, 174 N.H. 269, 274 (2021). We do not interpret a word or phrase of the Code in isolation, but in the context of the overall scheme. See *id.*; see also Subsection 201.4. So, to understand the term “work” as used within Subsection 105.5, we look to Section 105 and the Code as a whole. See

Dembiec v. Town of Holderness, 167 N.H. 130, 134 (2014); *see also* Subsection 201.4; Antonin Scalia and Bryan Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, 167-173 (explaining the “Whole Text” and the “Presumption of Consistent Usage” canons of statutory interpretation).

Subsection 105.1 details what “work” requires the issuance of a permit, while Subsection 105.2 exempts certain “work” from the permit requirements of the Code. Under Subsection 105.1, any “owner or owner’s authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by [the] code, or to cause any such work to be performed,” must first apply to the appropriate building official and obtain the required permit.

To apply for a permit, the applicant must, among other things, identify and describe the “work to be covered by the permit”, describe in a manner that readily identifies and definitively locates the “proposed building or work”, “indicate the use and occupancy for which the proposed work is intended”, and “state the valuation of the proposed work.” *See* Subsection 105.3.

After receiving an application, the appropriate building official must issue a building permit if satisfied that the “proposed work conforms to the requirements of [the] code” and the applicable laws and ordinances. Subsection 105.3.1. The issued permit, however, is rendered invalid if the “work authorized on the site by the permit” is not commenced within 180 days of issuance or if the “work authorized on the site by the permit” is suspended or abandoned for a period of 180 days. Subsection 105.5. Upon issuance of a permit, the permittee is required to keep the permit or a copy of the permit “on the site of the work until the completion of the project.” Subsection 105.7.

In reviewing the term “work” within Section 105 as a whole, it is apparent that the appropriate interpretation of “work” is neither overly expansive nor extremely narrow.

From its use throughout the section, the term “work” refers to activities that are regulated by the Code. The activities range from constructive acts to destructive acts and vary from large to small. But it does not include all efforts, exertions, or activities directed toward an ultimate end result. Nor does the term “work” encompass efforts and activities that occur beyond the identified and definitively located site listed in the permit and where the permit must be posted. For example, mental exertion associated with complex commercial building projects or particularly intricate residential projects (even if small) undoubtedly requires taxing effort by professionals. But this type of exertion is not readily encompassed by the term “work” as used within Section 105 of the Code.

To hold otherwise makes the Section confusing and incoherent, requiring multiple interpretations of “work” within a single section of the Code. As noted above, an applicant is required to describe the work covered by the permit and identify the location of the proposed work. But the BCBA interpreted the term “work” as used within Subsection 105.5 to encompass

more than physical activities and favorably cited a North Carolina decision holding the word “work” includes the mental effort to overcome obstacles. CR174, CR178.⁴

We conclude this interpretation of “work” goes too far. We find the meaning of the term “work” within Section 105 to be more limited, which becomes apparent from when reviewing the full context of the provision. Qualifying activities are those that are authorized by the permit and occur at the identified location, i.e., physical acts that take place at the physical site where the permit must be posted.

Last, it is evident that the BCBA based its interpretation and ultimate holding, at least in part, on the representations of City Officials to the permittee about what qualified as work in the early stages of the project. CR177-178. Because the City previously communicated in a March 2023 letter to XYZ that “preparation work” was sufficient to meet the requirements of “work” under Subsection 105.5, the BCBA held similar “preparation work” must also suffice as “work” in 2024. *Id.* It is beyond our jurisdiction to opine on whether there are equitable claims against the City of Lebanon for representations to XYZ. Here, our authority is limited to reviewing the interpretation of the text of the Code by the BCBA. *See* RSA 155-A:11-b. And it is beyond our authority to waive or grant variances to requirements of the code. *Id.* Accordingly, we do review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials concerning the types of conduct that would qualify as work under Subsection 105.5.

CONCLUSION

Because we hold that the local building code board of appeals incorrectly interpreted the term “work” as used within Section 105 of the Building Code, we reverse its decision. We hold that proper definition of “work” as used in Subsection 105.5 of the code refers to physical work authorized by the permit and conducted at the site.

We note the issuance of permits and collection of fees under the state building code is expressly reserved for local municipalities. *See* RSA 155-A:2, III. We therefore remand this matter to the City of Lebanon and its Building Code Board of Appeals for any additional and necessary proceedings to be held consistent with this Order.

⁴ The Notice of Decision and accompanying decision of the Lebanon Building Code Board of Appeals at CR175-179 lacks footnotes. The BCBA’s decision, however, is also printed, in full, in the May 6, 2024 minutes of the Lebanon Building Code Board of Appeals at CR169-174. The decision as reflected in the minutes contains the missing footnotes. As the minutes reflect the adoption of the Order via proper motion and vote of 4-1, we construe the omission of footnotes in the decision accompanying the Notice of Decision at CR175-179 to be a simple scrivener’s error and not an intentional deletion with legal significance.

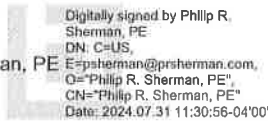
Based upon the above, it is:

ORDERED that the decision of the Lebanon Building Code Board of Appeals is **REVERSED** and this matter is **REMANDED** for further proceedings consistent with this Order.

BY ORDER OF THE BOARD⁵

Dated: July 31, 2024

Philip R. Sherman, PE



Digitally signed by Philip R. Sherman, PE
DN: C=US,
E=psherman@prisherman.com,
O="Philip R. Sherman, PE",
CN="Philip R. Sherman, PE"
Date: 2024.07.31 11:30:56-04'00'

Philip Sherman, Chair
New Hampshire State Building Code Review Board

⁵ This Order is the formalization of a decision previously made during the Board's meeting held on July 12, 2024 by unanimous vote of the participating Board members. The Board members participating and specific motions are captured in the Board's meeting minutes.

STATE OF NEW HAMPSHIRE

GRAFTON COUNTY, SS.

SUPERIOR COURT

XYZ Dairy, LLC

v.

The City of Lebanon, New Hampshire

and

Calvin Hunnewell, in his official capacity as
Building Inspector for the City of Lebanon, New Hampshire

Docket No. 215-2024-CV-00311

(Evidentiary Hearing Requested)

**PLAINTIFF XYZ DAIRY LLC'S MEMORANDUM OF LAW IN SUPPORT OF
ITS PETITION FOR A TEMPORARY RESTRAINING ORDER AND MOTION
FOR A PRELIMINARY INJUNCTION**

Plaintiff XYZ Dairy, LLC submits this Memorandum of Law in Support of Its Petition
for a Temporary Restraining Order and Motion for Preliminary Injunction.

INTRODUCTION/SUMMARY

On December 31, 2019, the City of Lebanon's Building Inspector granted a Building
Permit to XYZ Dairy for a complex life sciences building in the City of Lebanon. After a series
of Covid-19 related extensions, the Building Inspector attempted to revoke the Building Permit
on the basis of what he perceived to be inactivity at the site for a period of longer than 180 days.

Representatives of XYZ met with the Building Inspector and he reversed himself, issuing a letter to XYZ on March 24, 2023 acknowledging that the preparatory work XYZ was engaging in off-site in furtherance of the development of the complex project constituted “work” sufficient to keep XYZ’s Building Permit active. Relying on this representation, XYZ continued to pursue the required architectural, engineering, materials ordering, and other preparatory work required to commence construction on the project. On February 2, 2024, the Building Inspector declared XYZ’s Building Permit invalid, despite the fact that XYZ had incurred nearly \$900,000 in development costs in the 180-days immediately prior to the Building Inspector’s revocation decision. XYZ appealed, and the City of Lebanon’s Building Code Board of Appeals overruled the Building Inspector and reinstated XYZ’s Building Permit. For reasons that are not clear to anyone, the City of Lebanon then appealed its own Board’s decision, throwing XYZ’s Building Permit back into limbo, and making it impossible for XYZ to proceed with its development of the site.

The State of New Hampshire Building Code Review Board then reversed the decision of the Building Code Board of Appeals, taking the position, for the first time that counsel could find anywhere in U.S. jurisprudence, that the “work” required to keep a building permit active had to be physical, on-site work, and could not be preparatory in nature. The Building Code Review Board noted, however, that:

Because the City previously communicated in a March 2023 letter to XYZ that “preparation work” was sufficient to meet the requirements of “work” under Subsection 105.t, the BCBA held similar “preparation work” must also suffice as “work” in 2024. **It is beyond our jurisdiction to opine on whether there are equitable claims against the City of Lebanon for representations to XYZ. Here, our authority is limited to reviewing the interpretation of the text of the Code by the BCBA.... Accordingly, we do [not] review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials**

concerning the types of conduct that would qualify as work under Subsection 105.5.

This claim followed.

The Court should grant XYZ Dairy’s Petition for a TRO and its motion for a preliminary injunction, reinstating XYZ’s Building Permit before XYZ experiences irreparable harm.

RELEVANT FACTS

The Parties

XYZ Dairy, LLC

Plaintiff XYZ Dairy, LLC (“XYZ”), is a Delaware Limited Liability Company, with a physical address of 57 Main Street, West Lebanon, New Hampshire, 03784. XYZ Dairy, LLC is engaged in the business of real estate development. Compl. ¶1-2.

The City of Lebanon, New Hampshire

Defendant City of Lebanon, New Hampshire (“City of Lebanon”) is a municipal corporation with a physical address of 51 North Park Street, Lebanon, New Hampshire, 03766. Compl. ¶3.

Building Inspector Calvin Hunnewell

Defendant Calvin Hunnewell (the “Building Inspector”) is the former Building Inspector of the City of Lebanon, New Hampshire, and is sued here in his official capacity. Compl. ¶4.

Chronology of Facts and Procedural History

The Building Permit

The City of Lebanon’s Building Inspector Calvin Hunnewell issued Building Permit #2016-00293 (the “Building Permit”) to XYZ on December 31, 2019. Compl. ¶7 (Exh.1)

The Building Permit authorized XYZ to develop a “[n]ew mixed use commercial building within Lot #1 of the River Park subdivision” located at 1 River Park Drive (Tax Map 44, Lot 21) in West Lebanon, New Hampshire (hereinafter “River Park”). Compl. ¶8. XYZ paid the City of Lebanon \$90,492.00 for the Building Permit. Compl. ¶9.

The “Description of Work” on the Building Permit calls for a “new mixed-use commercial building within Lot #1 of the River Park subdivision.” Compl. ¶10. The contemplated “mixed use commercial building,” was a complex life sciences building with research laboratories and cleanrooms for scientific research, requiring a multi-faceted planning and development process and specialized equipment. *Id.*

The Building Permit, as approved, contained only the following five standard conditions of approval to be satisfied at various points during the construction process, with no stated deadlines for completion or other requirements except that “work shall not proceed until the City inspectors have approved the following stages of construction:

- (1) Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not set and the setbacks cannot be verified, the construction will not be approved or allowed to continue. Mistakes in the location of boundary lines are the sole responsibility of the owner. **DO NOT POUR CONCRETE UNTIL THE ABOVE HAS BEEN APPROVED!**
- (2) Foundation insulation, waterproofing, and drainage, prior to backfilling.
- (3) Structural rough frame, rough electrical and rough plumbing, prior to covering.
- (4) Prior to concealing any work authorized under this permit.
- (5) Final inspection for Certificate of Occupancy, to include plumbing, heating, electrical, and any other code issue or miscellaneous item as applicable to the project, including site improvements. **PLEASE SCHEDULE THIS AT LEAST 5 DAYS IN ADVANCE.** A building or structure shall not be used or occupied in whole or in part until a **CERTIFICATE OF OCCUPANCY** has been issued.

Compl. ¶11.

***The International Building Code, as Adopted by the New Hampshire Building Code,
Establishes the Requirements for Building Permits in New Hampshire***

Section 105.5 of the New Hampshire Building Code, which adopts the language of the International Building Code, (the “Code”) states, in its entirety:

“Every permit issued shall become invalid **unless the work on the site authorized by such permit is commenced** within 180 days after its issuance, or if **the work authorized on the site by such permit is suspended or abandoned** for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions for time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.”

Per this requirement, in order for a building permit to remain valid, the “work” authorized by the building permit must (1) begin within 180 days of its issuance *and*, once that work has begun, (2) it must neither be “suspended” nor “abandoned” for any period of 180 consecutive days (or longer) without permission of the Building Inspector, in writing, upon demonstration of justifiable cause. Neither the term “work” nor the terms “suspended” or “abandoned” are defined anywhere in the Code or in the local regulations.

The Building Permit Was Twice Extended Due to the Covid-19 Pandemic

On December 9, 2021, XYZ applied for a written extension of the Building Permit citing the Covid-19 pandemic as justification. Compl. ¶ 13 (Exh.2) By memo dated January 18, 2022, the Building Inspector approved a 180-day extension of the Building Permit. *Id.* The Building Inspector’s January 18, 2022 approval memo acknowledged that the COVID-19 pandemic represented adequate justification for granting an extension of the Building Permit through July 17, 2022, and clarified that the Building Inspector was also granting the multiple retroactive extensions required to date back to the original December 31, 2019 date of issuance of the Building Permit. *Id.* In the City of Lebanon, the authority to review the adequacy of the justification for the extension of a building permit, and for the issuance of all such extensions,

lies with the Building Inspector.

On May 3, 2022, XYZ submitted a written request for a second 180-day extension of the Building Permit, again citing various Covid-19-related justifications. Compl. ¶ 16. By letter dated May 27, 2022, the Building Inspector granted this second 180-day extension of the Building Permit. Compl. ¶ 17. The Building Inspector's May 27, 2022 letter again noted that the COVID-19 pandemic represented adequate justification for granting XYZ's request and extended the Building Permit through January 13, 2023. Compl. ¶18.

The 2022 construction season was adversely impacted by both an exceptionally tight labor market and rampant supply chain issues due to the lingering effects of the Covid-19 pandemic. As such, XYZ experienced months-long delays in obtaining materials and securing the on-site contractors needed to proceed with construction. Compl. ¶ 19 (*Exh. 3 at 4*).

On-Site Construction Begins at River Park on November 29, 2022

XYZ was finally able to begin on-site construction activities at River Park on November 29, 2022. Compl. ¶ 19. These construction activities included the staking out of the foundation area and excavation of a portion of the basement area of the planned mixed-use commercial building on Lot #1 at River Park. Compl. ¶ 20. This excavation work was also done to locate the City's stormwater line running from catch basins on Route 10 to a ravine on the River Park site for which the city neither had an easement nor sufficient documentation as to its precise course. Compl. ¶21.

During this excavation work, XYZ's excavation contractor encountered the City's stormwater line. Compl. ¶22. The depth of the stormwater drainage pipe put the pipe in direct conflict with XYZ's foundation excavation for the planned mixed-use commercial building on Lot #1 at River Park and as such, the pipe could not simply be abandoned in place. Best

construction practices called for the removal of the City’s stormwater drainage pipe and accommodating the stormwater runoff through some other temporary means of stormwater management. Compl. ¶23 (*Exh. 4 at ¶7*). XYZ’s excavation contractor expressed significant concern that the City’s stormwater pipe was made of clay, posing significant additional risk of crushing the pipe, and increasing both the time and cost to move it. Compl. ¶ 24. XYZ’s civil engineer sought and received permission from the State of New Hampshire to install a temporary bypass line in compliance with all code and regulatory requirements and amended XYZ’s Alteration of Terrain permit to reflect those changes. Compl. ¶ 25. The City of Lebanon was kept in the loop and copied on all of these efforts.

With the State’s permission in place, all that remained was for the City of Lebanon to grant permission to XYZ to disconnect the stormwater drainage line and permit XYZ to make the connection to the temporary bypass line that XYZ had already installed for this purpose. Compl. ¶ 26. The temporary line was entirely contained on XYZ’s property and did not require any disturbance of state or municipal property. *Id.*

In furtherance of this outcome, on December 9, 2022, XYZ sent a letter to Deputy City Manager David Brooks, DPW Engineer Brian Vincent, and Building Inspector Calvin Hunnewell, stating that XYZ had “commenced construction on 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.” Compl. ¶ 27 (*Exh. 5*). The letter specified that “[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022,” and solicited feedback from the City of Lebanon as to how to handle the stormwater bypass issue on a temporary basis, as the pipe constituted municipal infrastructure. *Id.*

The City of Lebanon did not respond to XYZ’s December 9, 2002 letter for nearly *two months* – importantly, until *after* the Building Permit’s January 13, 2023 expiration date. Compl.

¶ 28. Finally, on February 2, 2023, Deputy City Manager David Brooks sent an email back to XYZ addressing the stormwater management issue and providing additional information regarding options for addressing the conflict. He then added that “[w]ith respect to the commencement of the construction on Lot 1, I understand that the Planning Department will be reaching out separately to request additional information” on that issue. Compl. ¶29 (*Exh. 6*).

***The Building Inspector Then Attempts to Impose Burdensome
Retroactive Conditions on XYZ’s Active Building Permit***

Two weeks later, on February 15, 2023, 68 days after XYZ’s December 9, 2022 initial communication on the issue, the Building Inspector sent a letter to XYZ addressing XYZ’s November 29, 2022 “commencement of construction” and attempted to unlawfully impose retroactive conditions on the already active Building Permit in order for the permit to “remain active.” Compl. ¶30 (*Exh. 7*). Among those conditions were requirements that XYZ produce:

- Private contract agreements with description of the project, the scope of work, and construction schedule
- The names of our Construction Manager and architectural firm that we had engaged
- A “Construction schedule, including the project’s intended completion date, and start and finish times for each phase of the project;” and
- “cost estimates” and other financial information

Id. The Building Inspector’s letter also imposed “several other steps that need to be completed prior to the resumption of construction activities (and which should have been completed prior to the commencement of any construction).” Compl. ¶ 31. Those “steps,” however, were NOT related to the Building Permit in question, but rather to the Phase 1 Infrastructure work that was subject to a *different* permitting process and, per the written conditions of approval from the City of Lebanon, only needed to be completed prior to being granted a Certificate of Occupancy for 1 River Park. *Id.*

Nevertheless, the Building Inspector stated, in his February 15, 2023 letter, that without XYZ satisfying these additional requirements, I “will revoke the permit as of January 13, 2023.” Compl. ¶ 32. This letter from the Building Inspector, however, was dated nearly a month *after* the date that he threatened to revoke the permit. *Id.*

By letter dated March 7, 2023, XYZ provided some of the requested additional information to the Building Inspector, but also asked the Building Inspector to provide the source of the authority, either in the Building Code or in the City of Lebanon’s regulations, that supported the additional conditions the Building Inspector was attempting to place on XYZ in order to for its Building Permit to “remain active.” Compl. ¶33 (*Exh. 8*). The Building Inspector never provided XYZ with the source of any authority allowing him to impose retroactive conditions on an already issued and active building permit. Compl. ¶34.

XYZ Meets with the Building Inspector on March 16, 2023

On March 16, 2023, representatives of XYZ met with the Building Inspector to discuss this situation. Compl. ¶ 35. The Building Inspector refused to accept XYZ’s excavation work on the River Park site as evidence of “work” having commenced under the Building Permit. Compl. ¶ 36. Instead, the Building Inspector requested that additional evidence, including receipts for project materials, be provided to substantiate the preparatory work that XYZ claimed to be doing. XYZ provided those receipts to the Building Inspector later that same day. *Id.*

The Building Inspector’s March 24, 2023 Letter

The Building Inspector memorialized the subject matter covered at this meeting in a critically important March 24, 2023 letter from the Building Inspector to XYZ. Compl. ¶37 (*Exh. 9*). That March 24, 2023 letter acknowledges that XYZ and the Building Inspector had discussed the following topics at their March 16, 2023 meeting:

- Determination of commencement of work
- Timing and continuance of work
- Existing stormwater situation
- Inability to complete the excavation of the building
- TF Moran designing potential solutions
- Meetings with project partners
- Project expenses and requested documentation

Compl. ¶38.

None of these topics established that the City was relying on any actual *physical* on-site construction work done by XYZ at River Park to establish that “work” had occurred under the Building Permit. Compl. ¶ 39. To the contrary – all of these topics involved work preparatory to actual, on-site construction. *Id.* Critically, the Building Inspector’s March 24, 2023 letter to XYZ concluded as follows:

“we agree that you have justified [that] the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

Compl. ¶ 40(emphasis supplied).

Accordingly, in his March 24, 2023 letter to XYZ, the Building Inspector took the position, unequivocally, that the “preparation work” that XYZ had “been preparing with [its] construction partners” constituted “commencement of work” under the Building Permit. Compl. ¶ 41. The Building Inspector acted within the scope of his authority in making such a finding, as it was his duty to administrate building permits in the City of Lebanon – including XYZ’s Building Permit at issue here. Compl. ¶42.

In the very next paragraph of his March 24, 2023 letter to XYZ, however, the Building Inspector re-introduced the unlawful conditions that he again claimed “need to be completed in order to maintain activation of the building permit.” These unlawful conditions included:

- “Design of the storm water solution”

- “Confirmation that the registered design professionals are in your hire and ready to proceed
- “contract agreements with description of the project, the scope of work, and construction schedule
- Construction schedule, including the project’s intended completion date and start and finish times for each phase of the project
- “Scope of work, including which contractors and subcontractors are responsible for each component of work,” and
- “Cost estimates”

Compl. ¶43. The Building Inspector’s March 24, 2023 letter contained no reference to the authority permitting him to impose these additional retroactive requirements on XYZ after he had *already concluded* that the preparatory work that XYZ had been engaging in with its construction partners constituted the “commencement of work” sufficient to keep the Building Permit active. Compl. ¶ 44.

By email dated April 10, 2023, XYZ again sought a response from the Building Inspector seeking clarity about (1) the date that the Building Inspector was using to determine the “commencement of work” under the Building Permit; (2) the need for the City’s permission to make the bypass line connection; (3) the re-started work on the Civil Engineering; and (4) the legal basis for the Building Inspector’s demand for this additional information as a condition of maintaining the Building Permit’s “activation.” Compl. ¶45 (*Exh. 10*). The Building Inspector did not respond to XYZ’s April 10, 2023 email. Compl. ¶46.

