



**LEBANON PLANNING BOARD
FEBRUARY 10, 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: 624 689 363#). 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. **XYZ Dairy, LLC & Lyme Properties 2, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & 7), zoned CB, IND-L and R-3:** Applicant requests a two (2)-year extension of the River Park Site Plan approval (PB2010-25-SPR), as most recently amended on September 9, 2019 (PB2018-34-SPA) and extended on October 12, 2021 (PB2021-29-EXT). **PB2025-05-EXT**
- 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 January 13, 2025**

4. Study Items

- A. **Recap 2025 adopted Capital Budget, Commence 2026-2031 CIP process**
- B. **Strategic Plan - Annual Goals and Workplan**
- C. **Review of Proposed Amendments to Site Plan Review Regulations re: Minor Site Plan Committee and Conceptual Review**

5. Other Business

6. Approval of Minutes

- A. December 9, 2024
- B. December 17, 2024
- C. January 13, 2025

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](https://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 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.#: () - -

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

E-MAIL ADDRESS: @

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Lyme Properties 2, LLC

TEL.#: () - -

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

E-MAIL ADDRESS: @

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: *David Clem*

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: *David Clem*

DATE: 12/19/2024

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



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.

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).

MEMORANDUM

TO: Lebanon Planning Board

FROM: Matthew C. Decker

DATE: February 7, 2025

**RE: XYZ Dairy LLC's Request for Extension - #PB2018-34-SPA:
Subsequent Application Doctrine**

This memorandum concerns the procedure for evaluating the above-referenced application of XYZ Dairy, LLC ("XYZ") dated as of December 19, 2024, requesting a 2-year extension to XYZ's site plan deadlines, following the Planning Board's denial of an application for the same relief on November 12, 2024.

Whether the Planning Board may review the merits of XYZ's new application depends on whether the "subsequent application doctrine", articulated in the N.H. Supreme Court case of *Fisher v. City of Dover*, 120 N.H. 1887 (1980), bars this application. Accordingly, the Planning Board has scheduled a limited public hearing for February 10, 2025, to determine whether there has been a material change of circumstances affecting the merits of the application since the time of the prior application.

Relevant Facts: Background facts relevant to this application include the following:

Planning Board Proceedings

1. XYZ submitted an application (PB2024-34-EXT) for a 2-year extension to each of its site plan deadlines with a cover letter dated July 8, 2024. XYZ's application was supported by a handout dated August 12, 2024, which alleged three "circumstances beyond the control of the applicant" in support of the extension request:
 - a. Issue #1: "The 1 River Park Building Permit (#2016-00293) was invalidated by Lebanon Planning Department on Feb. 1, 2024."
 - b. Issue #2: "Staff comments on corresponding Performance Bond / Security Agreement [for Excavation Permit for Phase 1 infrastructure] were not received until July 25, 2024."
 - c. Issue #3: "On July 15, 2024, NH DOT responded [to an Excavation Permit application for Route 10] with the surprise demand that new/additional Traffic Analysis be conducted."
2. On November 12, 2024, the Planning Board voted 5-0 to deny the extension application of PB2024-34-EXT, with a written Notice of Action timely issued on November 19, 2024.¹ Therefore, the deadline to appeal the Planning Board's decision was December

¹ Per RSA 676:3, II, written decisions on an application "shall be placed on file in the board's office and shall be made available for public inspection within 5 business days of such vote. Tuesday, November 19 was the fourth business day after the Tuesday, November 12 vote, as City offices were closed for business Friday through Sunday, November 15-17.

12, 2024. RSA 677:15 provides that an appeal petition “shall be presented to the [superior] court within 30 days after the date upon which the board voted to approve or disapprove the application”.

3. XYZ did not file an appeal of the planning board’s decision in PB2024-34-EXT on or before December 12, 2024. Therefore, this decision of the planning board is final and may no longer be appealed.²
4. XYZ’s subsequent extension application dated as of December 19, 2024 references court proceedings (see below) and concludes that “[t]his [court] 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....”