XYZ Appeals the Building Inspector’s Imposition of Additional Requirements on its Approved and Active Building Permit

XYZ was concerned, given the lack of a response from the Building Inspector, the four months of uncertainty that had already transpired, and the Building Inspector’s ongoing attempt to improperly impose retroactive conditions on the issued and active Building Permit, that the Building Inspector would again attempt to revoke the Building Permit. Compl. ¶ 47. As such, on April 25, 2023, XYZ took an administrative appeal of the Building Inspector’s retroactive

imposition of these additional requirements on its Building Permit to the City of Lebanon’s Building Code Board of Appeals (the “BCBA”) (Docket #BCBA2023-01). Compl. ¶ 48 (*Exh. 11*). XYZ took this action in order to (1) protect its investment-backed interests; (2) get clarification as to XYZ’s obligation to comply with these requirements; and (3) determine the source of authority, if any, for the Building Inspector’s imposition of these requirements. *Id.*

The BCBA held a hearing on July 11, 2023 and *dismissed* XYZ’s appeal, holding that the Building Inspector’s March 24, 2023 letter to XYZ imposing the additional conditions on XYZ did not constitute an actual “administrative decision.” Compl. ¶ 49 (*Exh. 12*). In so doing, the BCBA concluded that the Building Permit remained in full force and effect without the additional conditions. *Id.*

XYZ Immediately Restarts Work on River Park

With that necessary clarification in hand, XYZ immediately re-started its development activities in furtherance of the work authorized by the Building Permit. Compl. ¶ 50. XYZ memorialized the re-initiation of these efforts in an August 3, 2023 letter to the Building Inspector, explaining that XYZ had reengaged with XYZ’s contractors, architects, engineers, and consultants. Compl. ¶51 (*Exh. 13, 14*). In parallel with these efforts, XYZ re-started negotiations with prospective tenants to obtain leasing commitments for the completed building. Compl. ¶53 (*Exh. 15*). The Building Inspector did not respond to XYZ’s August 3, 2023 letter.

On August 17, 2023, XYZ held an on-site meeting with engineers from the City of Lebanon’s Department of Public Works with respect to connecting the temporary stormwater line to allow work on the site to continue – another example of XYZ’s active engagement in work on the site. Compl. ¶ 55. The City of Lebanon’s Department of Public Works engineers had no issues with XYZ’s proposed temporary solution, requesting only that as-builts and

elevations ultimately be provided,¹ but XYZ could not get signoff from the City of Lebanon's Planning and Development Department. *Id.* These delays pushed XYZ's commencement of construction out of the 2023 construction season due to the City of Lebanon's ordinance imposing restrictions on winter excavations. *Id.*

On January 5, 2024, XYZ provided another written update to the Building Inspector, documenting that its contracted architects, Elkus Manfredi, and its General Contractor, Engleberth Construction, were actively and diligently working on the plans and specifications for the commencement of construction activities in the Spring of 2024 as soon as the City's seasonal excavation moratorium was lifted. Compl. ¶56 (*Exh. 16*). Other than the above-referenced August 17, 2023 site meeting, there had been no other response, dialogue, or other written or oral inquiry between the Building Inspector or any other official from the City of Lebanon and XYZ.

The Building Inspector Improperly Revokes the Building Permit on February 1, 2024

Despite hearing nothing from the Building Inspector since his March 24, 2023 letter, and despite the Building Inspector's failure to respond to multiple communications from representatives of XYZ, on February 1, 2024, the Building Inspector sent a letter to XYZ stating that:

"It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid."

Compl. ¶57 (*Exh. 2*).

During the 180-day period preceding the Building Inspector's February 1, 2024 letter determining that the Building Permit had expired, XYZ had been actively engaged in a wide variety of continuing preparatory activities for the River Park site in accordance with XYZ's

¹ As-builts and elevations were included in XYZ's June 5, 2024 plan set submitted to the City of Lebanon.

previous communications to the City of Lebanon and following the delays and constraints imposed by the City of Lebanon’s winter excavation moratorium. Compl. ¶ 58. In connection with those preparations, XYZ spent \$221,838 in direct costs for the site and entered into contractual obligations to pay another \$652,303 in professional and contracting fees. Compl. ¶ 58 (*Exh. 17*). During that same 180-day period, XYZ had formally engaged three subject-specific engineering firms, a code consultant, and one architectural firm to move the River Park project forward as soon as the Spring 2024 construction season could begin. XYZ had also solicited bids from the number of trades required to construct the contemplated complex life sciences building at 1 River Park. Compl. ¶ 59. The amount of money XYZ invested in the River Park project in the 180 days immediately preceding the Building Inspector’s revocation of the Building Permit equates to more than *nine times* the original cost of the Building Permit and more than *seven percent* of the original \$12,296,100 budget for the entire 1 River Park project. Compl. ¶ 60.

The February 1, 2024 decision by the Building Inspector to revoke XYZ’s Building Permit was wholly inconsistent with the position he took in his March 24, 2023 letter that off-site preparatory work undertaken by XYZ to advance the project within a 180-day window was *sufficient* to maintain XYZ’s active Building Permit. Compl. ¶ 61. Nothing in the Building Inspector’s March 24, 2023 letter suggested that he was making an exception, or that his decision was limited to that one occasion. The Building Inspector’s letter simply acknowledges that XYZ’s preparatory work constituted “work” under the Building Permit. As such, without some indication to the contrary, XYZ acted reasonably in relying on the Building Inspector’s March 24, 2023 determination and spending nearly \$900,000 based on its reasonable assumption that XYZ’s *continued* preparatory work, of the same type and scope, would be sufficient to keep its

Building Permit active.

***XYZ Appeals the Building Inspector's February 1, 2024
Revocation of XYZ's Building Permit***

The Building Inspector's arbitrary decision to revoke XYZ's Building Permit required XYZ to once again suspend the work of its contractors, architects, engineers, and consultants and file *another* administrative appeal. Compl. ¶ 62. The timing of this appeal, however, jeopardized XYZ's ability to move forward with the River Park project during the 2024 construction season. Compl. ¶62 (*Exh. 19 at ¶11*). The Building Inspector's decision also interfered with XYZ's leasing activity, since the disruption of XYZ's construction activities affected XYZ's ability to project the completion of the space for lease, jeopardizing time-sensitive tenant needs and expectations, and the overall financial viability of the River Park project. Compl. ¶63.

XYZ timely filed its administrative appeal of the Building Inspector's decision with the City of Lebanon's BCBA pursuant to NH RSA 674:34 on February 29, 2024. Compl. ¶64 (*Exh. 20*). In an effort to mitigate its rapidly accruing financial damages caused by the Building Inspector's actions, however, XYZ, through XYZ's prior counsel, contacted the Building Inspector and Planning Director via the City's attorney and asked the Building Inspector to either rescind his February 1, 2024 decision, or to permit work to continue under the Building Permit on a temporary basis while the appeal was pending. The Building Inspector refused both requests. Compl. ¶65 (*Exh. 19 at ¶13*).

The City of Lebanon BCBA held hearings on April 1, 2024 and April 18, 2024. Compl. ¶ 66. The Board heard testimony from XYZ representatives David Clem and Chet Clem, and legal argument from XYZ's prior counsel. *Id.* The Board also heard legal argument from the City's attorney, and from the Building Inspector himself. *Id.* All parties were invited to submit

additional briefing and any information that they wanted to provide to refute, rebut, or clarify any arguments. Compl. ¶66 (*Exh. 18*).

The City of Lebanon’s Building Code Board of Appeals REVERSES the Building Inspector

On May 17, 2024, the City of Lebanon BCBA issued its written decision, overturning the decision of the Building Inspector that XYZ’s Building Permit had expired on February 1, 2024 due to inactivity on the site, and granting XYZ’s request to reinstate the Building Permit. Compl. ¶67 (*Exh. 18*). In its written decision, the City of Lebanon BCBA made several factual findings relevant to the claim at Bar. First, the BCBA found that:

“[t]he development of a new building on a previously undeveloped site is a complex, multi-part endeavor. This endeavor requires engineering, architectural planning, multi-agency coordination, materials procurement, and contractor scheduling. Although not unusual for any major construction project, these complex activities are distinguishable from common, single-action activities that also require permits, such as a minor residential electrical upgrade or heating furnace installation.”

Compl. ¶68 at ¶5 (emphasis added). Second, the BCBA found that:

“the Building Official issued a letter to XYZ on March 24, 2023. That letter identified 8 bullet-pointed topics discussed on March 16, 2023. None of the eight topics discussed involved actual completed physical work at the building site.”

Compl. ¶69 at ¶6. Third, the BCBA observed, the written determination of the Building Inspector in his March 24, 2023 letter, after reviewing those 8 bullet-pointed topics, was that:

“... we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

making it clear that the Building Inspector considered the engineering, architectural planning, multi-agency coordination, materials procurement, and contractor scheduling that XYZ had been engaged in to constitute “work” sufficient to keep its Building Permit active. Compl. ¶69.

Finally, the BCBA found that the City *conceded* ALL of the following points in the hearings:

- a. “Section 105.5 does not set a high bar for ‘work’
- b. That it is “obvious that there are aspects of construction projects that are supported by offsite operations and preparation to perform”
- c. That “‘one day of work every 179’ would be sufficient to keep the permit active”
- d. That the “City believes that it ‘must do what the law says even when it makes no sense’”
- e. That “there are items of work that could occur offsite that the City would accept as work”
- f. That Section 105.5 of the IBC “does not purport to regulate the intensity or pace of work progress”

Compl. ¶70 at ¶9.

The City of Lebanon Appeals the Decision of its Own Building Code Review Board

Amazingly, at 4:30pm on June 5, 2024, the very last day of the appeal period, the City of Lebanon appealed *its own BCBA’s decision* to the State Building Code Review Board (the “New Hampshire BCRB”). Compl. ¶71 (*Exh. 21*). The City of Lebanon did not provide the BCBA with independent counsel to defend its decision at the New Hampshire BCRB, but *did* provide counsel for the Building Inspector in his appeal of the BCBA’s decision. Compl. ¶72. As such, XYZ found itself in the very unusual position of defending the decision of the City of Lebanon’s BCBA on its own and having to formally intervene in the proceeding to advocate for its own rights under the Building Permit that the City of Lebanon’s BCBA had reinstated. Compl. ¶73.

The City of Lebanon’s appeal from its own Building Code Board of Appeals was based on the interpretation of the word “work” in the New Hampshire Building Code – specifically, what actions qualify as “work” sufficient to keep an issued building permit active under Section 105.5 of the International Building Code as adopted by the New Hampshire Building Code. Compl. ¶74. As the New Hampshire BCRB observed in its Final Order, a plain reading of the relevant code sections provides a member of the public with no clarity on the subject:

“[s]ubsection 105.5 uses the term ‘work’ three times. And Section 105, Permits, as a whole uses the term ‘work’ nineteen times. Yet the term is undefined in this section and throughout the Code.”

Compl. ¶75 (*Exh. 22*). The New Hampshire BCRB’s decision thus, would have to turn on a question of statutory construction – specifically, whether the Lebanon BCBA **incorrectly interpreted** the language of Section 105.5 of the IBC – which states, in its entirety:

“Every permit issued shall become invalid **unless the work on the site authorized by such permit is commenced** within 180 days after its issuance, or if **the work authorized on the site by such permit is suspended or abandoned** for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions for time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.”

(emphasis added). Compl. ¶76.

The New Hampshire BCRB Overturns the Decision of the City of Lebanon’s BCBA, but Suggests a Claim of Municipal Estoppel

No part of the IBC, the New Hampshire Building Code, or any other provision of the City of Lebanon’s ordinances, rules, or regulations sets forth definitions or standards for what constitutes “work,” or the “commencement,” “abandonment” or “suspension” of such work under a building permit. Compl. ¶77. As such, there was no way for an applicant to clearly understand its rights when confronted with the question that XYZ faced in this case.

In the absence of specific provisions in the IBC, the New Hampshire Building Code, or the City of Lebanon’s Code of Ordinances, the New Hampshire BCRB resorted to the application of New Hampshire’s common law rules of statutory construction. *See Trottier v. Lebanon*, 117 N.H. 148, 150 (1977); *see also* Loughlin, O., 15 New Hampshire Practice, Land Use Planning and Zoning (4th Ed.) § 6.01. Under this rubric, “words and phrases must be given their ordinary meaning unless it appears from the context that a different meaning was intended. *Greenland v. Bunker*, 118 N.H. 783, 785 (1978). “Doubt about the meaning of an ordinance is determined in accordance with the intent of the ... body that enacted it, and any ambiguity is to

be resolved by reference to the apparent object of the provision.” *Id. citing Storms v. Eaton*, 131 N.H. 50 (1988)(emphasis added). Thus, in undertaking a proper legal analysis of this question, the New Hampshire BCRB was first required to discern the *object* of Section 105.5 of the IBC based on its administrative history. As the City of Lebanon Building Code Board of Appeals had correctly found, the intent of Section 105.5 of the IBC is “primarily administrative” in nature. Compl. ¶80 (*Exh. 18, Ruling of Law #1*).

The City of Lebanon’s Director of Planning and Development admitted in testimony before the City of Lebanon’s BCBA that the Planning and Development Office has to dispose of “voluminous numbers of permits that are applied for and never acted upon” – in other words, to administratively dispose of permits where *no work at all* is ever undertaken in pursuit of the permit. *That*, as the City of Lebanon’s BCBA concluded, is the object of Section 105.5. Compl. ¶81. There is nothing in Section 105.5 to suggest that its object is to regulate the *pace* of construction pursuant to a building permit where activities in pursuit of that permit, whatever their pace, have actually been undertaken by the permit holder within the 180-day timeframe. Compl. ¶82. As the City of Lebanon BCBA concluded:

“It is possible that one developer may believe it to be economically advantageous to hyper-accelerate a project and complete a project quickly, paying substantial overtime and expedite fees in doing so. Conversely, it is also possible that a different developer could elect to proceed at a more leisurely pace. To the extent that the City is concerned about “slow rolling” projects or “system gaming” and wishes to enact a policy to regulate construction intensity, this is best pursued through legislative process.

Compl. ¶ 83 (*Exh. 18, Ruling of Law #1*).

Pursuant to New Hampshire’s rules of statutory construction, “words and phrases must be given their ordinary meaning unless it appears from the context that a different meaning was intended. *Bunker*, 118 N.H. at 785. The plain and ordinary meaning of the word “work” is

broad. According to Black’s Law Dictionary, “work” is “physical and mental exertion to attain an end.” *Black’s Law Dictionary* (11th Ed. 2019), or as the City of Lebanon BCBA defined it, “effort, exertion, or activity.” Compl. ¶84 (*Exh. 18, Ruling of Law #4*).

In seeking to develop a reasonable interpretation of “work” under Section 105.5, the City of Lebanon BCBA, as New Hampshire law directed them to do, looked at the *purpose* for which the Building Permit was issued. *See Bunker*, 118 N.H. at 785 (in defining words, a Board should refer to the apparent “object” of the provision). The approved “Description of Work” in the Building Permit states that the Building Permit is for a “New mixed-use commercial building within Lot #1 of the River Park Subdivision.” Therefore, the BCBA concluded, when the project is completed, the resulting “New mixed-use commercial building” would be the product of all of the “effort, exertion, or activity” required to bring it about. Based on this working definition, the BCBA stated, a reasonable interpretation of the “work” contemplated by Section 105.5 would be “any effort, exertion, or activity directed to accomplish the “New mixed-use commercial building.” Compl. ¶85 (*Exh. 18, Ruling of Law #4*).

Importantly, the Building Inspector’s own March 24, 2023 letter to XYZ completely *supports* the City of Lebanon BCBA’s interpretation of Section 105.5. Compl. ¶86. In that March 24, 2023 letter, the Building Inspector interpreted the word “work” in Section 105.5, and acknowledged to XYZ that “the **preparation work** you have been preparing with your construction partners **constitutes commencement of work** at 1 River Park Drive in accordance with the City of Lebanon Building Permit #2016-00293” (emphasis added). Compl. ¶87. As the City of Lebanon’s BCBA properly observed, in order not to be arbitrary and capricious, the decisions of the building inspector must either adhere to precedent or state a compelling and valid reason why a different result must be reached on essentially the same set of facts. Here,

since the Building Inspector in this case **had already concluded that XYZ’s “preparation work” constituted “work” under Section 105.5**, XYZ’s *continuing* preparatory work, which occurred in the 180-day window prior to the Building Inspector declaring the Building Permit expired, must *also* count as “work” under Section 105.5. As the City of Lebanon BCBA determined in its May 6, 2024 decision:

“we hold that since “work” as previously found by the City in the March 2023 letter includes “preparation work”, similar “preparation work” must also count as work in the absence of a valid justification of a different approach.”

Compl. ¶88 (*Exh. 18, Ruling of Law #2*).

There is nothing obvious in the language of Section 105.5 that required XYZ to engage in specific, physical, on-site construction activities in order to keep its Building Permit from expiring. Compl. ¶89. The City of Lebanon BCBA found that the “work” contemplated by that Building Permit was any action taken that advances the project toward the end result of the creation of that “New mixed-use commercial building.” *Id.* XYZ had assumed the same to be true because the Building Inspector had so concluded in his March 24, 2023 letter, and XYZ acted reasonably in continuing to rely on the Building Inspector’s interpretation as XYZ continued its required development work preparatory to the construction of the River Park building. *Id.* The City of Lebanon BCBA also found, in its review of the record of this case, that the City had already conceded this several times and had recognized that there are multiple off-site activities that could constitute “work” under Section 105.5. Compl. ¶89 (*Exh. 18, Finding of Fact #9*).

The New Hampshire BCRB, however, disagreed with the City of Lebanon BCBA’s analysis of Section 105.5, holding that “the BCBA incorrectly interpreted the word “work” given the context and use of the word throughout Section 105 of the Code. As the New Hampshire

BCRB stated in its Final Order:

the term “work” refers to activities that are regulated by the Code. The activities range from constructive acts to destructive acts and vary from large to small. But it does not include all efforts, exertions, or activities directed toward an ultimate end result. Nor does the term “work” encompass efforts and activities that occur beyond the identified and definitively located site listed in the permit and where the permit must be posted... the BCBA interpreted the term “work” as used within Subsection 105.5 to encompass more than physical activities and favorably cited a North Carolina decision holding the word “work” includes the mental effort to overcome obstacles... We conclude this interpretation of “work” goes too far. **We find the meaning of the term “work” within Section 105 to be more limited.... Qualifying activities are those that are authorized by the permit and occur at the identified location, i.e., physical acts that take place at the physical site where the permit must be posted.**

Compl. ¶96-97 (*Exh. 22 at 4*).

The New Hampshire BCRB, however, recognized the fact that the City of Lebanon BCBA had based its interpretation and ultimate holding, at least in part, on the fact that the Building Inspector and other City Officials had made affirmative, written representations to XYZ about what qualified as “work.” As such, the New Hampshire BCRB recognized that:

Because the City previously communicated in a March 2023 letter to XYZ that “preparation work” was sufficient to meet the requirements of “work” under Subsection 105.t, the BCBA held similar “preparation work” must also suffice as “work” in 2024. It is beyond our jurisdiction to opine on whether there are equitable claims against the City of Lebanon for representations to XYZ. Here, our authority is limited to reviewing the interpretation of the text of the Code by the BCBA. And it is beyond our authority to waive or grant variances to requirements of the code. Accordingly, we do [not] review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials concerning the types of conduct that would qualify as work under Subsection 105.5.

Compl. ¶98 (*Exh. 22 at 5*).

As the New Hampshire BCRB decision plainly demonstrates, this is *not* a case where XYZ could have simply looked up Section 105 of the New Hampshire Building Code and determined that the Building Inspector had given XYZ an improper reading of that Code section

in his March 24, 2023 letter. Here, as already established, neither the New Hampshire Building Code, nor the International Building Code defines what “work” or the “commencement” or “suspension,” or “abandonment” of “work” is. No local ordinance provision provides any greater clarity. And the only recorded judicial decision interpreting Section 105.5’s definition of “work” found that a local permit had *not* expired simply because there had not been on-site work. See *Morris Communications Corp. v. City of Bessemer Zoning Board of Adjustment*, 365 N.C. 152, 157 (2011). In the *Morris Communications* case, the North Carolina Supreme Court held that the fact that the zoning administrator did not observe construction-like activities on the site was not dispositive, because the term “work” had a broader meaning than mere visible evidence of on-site construction. The City of Lebanon’s BCBA seized on this, observing:

“[a]lthough out-of-state rulings have no precedential value over us, the Board references the highly informative ruling from the North Carolina Supreme Court in *Morris Communs. Corp v City of Bessemer*... ruling in favor of the landowner who argued that “work” encompasses the border range of activities necessary [to complete a project]... and Webster’s Dictionary defines ‘work’ to include ‘sustained physical or mental effort to overcome obstacles and achieve an objective or result...’ Applying this definition to the Bessemer City ordinance, the term “work” has a broader meaning than mere visible evidence of construction.”

Compl. ¶100 (*Exh. 18*).

Here, XYZ has never demonstrated, either by any overt act, or by any failure to act, any intention *whatsoever* to stop or abandon or suspend “work” on the River Park project for 180 days. To the contrary, XYZ has, at all times, continuously, diligently, and in good faith pursued completion of the “work” authorized by the Building Permit. XYZ completed two Code Compliance reports and has made all necessary updates and adjustments to its building plans to bring those plans into full compliance with the updated IBC and submitted those changes to the City of Lebanon. XYZ’s building plans are fully up to date with the latest code requirements, and there is no risk to the health, safety, or welfare of the public, or any other pragmatic reason

for the City of Lebanon to invalidate the Building Permit, and the City of Lebanon has never identified a single such justification for its curious but insistent effort to invalidate XYZ's Building Permit.

For all of the aforementioned reasons, XYZ's development of River Park should be allowed to continue under the existing Building Permit.

ARGUMENT

XYZ DAIRY IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

Under New Hampshire law, injunctive relief requires a movant to show: (1) it is likely to succeed on the merits of its claims; (2) there is an immediate danger of irreparable harm if an injunction is not granted; (3) it has no adequate remedy at law; and (4) the public interest would be served by granting the injunction. See UniFirst Corp. v. City of Nashua, 130 N.H. 11, 13–14 (1987); see also Thompson v. N.H. Bd. of Med., 143 N.H. 107, 108 (1998); 5 G. MacDonald Wiebusch on New Hampshire Civil Practice and Procedure §§ 19.05-19.16.

“A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case.” N.H. Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007)(citing Kukene v. Genuardo, 145 N.H. 1, 4 (2000)). The “granting of an injunction is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.” DuPont v. Nashua Police Dep't, 167 N.H. 429 (2015).

Here, XYZ seeks a temporary restraining order and a preliminary and permanent injunction (1) immediately reinstating its Building Permit so that XYZ can re-commence work before the end of the 2024 construction season in order to have any chance to potentially retain

its anchor tenant for the 1 River Park building; (2) extending its subdivision and site plan approvals for a period of two years to permit the approved construction at the River Park site to be carried out without further interruption; and (3) awarding to XYZ its legal fees and costs incurred in being required to pursue this clearly defined right.

A. XYZ is Likely to Succeed on Its Claim of Municipal Estoppel

To prevail on a claim of municipal estoppel under New Hampshire law, the plaintiff bears the burden of proof to establish (1) that a municipal official (here the Building Inspector) made a representation of material fact with knowledge of those facts; (2) that the party to whom the representation was made (here XYZ) was ignorant of the truth of the matter; (3) that the representation was made with the intention of inducing the other party to rely on it; and (4) that the other party was induced to rely on the representation to its injury. See Concord v. Tompkins, 124 N.H. 463, 467-68 (1984); Aranosian Oil Co. v. City of Portsmouth, 136 N.H. 57, 59 (1992); Thomas v. Town of Hooksett, 153 N.H. 717, 721 (2006).

1. The Building Inspector Made a Representation of Material Fact with Knowledge of Those Facts

The Building Inspector, in his March 24, 2023 letter to XYZ, stated:

“we agree that you have justified [that] the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

Compl. ¶ 40 (*Exh. 9*)(emphasis supplied). The Building Inspector’s unequivocal written statement makes clear that he concluded that XYZ’s off-site engineering, architectural, materials sourcing, and other preparatory work undertaken to advance the River Park project within a 180-day window was *sufficient* to maintain an active Building Permit. Nothing in the Building Inspector’s March 24, 2023 letter suggests that his decision was a “one-time-only” conclusion, or that his decision was limited to that one occasion. The Building Inspector’s letter simply

acknowledges that XYZ’s preparatory work constituted “work” under the Building Permit. The Building Inspector acted within the scope of his authority in making such a finding, as it was his duty to administrate building permits in the City of Lebanon – including XYZ’s Building Permit at issue here.

2. XYZ had no Reason to Believe that the Building Inspector’s Representations in his March 24, 2023 Letter were Incorrect, and Reasonably Relied on the Building Inspector’s Written Statement that XYZ’s Preparatory Work Constituted “Work” Under the Building Permit

As the New Hampshire BCRB decision plainly demonstrates, this is *not* a case where the XYZ could have simply looked up Section 105 of the New Hampshire Building Code and determined that the Building Inspector had given XYZ an improper reading of that Code section in his March 24, 2023 letter. Neither the New Hampshire Building Code, nor the International Building Code defines what “work” or the “commencement” or “suspension,” or “abandonment” of “work” is. No related state statute or local ordinance provision in the City of Lebanon provides any greater clarity, and the only recorded judicial decision interpreting Section 105.5’s definition of “work” supports the conclusion in the Building Inspector’s March 24, 2023 letter. *See Morris Communications Corp. v. City of Bessemer Zoning Board of Adjustment*, 365 N.C. 152, 157 (2011)(holding that the fact that the zoning administrator did not observe construction-like activities on the site was not dispositive, because the term “work” had a broader meaning than mere visible evidence of on-site construction).

The City of Lebanon’s BCBA seized on this, observing:

“[a]lthough out-of-state rulings have no precedential value over us, the Board references the highly informative ruling from the North Carolina Supreme Court in *Morris Communs. Corp v City of Bessemer*... ruling in favor of the landowner who argued that “work” encompasses the border range of activities necessary [to complete a project]...

and Webster’s Dictionary defines ‘work’ to include ‘sustained physical or mental effort to overcome obstacles and achieve an objective or result...’ Applying this definition to the Bessemer City ordinance, the term “work” has a broader meaning than mere visible evidence of construction.”

Compl. ¶101 (*Exh. 18*).

Without any clear indication to the contrary, XYZ acted reasonably in relying on the Building Inspector’s March 24, 2023 letter and governing its actions in accordance with it – namely by assuming that XYZ’s *continued* preparatory work, of the same type and scope, would, without more, be sufficient to keep its Building Permit active.

3. The Building Inspector’s March 24, 2023 Letter was Clearly Issued with the Intent that XYZ Dairy Would Rely on it

As explained above, on February 15, 2023, the Building Inspector sent a letter to XYZ addressing XYZ’s November 29, 2022 “commencement of construction” and attempted to unlawfully impose retroactive conditions on the already active Building Permit in order for the permit to “remain active.” Among those conditions were requirements that XYZ produce:

- “contract agreements with description of the project, the scope of work, and construction schedule”
- A “Construction schedule, including the project’s intended completion date, and start and finish times for each phase of the project;” and
- “cost estimates” and other financial information

The Building Inspector stated, in his February 15, 2023 letter, that without XYZ satisfying these additional requirements, I “will revoke the permit as of January 13, 2023.”

By letter dated March 7, 2023, XYZ provided some of the requested additional information to the Building Inspector, but also asked the Building Inspector to provide the source of the authority, either in the Building Code or in the City of Lebanon’s regulations, that supported the additional conditions the Building Inspector was attempting to place on XYZ in

order to for its Building Permit to “remain active.” This dispute precipitated a meeting between XYZ and the Building Inspector on March 16, 2023 to discuss the situation.

During that meeting, the Building Inspector specifically refused to accept XYZ’s excavation work on the River Park site as evidence of the commencement of “work” under the Building Permit. Instead, the Building Inspector requested that XYZ produce additional evidence, including receipts for project materials, to substantiate the preparatory work that XYZ claimed to be doing. XYZ provided those receipts to the Building Inspector later that same day.

The Building Inspector memorialized the subject matter covered at this meeting in the critically important March 24, 2023 letter from the Building Inspector to XYZ. That letter acknowledges that XYZ and the Building Inspector had discussed, at their March 16, 2023 meeting, the many things that XYZ had been doing to get the River Park site ready for construction, and concludes that

“we agree that you have justified [that] the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.”

This was the acknowledgement that XYZ had been seeking from the Building Inspector, and the Building Inspector put this conclusion in a letter directed to XYZ. Given the history that led to this letter being written, there can be no reasonable argument that the Building Inspector did not expect XYZ to rely on it.

4. XYZ Dairy was Induced to Rely on the Building Inspector’s March 24, 2023 Letter and has been Injured as a Result of its Reliance Thereon

As David Clem’s affidavit to the City of Lebanon BCBA makes clear, Compl. ¶58 (*Exh. 17*) XYZ was induced to rely on the Building Inspector’s March 24, 2023 letter, and did so to its substantial injury. After receiving the letter, XYZ actively engaged in a wide variety of

continuing preparatory activities for the River Park site, spending \$221,838 in direct costs for the site and entering into contractual obligations to pay another \$652,303 in professional and contracting fees. *See* CR164; CR176. XYZ also formally engaged three subject-specific engineering firms and one architectural firm to move the River Park project forward as soon as the Spring 2024 construction season could begin. The amount of money XYZ invested in the River Park project after receiving the Building Inspector's March 24, 2023 letter equates to more than *nine times* the original cost of the Building Permit and more than *seven percent* of the original \$12,296,100 budget for the entire 1 River Park project.

B. XYZ Has Shown an Immediate Danger of Irreparable Harm and that it has No Adequate Remedy at Law.

As the attached Affidavit of David Clem establishes, *see Exh. 1 hereto*, the revocation of XYZ's Building Permit and subsequent reversal of XYZ's successful appeal of the Building Inspector's revocation decision has placed XYZ in immediate danger of irreparable harm. First, the termination of XYZ's Building Permit will allow Engleberth and/or any of the subcontractor bidders to withdraw from the project, which will then it impossible for XYZ to complete the necessary infrastructure work by the deadline of January 5, 2025 imposed by the City of Lebanon. This would cause irreparable harm to XYZ by erasing XYZ's hard-fought entitlement approvals for the entire seven-phase, mixed use development, which totals over 1.0 M rentable square feet. Given the many regulatory changes that have occurred since XYZ's initial approvals, this project would likely not be approved again in the current regulatory environment.

The owner of Engleberth visited David Clem at home last week to warn him that the selected contractor bids were now at risk due to the delays in the start date, and that Engleberth is also receiving pushback from some subcontractors that their bids are no longer fixed due to the delays. All of this immediately imperils the project.

Unless XYZ's Building Permit is immediately restored, it will cause irreparable damage to XYZ and the River Park development. XYZ will lose the contractors needed to complete the necessary infrastructure work before winter. That, in turn, will cause XYZ to fail to meet its January 5, 2025 deadline, and thus, to lose its entitlements for the entire project. And that will irreparably harm XYZ's credibility as developers in the marketplace. See *Soukup v. Brooks*, 2006 N.H. Super. LEXIS 35 at *5-6 (Because the subject of this litigation involves the Plaintiffs' ability to use real estate, "there is a presumptive lack of an adequate, alternative remedy at law and of irreparable harm" which cannot be redressed by a damage award).

In addition, XYZ is at a critical lease negotiation phase with two tenants, one a national life science company, and the other a nationally recognized operator of childcare facilities. Both are publicly traded companies. Their combined tenancies would occupy over 50% of the building, but have occupancy deadlines due to expiration of current leases and the need for additional space/facilities. XYZ cannot meet their occupancy needs if the Building Permit is invalidated. This would pose irreparable damage to XYZ's reputation and a loss of the revenue necessary to get construction financing for 1 River Park by a local lender.

This is the textbook case of irreparable harm for which there is no adequate remedy at law and for which an injunction is required to prevent damage.

C. XYZ Dairy Has Shown That a Preliminary Injunction Is in the Public Interest.

A grant of injunctive relief is in the public interest where the offending conduct violates the public policy of the State of New Hampshire. See, e.g., *Control Techs., Inc. v. ENE Sys. of N.H., Inc.*, No. 217-2019-CV-849, 2020 N.H. Super. LEXIS 8, at *25 (Mar. 26, 2020). Here, the Building Inspector went on record, within the scope of his authority, after holding a meeting with representatives of XYZ, and wrote a letter to XYZ stating, unequivocally, that the preparatory

work XYZ was engaged in on the River Park site was sufficient to keep the Building Permit active. XYZ then relied on that affirmative representation from the person imbued with the authority to make it, and spent nearly \$900,000 in development costs in the ensuing months in reliance on it.

On these facts, public policy and the public interest is advanced by holding the Building Inspector to his written statement. There is no damage or downside whatsoever to the public interest in doing so. XYZ's building plans are fully up to date with the latest code requirements, and there is no risk to the health, safety, or welfare of the public, or any other pragmatic reason for the City of Lebanon to invalidate the Building Permit, and the City of Lebanon has never identified a single such justification for its curious but insistent effort to invalidate XYZ's Building Permit.

D. The Court Should Not Require the Posting of an Injunction Bond.

New Hampshire Superior Court Rule 48(c) requires the posting of an injunction bond unless good cause exists. "The purpose of an injunction bond is to mitigate the harm caused to the defendant by an erroneously issued injunction." *Deere & Co. v. State*, 2013 N.H. Super. LEXIS 32, *35-36 (N.H. Super. Sept. 19, 2013) (excusing injunction bond requirement). Thus, "a bond is required where the injunction exposes the defendant to a risk of monetary loss." *Id.* (quoting *Crowley v. Local No. 82. Furniture and Piano Moving. Furniture Store Drivers. Helpers. Warehousemen, and Packers*, 679 F.2d 978, 1000 (1st Cir. 1982)). Here, there is no risk of monetary loss to the City of Lebanon in excusing the injunction bond. As noted, XYZ was proceeding under a fully-approved Building Permit, and a full set of approved entitlements from the City of Lebanon's Planning Board. All that XYZ is seeking through this injunction is the right to proceed under those previously-approved entitlements. Therefore, the Court should not require the Plaintiffs to post an injunction bond.

CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion for a Temporary Restraining Order and a Preliminary Injunction should be granted. An evidentiary hearing is requested if needed by the Court to make a ruling on the Plaintiffs' request for a preliminary injunction.

Respectfully submitted,

XYZ DAIRY, LLC

By its attorneys,

SHEEHAN, PHINNEY
Professional Association

Dated: September 13, 2024

By: /s/ Robert H. Miller
Robert H. Miller, Bar No. 13881
1000 Elm Street, 17th Floor
Manchester, NH 03105-3701
603.627.8145
rmiller@sheehan.com

EXHIBIT 1

STATE OF NEW HAMPSHIRE

GRAFTON COUNTY, SS.

SUPERIOR COURT

XYZ Dairy, LLC

v.

The City of Lebanon, New Hampshire

and

Calvin Hunnewell, in his official capacity as
Building Inspector for the City of Lebanon, New Hampshire

Docket No. _____

AFFIDAVIT OF DAVID CLEM

1. I am over 18 years of age, possess personal knowledge of the facts contained herein, and am competent to testify to the facts thereto.
2. I am the Manager of XYZ Dairy, LLC ("XYZ").
3. There are several exigencies associated with the improper revocation of our Building Permit for 1 River Park that are creating the risk of irreparable harm, both to the River Park project, and to our professional reputations as developers.
4. XYZ hired Engelberth Construction ("Engleberth") to act as our construction manager for 1 River Park.

5. We identified two scopes of work for Engleberth to bid and manage: (1) the completion of the last component of the so-called Phase 1 Infrastructure Work for River Park to vest the entire project and to remove the restriction against the transfer of any lots created by the subdivision plan for River Park, and (2) the construction of the base building core and shell for 1 River Park with associated site improvements on Lot 1 of River Park according to the construction documents submitted to the City of Lebanon and the terms of the building permit based on those stamped drawings issued by Calvin Hunnewell as Building Inspector. The work noted above for the last component of the Phase 1 Infrastructure Scope had a completion deadline of January 2025 found in the Notice of Action of both our Site Plan and Subdivision Approvals voted by the Lebanon Planning Board.

6. XYZ represented to Engleberth and others that we had a valid Building Permit when Engleberth was hired, and they, in turn, represented the same to all of the approved subcontractors. All of these companies have relied on our representation to their detriment, and have lost work, profits, and marketing and networking opportunities while sidelined during this process.

7. Our Building Permit only requires that the infrastructure work be completed as a condition precedent to the issuance of a certificate of occupancy for the 1 River Park building. It does not require that the infrastructure work be completed before the construction of the 1 River Park building.

8. The termination of our Building Permit will allow Engleberth and/or any of the subcontractor bidders to withdraw from the project, which will have the effect of making it impossible for us to complete the necessary infrastructure work by January 5, 2025. This would cause irreparable damage to XYZ by erasing our hard-fought entitlement approvals for the entire

approved, seven-phase, mixed use development, which totals over 1.0 M rentable square feet, which we may never be able to get approved again.

9. Engelberth “went to the street” and solicited bids from multiple trades to perform the work based on the Building Permit construction documents and the site plan engineering documents previously approved and recorded by the City of Lebanon and the NH DOT. Engelberth informed all bidders that their bids should be based on a May 1, 2024 construction start.

10. This start date was critical because the City of Lebanon has an ordinance that allows the City Engineer to shut down work in a municipal street on November 1 in order to ensure that all paving is completed before the asphalt plants shut down due to cold weather.

11. XYZ reviewed the bids and recommendation of Engelberth and selected the contractors who could commit to performing the infrastructure work over the summer in order to meet our January, 2025 deadline and to avoid any risk of work being shut down in the Route 10 ROW in early November.

12. The contractor selected for the critical path infrastructure work is Nott’s Excavating. Nott’s has completed all of the Phase 1 Infrastructure Work to date at River Park (Crafts Avenue, Crafts Avenue Extension and the Cross Country Connector) and is on the list of approved contractors published by the NH DOT. Additionally, Nott’s work completing the first three components of the Phase 1 Infrastructure Work was approved and accepted by the City of Lebanon without exception and without any subsequent corrective work required under the one-year warranty for the work provided to the City of Lebanon. Nott’s was not the low bidder amongst the multiple site work bids submitted to Engelberth; however, Nott’s was willing to commit to the critical path completion schedule required by XYZ Dairy and was willing not to

bid on other jobs that might jeopardize the necessary schedule. The contract negotiated by Engelberth on behalf of XYZ Dairy, with the necessary deadline for the 100% completion of the work required by the City of Lebanon and the NH DOT, obligated XYZ to pay Nott's in full for any partial completion of the scope of work and, potentially, for Nott's lost revenue and lost profit in foregoing other work if their contract was terminated without cause.

13. Engelberth and Nott's have requested that XYZ immediately release the acquisition of all infrastructure materials (pipe, subsurface stormwater collection systems, catch basins) not currently on site in order to meet the January 2025 deadline. This has presented XYZ with a Catch-22 situation if the Building Permit is not restored and the City is allowed to impose new infrastructure conditions on any future permit which the Director of Planning and Building has already told our Construction Manager will be required.

14. Engelberth was authorized to meet with the Lebanon DPW and City Engineer and to submit the appropriate excavation permit application as required by the City of Lebanon. Engelberth was also authorized to meet with the NH DOT regional office engineer and staff and to submit the appropriate permit application they required since the improvements in Route 10 (North Main Street) involved both jurisdictions. The City of Lebanon Planning Department has not signed off on the work required to allow the final component of the infrastructure work to begin, notwithstanding the City's previous acceptance of language for the necessary completion bond agreement for the first three components of the Phase 1 Infrastructure Work already completed by XYZ and accepted by the City of Lebanon.

15. The uncertainty caused by the City of Lebanon's challenge to the 1 River Park Building Permit and the delays in approving the Excavation Permit application by imposing new conditions have not allowed XYZ to release Engelberth and their subcontractors to execute the

required infrastructure work or to enter into a Security Agreement with the City and to post a Letter of Credit as successfully done on the three prior occasions.

16. The owner of Engelberth came to my home last week to notify me that the selected contractor bids were now at risk due to the delay in the start date. Engleberth is also now receiving pushback from some subcontractors that their bids are no longer fixed due to the delays. The completion schedule is now at risk as well.

17. Unless our Building Permit is restored in September, it will cause irreparable damage to XYZ and the River Park development, as we will almost certainly lose the contractors needed to complete the work on deadline necessary to secure an anchor tenant. That, along with the impending expiration of the River Park Site Plan, will cause us to lose the entitlements for the entire project. And that will irreparably harm our credibility as developers in the marketplace.

18. XYZ is also at a critical lease negotiation phase with two tenants, one a national lifescience company, and the other a nationally recognized operator of childcare facilities. Both are publicly traded companies. Their combined tenancies would occupy over 50% of the building, but both have occupancy deadlines due to expiration of current leases and the need for additional space/facilities. XYZ cannot meet their occupancy needs if the Building Permit is invalidated. This would pose irreparable damage to XYZ's reputation and a loss of the revenue necessary to get construction financing for 1 River Park by a local lender.

19. The first phase of River Park is in excess of \$30.0M, excluding tenant buildout costs. The latter will require construction documents and additional building permit fees to the City of Lebanon. Based on two previous large-scale mixed use projects that we have developed in Cambridge and Boston, the estimated value of the seven phases of development approved for

River Park over the next 15+ years is estimated to be in excess of \$500M. If the Building Permit is revoked and the January 5, 2025 infrastructure completion schedule cannot be achieved, the \$1.2 M in architectural and engineering fees already paid for the 1 River Park building alone, and are site specific, will be lost, and the project, and all of its employment opportunities and other contributions to the local economy, will be dead.

I HEREBY SWEAR, under pains and penalties of perjury, that the contents of this Affidavit are true and accurate to the best of my knowledge and recollection.

Date: _____

9/13/24


David Clem

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this ____ day of September, 2024, before me, the undersigned officer, appeared David Clem, known to me (or satisfactorily proven) to be the person whose name appears above, and he subscribed his name to the foregoing instrument for the purposes contained therein.




Notary Public/Justice of the Peace

Name: Alysha Webster
My Commission Expires:

June 26th, 2029



September 23, 2024

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

Re: Appeal of Administrative Decision: #PB2024-40-AAD

In response to the Planning Staff's position in the August 12, 2024 Staff Memorandum, the discussion at the September 9, 2024 Planning Board hearing, and subsequent communication from the Planning Staff on September 10, 2024, XYZ Dairy provides the following additional information.

All of the conditions identified in Mr. Corwin's communications related to the Phase 1 Infrastructure have been previously satisfied. XYZ does not bear responsibility for the City's file management, nor should consideration or approval of **PB2024-34-EXT** before the Planning Board be withheld. These conditions, apart from having already been satisfied as outlined in **Appendix A**, are not germane to the extension request at hand.

I take umbrage at the Staff's position that XYZ is deficient in meeting these requirements while XYZ has not only provided the information previously, but also continues to address the larger issues resultant from the Planning Staff's own decisions and actions this year. This determination is disingenuous and a distraction from the matter at hand.

The two gating issues for XYZ are 1) the Extension of the Site Plan approvals (#PB2018-34-SPA,) and 2) the status of the Building Permit (#2016-00293). If those overarching permits are invalidated, there is no reason for XYZ or Lyme to expend effort addressing these minor issues and redundant requests for information.

Only the extension of #PB2018-24-SPA is before the Planning Board. Building Permit #2016-00293 is separate matter and is being addressed in a different venue.