Court Proceedings

5. On September 13, 2024, XYZ filed a complaint for injunctive relief before the Superior Court, Grafton County with respect to the expiration of its building permit. The sole claim raised in the complaint was for injunctive relief to reinstate the building permit on “municipal estoppel” grounds.³
6. On November 26, 2024, the Superior Court issued an order granting a temporary⁴ injunction to (1) reinstate XYZ’s building permit and, in conjunction therewith, (2) extending XYZ’s site plan deadline, for Phase 1 only, by 11 months and 2 days from the date of the order. No other site plan deadlines were extended by the Superior Court.
7. On December 23, 2024, the Superior Court issued an order denying the City’s motion for reconsideration and upholding its order extending XYZ’s Phase 1 site plan approval by 11 months and 2 days.

² See *Collden Corp. v. Town of Wolfeboro*, 159 N.H. 747, 751 (2010) (“RSA 677:15, I, ‘provides the jurisdictional deadline for superior court review of a planning board decision.’ ‘New Hampshire law requires strict compliance with statutory time requirements for appeals of planning board decisions to the superior court ... because statutory compliance is a necessary prerequisite to establishing jurisdiction [there].’”(internal citations omitted)).

³ The elements of a municipal estoppel claim are: (1) a false representation or concealment of material facts made with knowledge of those facts; (2) the party to whom the representation was made must have been ignorant of the truth of the matter; (3) the representation must have been made with the intention of inducing the other party to rely upon it; and (4) the other party must have been induced to rely upon the representation to his or her injury. *Thomas v. Town of Hooksett*, 153 N.H. 717, 721 (2006). Moreover, a party’s reliance upon the representation must be reasonable. *Id.* At 722.

⁴ “Temporary” or “preliminary” injunctions are effective only during the pendency of a court case, to preserve a status quo pending a final decision on the merits of a claim. An applicant for a temporary injunction must show an immediate danger of irreparable harm, a lack of an adequate remedy at law, and a likelihood of success on the merits of its claim. See, e.g., *New Hampshire Dep’t of Env’t Servs. v. Mottolo*, 155 N.H. 57, 63 (2007).

8. XYZ’s municipal estoppel case remains pending before the Superior Court with respect to XYZ’s request for permanent⁵ injunctive relief.

The Subsequent Application Doctrine

The “subsequent application doctrine” holds that a local land use board, having denied one application, may not review subsequent applications for the same purpose absent a **material change in circumstances affecting the merits of the application**. *See Brandt Development Co. of N.H. v. City of Somersworth*, 162 N.H. 553, 556 (2011). This rule “reflects the practical reality that [land use] boards should not be required to reconsider an application based on the occurrence of an inconsequential change, when the board inevitably will reject the application for the same reasons as the initial denial.” *Id.* (internal quotation marks and citation omitted).

The subsequent application doctrine applies to planning boards as well as zoning boards. *See CBDA Development, LLC v. Town of Thornton*, 168 N.H. 715, 722-23 (2016). The standard of review is the same for planning boards. “It is well settled that a planning board, having rejected one land use application, may not review subsequent applications absent a **material change of circumstances affecting the merits of the application**.” *TransFarmations, Inc. v. Town of Amherst*, 175 N.H. 530, 535 (2022) (emphasis added, internal quotations and citations omitted).

In the first case applying the subsequent application doctrine, *Fisher v. City of Dover*, 120 N.H. 187 (1980), a property owner’s second application for a variance to convert a 32-room house into a multi-family apartment complex was improper where the second application was filed two months after the denial of the first application, and where the applicant “conceded [it] was substantially the same as the variance previously requested and ultimately denied” by the ZBA. *Id.* at 188.

In the *Brandt Development* case, a second application for a variance was held to be not improper, where the two applications were separated by fifteen years (1994 and 2009), and where intervening changes in state law concerning variance criteria “create[d] a reasonable possibility – not absolute certainty – of a different outcome from that obtained in 1994 upon the ZBA’s consideration of the merits of Brandt’s 2009 variance request.” 162 N.H. at 560.

In the *CBDA Development* case, a second application for site plan approval for a “campsite” filed one year after the denial of a first application was held to be improper where the renewed application was not modified to address the planning board’s principal concern and ground for the first denial – the permanency and relative immobility of the proposed park model residential units. 168 N.H. at 725.

In the *TransFarmations* case, a second application for site plan approval filed just eight days after the denial of a first application was held to be not improper, where the second

⁵ “Permanent” injunctions may be granted after a final decision on the merits and typically extend beyond the conclusion of the court case.

application supplied additional information to address the planning board's stated concern with the first application that there would be no significant adverse impact upon public health, safety and general welfare, and where statements of the board chair had invited a reapplication with more information. 175 N.H. at 533, 540.

Limited Purpose Hearing for XYZ's New Extension Request

The determination by the planning board whether a successive application is materially different from a former application "is a step preliminary to consideration of the merits of the revised application." *TransFarmations*, 175 N.H. at 538. To make this threshold determination, the Planning Board has scheduled a limited purpose hearing for February 10, 2025. The sole subject for this hearing is whether there is a "material difference" between XYZ's current application and its prior application.

XYZ bears the burden of persuading the Planning Board that its new application is materially different. "[A]n applicant before a planning board bears the burden of demonstrating that a subsequent application 'materially differs in nature and degree from its predecessor.'" *CBDA Development, LLC*, 168 N.H. at 724; *see also Fisher*, 120 N.H. at 190 ("The burden of proving a material change of circumstances before the board of adjustment lies on the party seeking the variance.") *Brandt*, 162 N.H. at 556 ("In subsequent variance applications, the applicant bears the burden to demonstrate a material change in circumstances.").

"Once the applicant has presented evidence of a change in circumstances, the zoning board of adjustment must determine as a threshold matter whether a material change has occurred and whether full consideration is therefore required." *Brandt*, 162 N.H. at 556. If full consideration of the application is required, the matter may be placed on the agenda of a future Planning Board meeting for consideration of the merits.

Material Differences in the Applications

In the recent *Transformations* case from 2022, the court noted that "[a] review of our successive application cases demonstrates that what constitutes a 'material difference' in such cases turns upon the identified deficiencies in the initial application and the terms of the invitation to reapply." *Id.* at 538 (emphasis in original).

The Planning Board denied the prior application because "the testimony and evidence offered by the Applicant does not support a finding that circumstances beyond the applicant's control prevented completion of the Phase 1 infrastructure within the timeframes required by the Board" and, therefore, there was no "good cause" for an extension. Also, the Planning Board's written decision of November 19, 2024 does not appear to reflect an invitation to reapply for an extension.

To be "materially different", XYZ's application must identify a material change in circumstances from those of XYZ's prior application. XYZ's new application appears to rely on a court ruling that was issued on November 25, after the Planning Board's decision was made on November 12, with XYZ's thesis being that "[t]his [court] decision

substantiates XYZ’s position that the delays were beyond our control” and, therefore, XYZ has renewed its request for “a 2-year extension of all relevant dates in the Site Plan approval.”

In reviewing XYZ’s new application, the Planning Board may wish to consider whether the court decision constitutes a material change in terms of circumstances being outside of XYZ’s control. The Planning Board is not required to agree or disagree with the court as to findings of fact or questions of law beyond the scope of the court’s ruling.⁶

The Planning Board may also wish to consider the similarities or differences in the court case and the first extension application. The court decision concerned whether to grant a temporary injunction (*see* FN4, *supra*) on a claim for municipal estoppel (*see* FN3, *supra*) and made certain preliminary findings of fact and conclusions of law as set forth in the court’s order. The Planning Board reviewed a different but overlapping set of facts for a separate claim (“good cause” for an extension and whether circumstances were outside the control of the applicant).

Also, the Planning Board may wish to consider whether the effective impact of the court order – extending XYZ’s first site plan deadline by 11 months and 2 days – may constitute a material change in circumstances. It would be up to XYZ to demonstrate that being granted 11 months and 2 days of additional time to complete its Phase 1 work would be “material” to the question of “good cause” for requesting a further extension of the Phase 1 deadline and/or subsequent site plan deadlines.

Proposed Motion

The following template is offered for a motion to either accept or reject XYZ’s application under the “subsequent application doctrine”:

MOVED that the application of XYZ Dairy, LLC for a 2-year extension of all relevant dates in its Site Plan approval be [accepted/not accepted] under the “subsequent application doctrine” because the applicant [has/has not] carried its burden to demonstrate that its application materially differs from its prior application. The change in circumstance described by the applicant, [insert summary of changed circumstance], [is/is not] material and [would/would not] affect the merits of the prior application.