Mr. Corwin's September 10, 2024 email references his June 10, 2024 and June 13, 2024 emails regarding these "outstanding" items, and he now asks why XYZ hasn't responded to previous requests for this information. A review of the timeline of events (**Appendix B**) provides a logical answer: these items were superseded by more pressing matters and were to be addressed in the Security Bond / Performance Agreement process necessary to complete the last portion of Phase 1 Infrastructure work.

Thus is the subject of Appeal #PB2024-40-AAD, Mr. Corwin's September 10, 2024 decision via email "So that there's clarity, unless you provide satisfactory information to the contrary, **it is my determination that Conditions 1, 2, 4, 5, 7 and 14-4 from the 9/19/19 Notice of Action for PB2018-34-SPA have not yet been satisfied and, consequently, construction of Phase 1 may not commence.**"



Mr. Corwin's Staff Memo and subsequent emails confuse the issue. The matter before the Planning Board is not whether Phase 1 can commence, but rather whether the underlying Site Plan and Subdivision approvals for River Park are to be extended to account for the delays incurred beyond XYZ's control.

We request that this "decision" be overturned, so that the Planning Board may continue its review of the Extension request before them.

Should the Board grant the requested extension and the Building Permit be reinstated, further requests for information will be addressed by XYZ's Construction Manager or Design/Engineering project team.

Having filed this Appeal in a timely fashion and paid all required fees, XYZ retains the right to have this Appeal heard by the Lebanon Planning Board on October 14, 2024.

Sincerely,

Chet Clem
Lyme Properties 2, LLC
57 Main Street
West Lebanon, NH 03784



Appendix A: Status of conditions

1. The applicant shall submit final designs, including construction drawings, of all infrastructure features associated with each phase, including proposed on- and off-site roadway and parking areas, sidewalks, water and sewer utilities, and storm drainage systems, to the City Engineer for approval, which shall not be unreasonably withheld.

July 28, 2016:

1 River Park and Phase 1 Infrastructure plans originally submitted to City of Lebanon.

December 21, 2018:

Amended drawings for re-routed path of Cross Country Connector submitted.

August 4, 2022:

Amended connection from Lot 29/30 to CCC submitted, following Lebanon DPW catching error made by previous City Engineer.

June 7, 2024:

Updated drawings submitted to City of Lebanon DPW and State of NH DOT for 2024 commencement, reflecting full review of any code changes by XYZ project team, with any changes denoted in the updated package.

2. The applicant has submitted sufficient site and building information to obtain Site Plan approval for development of the site. However, the applicant shall be required to submit updated site plans, building elevations, and phasing information sufficient to demonstrate compliance with the approval to the City for review and approval by the Planning Department, prior to the issuance of Building Permits for each phase and prior to the start of any construction activities for development shown or described in all remaining phases as depicted on the New Phasing Plan. For purposes of this decision, construction activities shall include any construction, excavation, or other site work associated with the construction or installation of buildings, roadways, parking, water, sewer, or storm drainage infrastructure. All such plans and information shall be in accordance with the Site Plan Review Regulations dated last revised November 9, 2009. Such Planning Department review shall be for the purpose of ensuring that the proposed building design and uses are in substantial conformance with the approved phased development project and with the Site Plan Review Regulations referenced above.

April 13, 2015:

Updated Site Plan showing the designed 1 River Park Drive footprint and change from massing footprint in original Site Plan approvals submitted by XYZ to City. (Note: the footprints shown in the original Site Plan application were not based on actual building designs; rather, they were shown to



demonstrate that each building would meet the setback requirements in each zone).

June 8, 2015:

Amended plans accepted by City of Lebanon Planning Board.

December 29, 2019:

Building Permit issued, further implying that this condition had been satisfied.

June 6-7, 2024:

Plan set confirms no change to site and building information.

4. Prior to the start of any construction activities for which construction inspection is required pursuant to this decision or any applicable ordinance or code for each phase of the project, the City shall retain the services of an independent 3rd party inspector, for which the applicant shall be responsible for all inspection fees related to construction and installation of on- and off-site roadways, parking, sidewalks, water and sewer utilities, storm drainage, and erosion control, in accordance with Chapter 181 of the City Code and Section 14 of the Subdivision Regulations unless waivers have been granted. The applicant shall provide funding for inspection services in a form acceptable to the City. Third party engineer inspection reports and as-built drawings provided by the applicant (using NH State Plane Coordinate system), including tie sheets and Northing and Easting coordinates and elevations of underground utilities, shall be reviewed and approved by the City Engineer, prior to acceptance of any utility improvements by the City and all inspection reports shall be made available to the applicant.

XYZ is aware of this requirement and has completed this for the three previous segments of the Phase 1 Infrastructure Improvements and paid a 5-14% project cost premium as a result. As in these three previous cases, the 3rd Party inspection scope of work is developed by the Planning Staff/Dept. of Public Works in parallel with the Security Bond/Performance Agreement.

Appendix B outlines the timeline of events and illustrates why the 3rd Party inspection agreement had not yet been provided: a final \$ value had not been accepted by the Lebanon DPW and Planning Department when the Appeal was filed on July 8, 2025

Crafts Avenue Sewer and Roadway Improvements (CASRI):

Total Construction Value:	\$1,048,348.54
Total 3 rd Party Inspection paid by XYZ:	\$86,080 (8%)

Crafts Avenue Extension (CAE):

Total Construction Value:	\$383,083.52
Total 3 rd Party Inspection paid by XYZ:	\$20,580 (5%)



Cross Country Connector (CCC):

Total Construction Value: \$122,879.26
Total 3rd Party Inspection paid by XYZ: \$18,000 (14%)

5. **Edge-of-Disturbance fencing shall be installed and maintained before and during any site work for each phase under construction, to be verified by the City Engineer or City's third-party inspector on site.**

XYZ is aware of this condition. Historically, this condition is satisfied by the Construction Manager as the first step for mobilization and signed-off upon by the 3rd Party Inspector on-site. Mobilization has not proceeded due to regulatory actions beyond XYZ's control.

7. **Temporary parking facilities.**
 - a. Temporary parking facilities are approved in accordance with the chart attached hereto as Exhibit "A".
 - b. Prior to the issuance of a building permit for any phase involving the construction of a temporary parking facility, the applicant shall provide the Planning & Development Department with plans for the proposed temporary parking facility, together with an operation and maintenance plan.
 - c. Each temporary parking facility shall be designed to ensure the safe movement of vehicles and pedestrians to the satisfaction of the Director of the Department of Public Works and the Director of the Planning Department, which shall not be unreasonably withheld. It shall be the responsibility of the applicant to maintain each temporary parking facility in accordance with the operation and maintenance plan.
 - d. The temporary parking identified in Exhibit A may be used until such parking is replaced by the permanent parking garage included in Phase 3 or December 31, 2038, whichever is earlier.

Building Permit #2016-00293 was issued by the Lebanon Planning Department on December 29, 2019, three months after this September 9, 2019 Notice of Action. The permit confirms that this requirement is not applicable and that sufficient parking had been provided, as shown on the Building Permit Construction documents for 1 River Park Drive.

The updated Phasing Plan in the September 9, 2019 Notice of Action reflects off-site parking requirements for Lot 1, if the 125-unit multi-family building were to be constructed concurrently as



XYZ had hoped. Unfortunately, that additional housing is not presently under consideration, due to repeated delays and the rejection of XYZ's proposed Site Plan amendments in 2023 that would have enabled this housing to progress simultaneously with 1 River Park.

The Phase 1 plans before the Department of Public Works and Planning Department are consistent with plans previously approved, there has been no material change to parking whatsoever, and there is no temporary parking facility required, making Condition 7 **not applicable**.

The Permit and subsequent updated plans (Sheets 1-5 and 1-6) provided to the Planning Department on June 6-7, 2024 show the original, approved plan for 1 River Park. This provides more than sufficient parking on Lot 1 (42 spaces) and Lot 2 (140 spaces) to meet the total parking requirements for 1 River Park (149 spaces).

14-4. Prior to the issuance of a Building Permit for Phase 1 of the development, the applicant shall obtain all required State approvals including, but not limited to, the following:

- NHDES Alteration of Terrain Permit
- NHDES approval for Sewage Discharge

Note: this requirement has already been satisfied. Alteration of Terrain Permit #AoT-0994 dated October 6, 2015 and Sewage Discharge Permit #D2015-0802 dated September 10, 2015, have been issued by NH DES for Phase 1.

As the Planning Department's own Notice of Action (highlighted above) states, this requirement has already been satisfied.

NHDES Alteration of Terrain Permit: #AoT-09943A

The NH DES Alteration of Terrain Permit #AoT-09943A was issued on October 6, 2015. Following the 2018 suspension and the 2020 suspension, TF Moran submitted a request for extension on XYZ's behalf to NH DES on August 2, 2020, which was granted on October 30, 2020 with an expiration date of October 30, 2025.

As referenced numerous times previously, the August 2, 2020 letter from TF Moran included reference to the temporary stormwater line to be installed to re-direct the City's stormwater line to allow construction of 1 River Park to commence, and until the permanent solution is installed. Per the October 30, 2020 letter from NH DES, XYZ's project team must abide by N.H. **Env-Wq 1507.07**.

As stated in numerous past communications to the City, the City of Lebanon was copied on all communications related to this permit.



To eliminate any further confusion regarding jurisdiction and approval, XYZ requests that the Planning Department provide reference to any specific, applicable City regulations regarding stormwater that have not been met.

NHDES approval for Sewage Discharge: #D2015-0802

This permit was granted by the NH DES/Lebanon DPW on 9/10/2015.

A memo sent by XYZ to the Lebanon DPW on December 4, 2019 includes all previous calculations related to water & sewer connections for 1 River Park, and minor updates related to fee calculations for the core & shell construction prior to the issuance of Building Permit #2016-00293. On December 19, 2019 XYZ paid the City of Lebanon \$15,886 for a water and sewer connection fee for 1 River Park in accordance with #D2015-0802.

Work on the sewerage construction under Permit #D2015-0802 was commenced prior to the three years of the approval date in accordance with the written condition on the permit, when the Crafts Avenue Sewer and Roadway Improvement (CASRI) construction began in 2018. Work on this same scope of work has continued, with the City's implicit approval, during the Crafts Avenue Extension (CAE) work in 2020 and the Cross Country Connector (CCC) work in 2022.



Appendix B: Timeline of relevant events

February 1, 2024

The Planning Staff's memo invalidating the Building Permit jeopardized the entire River Park project, and repeat efforts by XYZ and its Attorney to address this matter to allow development activities to continue while the matter was resolved were fruitless, causing months of uncertainty.

May 6, 2024

95 days and three (3) Lebanon Building Code Board of Appeals hearings later, the BCBA reinstated Permit #2016-00293. With the project seemingly back on track after the BCBA decision overturning the Staff's actions, XYZ's project team is re-released to file necessary information.

June 5, 2024

The City of Lebanon elects to appeal the BCBA's May 6, 2024 appeal decision. This appeal is filed at 4:30pm on the 30th day of the 30-day appeal period.

June 6, 2024

Engelberth Construction on behalf of XYZ submitted an Excavation Permit Application for the portion of remaining Phase 1 infrastructure under the City's jurisdiction. A parallel application to the NHDOT was submitted the same day.

That application was required to be reviewed and approved by the Lebanon DPW, and necessary for infrastructure cost values to be determined to reach a Performance Bond/Security Agreement.

June 7, 2024

Engelberth Construction on behalf of XYZ submits updated construction drawings for 1 River Park reflecting minor code changes from the two (2) code update reviews conducted under the direction of Elkus Manfredi Architects.

June 13, 2024

Planning Director Nathan Reichert responds to Engelberth Construction regarding technical issues with the City's ongoing OpenGov software transition.

In a conversation between Mr. Reichert and Chris Yandow at Engelberth Construction, memorialized by Mr. Yandow to XYZ via email on June 13, 2024, Mr. Reichert states that the Permit would not be recognized until the appeal process is over. Mr. Reichert's decision is contradictory to NH RSA 676:6, "The effect of an appeal to the board shall be to maintain the status quo."

Thus, the Permit that was reinstated by the Lebanon Building Code Board of Appeals on May 6, 2024 should have been honored as in-place while any State appeal process brought forth by the Lebanon Planning Department played out. This *ultra vires* decision further jeopardized XYZ's ability to move forward, contributing to the numerous, unwarranted delays XYZ has faced beyond its control.



Building Permit submission

1. Documentation submission began Monday morning outside the online building application portal.
2. Discussed the following in a phone conversation with Nate Reichert:
 - a. Recognizes an earlier permit was issued, but wants to use the new building permit system for tracking/processing.
 - b. They want the permit application submission redone thru their permit portal as all other building permit applications are now done. They are establishing Building 1 with an E911 address of 1 River Park Drive and I am waiting for the creation of that address to begin the process.
 - c. With the new Inspectors in place, they will review the new plans against the conditions from the 2016-00293 permit to see which either no longer pertain (because of new codes) or have been satisfied with the new drawings.
 - d. **NOTE** – he mentioned the City is appealing the State’s decision that the past permit is still valid. That appeal was just recently filed – were you aware of this.
 - e. **He said Planning and Development would still receive, process and review the application during the appeal process – but that a permit would not be recognized or issued (if they decide to issue a new number) until the appeal process is over.**

Figure 1: Portion of June 17, 2024 memo from Chris Yandow to XYZ.

June 25, 2024

XYZ’s Attorney submitted a draft Performance Bond/Security Agreement to Mr. Corwin.

A series of emails between Attorney Hastings, Mr. Corwin, and Mr. Vincent take place regarding the required bond values, and additional information is provided by XYZ in response on 6/26/2024.

Lebanon DPW subsequently signs off on Excavation Permit and sets cost of construction to be bonded and reflected in the Performance Bond/Security Agreement.

June 27, 2024

XYZ attends pre-hearing conference with the N.H. BCRB in Concord. Attorney Rob Miller for XYZ Dairy, LLC requests that the City drop its appeal so as to not jeopardize commencement of Site Work that had been rescheduled for July in order to meet the January 2, 2025 completion deadline, and more importantly, the required schedule of the anchor tenant for 1 River Park.

The City refused. As a result, XYZ cannot proceed with work as scheduled, loses Site Work contractor, and any reasonable chance to complete requisite work by January 2, 2025.

July 8, 2024

The Lebanon Planning Staff’s actions and the delay caused by the NH BCRB process, results in XYZ filing a request for extension of #PB2018-24-SPA.



July 12, 2024

N.H. BCRB hearing in Concord. BCRB overturns Lebanon BCBA. Resultant decision from BCRB remands the issue back to BCBA, but draws attention to the matter of municipal estoppel that was central to the BCBA's decision.

Last, it is evident that the BCBA based its interpretation and ultimate holding, at least in part, on the representations of City Officials to the permittee about what qualified as work in the early stages of the project. CR177-178. Because the City previously communicated in a March 2023 letter to XYZ that “preparation work” was sufficient to meet the requirements of “work” under Subsection 105.5, the BCBA held similar “preparation work” must also suffice as “work” in 2024. *Id.* It is beyond our jurisdiction to opine on whether there are equitable claims against the City of Lebanon for representations to XYZ. Here, our authority is limited to reviewing the interpretation of the text of the Code by the BCBA. *See* RSA 155-A:11-b. And it is beyond our authority to waive or grant variances to requirements of the code. *Id.* Accordingly, we do review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials concerning the types of conduct that would qualify as work under Subsection 105.5.

Figure 2: Excerpt from N.H. BCRB Decision, July 31, 2024

July 16, 2024

Having heard nothing for 20 days from the Planning Staff regarding the draft Performance Bond / Security Agreement prepared by XYZ and provided to the City on June 25, 2024 following submission of the relevant Excavation Permit, Attorney Hastings follows-up with Mr. Corwin regarding the status of the draft agreement.

July 25, 2024

30 days after the draft was submitted to the City, Mr. Corwin responds with a redline of the Security Bond/Performance Agreement. Mr. Corwin identifies several new issues– which had not been raised during the three (3) previous Security Bond / Performance Agreements related to earlier segments of Phase 1 Infrastructure– that require additional consideration, and perhaps being brought before the Planning Board for review and approval.

August 12, 2024

The Staff Memo, arriving two (2) days prior to the scheduled August 12, 2024 hearing, brings forth new questions and requests for information from the Applicant.

XYZ prepares the relevant information requested by the Staff for the hearing, only to have the hearing continued for a month at the suggestion of the Planning Staff and Planning Board.



September 5, 2024

XYZ responds to Mr. Corwin's Staff Memo and subsequent August 13, 2024 email communication, pointing out the disparity between the Staff's actions and the Board's previous considerations of XYZ's request for extension of #PB2018-24-SPA, and the lack of communication from the Staff prior to the August 12, 2024 hearing that could have easily avoided any delay in consideration of the requested extension.

Had the Planning Staff observed their own Staff Review and Initial Completeness Determination (SPRR Section 4.7.C.3.a-c) following XYZ's submission of the request for extension on July 8, 2024, the new requirements from the Staff would have been provided by XYZ in a timely manner.

3. Initial Completeness Determination

 - a. The Planning & Development Department shall review the application for completeness pursuant to the requirements of Section 4.7.A and Section 5.1. If the Planning & Development Department finds that the application is complete, or lacks only those items or documents for which waiver requests have been submitted, then the Planning & Development Department shall make a preliminary determination of whether the waiver requests meet the standards of Section 7.1 of these Regulations, and if so, then the Planning & Development Department shall recommend to the Board acceptance of the application for review.
 - b. If the Planning & Development Department finds that the application is not complete or that one or more of the waiver requests do not meet the standards of Section 7.1, the Planning & Development Department shall so advise the Applicant, who can elect to complete the missing submission requirements. Missing submission requirements, including any necessary waiver requests, shall be delivered to the Planning & Development Department by close of business on the fourth Monday of the month (or the following business day if the office is closed) for submission to the Board the following month. Submission of additional or revised materials by this date is necessary to ensure that the Planning & Development Department has adequate time to review application materials and to prepare a staff report, as needed, for each application listed on the Board's agenda.
 - c. If the applicant elects not to complete the missing requirements, fails to deliver all missing submission requirements prior to the deadline as described above, or, if applicable, fails to pay engineering review fees, the Planning & Development Department shall recommend that the Board deem the application incomplete. Prior to acting on the recommendation, the Board shall give the applicant a reasonable opportunity to be heard on the limited issue of completeness.

Instead, the information requested on Thursday, September 5, 2024 was provided to the Planning Board at the outset of the hearing on Monday, September 9, 2024, as has been done historically by XYZ when insufficient time is allowed by the Planning Staff due to late receipt of the Staff Memorandum.

September 9, 2024

Following over 1.5 hours of answers and information provided to the Board by XYZ— including answers to the very same questions posed again via by Mr. Corwin on September 10, 2024— the second hearing of the extension request is continued another full month until October 14, 2024.

DRAFT¹

**LEBANON PLANNING BOARD
CITY COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
~~MONDAY~~TUESDAY, NOVEMBER 12, 2024 6:30 PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Kathie Romano (REMOTE), Patrick Kennelly, Karen Zook (City Council Rep), Jeremy Rutter, Kellen Appleton, Eric Stacey (alt), Brian Ceglarski (alt)

MEMBERS ABSENT: NONE

STAFF PRESENT: Tim Corwin (Deputy Planning Director)

OTHERS PRESENT: Christine Johnston, Esq. (Legal Counsel for the Planning Board)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:36pm.

Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. NOTICE OF REGIONAL IMPACT

The following applications were received by the Planning and Development Department on or before November 12, 2024:

- **Grafton County Senior Citizens Council, Inc. and City of Lebanon, 10-12 Campbell Street (Tax Map 92, Lot 23), 0 Flynn Street (Tax Map 92, Lot 17), and 0 Flynn Street (Tax Map 91, Lot 245), zoned L-D: Request for approval of a Boundary Line Adjustment between Lot 92-23 and Lot 92-17 and a Voluntary Lot Merger of Lot 92-17 and Lot 91-245. PB2024-46-BLAVLM**

¹ With suggested edits by A Faunce, J Rutter, and staff (deletions in red, additions in blue)

- 1 • Choice Storage LLC regarding 00 Etna Rd (Tax Map 26, Lot 17 ~~L-D~~), zoned L-D and
2 ~~RO-RL-3~~: Request for A 5-lot subdivision and a Conditional Use Permit pursuant to
3 Article 5, Section 508.6A of the Lebanon Zoning Ordinance. PB 2024-47-MAJCUP.
- 4 • Cicotte Holdings, LLC, 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), zoned R-O-1:
5 Request for a Conditional Use Permit pursuant to Section 311A.2 of the Lebanon Zoning
6 Ordinance and for Site Plan Review per Section 3.1.D of the Site Plan Review
7 Regulations to expand the outdoor vehicular storage area for an existing vehicular sales
8 use together with associated site improvements including landscaping and lighting.
9 PB2024-48-SPRCUP

10
11 Mr. Corwin said Staff recommends the applications do not have the potential for regional impact.

12
13 *A MOTION was made by Richard Ford Burley that the applications ~~of Grafton County Senior~~
14 ~~Citizens Council Inc. in the city of Lebanon regarding 1150 Campbell St. and 0 Flynn St. tax~~
15 ~~back 91 lot 245 and tax back 92 lot 23. Zoned Lebanon Downtown, Choice Storage LLC~~
16 ~~regarding 00 Aetna Rd. that is tax map 26, lot 17 zoned Light Industrial and RO-3, and~~
17 ~~Holdings LLC regarding 51 Evans Drive, Tax map 78, lot 40, plot 200, zoned RO-1~~ received ~~do~~
18 ~~not have the potential for regional impact. The motion was seconded by Jeremy Rutter.~~*

19
20 Ms. Romano confirmed that she's participating remotely because she is out of town and she is
21 alone in the room while attending.

22
23 **Roll Call Vote:**

24 **Voting For – Ms. Zook, Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter,**
25 **and Ms. Romano**

26 **Voting Against – None**

27
28 ***The MOTION was approved (7-0).**

29 **3. DELIBERATION**

30
31 **A. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & Tax Map 44, Lot 7),**
32 **zoned CBD, IND-L and R-3: Applicant requests a 2-year extension of the River Park**
33 **Subdivision approval (PB2011-01-FMAJ) and Site Plan approval (PB2010-25-SPR), as**
34 **most recently amended on September 9, 2019 (PB2018-34-SPA) and extended on October**
35 **12, 2021 (PB2021-29-EXT). PB2024-34-EXT – Continued from October 14, 2024.**

36
37 Ms. Romano and Ms. Appleton recused themselves from the discussion. Chair Faunce said only
38 Ms. Zook, Mr. Kennelly, Mr. Ford Burley, Mr. Rutter, and he would participate in the deliberation
39 at this meeting because they were the Board members who have previously participated in this
40 hearing item.

41
42 ~~No one was present on behalf of the applicant.~~

43
44 Chair Faunce explained that a straw poll was taken at the October 14, 2024 meeting, which ended
45 in a vote of 4-1, to deny the extension request. He said Staff developed a motion that was reviewed

by the City's Legal counsel. Chair Faunce said he also participated in the drafting of the motion. He said the motion had been distributed ~~via email~~ to the Board members that will be deliberating at this meeting. He said participating Board members will have a chance to review and discuss the motion and then make a motion to either deny or approve the two-year extension.

Mr. Ford Burley noted that the draft motion is very long, to which other agreed, and suggested a motion be made that references that draft as a written decision.

A MOTION was made by Richard Ford Burley to deny the extension request because the applicant has not, in the opinion of the Board, demonstrated the need for more time is attributable to unusual circumstances beyond the control of the applicant or there is otherwise good cause to grant a two-year extension. A written decision, consistent with the draft prepared by Staff and discussed by the Board, including findings of fact and reasoning for this decision, and consistent with testimony and information submitted during the hearings, will be prepared for the Chair's signature.

The motion was seconded by Jeremy Rutter.

Mr. Rutter suggested the word "By" be added before NHDOT on Page 7 on the last line of paragraph 2 of the written draft decision. The correction was accepted by the Board and will be made to the written decision document.

Roll Call Vote:

Voting For – Ms. Zook, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, and Mr. Rutter

Voting Against – None

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

3.4.PUBLIC HEARING ITEMS

A. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot 7), zoned CB, IND-L and R-3: Appeal of administrative decision made on September 10, 2024, that conditions 1, 2, 4, 5, 7 and 14-4 of the River Park development Site Plan approval as set forth in the Notice of Action dated September 9, 2019, for PB2018-34-SPA, have not yet been satisfied and, consequently, that construction of Phase 1 may not commence. PB2024-40-AAD – Continued from October 14, 2024

Mr. Corwin said, following the October 14, 2024 Public Hearing, Planning Staff worked with the City Engineer to further review the record in relation to the conditions that Staff had asked about back on June 10, 2024 via an e-mail to the applicant. He said that Staff concluded that those conditions have been satisfied, except for the requirement to install temporary erosion control measures and the requirement to obtain a third-party reviewer prior to the commencement of construction. He said Staff sent out an e-mail to the applicant earlier today detailing those findings and sent a copy to the Board.

No one was present on behalf of the applicant.

1 Attorney Christine Johnson said the Board might conclude that the conditions that have been met
2 are considered resolved. She said the Board can open the public comment portion now. She said,
3 after that, the Board may conclude that the remaining two conditions (which have not been
4 satisfied) and the appeal for those two conditions could possibly be denied.

5
6 Chair Faunce opened the public comment portion of the meeting. No one from the public made a
7 comment. Chair Faunce closed the public comment portion of the meeting.

8
9 Mr. Corwin reminded the Board that Staff requested a status update for six conditions as set forth
10 in the River Park Site Plan Approval of September 09, 2024 (Application **PB2018-34-SPA**),
11 which are Conditions 1, 2, 4, 5, 7 and 14-4.

12
13 He said, of those conditions, Staff is satisfied that Conditions 1, 2, 7, and 14-4 have been met. He
14 said Condition 4 (third-party inspections) and Condition 5 (edge of disturbance fencing) have not
15 been met.

16
17 ***A MOTION was made by Richard Ford Burley that the Lebanon Planning Board grants the***
18 ***appeal for Conditions 1, 2, 7, and 14-4, and denies the appeal for Condition 4 and Condition 5.***
19 ***The Motion was seconded by Patrick Kennelly.***

20
21 ****The MOTION was approved (5-0).***

22
23 **B. Irma Muzzy Estate & City of Lebanon, 192 Mascoma Street (Tax Map 90, Lot 19) and 0**
24 **Mascoma Street (Tax Map 90, Lot 20), zoned R-3: Request for approval of a Boundary**
25 **Line Adjustment between lands located at 192 & 0 Mascoma Street. PB2024-43-BLA**

26
27 Chair Faunce said all Board members present would participate in the discussion and vote for this
28 Public Hearing, except Ms. Romano, who recused herself from this discussion.

29
30 Mr. Corwin stated that Staff recommends that the application is complete enough for the Planning
31 Board to accept jurisdiction and commence review.

32
33 ***A MOTION was made by Richard Ford Burley that the application of Irma Muzzy Estate &***
34 ***City of Lebanon, 192 Mascoma Street (Tax Map 90, Lot 19) and 0 Mascoma Street (Tax Map***
35 ***90, Lot 20), zoned R-3 is complete enough for the Planning Board to accept jurisdiction and***
36 ***commence review. The Motion was seconded by Jeremy Rutter.***

37
38 ****The MOTION was approved (6-0).***

39
40 Mr. Corwin explained that, in 1968, the City and the Muzzy family, owners of two abutting
41 properties on Mascoma Street, agreed to exchange small amounts of land between the two
42 properties. He said, to effectuate the exchange, the parties would have needed City Council
43 approval, as well as Planning Board approval for the lot line adjustment, and for the land transfer
44 plat and two deeds to be recorded: one from the Muzzys to the City and one from the City to the
45 Muzzys.

46 :-

1 He said the Muzzy Estate now wants to sell its property, but has discovered that, dating back to
2 1968, the deed from the City to the Muzzys was never recorded, and Planning Board approval was
3 never obtained. He said the failure to convey the City's portion of its property to the Muzzy Estate
4 is creating a title issue and is preventing the present sale transaction from moving forward.

5
6 He said the City Council has agreed to reauthorize the land transfer and authorize the City
7 Manager to execute all necessary documentation, including the deed. He said the Planning Board
8 is being asked to retroactively approve the plat that was recorded back in the 1960s. He said if the
9 Board does approve the plat, the Board's notice of action and the deed from the City to Muzzy
10 will be recorded and the tax maps will be updated accordingly.

11
12 ***A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the***
13 ***application of Irma Muzzy Estate & City of Lebanon for a proposed boundary line adjustment***
14 ***between 192 Mascoma Street (Tax Map 90, Lot 19) and 0 Mascoma Street (Tax Map 90, Lot***
15 ***20), PB2024-43-BLA, as shown on a plat titled "Parcel Transfer – Donald A. & Irma W. Muzzy***
16 ***– City of Lebanon," dated September 19, 1967, prepared by K.A. LeClair Assoc., Inc., Proj. No.***
17 ***67967, recorded in the Grafton County Registry of Deeds in Book 1060, Page 67, subject to the***
18 ***following conditions:***

- 19 ***1. The applicants shall provide a draft copy of the land transfer from the City of Lebanon***
20 ***to the Irma Muzzy Estate for review to ensure the transfer will be completed properly for***
21 ***[a](#)Assessing and recording purposes.***
- 22
23 ***2. The Planning Board Notice of Action for PB2024-43-BLA shall be recorded by the***
24 ***Planning & Development Department in accordance with Planning & Development***
25 ***Department recording procedures which the applicants are required to follow and***
26 ***complete.***
- 27
28 ***3. This approval shall be considered void unless all conditions precedent are met and the***
29 ***Notice of Action and deed of the land transfer from the City of Lebanon to the Irma***
30 ***Muzzy Estate is recorded in the Registry of Deeds within two (2) years from the date of***
31 ***approval.***

32
33 ***The Motion was seconded by Kellen Appleton.***

34
35 ****The MOTION was approved (6-0).***

36
37
38 **C. Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-**
39 **2: Request for Site Plan Review to construct a +/- 3,882 sq ft. two story accessory office**
40 **building for the existing multi-family complex, together with associated site**
41 **improvements, including relocating a basketball court and new parking spaces. PB2024-**
42 **41-SPR**

43
44 Chair Faunce noted this item will be postponed to the December 9, 2024 Planning Board meeting.
45 Ms. Romano rejoined the meeting as an active participant.

1
2 ***A MOTION was made by Richard Ford Burley to postpone Agenda Item 4C: Lebanon Housing***
3 ***Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2 PB2024-41-SPR to December***
4 ***9, 2024. The Motion was seconded by Jeremy Rutter.***

5
6 ***Roll Call Vote:***

7 ***Voting For – Ms. Romano, Ms. Zook, Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr.***
8 ***Faunce, and Mr. Rutter***

9 ***Voting Against – None***

10
11 ****The MOTION was approved (7-0).***

12
13
14 **D. Brickyard One Nominee Trust, 174 Hanover Street (Tax Map 48, Lot 4), 0 Hanover**
15 **Street (Tax Map 48, Lot 2), 0 Hanover Street (Tax Map 48, Lot 1), and 238 Hanover**
16 **Street (Tax Map 63, Lot 1), zoned R-1, R-O-1, R-3 & RL-3: Request for Site Plan Review**
17 **and a Conditional Use Permit pursuant to Sections 308.2, 310.2, 311A.2, and 501.2 of the**
18 **Zoning Ordinance for a proposed 474-unit multi-family Planned Unit Residential**
19 **Development (PURD) totaling +/- 731,600 sq. ft. in size, consisting of 11 buildings**
20 **together with parking, utilities, landscaping, access, and other related site improvements.**
21 **Applicant also requests a Conditional Use Permit pursuant to Section 308.4 of the Zoning**
22 **Ordinance to allow an increase in the maximum permitted building height from 45 ft. to**
23 **55 ft. PB2024-22-CUPSPR - Continued from October 14, 2024**

24
25 Mr. Corwin said the applicant presented a revised site layout to the Planning Board at the October
26 14, 2024 meeting and, following that discussion, the applicant submitted a revised plan set
27 reflecting those changes that were presented at the October 14 meeting. He said the revised plan
28 set, along with an updated traffic memorandum, stormwater report, and two Conditional Use
29 permit applications were submitted on October 25, 2024. He said those documents were included
30 with the Board's agenda packet, as well as the following:

- 31 • comments from the Lebanon Fire Department
- 32 • a letter from the Lebanon Conservation Commission
- 33 • a Weston & Samson peer review of the updated traffic memorandum (dated October 25,
- 34 2024).

35
36 He said the applicant intends to submit an updated Impact Study. He suggested the discussion at
37 this meeting could focus on the comments made by various City boards and committees:

- 38 • Conservation Commission
- 39 • Heritage Commission
- 40 • Pedestrian Bicyclist Advisory Committee
- 41 • Tree Advisory Board

42
43 Mr. Corwin suggested that the full technical presentation could be made by the applicant at this
44 meeting, which has not been presented in full at any previous meetings.

Mr. Dave Fenstermacher, Mr. Jason Plourde (traffic engineer), Mr. Rich Whitehouse, Mr. Tom D'Aguiar, Mr. Erik Bednarek (landscape architect), Ms. Quinn Stuart (director of cultural resources) – all of VHB – and Mr. Gil Aleixo (Brickyard One Nominee Trust), were present on behalf of the applicant.

Overview of how project meets PURD criteria

Mr. Fenstermacher gave an overview of the concerns and comments that have been made and the design changes that have been made.

He discussed the criteria for a PURD (Planned Unit Residential Development) and how building the development to meet ~~that~~ those criteria will allow them to build a better project. He outlined the ways that the project design meets the criteria for a PURD.

Historical presentation

Ms. Stuart said her specialty is architectural history. She said they partnered with Dr. Bob Goodby of Monadnock Archeology Consulting LLC to complete a walk-over and sensitivity assessment of the site. She said Dr. Goodby provided a report on his findings in September.

She provided an overview of the results of the archeology study, the site visit, and other research they have conducted:

- no structures prior built prior to 1900 were identified during the site visit
- over the course of 200 years of use, most buildings have been replaced over time
- At its peak, the site contained 7 buildings, 5 kilns that were built in the 1940s, 10 stable storage buildings
- the company closed its brick making portion of the business in 1974 due to the oil embargo
- 1985 began the history of the site being purchased

PUD/PURD Criteria

§01.2 Planned Unit Residential Development (PURD)

A. **Objectives** The objectives of the PURD provisions of this ordinance are as follows:

- To encourage conservation of Open Space to effect appropriate density and protect important natural resources such as agricultural soils, forested land, wildlife habitat, water resources, other natural resources, including geologic and scenic, and historical and archeological resources.
- To establish a connected network of conservation lands, trails, and working farm and forest land throughout the City by linking the Open Spaces and trails within the development, to conservation lands, important natural resources and trails on adjoining lands whenever possible, and as particularly found in the Lebanon Master Plan and Natural Lebanon.
- To preserve those areas of the property that have the highest ecological value, including, for example, wildlife habitat, large un-fragmented blocks of undeveloped land, and areas of co-occurring resources as shown in Natural Lebanon, and water resources, such as drinking water supply areas, wetlands, streams and rivers.
- To encourage the development of environmentally sensitive outdoor recreation land uses.
- To allow flexibility in residential development to provide for a diversity of housing types, densities, and styles.
- To provide opportunities for the development of workforce or affordable housing.
- To locate buildings and structures on those portions of the property which are the most appropriate for development and avoiding developing in areas ill-suited for development, including, for example, areas with poor soil conditions, a high water table, that are subject to frequent flooding or that have excessively steep slopes.
- To encourage a more suitable form of development by facilitating the design, construction, and maintenance of housing, streets, utilities and public services in a more economic and efficient manner and by integrating the new development into the existing built and natural environment.
- To promote the reduction of impervious surface areas and sustainable stormwater management.

Site History and Archaeology

- Area was relatively undeveloped until Hanover Street was established in the late 1700s.
- The brickyard in the project area was first established around 1806 by Comfort Goff a miller who began digging deep clay beds at the then north end of Hanover Street.
- The brickyard was taken over by Samuel Storrs Barrows in 1810; the Barrows and extended family operated the yard until 1881.
- Jason Densmore purchased the yard in 1881, and it remained in the Densmore family for 3 generations.
- "Brickyard" is first labeled on the 1860 Map (upper right) but not depicted on a map until 1884 (bottom right).



Tom D'Aguiar (External)

Site History and Archaeology

- No structures built prior to 1900 were identified during the site visit, most likely due to the high risk of fire associated with the kilns. A fire in 1906 consumed many buildings (upper right).
- At its peak, the site contained 7 buildings and 5 kilns on Lot 48-4 and 10 stables and storage buildings on Lot 48-2 (see photo at bottom right).
- The Densmore Brick Company was driven out of business in 1974 due to the rising cost of oil, which was used to run the kilns.
- In 1985 the lots were purchased by Hodges Development Corp; a 2-acre piece of Lot 48-4 was acquired separately by "The Burning Log" store and subsequently sold in 1989.
- Ownership of the remainder of the brickyard property was transferred to C.R. Wilson Properties but was left abandoned until the most recent purchase in 2004.
- Buildings along Hanover Street, including three residences and a barn, were acquired by multiple owners.



Tom D'Aguiar (External)

She said, currently, there are several buildings still standing that appear to be ancillary structures with no specific use associated with them. She said there are three kilns, in varying degrees of condition, that remain on the site. Ms. Stuart discussed the report's observations about subsurface disturbances, such as drainpipes, utilities, buried pavement, public dumping, etc.

She said there is evidence of the quarry on the site but there was no evidence of machinery, ~~landing sites~~, or processing facilities associated with them. She said the Freeto House dates as far back as 1836. She said it was a single-family home until the property was purchased by the Chandler family in 1950. She said after that, it was listed as Chandler's ~~Ce~~abins which were rented as resort cottages to vacationers. She said the fact that the cottages are more than 50 years old is worthy of study in NH under the Division of Historical Resources. She said there are three historical zones associated with the property.

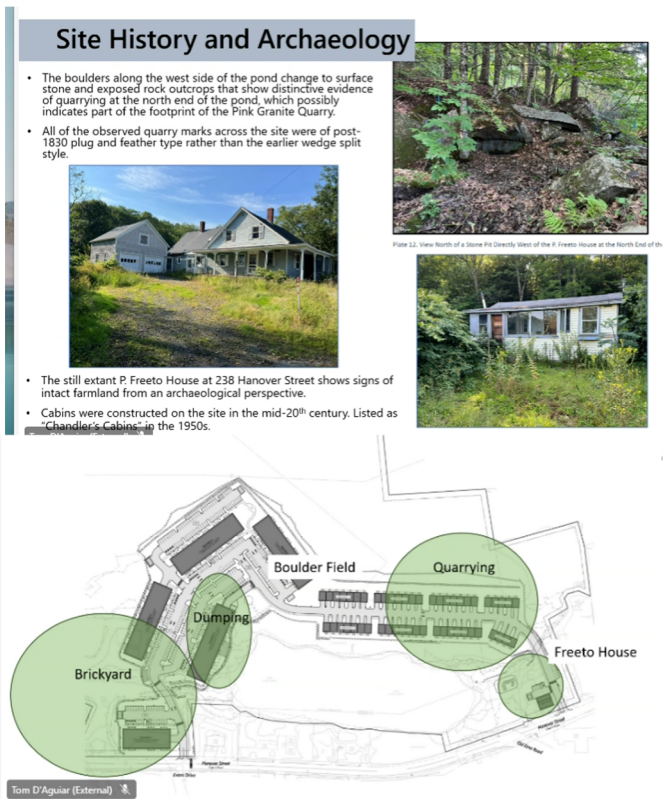
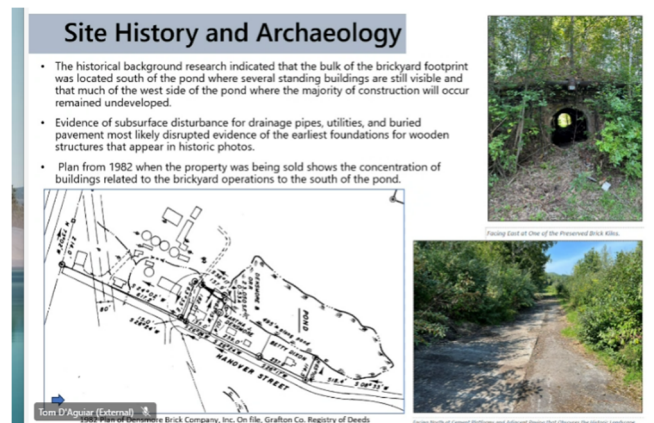
[At 7:36pm, Mr. Kennelly left the meeting.]

She said they are filing a request for project review with the Division of Historical Resources, which initiates that division's involvement, and will include the archaeology report and their above-ground findings. She said they've included quite a large study area surrounding the property to make sure that any historic resources that are further afield that may be impacted visually, or "vibration-wise," – anything that may be indirectly impacted – are captured as well.

Traffic Study

Mr. Plourde gave an overview of the process behind the traffic study, the planning for which he said began in Fall 2022.

He said the circled intersections were identified as sites for data collection:



- Route 120 at Evans Dr
- Evans Dr at Hanover St.
- Hanover St at Old Etna
- Mt. Support Rd at Heater Rd
- Heater Rd at Old Etna
- Old Etna Rd at Route 120

He said, after some delays, they conducted a scoping meeting with NHDOT, City officials and UVLSRPC officials. He said the study area that was agreed upon by the City was approved by the other officials. He said they were asked to look at land development projects in NH and to take the traffic counts, adjust them to peak month conditions, and take the pandemic into account.

He said they used pre-pandemic conditions at peak months to establish a baseline to compare to more current data. He noted that NH DOT did not take those factors into consideration during the Route 120 Corridor Study. He said for this reason, the traffic volumes in their study could be a lot higher than NHDOT's projections for the Route 120 Corridor. He said NHDOT asked them to show traffic counts without any adjustments and the numbers they had to use show worse operations than the regular traffic counts.

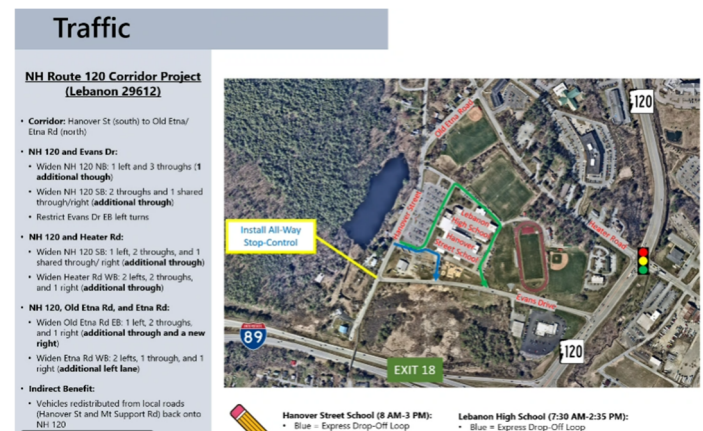
He said the other part of the scoping meeting was to determine what improvement alternatives could be considered along the Route 120 Corridor. He described the improvements proposed for that area.

He said the traffic counts were conducted at the following times:

- Weekdays 7:00am to 9:00am
- Weekdays 4:30pm to 5:30pm
- Saturdays 11:00am and 1:00pm

He said they also needed to project the future traffic volume conditions for the area. He said, in NH, they needed to estimate traffic volumes and conditions for the project's opening year (2025) and opening year plus ten (2035). He said NHDOT requires no less than 1% compounded annual growth rate for estimating future traffic volume. He said the City provided a list of developments that have not yet been constructed or occupied. He said they used all these factors to evaluate what the future conditions would be and estimated the number of site trips coming to and from their site to determine the estimated traffic volume in 2025 and 2035.