⁶ In an order on the City’s motion for reconsideration dated December 23, 2024, the court wrote that “The parties asked this Court and the Planning Board to consider different legal issues, based on different legal standards and burdens of proof. Then, this Court and the Planning Board reached different decisions, for different reasons. While the Court and Planning Board considered many of the same facts, neither decision bears on or negates the other. This Court may maintain its November 25, 2024 order extending Phase 1 site plan approval while the Planning Board may maintain its order finding that none of XYZ’s three proffered grounds constitute good cause to extend all deadlines by two years.

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.

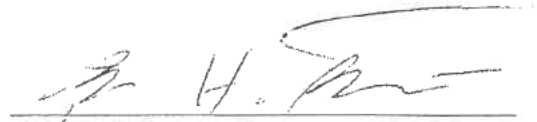
Conclusion

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

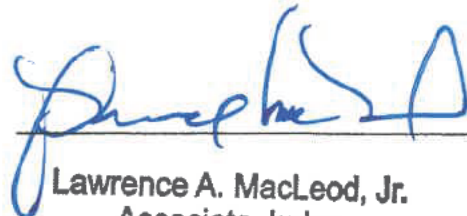

Peter H. Bornstein
Judicial Referee

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 here, 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:

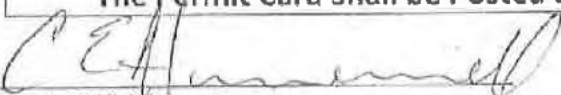
Constr Cost: \$12,296,100.00

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, 603 438 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 Spence, 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.

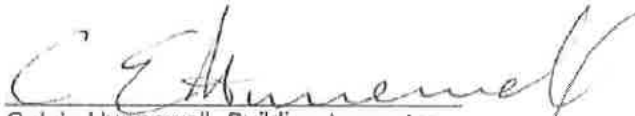
February 1, 2024

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

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 Lyne 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:

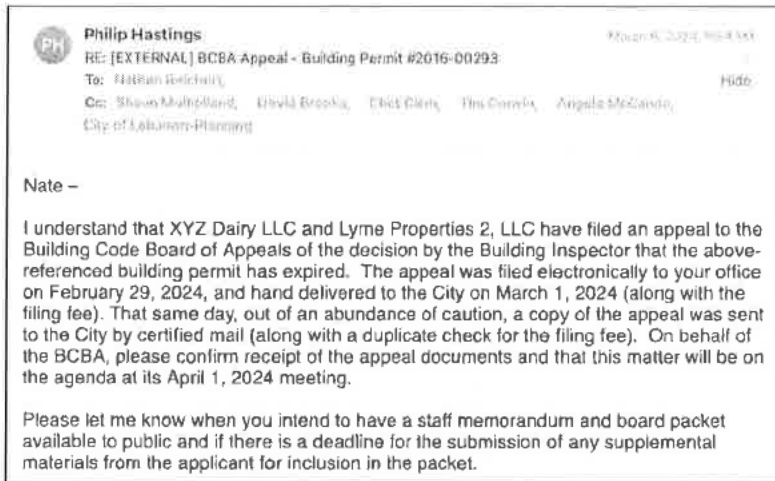


Figure 18: Email from Attorney Hastings to Planning Director Reichert on March 6, 2024.

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 28, 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.

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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.

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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).

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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

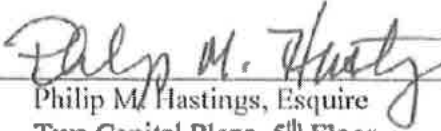
By: 
Philip M. Hastings, Esquire
Two Capital Plaza, 5th Floor
P.O. Box 1137
Concord, NH 03302-1137
Telephone: (603)224-7761
Email: hastingsp@cwbp.com

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 black ink that reads "Chet Clem". The signature is written in a cursive, slightly stylized font.

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 Cairrell Jay.Cairrell@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 pipe.)

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>; Angola 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.

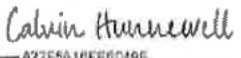
Without additional information and verification that you have actively prosecuted the permit, I cannot justify the continuance of the Building Permit and will revoke the permit as of January 13, 2023.

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



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 676:8.