Mr. Plourde said the traffic study was submitted in May 2024 and the City's peer review consultant, Weston and Sampson, reviewed the study and made a few comments for clarification.



He said they updated the study report and reissued it in August 2024. He said on November 1, 2024, after the changes to the number and nature of the units in the development were made in response to City and resident comments/concerns, Weston and Sampson conducted a peer review. He said from an engineering perspective, there was not much change to the traffic estimations even with fewer units and the addition of townhouses to the development.

He noted there are long delays at the Evans Dr and Hanover St intersection in the morning, when students are driving to school and students are parking on campus or along Hanover St. He said the traffic counts and observations were conducted and based on the Manual on Uniform Traffic Control Devices (MUTCD). He said one consideration is to have an all-way stop at that intersection.

He said they do not need a NHDOT permit but they need to submit their information to NHDOT so NHDOT can include the traffic volume in their own projections to ensure that any traffic generated from this development would not force them to make even more improvements along the Route 120 Corridor.

He said they worked with engineers at VHB to figure out the best locations for driveways for the development. He said that is important because they need to prevent all the traffic coming in and out at the same time in one spot.

He said they also considered an all-way or three-way stop at the intersection of Old Etna Rd and Hanover St. He said they determined, after speaking with City Staff, that it would not work.

Landscape Plan / Site Amenities

Mr. Bednarek gave an overview of the landscaping plans for the site. He said they include:

- Landscape strips in the parking areas with shade trees
- Canopy structures that meet perimeter shrub requirements around each building
- Screens for dumpster areas
- Native grasses and perennials
- Plants to provide a buffer along Hanover St
- Plants and trees around the Maintenance Building and Building 1 to provide a screen between them and the residential buildings
- Cover on sloped areas to minimize erosion

He noted other amenities planned for the site:

- Bicycle parking and bike racks
- Private patios behind the townhouses



- Path system to provide connectivity throughout the site
- Open spaces (see orange circles in image)
- Terrace overlooking the pond on north side of Building 2
- Overlook facing the historic portion of the site (may include seating and interpretative signage)

He also outlined the lighting plan. He said the location of lighting will result in a minimal amount of spillage into roadways or near property lines. He said the amenity spaces could have light bollards.

Stormwater Management

Mr. Fenstermacher said they have met with DES and developed a stormwater management plan, which will be reviewed by the third-party engineer.

He gave an overview of their plan to reduce peak runoff rates per City and DES regulations. He said they are planning to implement subsurface detention basins and box culverts to divert the water and prevent flooding on the site.

He said they wanted to plan for more than just current rainfall conditions, and he said they are designing for 100-year storms and increased rainfall rates. He said the intent of the site is not to infill wetlands areas. He said residents had concerns about flooding on the site, and that will be part of the state's review, which includes a significant flood study and hydraulic study that will be included with the project team's wetlands permit application.

Circulation

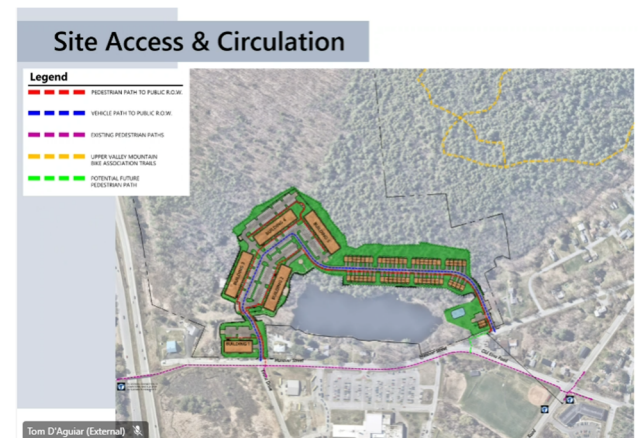
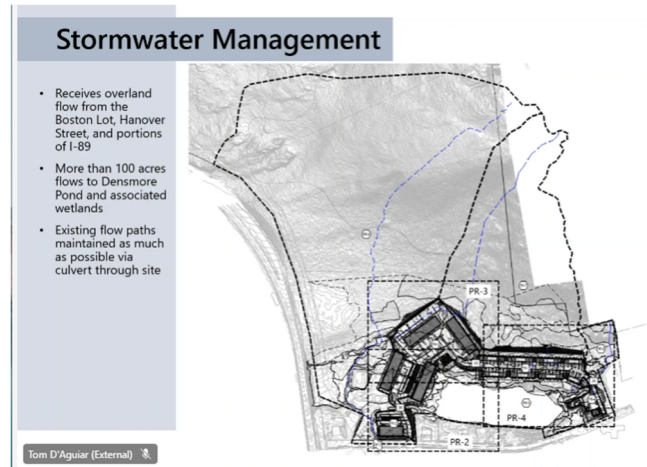
Mr. Fenstermacher said the plan includes opportunities to walk around to the back of the site and access the bike trails. He said they are working with the City to provide a crosswalk across Hanover St and sidewalk extensions at the intersection at Old Etna Rd.

He noted they are also considering implementing some brick into the look of the building architecture.

City Boards and Commissions Comments

Mr. Bruce James, Vice Chair of the **Conservation Commission**, said he composed a letter on behalf of the Commission with items that they believe the Planning Board should be considering:

- Planning Board review the Alteration of Terrain application – Mr. James said the alteration of terrain is significant for this project and the Planning Board should review and provide input



1 on the application. Mr. Fenstermacher said the application has not been submitted yet. Mr.
2 James said it is not clear what the disturbances of this glacial hillside will be.

- 3 • Wetlands – Mr. James said wetlands are important for their ecological value but also as
4 support to terrain water flowing down to the Mascoma River.
- 5 • Soil Properties – Mr. James said soil properties play an important role from a structural
6 engineering point of view
- 7 • Groundwater Hydrology – Mr. James said a lot of attention should be given to groundwater
8 hydrology and flows – more than the normal control of stormwater
- 9 • Wildlife Habitat Forest Ecosystem – Mr. James said more detail is needed on the amount and
10 impact of the disruption of the landscape

11
12 Mr. Fenstermacher said they have a certified soil scientist who will work with them to compose a
13 response to the letter submitted by the Conservation Commission and get that to Mr. Corwin to
14 give to the Commission.

15
16 Ms. Sarah Riley, Chair of the **Conservation Commission**, said a major objective of the PURD is
17 to encourage conservation of open space. She encouraged the project team to conserve even more
18 open space than what has been proposed in the plans. She said the zoning ordinance states that
19 “the characteristics of a property have to be studied and described to best ensure that impacts on
20 natural resources are minimized and that the development should occur in the areas of lowest
21 natural resource value.” She said she’d like to see that mapped out and the layers of natural
22 resources for this project demonstrated visually. She asked if all the site’s natural resources have
23 been delineated. She said there is an amphibian migration corridor across Hanover St just south of
24 Evans Dr that should be considered because it is an important natural component of this location.
25 She said she thinks the Impact Statement (that is required by Section 501 of the Zoning
26 Ordinance) will show there are many impacts to natural resources associated with this project.

27
28 She said wetlands would benefit from adjacent buffers and the pond would benefit also from
29 vegetative buffers. She said she would love to see if best management practices for riparian
30 buffers will be used to protect the pond from runoff and increased heat. She asked if floodplains
31 will be impacted by the project. Ms. Riley noted that the Board has the authority to require the
32 applicant to pay for an independent consultant to review and verify the conclusions of an Impact
33 Statement.

34
35 She said the Conditional Use Permit applications repeatedly use the term that “work will minimize
36 revenue tax to the maximum extent practical.” She said, given that this is a PURD and PURDs
37 have higher standards, she hoped they would do better than just minimizing to the maximum
38 extent practical.

39
40 Mr. Corwin said an Impact Study has been submitted. He said the applicant is preparing an
41 updated impact study to reflect the revised layout design.

42
43 Ms. Nicole Ford Burley, Chair of the **Heritage Commission**, said the Commission sent a letter
44 with recommendations to the Planning Board. She said it seems like some of those
45 recommendations are already in progress. Mr. Matt Smith, Vice Chair of the Heritage

Commission, said the site contains some very valuable historic resources and the Commission hopes that those resources will be preserved and (preferably) made accessible to residents.

Mr. Colin Smith, Chair of the **Pedestrian & Bicycle Advisory Committee**, said it seems like there has been a little progress on a crosswalk at the north entrance to help walkers safely across Hanover St. He said the Committee is concerned about kids getting across Hanover St safely to get to the school area. He said another comment the Committee made was about public access to the trail system and development in the Boston Lot area. He said it does not seem like anything has been done on that yet.

Mr. Fenstermacher said the updated plans include parking spaces near the north entrance that can be used by trail walkers/hikers who want to access the trails behind the proposed buildings and to the network of trails near and around Boston Lot. He said the crosswalk could not be added to the plans yet because it is part of the public right of way and they're working with City engineers to see what is feasible.

No one was present from the **Tree Advisory Board** to address the project applicant.

Planning Board Questions and Comments

Mr. Ford Burley asked if the kilns can be restored to the point where they can be accessible to the public for more than viewing from a distance. He also asked if the owner would commit to maintaining the kilns in perpetuity.

Mr. Fenstermacher said a structural analysis will be done. Ms. Stuart said, because there is a federal permit and the potential for DHR resources to be involved, if they are to be restored, there could be another layer of review for accessibility. Chair Faunce said the kilns are visually and experientially impactful and suggested they be given priority over some of the other interests on the site.

Mr. Rutter said this is an extraordinary opportunity (that may not exist otherwise in NH) to have as many as five kilns available (if remediation takes place) to present the various stages of brick making to residents and nearby high school children. He said it is incredibly important for residents to see inside the kilns. He said he would also love to see Building 1 and the brickyard there with a park for the whole City. Ms. Stuart said two of the kilns may have to be used to restore the other three to make them available for public viewing.

Ms. Romano said she is concerned about stormwater runoff. She said there are other developments in the area that have extremely wet sites and those project teams employed some of the ideas presented tonight for this site. She said the idea to retain rainwater and release it slowly, so it doesn't just flood Mount Support road into the Mascoma River did not really solve the problem – it just channeled the water more slowly. She said there needs to be some means of increasing the retention capacity or of preventing the City from being flooded with increasing amounts of water flow due to increased impervious surfaces from all the developments being built.

Mr. Ford Burley said he noted that (per C8.1 of the Phasing Plan) the townhouses will be built after Phase II, but Buildings ~~B, C, and D~~ 2, 3 and 4 will be built based on occupancy and market.

1 He asked if the applicant could provide a commitment to build those townhouses regardless of the
2 market for studio apartments and one-bedroom units. He asked if they have explored whether the
3 townhouses could be made into condominiums. Mr. Fenstermacher said they did look at it, but he
4 thought they would have to have subdivision approval to do that. Mr. Corwin said there may be
5 another way and Mr. Fenstermacher said they will continue to work with Staff to try to accomplish
6 it.

7
8 The group discussed the traffic study and the numbers of vehicles entering and exiting the area
9 during peak hours. Mr. Plourde confirmed the study indicated the predicted number of additional
10 cars on Hanover St and Evans Dr in the morning is 18 entering, 61 exiting onto Evans Dr and 45
11 going to the north. Mr. Plourde explained how the number of cars is determined, based on trip
12 generation calculations and the number of dwelling units. Mr. Ford Burley asked about emergency
13 vehicle access to the school during peak hours and asked if a risk analysis could be done to
14 determine how the increased traffic will impact response times. Mr. Plourde said the police and
15 fire departments may have a way to determine that, but it was not part of the traffic study.

16
17 Mr. Stacy asked what the capacity is of the four-way stop intersection per hour. Mr. Plourde said
18 he did not have that information at hand, but many things impact capacity, such as arrival patterns,
19 number of heavy vehicles, number of pedestrian crossings and bicyclists coming through the
20 intersection.

21
22 The group discussed the traffic volume and the intersections in the area in great detail. Mr. Stacy
23 asked why the intersection of Heater Rd and Route 120, as well as the intersection of Old Etna Rd
24 and Wolfe Rd, were not included as data points in the traffic study and suggested data should be
25 collected at peak hours at those intersections. Chair Faunce suggested Mr. Stacy direct his more
26 detailed traffic questions to Staff off-line to make sure there is time to answer questions from the
27 public at this meeting.

28
29 Mr. Ford Burley asked about the sizes of the open space areas in relation to the number of people
30 who live in the development to ensure the size is adequate to serve that number of people. Mr.
31 Bednarek said the spaces were determined based on similar spaces from other designs. He said
32 they will look at how these spaces may be used and will work with the client to provide amenities
33 (ex: barbeque grills) for the open spaces that best meet the needs of the residents.

34 35 **Public comment portion**

36 Chair Faunce opened the public comment portion of the public hearing. He asked that each
37 speaker keep their comments to two minutes.

38
39 **Mr. Bill Lamb (Ward 3)** said there is only one way out of Wolf Rd and that there are four major
40 developments on Wolf Rd. He asked what the basis legally is for not allowing any comments that
41 are negative about the developer. Mr. Corwin said he believes they are only allowed to take into
42 consideration the project itself and not the people responsible for it. He said there's nothing in the
43 site plan review regulations that relates to the background or status of the developer. Mr. Lamb
44 said if the Board makes a decision that supports this development and has refrained from allowing
45 any comments about the developer, it has opened itself up to an appeal which can be very
46 expensive. He suggested the Board get a legal basis for that and then decide.

1
2 Mr. Lamb said this developer says they will give up some things in order to do something that the
3 greater community needs, wants, or requires. He said there have been suggestions that that they're
4 giving the City something, but he said there aren't any gifts. He said there are 135 acres that they
5 want to develop. He said he has not heard any suggestion that they will not develop the other
6 acreage and leave it for open space or to the greater good of the of the Lebanon community.
7

8 **Ms. Maryann Levin** said the north access road goes right down her property line. She said she
9 has lived there since 1987 on the corner of Dartmouth Ave and Hanover St. She said the kids walk
10 down the road so they will need to build sidewalks. She said the area is biologically,
11 environmentally, and historically beautiful that has not really been developed. She said there are
12 foxes and deer and other wildlife in her yard. She said if they change the waterways, it will make a
13 big difference on the stream behind her house.
14

15 **Ms. Mary Davis (Ward 2)** asked if anyone has consulted the Lebanon Police Department
16 regarding the increased traffic projected for the area. She said additional crossing guards will be
17 needed at some of the intersections that have been identified as busy ones. She said she
18 understands the numbers have been calculated, but for anyone sitting in that traffic trying to bring
19 a child to school, it can be very frustrating. She said the traffic study did not really discuss the
20 walkers and bikers and how they're impacted by the extra traffic. She asked who will take
21 responsibility for maintaining the kilns if they are made accessible to the public. She said if they
22 are going to encourage people to go inside the kilns, they need to make sure someone will take
23 responsibility to keep them safe.
24

25 **Ms. Janet LaHaye (Ward 2)** asked how the sewer impact fees are determined for a development
26 like this. Mr. Fenstermacher said there is a worksheet that the City provides to calculate the impact
27 fees. Ms. LaHaye said Lebanon currently sends approximately 20% of its sewer to Hanover, and if
28 Hanover decides it doesn't want to handle it anymore, that comes back to the City, which is
29 already close to capacity, and what will the impact be of a huge development like this one.
30

31 **Ms. Sarah Riley (Ward 2)** suggested that bike storage on the site should be covered with access
32 to power so ebikes can be charged. She said the walkers in her area (near Wolf Rd and Heater Rd)
33 are many and should be taken into account in the traffic study. She said the development has to
34 show it [is](#) aligned with the character of the existing neighborhood (for the conditional use permit)
35 and she recommended that they think about which neighborhood they are comparing the
36 development to. She said there are smaller communities much closer to the school and the site.
37 She also said it would be great if they started looking at designing for beyond the 100-year flood
38 event because we are having these events already.
39

40 **Ms. Cindy LaHaye (Ward 2)** said traffic is horrible when one is trying to get across Route 120
41 and onto Evans Dr in the afternoons. She said she understands the numbers that were presented,
42 but she does not agree with the data from the study.
43

44 Chair Faunce closed the public comment portion of the public hearing.
45

Mr. Rutter asked whether the elevator shafts were included in the waiver for the height requirement. Mr. Corwin said there is a provision in the zoning ordinance (Section 203.1) that allows that certain features, like equipment enclosures (ex: elevator shafts) can exceed the maximum permitted ~~hide~~-height by up to 20 percent. Mr. Fenstermacher confirmed the height increase requests are for Buildings 4 and 5 only.

A MOTION was made by Richard Ford Burley to extend the meeting to 9:45pm. The Motion was seconded by Eric Stacy.

Roll Call Vote:

***Voting For – Ms. Romano, Ms. Zook, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter,
Voting Against – None***

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

Chair Faunce asked if the rooftops might provide additional recreational space for residents. Mr. Aleixo said they are considering solar panels for the rooftops, so these may not be available for recreational space.

A MOTION was made by Richard Ford Burley to continue this matter to the December 9, 2024 Planning Board meeting at 6:30 ~~PM~~ in City Council Chambers in City Hall, and, for the time being, currently for the Planning Board to direct the Planning Department Staff to work with the applicant to get in writing their OK to the extension. The Motion was seconded by Andrew Faunce.

Roll Call Vote:

***Voting For – Ms. Romano, Ms. Zook, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter,
Voting Against – None***

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

1. OTHER BUSINESS

None

2. APPROVAL OF MINUTES

- September 16, 2024
- September 23, 2024
- September 30, 2024
- October 14, 2024

A MOTION was made by Mr. Ford Burley to approve the September 16, 2024, September 23, 2024, and September 30, 2024 Planning Board meeting minutes as amended. The Motion was seconded by Jeremy Rutter.

Roll Call Vote:

***Voting For – Ms. Romano, Ms. Zook, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter
Voting Against – None***

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

2 Chair Faunce said the October 14, 2024 Planning Board meeting minutes would be reviewed at
3 the next meeting.

4
5 **3. ADJOURNMENT**

6
7 ***A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:34pm. The motion***
8 ***was seconded by Andrew Faunce.***

9 ***Roll Call Vote:***

10 ***Voting For – Ms. Romano, Ms. Zook, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter***

11 ***Voting Against – None***

12
13 ****The MOTION was approved (6-0).*** The meeting was adjourned at 9:34pm.

14 Respectfully submitted,

15 Paula Roux

16 Recording Secretary

DRAFT¹

**LEBANON PLANNING BOARD
MEETING ROOM ONE, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
MONDAY, NOVEMBER 25, 2024 6:30 PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Kathie Romano (REMOTE), Patrick Kennelly, Jeremy Rutter, Kellen Appleton (REMOTE), Eric Stacy (alt), Brian Ceglarski (alt)

MEMBERS ABSENT: Richard Ford Burley (Vice Chair), Karen Zook (City Council Rep),

STAFF PRESENT: Tim Corwin (Deputy Planning Director), Nate Reichert (Director of Planning & Development / Zoning Administrator)

1. CALL TO ORDER

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

Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. STUDY ITEMS

A. Review of Proposed Amendments to the Zoning Ordinance and Zoning Map

Mr. Reichert said, after this discussion about the proposed amendments, there will be two more public sessions (December 5 at Kilton Library and December 9 at DHMC).

The group reviewed several miscellaneous edits to the proposed amendments.

Nuisance Ordinance

The group discussed the details of the nuisance ordinance. Mr. Reichert said Mr. Corwin was in the process of revising the current language of the nuisance ordinance. He said an option is for the ordinance itself to be discontinued and to define what constitutes a nuisance within the zoning ordinance instead. He said the ordinance should be monitored and enforced principally by the City's health officers rather than by its zoning officials~~follow the health officers' enforcement (for example, in the case of hoarders and the health risk involved) more so than to zoning officials' enforcement.~~

¹ With suggested edits by J Rutter and staff (deletions in red, additions in blue)

Section 607.1

Mr. Corwin said legislation signed into law by the governor in August requires Planning Boards to consider alternative parking arrangements (that are different than what is prescribed by the zoning ordinance) for residential projects. He said the burden is on the applicant to come up with what the solution will be and the Board has the option to engage a third-party consultant to peer review the proposed alternative parking arrangement.

Section 608

The group discussed the reasons why digital signs are prohibited in the City. Mr. Corwin said, at times, there has been interest in revisiting this prohibition. He said the proposed amendment to the sign regulations is to allow digital signs in certain areas of the City, with the stipulation that the messaging would refresh only once per hour. Ms. Romano said it has been noted in the past that flashing signs distract drivers.

Section 607.8

The group discussed the idea of minimum percentages being used to determine how many EV spaces will be required for multi-family dwellings. Mr. Corwin explained how the percentages are calculated. Ms. Romano noted that, for large properties with 50 or 100 units, it is easier to determine a percentage than for smaller, four- or six-unit homes, where the percentage may turn out to be less than one space.

Section 411.3

The group discussed the special exception that allows townhouses to be built as part of the overlay district (for pattern zoning). Mr. Reichert suggested the general special exception criteria be clarified regarding allowing townhouses.

Ms. Romano said that section includes references to several requirements that may not be applicable to townhouses:

- tying into the City's stormwater system - does not say where that stormwater system is
- fuel tanks and garbage containers to be located at the rear of the property - often there's not much room in the rear of the property

- **Section 607.8** - clarify the minimum required percentage of EVSE-installed, EV-ready, and EV-capable spaces for multi-family dwelling and non-residential uses
- **Section 608** - allow freestanding non-static signs (i.e. digital message boards) on certain streets within the GC District, and related changes to the illumination standards and enforcement provisions
- **Section 610** - remove the requirement that an interior door is provided between the principal dwelling unit and an attached accessory dwelling unit (ADU)
- **Section 801 & Appendix A** – per HB 1359, clarify who has standing to (a) appeal an administrative decision to the ZBA, and (b) request a rehearing, and to clarify that "abutter" shall have the same meaning as provided by statute
- **Section 201** – allow stairs and stairwells to project up to 2 ft. into minimum required yards
- **Section 212** – in connection with the development of a proposed nuisance ordinance to be proposed to the City Council at a later date, remove anti-nuisance standards from the Zoning Ordinance
- **Section 213** – clarify procedures for requesting a waiver of impact fees from the Planning Board
- **Section 215** –
 - (a) require applicants for a shared driveway to produce an easement with maintenance provisions
 - (b) allow off-site utility improvements by conditional use permit
- **Section 507** - allow density bonuses for multi-family developments in the R-1 and R-2 Districts that provide for workforce housing, are energy efficient, and/or incorporate renewable energy systems
- **Section 509** -
 - (a) Clarify that building sites of no less than 1,500 sq. ft. shall be provided for both attached and detached cottages
 - (b) Provide a minimum parking requirement of 1.5 spaces per cottage
 - (c) Require an applicant to apply for Site Plan Review contemporaneously with the CUP
- **Section 604 & Appendix A** – per HB 1567, clarify that family day care homes and family group day care homes are allowed as an accessory use to any primary residential use
- **Section 607.1** – per HB 1400, permit Planning Board to authorize alternative parking solutions for residential uses

- renewable energy – these properties will not have chimneys
- setbacks that start where the lot widens out from the driveway – may not be able to achieve the required lot width
- street-facing entry – multi-unit townhouses may have end units that do not have front-facing entrances

The group discussed the design standards criteria that have been identified for the pattern housing units. Mr. Reichert said the zoning ordinance can be interpreted to a certain degree by the zoning administrator. He explained that if someone disagrees with the interpretation of the zoning official, they have the right to appeal to the Zoning Board for a ruling.

The group discussed the designs that would be provided by the designers (for example, via a pattern book) and how allowing owners to use their own designs may result in errors during construction. The group discussed how the option to use the designs provided (which would require the services of an architect) will probably be generally accepted for these projects. The group discussed at length possible proposals for funding by groups for pattern zoning projects, specifically for Auxiliary Dwelling Units (ADUs).

Section 614 – Recovery Houses

The group discussed whether vaping is included in the Fire Marshall's state smoking regulation for recovery houses, which are situations where people who are not related live in the same home.

Medical Center 2 District

Mr. Reichert explained that Alice Peck Day (APD) is asking for zoning amendments to their area so it can add residential housing for medical professionals to live directly on campus.

Mr. Reichert noted the MC-2 District does not allow for helicopters to land (as the MC District for DHMC does). ~~He said the APD campus is a light medical campus.~~

1. Reduce Minimum Lot Sizes and widths

- Minimum Lot Size:
 - R-1: Class 1 – 10,000 sq ft
 - R-2: Class 1 – 10,000 sq ft
 - R-3: Class 1 – 10,000 sq ft
 - LD: 3,000 sq ft
 - RO: 75', CBD: 3,000 sq ft, PB 10,000 sq ft
- Minimum Lot Width
 - R-1: Class 1 – 75'
 - R-2: Class 1 – 75'
 - R-3: Class 1 – 75'
 - LD: 40' may be reduced by CUP
 - RO: 75', CBD: 40', PB 75'

Minimum Lot Size
Recommendations:
Within the Pattern Zones
Overlay

Street Frontage:
40', 15' and 0'.

Minimum Lot Size:
4,000 sq ft.

A class 1 lot has access to City Sewer and Water.

Staff Recommended Technical Amendments

- Recovery House - Create Use Code and Special Exception Requirements
- Create Medical Center two (MC2) Zone
- Technical Amendments
- Map Changes – Leb Housing Auth, Create MC2.

Medical Center Two

- Create a Medical Center Two (MC-2) Zoning district.
- Re-zone the following parcels from R-3 to MC-2:
 - 10 Alice Peck Day Drive (90-59)
 - 0 Young (76-6)
 - 23 Alice Peck Day Drive (76-4)
 - 0 Hough Street (76-7)



Lebanon Housing Authority Romano Circle

Mr. Reichert suggested the Romano Circle property, which is owned by the Lebanon Housing Authority, be rezoned to RO so a variance is not required each time a change needs to be made. He said the LHA would like to build an office space on the property and rezoning to RO will mean that the project will not require a variance.

Map Change: Re-Zone Lebanon Housing Authority

• Re-zone Lebanon Housing Authority's 31 Romano Cir. Complex from R-2 to RO

- The current use that has been in place since 1975
- The current use is legal non-conforming
- As legal non-conforming the use cannot be easily changed to adapt to the changing times. Additional apartments, office space, the conversion of office space to apartments or even a maintenance facility requires a Variance.



Oakes Storage Request

Mr. Dan Nash (Advanced Geomatics & Design) was present on behalf of the party requesting the amendment.

Private Map Change Request

• Oakes Storage

- 111-16 92 Riverside Drive Rezone from RL-1 to GC with a CUP for Self Storage.
- Zoning Board approved a Use Variance and several additional dimensional variances thereby allowing the Self-Storage Use.
- Request by AGD - Dan Nash representing Oakes Storage.

Mr. Nash said three variances have been required to finish the work on the property, which, he said, indicates the RL-1 zone is not appropriate for this business. He suggested rezoning the area to GC would be a better fit. The group discussed the attorney's suggestion that spot zoning could solve this particular issue as opposed to rezoning the whole area.

The group discussed how there has been some discussion in this neighborhood, which is near an Interstate exit, over the years because the Zoning Board has allowed additional uses in the area, which seem to have made it less residential. The group discussed how the area still utilizes septic systems and is not connected to the City's sewer system, which is a constraint on development in the neighborhood.

A MOTION was made by Andrew Faunce that the Lebanon Planning Board recommends against satisfying and addressing this particular request when the area as a whole is being put forth as a request for rezoning. The Motion was seconded by Patrick Kennelly.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

Voting Against – None

****The MOTION was approved (7-0).***

[at 8:01pm, Mr. Reichert left the meeting, ~~He noted that Christine Johnston is going to be unavailable for a time and Attorney Matt Isham will be providing legal opinions during that time.~~]

Chair Faunce said Agenda Item 2D would be discussed next, which is out of the order of the agenda.

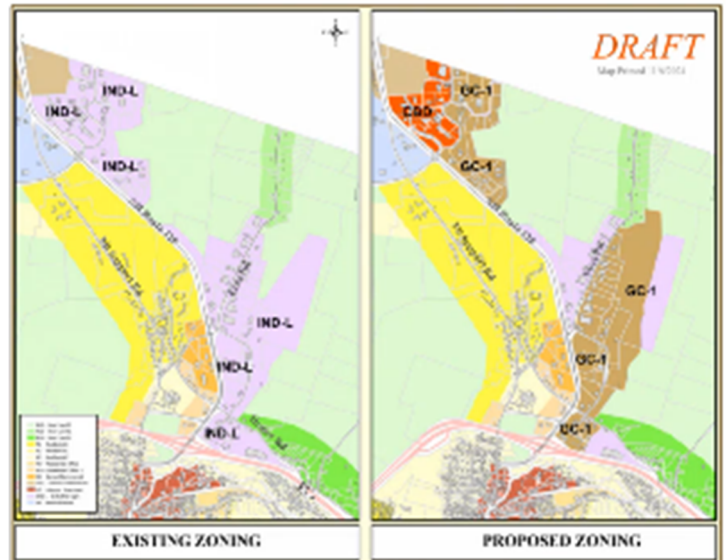
D. Review of Request for Zoning Map Amendment: ICV of NH, LLC - 67 Etna Road, Tax Map 26, Lot 2

Mr. Dan Nash was present on behalf of the applicant ~~making~~ requesting the zoning amendment. Mr. Jay Campion also participated in the discussion.

Mr. Nash said the owner of the property has built a building with 75 units and was interested in building more buildings with residential units, but it has been limited by the regulations of an Industrial PUD that requires 25% of the calculated density (13 units per acre). He said the owner is asking that the percentage be increased or for the area to be rezoned GC1, like other areas in the vicinity and on the other side of Route 120.

The group discussed the concerns of the Conservation Commission about the wetlands and the wildlife corridor in that area. Ms. Romano noted that a wildlife crossing bridge or culvert has been planned to help wildlife cross Route 120. She said they would not want to change zoning that may negate the possibility of building that wildlife crossing. The group also discussed how the area includes residential, IND-L, and GC1 zones, and how expanding the GC1 zones would affect the general characteristics of the area. Chair Faunce noted that currently there is not a lot of property that is zoned IND-L in this area.

Mr. Corwin explained the density formula in relation to PUDs in Industrial-zoned districts. He explained that, if the rezoning proposed for the Centerra Planned Business Park and the Altaeria PUD is approved, it calls into question how those developments can take advantage of the rezoning (based on their respective Planning Board approval conditions/requirements). He said the City wants to make sure that the approvals can be amended if the property owners want it. He said the Planning Board needs to be allowed to permit unlimited residential density, because without that there is no benefit to rezoning.



Dwelling units in one-family, two-family and multi-family dwellings or appropriate mixes thereof may be allowed in Commercial or Industrial PUDs, at the discretion of the Planning Board, provided that the Board determines that such residential uses are compatible within the proposed PUD. For PUDs or portions thereof in the IND-L or IND-RA Districts, the density of residential uses allowed pursuant to this section shall be determined based on a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre. For PUDs or portions thereof located in the GC, GC-1, or CB Districts, the density of residential uses allowed pursuant to this section shall be determined by the Planning Board pursuant to Sections 305.5, 305A.4, and 306.5, respectively. Where allowed, such dwelling units may be clustered together and/or distributed within the Commercial or Industrial PUD in mixed use buildings at the discretion of the Planning Board.

The group discussed at length the pros and cons of applying the same zoning that is on one side of Route 120 to an area that is on the other side of the road, versus changing all of the area to zone GC1.

Mr. Kennelly noted the uses that would no longer be allowed if the whole area was zoned GC1:

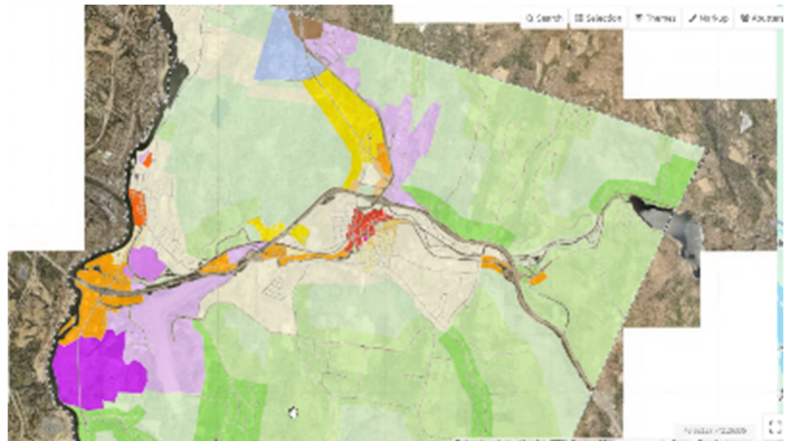
- Bus terminal
- Care and treatment of animals
- Car wash
- Contractor's yard
- Educational facility or vocational school
- Health club
- Industrial PG
- Local government usage

The group reviewed the current zone map and discussed the allowable uses for each (see image at right):

IND-L is light purple

GC is orange

GC-1 is brown



Mr. Kennelly noted the following uses are allowed in IND-L and/or GC and not in GC-1

- Funeral home
- Health club
- Hotel
- House of Worship
- Laundromat
- Membership clubs
- Motel
- Movie theater
- Local government usage
- Retail product pickup
- Retail showroom
- Vehicular sales
- Warehouse
- Publishing & printing

The group discussed the differences between the GC and GC-1 zones.

A MOTION was made by Andrew Faunce that the Lebanon Planning Board endorses the conversion of the remaining set of parcels and the study area on the ~~west~~-east side of Route 120, currently zoned IND-L, to GC-1, subject to analysis by the City Council and their agents as to

the remaining sufficiency of IND-L in the City and remedies to any nonconforming uses. The Motion was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

Voting Against – None

***The MOTION was approved (7-0).**

A MOTION was made by Andrew Faunce that the Lebanon Planning Board proposes that the area south of Heater Road and east of Route 120, currently proposed to be rezoned GC-1, to retain the zoning as IND-L. The Motion was seconded by Eric Stacy.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

Voting Against – None

***The MOTION was approved (7-0).**

Mr. Campion suggested that an updated map be created that shows the proposed rezoning to prevent confusion.

B. Review of Proposed Amendments to Site Plan Review Regulations re: Minor Site Plan Committee and Conceptual Review

Mr. Corwin said this amendment is to establish the Planning Director as the Chair of the Minor Site Plan Committee and to add the Chief Building Official as a member. He said he would take the role of Staff for the committee.

A. MINOR SITE PLAN COMMITTEE

1. **Establishment.** A Minor Site Plan Committee is established in accordance with RSA 674:43, III, and the resolution passed by the City Council on September 1, 2021, for the purpose of reviewing minor site plan applications per Section 3.1.C.
2. **Membership.** The Minor Site Plan Committee consists of the Director of Planning and Development, the Chief Building Official, the Director of Public Works, the Fire Chief, and the Police Chief ~~Planning and Development Department's Senior Planner and Associate Planner, and a representative from each of the following City departments: Fire, Police, and Public Works.~~ The Director of Planning and Development ~~Senior Planner~~ shall serve as chair and may use ~~his or her~~ their reasonable discretion in coordinating the activity of the ~~Committee~~ in an efficient and effective manner. The Deputy Director of Planning and Development or designee shall serve as staff for the Committee. ~~The Director of Planning and Development~~ members of the Committee may, at ~~his or her~~ their discretion, appoint a substitute representative from their respective departments to the Committee ~~for the~~

Conceptual Review

The group discussed the effectiveness of conceptual review and whether the conceptual review period should be conducted earlier in the project review timeline. They also discussed whether the conceptual review period should be lengthened (so the actual approval process can possibly be shortened). Mr. Corwin suggested the conceptual review period might be a good time to inform applicants what parts of their developments might undergo peer review.

Mr. Rutter asked if, during the conceptual review period, a cut-off point be enforced for applicants

that have not submitted information that has been requested by the Planning Board. He said some applicants go on for months and it seems like there should be a time limit, after which the applicant would have to resubmit.

Chair Faunce said Conceptual Review could be a good time for the Planning Board to establish a structured set of engagements with applicants on big projects that are designed to drive getting information to the Board at the time of formal application. He said Conceptual Review could also help the Planning Board articulate expectations to applicants prior to the formal application submission. The group also discussed completeness of applications and how to hold applicants accountable to provide information that is requested by the Board.

A MOTION was made by Andrew Faunce to extend the meeting to 9:40pm. The Motion was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

Voting Against – None

****The MOTION was approved (7-0).***

The group discussed what figures should be added to the proposed language regarding the number of new or additional dwelling units and the square footage of new buildings. (See image at right.) These figures are some of the proposed conditions that would require a Conceptual Review.

The group agreed to continue discussion about what the numbers should be.

B. Conceptual Review Required. Conceptual review shall be required for any land development that requires Planning Board review pursuant to Section 3.1.D and which involves any one or more of the following:

1. or more new or additional dwelling units;
2. More than one (1) principal building; and/or
3. Any new building of sq. ft. or more.

C. Conceptual Review Optional. For any site land development other than those identified in Section 4.3.B, conceptual review shall be optional.

~~the Applicant may request an informal discussion with the Board, to be conducted in general terms, of the basic concept of the proposed development. The Applicant may end the conceptual discussion at any time.~~

D. Notice. Conceptual reviews shall only take place at a formal meeting of the Board. Public notice of a required the conceptual discussion review shall be provided pursuant to Section 4.8 and shall also be provided to the following:

1. Conservation Commission
2. Pedestrian & Bicyclist Advisory Committee

C. Discussion of potential amendments to the Site Plan Review Regulations re: Article IV procedural requirements, Article V application submission requirements, and Article VII waiver requirements
Was not discussed.

3. COMMITTEE REPORTS

None

4. OTHER BUSINESS

None

5. APPROVAL OF MINUTES

- October 14, 2024

Chair Faunce said he reviewed the October 14, 2024 Planning Board meeting DRAFT minutes and shared his suggestions via email. He asked Board members to consider his edits (or suggest other edits) and come prepared to discuss them at the next meeting.

- October 25, 2024

Amendments: Page 1 Line 14: Change to Chamberlain

Page 7 Line 7: Edit to read “value of”

Page 7 Line 8: Edit to read “as well as qualify to participate”

Page 7 Line 38: Eliminate the line

A MOTION was made by Jeremy Rutter to approve the October 28, 2024 Planning Board meeting minutes as amended. The Motion was seconded by Brian Ceglarski.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

Voting Against – None

****The MOTION was approved (7-0).***

6. ADJOURNMENT

The meeting adjourned at 9:41pm.

Respectfully submitted,

Paula Roux

Recording Secretary

DRAFT

**LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
MONDAY, DECEMBER 09, 2024 6:30 PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Kathie Romano (REMOTE), Patrick Kennelly, Jeremy Rutter, Kellen Appleton, Eric Stacy (alt), Brian Ceglarski (alt)

MEMBERS ABSENT: Karen Zook (City Council Rep)

STAFF PRESENT: Tim Corwin (Deputy Planning Director), Nate Reichert (Director of Planning & Development / Zoning Administrator)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:30pm. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. NOTICE OF REGIONAL IMPACT

The following applications were received by the Planning and Development Department on or before December 9, 2024:

- **Robert & Brenda Owens and Dustin & Tong Fei Meltzer, 163 Meriden Road (Tax Map 121, Lot 6), and 161 Meriden Road (Tax Map 107, Lot 213), zoned R-3: Request for approval of a Boundary Line Adjustment between Lot 121-6 and Lot 107-213 and a Voluntary Lot Merger of Lot 121-6 and 121-5. PB2025-01-BLAVLM**
- **CWM All Waste, LLC, 40 N Labombard Road (Tax Map 51, Lot 10), zoned IND-L: Request for a two-lot minor subdivision. PB2025-02-MIN**
- **Choice Storage, LLC, 0 Etna Rd (Tax Map 26, Lot 17), CWM All Waste, LLC, 40 N Labombard Rd (Tax Map 51, Lot 10), Chaloux Properties, LLC, 32 Labombard Rd (Tax Map 51, Lot 11), Route 120 Hotel, LLC, 35 Labombard Rd (Tax Map 64, Lot 21), Chaloux Properties, LLC, 25 Labombard Rd (Tax Map 64, Lot 25), Klubio, LLC, 39 Labombard Rd (Tax Map 51, Lot 14), TLL Realty, LLC, 41 Labombard Rd (Tax Map 51, Lot 1) & Notch Climbing Real Estate, LLC, 33 Labombard Rd (Tax Map 51, Lot 15) zoned IND-L and RL-3: Request for a Conditional Use Permit pursuant to Section 508 of the Lebanon Zoning Ordinance for a proposed Planned Business Park and for Preliminary Major Subdivision approval of a proposed 4-lot subdivision of 0 Etna Road (Tax Map 26, Lot 17). PB2025-03-PMAJCUP**

- **City of Lebanon, 0 Barrows Street, Tax Map 77, Lot 106), zoned R-3: Request for a Conditional Use Permit, Site Plan Review, and Major Subdivision approval of a proposed 5-unit cottage development. 2025-04-SPR**

Mr. Corwin said Staff recommends the applications do not have the potential for regional impact.

A MOTION was made by Jeremy Rutter that the applications of Robert & Brenda Owens and Dustin & Tong Fei Meltzer, 163 Meriden Road (Tax Map 121, Lot 6), and 161 Meriden Road (Tax Map 107, Lot 213), zoned R-3, CWM All Waste, LLC, 40 N Labombard Road (Tax Map 51, Lot 10), zoned IND-L, Choice Storage, LLC, 0 Etna Rd (Tax Map 26, Lot 17), CWM All Waste, LLC, 40 N Labombard Rd (Tax Map 51, Lot 10), Chaloux Properties, LLC, 32 Labombard Rd (Tax Map 51, Lot 11), Route 120 Hotel, LLC, 35 Labombard Rd (Tax Map 64, Lot 21), Chaloux Properties, LLC, 25 Labombard Rd (Tax Map 64, Lot 25), Klubio, LLC, 39 Labombard Rd (Tax Map 51, Lot 14), TLL Realty, LLC, 41 Labombard Rd (Tax Map 51, Lot 1) & Notch Climbing Real Estate, LLC, 33 Labombard Rd (Tax Map 51, Lot 15) zoned IND-L and RL-3, and City of Lebanon, 0 Barrows Street, Tax Map 77, Lot 106), zoned R-3 do not have the potential for regional impact. The motion was seconded by Patrick Kennelly.

Ms. Romano confirmed that she's participating remotely because she is out of town, and she is alone in the room while attending.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, Mr. Rutter

Voting Against – None

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

3. PUBLIC HEARING ITEMS

- A. Brickyard One Nominee Trust, 174 Hanover Street (Tax Map 48, Lot 4), 0 Hanover Street (Tax Map 48, Lot 2), 0 Hanover Street (Tax Map 48, Lot 1), and 238 Hanover Street (Tax Map 63, Lot 1), zoned R-1, R-O-1, R-3 & RL-3: Request for Site Plan Review and a Conditional Use Permit pursuant to Sections 308.2, 310.2, 311A.2, and 501.2 of the Zoning Ordinance for a proposed 474-unit multi-family Planned Unit Residential Development (PURD) totaling +/- 731,600 sq. ft. in size, consisting of 11 buildings together with parking, utilities, landscaping, access, and other related site improvements. Applicant also requests a Conditional Use Permit pursuant to Section 308.4 of the Zoning Ordinance to allow an increase in the maximum permitted building height from 45 ft. to 55 ft. PB2024-22-CUPSPR - Continued from November 12, 2024**

Mr. Dave Fenstermacher and Mr. Jason Plourde (traffic engineer) (both of VHB) and Mr. Gil Aleixo (Brickyard One Nominee Trust), were present on behalf of the applicant.