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 Decision 10/20/2020

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 Hembrece (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 Belchert](#); [Tim Corwin](#); [David Clem](#); [Angela McCanna](#)
Subject: Re: [EXTERNAL] Temp Stormwater connection - Permit #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) 448-6134 (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.



1 River Park Drive
West Lebanon, NH 03784
603-676-7800

info@riverparkwestlebanon.com
www.riverparkwestlebanon.com
www.lymeproperties.com

RIVER PARK West Lebanon

River Park

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.

**"We build innovative buildings
for innovative companies."**



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



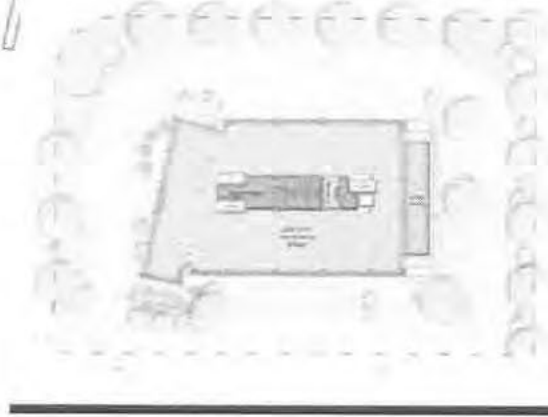
Central to the Upper Valley

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.

Appendix L



- Lab Space
- Office Space
- Support Space
- Building Core
- Vertical Circulation
- Roof Terrace
- Interconnectable Roof
- Mechanical/Shaft



Test Fit: Option 1
Life-Science Lab/Office

Building: 1 River Park Drive

Space: 3rd Floor

LAB AREA
7,564 SF (62%)
SUPPORT AREA
1,639 SF (14%)
OFFICE AREA
2,854 SF (24%)
1.014 lf Bench

22CR088



1 RIVER PARK

Building:

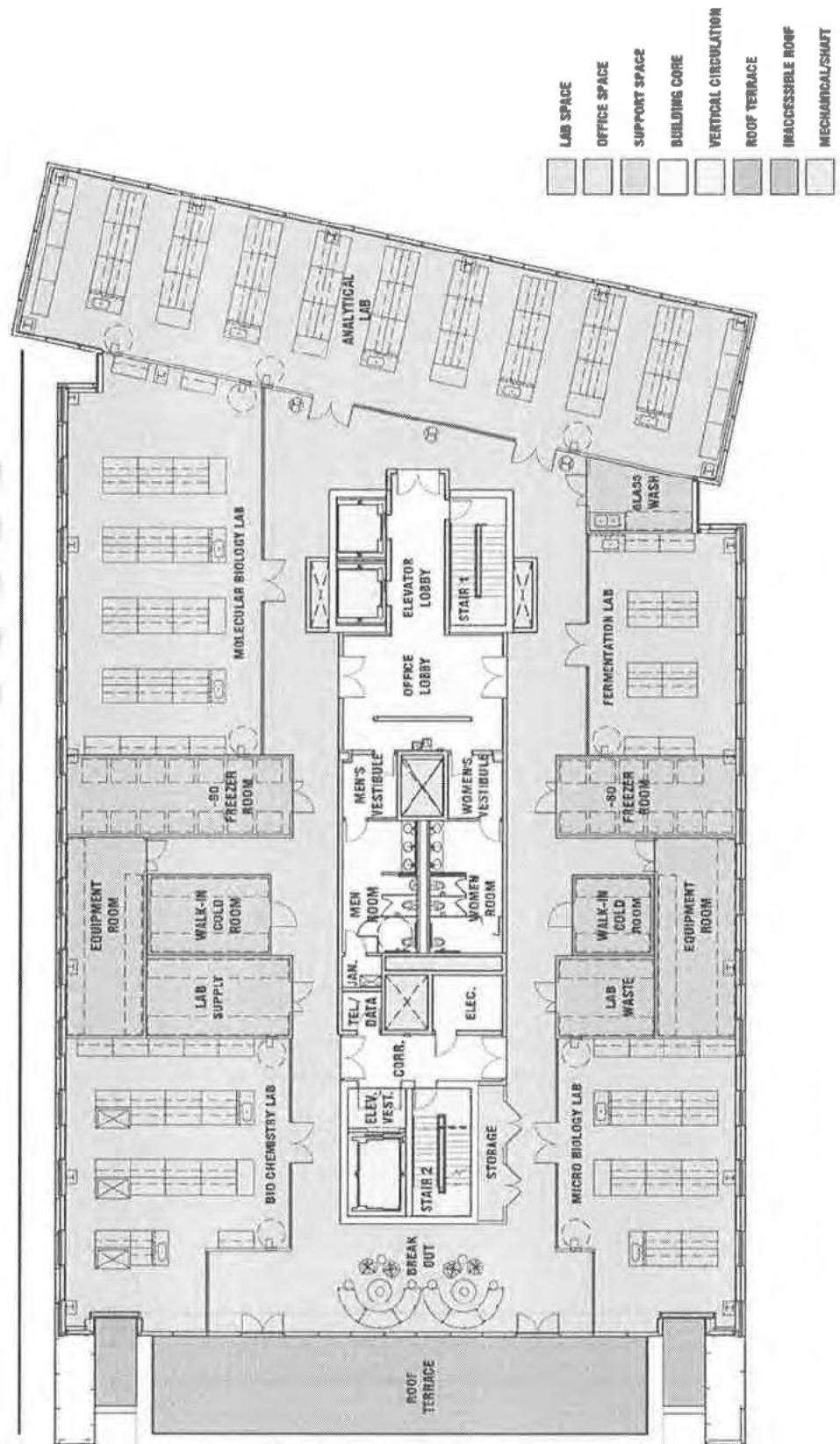
1 River Park Drive

Test Fit: Option 2

Life-Science Lab/Office

Space:

3rd Floor

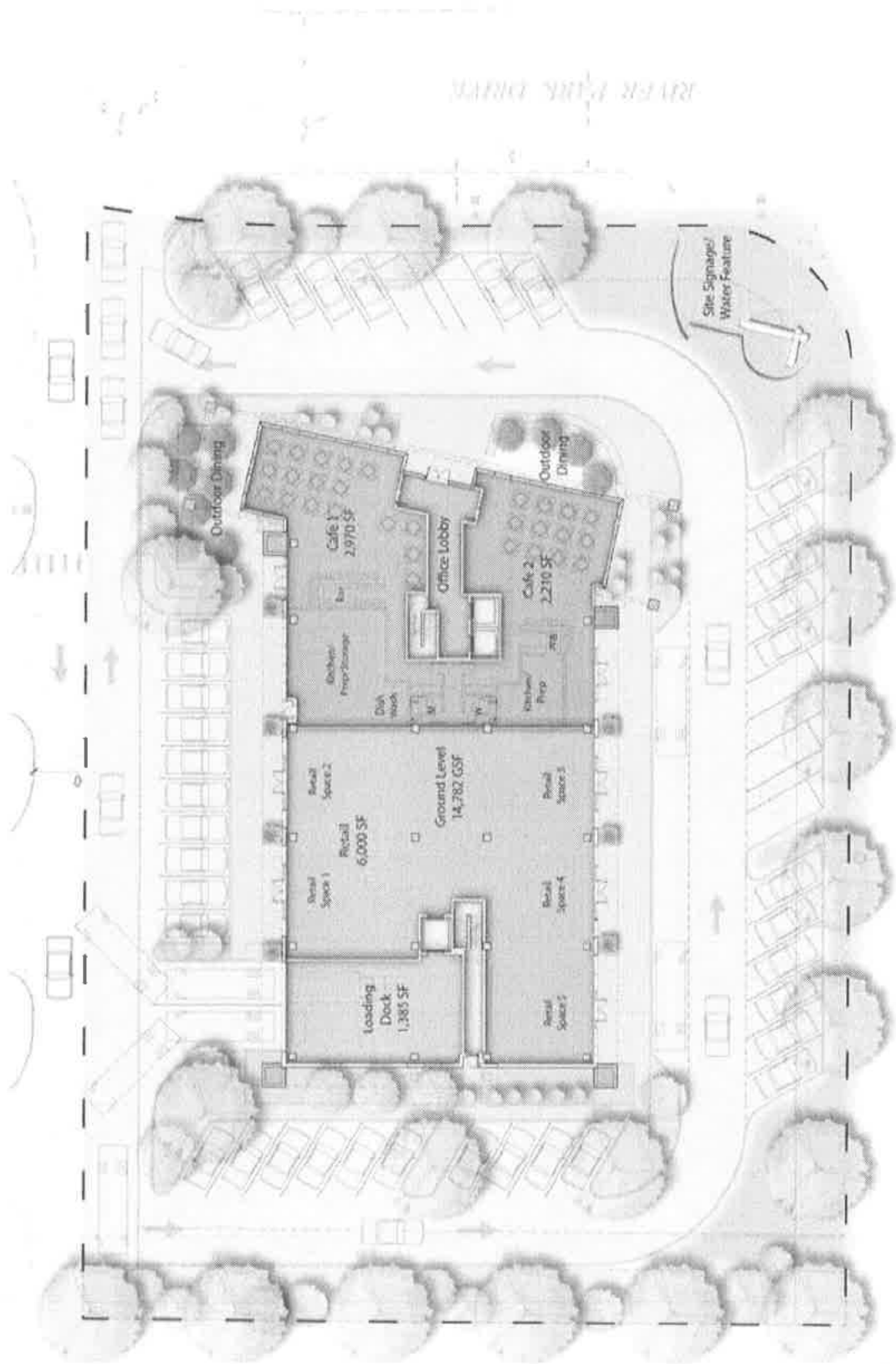




1 RIVER PARK

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". The signature is fluid and cursive.

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

4889-4609-9895, v. 1

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

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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)

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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.”

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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

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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, A May 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

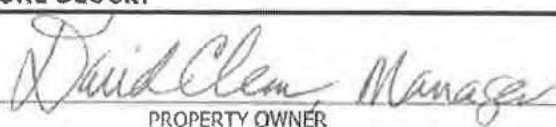
By: Philip M. Hastings
Philip M. Hastings, Esquire
Two Capital Plaza, 5th Floor
Concord, NH 03302-1137
Telephone: (603)224-7761
Email: hastingsp@cwbp.com

EXHIBIT 20

**CITY OF LEBANON
APPLICATION FOR**

MAILED 1 2017

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.



Chet Allen

David Allen

Page 171 of 360

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)

CR042

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,

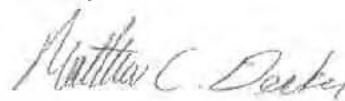
My firm represents the building inspector in Lebanon, NH. Pursuant to RSA 674:34, II, RSA 155-A:10, IV(e), RSA 155-A:11-b and the NH State Building Code Review Board administrative rules, Bcr 200, I am enclosing an original and 16 copies of a Notice of Appeal and Petition seeking the State Building Code 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".

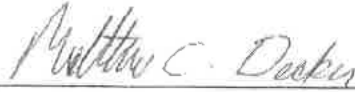
53. Accordingly, the State Building Code Review Board should reverse the BCBA and order that IBC §105.5 may be enforced by the Building Inspector through his observations of the construction site.

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.

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. Denney

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.

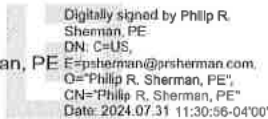
Based upon the above, it is:

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@prsherman.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:

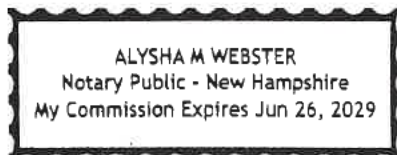
9/13/24


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 3 rd 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.

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: **Cicotte Holdings, LLC** TEL.#: **Tel#: 603-448-6363**

MAILING **PO Box 600, Lebanon, NH 03766**

E-MAIL ADDRESS: _____

CO-APPLICANT, AGENT, OR LESSEE:

NAME: **Dan Nash** TEL.#: **802-356-4928**

MAILING ADDRESS: **105 Bank St, Lebanon, NH 03766**

E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: **78** LOT#: **40-2** PLOT #: _____ ZONE: **RO-1**

STREET ADDRESS OF PROJECT: **51 Evans Drive**

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

SCOPE OF PROJECT:

Re-establish vehicular sales use for Lot 78-40-2, which has been in place over 60 years, and just re-allowed in zoning.