1 Walkability

2 The group discussed crosswalks at the intersection of
3 Hanover Street and Old Etna Road and on the west side of
4 Hanover Street near Evans Drive. Mr. Ford Burley said he'd
5 like plans for the sidewalks and crosswalks area to be
6 included in the plan set. Mr. Corwin said that could be made
7 conditions of approval.

8
9 Mr. Rutter said there are references to an island related to the
10 crosswalk plan at Hanover and Old Etna, but he said he did
11 not see it on the map. Mr. Fenstermacher added the drawing
12 of the island in red (see image at right). He noted that the
13 right of way for the property on that corner is for the garage.

14
15 Mr. Corwin said they can craft conditions precedent where
16 the applicant can come back to the Board with final designs
17 related to one or more conditions. Chair Faunce noted he was
18 not aware of a full walkability presentation being provided
19 previously by the applicant. Mr. Fenstermacher said detailed
20 plans for these crosswalk possibilities will be provided. The
21 group discussed lighting and other safety considerations at
22 these crosswalks.

23
24 Mr. Ford Burley asked if the applicant could add some lighting, signage, or other improvements to
25 make the pedestrian bridge more welcoming for the residents living in the new complex and
26 encourage them to use the pedestrian bridge. The group discussed who the owner of the
27 surrounding area is and what wetlands may be involved. Mr. Corwin said he'd investigate the
28 specifics about the land at the entrance to the pedestrian bridge.

29
30 Mr. Kennelly asked whether crossing guards will be added to both proposed crosswalk areas. He
31 asked if this could be made a condition of approval. Mr. Corwin said he thought the City hires
32 crossing guards, not the school.

33
34 Mr. Sean Dietrich of the Lebanon Pedestrian & Bicycle Committee asked if the parking spaces
35 that have been added for walkers to use the trails are open to the public. Mr. Fenstermacher
36 confirmed they are open to the public. Mr. Fenstermacher asked if the applicant would commit to
37 working with Dartmouth to clear a trail leading from the parking lot to the trails to make them
38 more accessible. Mr. Dietrich said the applicant has committed to the 6 parking spaces for public
39 access and a connector trail to the existing trail network. He said they have not committed to a trail
40 beyond the property line.

41 Traffic

42
43 Mr. Stacy asked why on Table 7 the level of service will drop from an E to an F for the westbound
44 approach of Evans Drive at the intersection of Evans Drive and Hanover Street, when it appears
45 that residents will drive straight out of the development and onto Evans Drive.



Mr. Plourde said an additional leg to the Evans Dr / Hanover St intersection will be added (to total four) and that affects the operations of the intersection. He said all the vehicles on that street will be in one lane, so if the lead vehicle at the intersection is turning left, that will affect all the cars behind it if the left turn is not easily attained. He said that is the reason they are proposing an all-ways stop at this intersection because it forces motorists to stop and allow cars in that single lane to proceed more quickly. Mr. Plourde explained the engineering complications related to widening the lanes at that intersection. The group discussed other possible alternative ways to design/engineer the intersection.

He said the traffic study did take pedestrian activity at that intersection into consideration, but not the proposed crosswalk. He said the traffic volumes quoted in the study are most likely higher than what New Hampshire DOT would see. He said he feels comfortable saying that the current traffic volume may not be seen in the future.

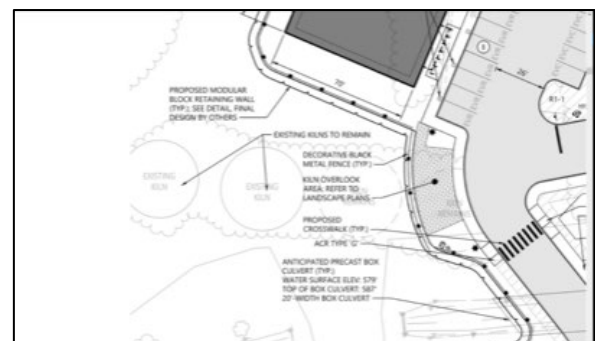
Mr. Douglas Ostler (Weston & Sampson) said his firm is contacted by the Planning Board to provide peer review and recommendations regarding the development. He said they did discuss the benefits of the all-ways stop versus adding additional lanes to this intersection. He said they agreed with the proposal that the all-ways stop was better, particularly for the safety of school-age pedestrians and bikers of any age.

Mr. Plourde said that the traffic study has been submitted to Chris Turgeon at the NHDOT District Office. The group discussed the impact that the Route 120 Study and the improvements that are proposed may have on the project.

Historic Resources

The group discussed the kilns and how to make them safely accessible to the public. Mr. Ford Burley said he did not feel like an overlook was enough and ground-level access would be better. The group discussed whether the applicant would provide preserve the kilns and commit to maintenance of the kilns in perpetuity. Ms. Romano suggested a condition of approval these historic resources will not be destroyed after the project is completed.

Mr. Alexio said two kilns will be preserved and cared for and agreed to a condition of approval for maintenance of these kilns. He said they were looking into adding glass doors so the public can look into them so residents will not be inside. He said they are also considering QR codes on the signage so people can access an app to learn more about the history of the kilns and the brickyard. Mr. Ford Burley said a condition of approval could be to ask for a comprehensive plan for maintenance and care. Mr. Alexio said some of the brick from the kilns that had collapsed may be considered for use in the lobby of the buildings. Ms. Romano noted that some of the people who may have worked at the brickyard may still be living in the area and they could be consulted regarding the work that may need to be done on the site.



Natural Resources

Chair Faunce said there have been concerns raised regarding the inflow and outflow of the pond on the site and suggested a condition of approval related to the maintenance and inspection of the pond could be added. Mr. Fenstermacher said this will have an AOT Permit associated with it and, as part of the AOT permit, there are regular operation and maintenance inspections required.

Chair Faunce asked if an access management (for recreational use of the pond) has been developed. Mr. Alexio confirmed that they do not want people in the pond. He noted that deeds for the houses directly in front of the pond (on Hanover St) include access to the pond. He said they use the pond at their own risk, and he cannot stop them from using it. He said he will be talking to their attorneys regarding liability for the use of the pond (if it is as an ice rink or for fishing). Mr. Corwin said they could discuss at another time whether the City should be concerned whether the developer has a risk management plan related to the pond.

Mr. Rutter asked if there was any garbage in the pond. Mr. D'Aguiar said they will analyze the hydraulic connection of these streams, the overall watershed, the pond, and the outlet culvert to the south as it goes to the adjacent property. He said they will be submitting the bathymetric cross sections to the state as part of a larger study that the state will look at, which will help determine the final size and design of these wildlife crossings and culverts. He said the City will receive a copy of this study. Mr. Rutter noted that he has not seen any comments about the soil conditions. Mr. Fenstermacher said they did a Phase I review.

Mr. Ford Burley asked about ownership of the open space. He said the regulations seem to require specified ownership of the open space. Mr. Fenstermacher said they would do a defined easement. Mr. Ford Burley said the site plan needs to include how the open space is delineated and defined. Mr. Fenstermacher said signage will be added and those details will be added to the site plan.

Mr. Fenstermacher said there is no real development plan right now for the lot above the development that has been defined. Mr. Ford Burley asked if the townhouse construction could begin after Phase 3A instead of 3D. Mr. Fenstermacher said the phasing plan is being updated.

Chair Faunce said the next meeting will cover the following:

- Clarification of waivers still in place
- Cleaning up the phasing
- Crafting language of the conditions of approval

Chair Faunce suggested that the Board should read the information provided about the waivers, phasing plan, and the draft conditions of approval and be ready to discuss them at the next meeting.

The results of a straw poll showed that enough members of the Board would be available to make a quorum if they met on December 17, 2025. The group decided to hold a special meeting on December 17, 2025 at 7:00pm at City Council Chambers to discuss these items.

Chair Faunce opened the public comment portion of the meeting.

Chair Faunce closed the public comment portion of the meeting.

1 Mr. Fenstermacher said he will submit a written request for a 40-day extension to Staff.

2
3 At 8:05pm, Chair Faunce called for a brief recess.

4 At 8:14pm, the meeting resumed.

5
6 **B. Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2: Request for Site Plan Review to construct a +/- 3,882 sq ft. two story accessory office building for the existing multi-family complex, together with associated site improvements, including relocating a basketball court and new parking spaces. PB2024-41-SPR - Postponed from November 12, 2024**

7
8
9
10
11
12 Mr. Corwin stated that Staff recommends that the application is complete enough for the Planning Board to accept jurisdiction and commence review.

13
14
15 *A MOTION was made by Richard Ford Burley that the application of Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2 is complete enough for the Planning Board to accept jurisdiction and commence review. The Motion was seconded by Jeremy Rutter.*

16
17
18
19
20 *Roll Call Vote:*

21 *Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, Mr. Rutter*

22 *Voting Against – None*

23
24
25 **The MOTION was approved (6-0).*

26
27 Mr. Jeff Merritt (Granite Engineering), Ditha Alonzo (Executive Director of LHA), Jerry Wuebbolt (Right Track Design), Justin Daniel (Granite Engineering) were present on behalf of the applicant.

28
29
30
31 Mr. Merritt gave an overview of the project. He said the City Council voted to make Romano Circle a private road. He said the Lebanon Housing Authority is seeking to build an office building on the campus. He noted the applicant is requesting a waiver of Section 6.2.D, which requires 10 feet of landscaping around the building. He said they are requesting the waiver because there is not 10 feet of space on one side of the building.

32
33
34
35
36
37 Ms. Romano noted that it was revealed during a past project that the LHA did not realize that stormwater mitigation areas were not being properly maintained. Mr. Merritt confirmed that those areas (which have since been reconstructed and rehabilitated) will now be maintained for their intended purpose.

38
39
40
41
42 *A MOTION was made by Richard Ford Burley that, for the application of Lebanon Housing Authority, PB2024-41-SPR, the Lebanon Planning Board approves partial waivers from the following sections of the Site Plan Review Regulations:*

43
44
45 *• Section 6.2.B – perimeter landscaping requirements*

46 *• Section 6.2.D – landscaping around buildings requirements*

1 • **Article VI – design requirements as applied to the property outside of the proposed**
2 **development area**

3
4 **The Motion was seconded by Eric Stacy.**

5
6 **Roll Call Vote:**

7 **Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, Mr.**
8 **Rutter**

9 **Voting Against – None**

10
11 ***The MOTION was approved (6-0).**
12

13
14 Mr. Corwin noted that a draft motion, prepared for the approval of the site plan, has been provided
15 to the Board. He said a few exceptions have been highlighted in yellow that are related to third-
16 party review.

17
18 He said the following sentence has been added to Condition #15:

19 *“If the City Engineer performs the on-site inspection as set forth in Condition 18, the reviewing*
20 *engineer fees shall be paid prior to the issuance of a Certificate of Occupancy.”*
21

22 He read the following second paragraph, which was added to the General Condition #18:

23 *“Alternatively, at the discretion of the Department of Public Works, the applicant shall coordinate*
24 *with the City Engineer to observe the installation of the site infrastructure. Such coordination*
25 *shall include preparing a tentative construction schedule and agreeing to provide the City*
26 *Engineer a minimum of 7 days’ notice prior to a required or requested inspection. The City*
27 *Engineer’s time shall be billed to the applicant in accordance with Section 4.7.E.1 of the Site Plan*
28 *Review Regulations and shall be paid pursuant to Condition 15.”*
29

30 And he read a new Condition \$24:

31 *“The applicant shall provide digital as built plans (PDF format and CAD .dwg format using NH*
32 *State Plane Coordinate system) to the satisfaction of the Department of Public Works and to the*
33 *Planning & Development Department.”*
34

35 **A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approve the**
36 **application of Lebanon Housing Authority regarding 31 Romano Circle (Tax Map 101, Lot 20),**
37 **zoned R-2, PB2024-41-SPR, for Site Plan approval to construct a +/- 3,882 sq ft. two story**
38 **accessory office building for the existing multi-family complex together with associated site**
39 **improvements, as shown on a plan set titled “Residential Site Plan – Lebanon Housing**
40 **Authority,” prepared by Granite Engineering, LLC, dated 10/14/24, revised 11/25/24 (15**
41 **sheets), including any and all submissions and testimony provided for and during the public**
42 **hearing.**
43

44 **In support of its decision, the Board finds that the applicant has submitted plans, testimony,**
45 **technical data, information, reports, and studies – variously prepared by a professional civil**
46 **engineer, licensed land surveyor, an architect, and a licensed landscape architect – that**

1 *together satisfactorily demonstrate compliance with the applicable requirements of the Site Plan*
2 *Review Regulations, except as may reasonably be addressed through the imposition of certain*
3 *conditions of approval, set forth below, and except as may have been waived pursuant to Section*
4 *7.1.*

5
6 *This approval is subject to the conditions as set forth in the December 09, 2025 Planning Board*
7 *meeting agenda packet, and subject to the amendments read out by Mr. Tim Corwin.*

8
9 *The Motion was seconded by Jeremy Rutter.*

10
11 *Roll Call Vote:*

12 *Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, Mr.*
13 *Rutter*

14 *Voting Against – None*

15
16 **The MOTION was approved (6-0).*
17

18
19 **C. Grafton County Senior Citizens Council, Inc. and City of Lebanon, 10-12 Campbell**
20 **Street (Tax Map 92, Lot 23), 0 Flynn Street (Tax Map 92, Lot 17), and 0 Flynn Street**
21 **(Tax Map 91, Lot 245), zoned L-D: Request for approval of a Boundary Line**
22 **Adjustment between Lot 92-23 and Lot 92-17 and a Voluntary Lot Merger of Lot 92-**
23 **17 and Lot 91-245. PB2024-46-BLAVLM - Postponed to January 13, 2025**

24
25 **D. Cicotte Holdings, LLC, 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), zoned R-O-**
26 **1: Request for a Conditional Use Permit pursuant to Section 311A.2 of the Lebanon**
27 **Zoning Ordinance and for Site Plan Review per Section 3.1.D of the Site Plan Review**
28 **Regulations to expand the outdoor vehicular storage area for an existing vehicular**
29 **sales use together with associated site improvements including landscaping and**
30 **lighting. PB2024-48-SPRCUP - Postponed to January 13, 2025**

31
32 *A MOTION was made by Andrew Faunce to postpone Agenda Items 3C and 3D (Grafton*
33 *County Senior Citizens Council, Lincoln's City of Lebanon and Psychotic Holdings LLC.*
34 *Council Chambers 51 Evans Drive) to the January 13, 2025 Planning Board meeting at City*
35 *Council Chambers at 6:30pm. The Motion was seconded by Richard Ford Burley.*

36
37 *Roll Call Vote:*

38 *Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms.*
39 *Romano*

40 *Voting Against – None*

41
42 **The MOTION was approved (6-0).*

43 **4. CONCEPTUAL REVIEW**

44

45 **A. Choice Storage, LLC, 0 Etna Rd (Tax Map 26, Lot 17), CWM All Waste, LLC, 40 N**
46 **Labombard Rd (Tax Map 51, Lot 10), Chaloux Properties, LLC, 32 Labombard Rd**

(Tax Map 51, Lot 11), Route 120 Hotel, LLC, 35 Labombard Rd (Tax Map 64, Lot 21), Chaloux Properties, LLC, 25 Labombard Rd (Tax Map 64, Lot 25), Klubio, LLC, 39 Labombard Rd (Tax Map 51, Lot 14), TLL Realty, LLC, 41 Labombard Rd (Tax Map 51, Lot 1) & Notch Climbing Real Estate, LLC, 33 Labombard Rd (Tax Map 51, Lot 15) zoned IND-L and RL-3: Conceptual Review of a proposed Planned Business Park and Major Subdivision. PB2024-47-CON

Mr. Jay Campion and Mr. Dan Nash (Advanced Geomatics & Design) were present on behalf of the applicant.

Mr. Campion gave an overview of the project, which he confirmed he has presented for conceptual review to the Planning Board at a previous meeting. He said the project location has been “flipped around” on the site to accommodate the topography.

Mr. Campion explained the privately funded TIF that has been proposed for this project. The group discussed what may be involved in a TIF at length. The Board agreed that it will need a lot more information about this type of funding arrangement and agreed to discuss this in more detail at another meeting.

Mr. Campion explained why the project is proposed as a Planned Business Park. He said the plan is to include some owned properties in the residential portion.

Ms. Romano noted that, during previous presentations of this project, there was some discussion about the fact that the wildlife corridors run directly through the proposed recreation sites for children. She said Mr. Campion said he would do some further research into how to deal with that situation. Mr. Campion said there are proposed clarifications in the zoning amendments package that clarify exactly how that is to be treated. Mr. Campion said the land identified for recreation areas would be given to the City and it would be the City’s decision on how to use that land.

The group discussed the possible feedback that the Conservation Commission will provide after it reviews the location of the wildlife corridor as related to this project site. They also discussed the impact that the zoning amendments may have on how the project progresses. Mr. Campion said he would submit a formal application for the Board to review for completeness in January.

5. STUDY ITEMS

A. Review of Proposed Amendments to the Zoning Ordinance and Zoning Map

Mr. Reichert explained why changing the zoning to GC1 for the area near Route 120 (as proposed) would be good for the area. He said the GC1 zoning would create more of a neighborhood in the area, as opposed to the Industrial character that exists today. The group discussed possibly changing the allowed uses for the GC1 zones. The group agreed to review the latest amendments and discuss them at the December 17 Special Planning Board meeting.

6. OTHER BUSINESS

A. Review of 2025 Planning Board Meeting Calendar

Mr. Corwin reminded the group about the annual meeting is in January. He said this is the meeting when Board elections and committee appointments take place. He also noted the following:

- The March 10 meeting was moved to March 17 because of a conflict
- May 27 is Memorial Day so no meeting will be held that day
- October 13 is Columbus Day but City Hall is open so the meeting can be held
- A work session is proposed for the third Monday in August (Aug 18) because Board members are usually not available for the last Monday in August

MEETING DATE* (completeness review & commencement of public hearing)	APPLICATION DEADLINE*	STAFF REVIEW*
JANUARY 13, 2025	DECEMBER 9, 2024	DECEMBER 16, 2024
FEBRUARY 10, 2025	JANUARY 13, 2025	JANUARY 21, 2025* (Tuesday)
MARCH 17, 2025**	FEBRUARY 10, 2025	FEBRUARY 18, 2025* (Tuesday)
APRIL 14, 2025	MARCH 10, 2025	MARCH 17, 2025
MAY 12, 2025	APRIL 14, 2025	APRIL 21, 2025
JUNE 9, 2025	MAY 12, 2025	MAY 19, 2025
JULY 14, 2025	JUNE 9, 2025	JUNE 16, 2025
AUGUST 11, 2025	JULY 14, 2025	JULY 21, 2025
SEPTEMBER 8, 2025	AUGUST 11, 2025	AUGUST 18, 2025
OCTOBER 13, 2025***	SEPTEMBER 8, 2025	SEPTEMBER 15, 2025
NOVEMBER 10, 2025	OCTOBER 13, 2025	OCTOBER 20, 2025
DECEMBER 8, 2025	NOVEMBER 10, 2025	NOVEMBER 17, 2025

*All dates are Mondays except where otherwise noted

**March 10th meeting room conflict for Election Day/meeting moved to March 17th

***Columbus Day – City Hall Open

A MOTION was made by Richard Ford Burley to adopt the 2025 Planning Board Meeting Calendar. The Motion was seconded by Kellen Appleton.

Roll Call Vote:

Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms. Romano

Voting Against – None

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

A MOTION was made by Richard Ford Burley to extend the meeting to 9:40pm. The Motion was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms. Romano

Voting Against – None

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

B. Adoption of Proposed Planning Board Rules of Procedure

A MOTION was made by Richard Ford Burley to approve the Planning Board Rules of Procedure as presented. The Motion was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms. Romano

Voting Against – None

1
2 ****The MOTION was approved (6-0).***
3

4 **7. APPROVAL OF MINUTES**

- 5 • October 14, 2025
6 • November 12, 2025
7 • November 25, 2025
8

9 ***A MOTION was made by Richard Ford Burley to approve the proposed paragraph to the***
10 ***October 14, 2024 Planning Board meeting minutes, written and submitted by Chair Faunce.***
11 ***The Motion was seconded by Jeremy Rutter.***
12

13 Ms. Romano recused herself from the vote, because she had recused herself from the discussion
14 (during the October 14, 2025 meeting) of the item for which Chair Faunce had written the
15 proposed paragraph. Ms. Romano noted her name was misspelled.
16

17 ***Roll Call Vote:***

18 ***Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, and Mr. Rutter***

19 ***Voting Against – None***
20

21 ****The MOTION was approved (5-0).***
22
23

24 Mr. Rutter noted several other edits to the rest of the meeting minutes, which had been reviewed
25 by Staff.
26

27 ***A MOTION was made by Richard Ford Burley to accept the additional suggested edits from***
28 ***Jerry Rutter to the October 14, 2024 Planning Board meeting minutes. The Motion was***
29 ***seconded by Andrew Faunce.***
30

31 ****The MOTION was approved (5-0).***
32
33

34 ***A MOTION was made by Richard Ford Burley to approve the October 14, 2024 Planning***
35 ***Board meeting minutes as amended. The Motion was seconded by Jeremy Rutter.***
36

37 ***Roll Call Vote:***

38 ***Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms.***

39 ***Romano***

40 ***Voting Against – None***
41

42 ****The MOTION was approved (6-0).***
43
44

1 *A MOTION was made by Richard Ford Burley to postpone review of the November 12, 2024*
2 *and November 25, 2025 Planning Board meeting minutes to the January 17, 2025 Planning*
3 *Board meeting. The Motion was seconded by Eric Stacy.*

4
5 *Roll Call Vote:*

6 *Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms.*
7 *Romano*

8 *Voting Against – None*

9
10 **The MOTION was approved (6-0).*

11
12
13 **8. ADJOURNMENT**

14
15 *A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:32pm. The Motion*
16 *was seconded by Eric Stacy.*

17
18 *Roll Call Vote:*

19 *Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, Mr. Rutter, and Ms.*
20 *Romano*

21 *Voting Against – None*

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

24
25 The meeting adjourned at 9:32pm.

26 Respectfully submitted,

27 Paula Roux

28 Recording Secretary

29