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: **Vehicular sales**

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 **10 February**, 20- **25** unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY
OWNER: _____

DATE: **2/23/24**

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: **2/23/24**

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

(Last Revised 4/04/18)



27 January 2025

Tim Corwin, Planning Office
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Conditional Use Permit and Site Plan Amendment Applications
Lot 78-40-2, 51 Evans Drive

Dear Mr. Corwin:

We provide the following in support of the CUP and Site Plan applications for 51 Evans Drive:

On 7Feb24, the city council voted to allow either “auto sales and service” or vehicular sales” uses by Condition Use Permit in the RO-1 zone. The Conditional Use package is attached.

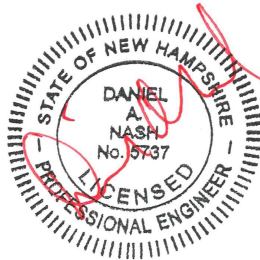
The Site Plan amendment follows. That package includes: letter response to 18Nov24 review, revised plans, drainage plans, updated waiver requests.

The site has been and continues to be a thriving auto dealership. We trust the Board will find this CUP and site plan amendment appropriate.

Please let me know if you need any further materials to support this application.

Sincerely,

Daniel A. Nash, PE
Principal



CC: Cicotte Holdings, LLC

Attachments:

- CUP application
- letter response to staff comments
- Revised Site plans
- Drainage Report
- Waiver Requests

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~~12 November 2024~~ Revised 27Jan25

Tim Corwin, Planning Office
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Conditional Use Permit Application
Lot 78-40-2, 51 Evans Drive

Dear Mr. Corwin:

We provide the following in support of the CUP application for 51 Evans Drive:

On 7Feb24, the city council voted to allow either “auto sales and service” or vehicular sales” uses by Condition Use Permit in the RO-1 zone.

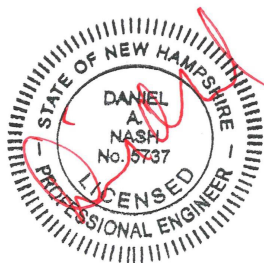
This site has been a vehicle sales and service site since the 60’s. it was formerly known as Smith Auto Sales. The zoning was changed to RO-1 in 2001. Any change of use on the site required a variance from the Zoning Board due to the site becoming non-conforming to the RO-1 zoning. The 7Feb24 action by Council has provided a reasonable relief.

The site has been and continues to be a thriving auto dealership. We trust the Board will find this CUP appropriate.

Please let me know if you need any further materials to support this application.

Sincerely,

Daniel A. Nash, PE
Principal



CC: Cicotte Holdings, LLC

Attachments:

- CUP application
- Abutters list
- Support statement
- Site plan

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12 November 2024

Tim Corwin, Planning Office
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Support Statement
Site Plan Lot 78-40-2
51 Evans Drive

Dear Mr. Corwin:

We provide the following support statement information:

1. Consultants. The team members are listed in the abutters list.
2. Restrictions. We are not aware of any conservation, preservation, or agricultural preservation restrictions on the subject parcel.
3. Utilities. The site is currently served by electric, telephone, and cable services.
4. Zoning. The proposed use is subject to Conditional Use approval by the Planning Board.
5. Drainage. The site includes a drainage infiltration trench that reduces overall site runoff.
6. Timetable. We anticipate an early Spring '25 construction start. Work is scheduled to be complete in one or two months.
7. Fire Protection. The site is a low hazard use. The site fronts on Evans Drive that is served with a 10" main that provides fire flow for the area.
8. Waivers. Waiver requests will be provided under separate cover.

Sincerely,

Daniel A. Nash, PE
Principal

CC: Cicotte Holdings, LLC

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City of Lebanon, New Hampshire

APPLICATION FOR CONDITIONAL USE PERMIT

SUPPORT STATEMENT

Office Use Only Date Received: _____ Application No.: _____

Prepared 9Sep24

I. APPLICATION CHECKLIST

- [Application form](#)
- [Public Hearing Notification List](#)
- [Filing fee](#)
- This form, including written responses to the Section 302.4.D requirements, outlined below
- A site plan
- Optional: photos and any other materials in support of your application

II. PROJECT DESCRIPTION

I (we) hereby request a Conditional Use Permit as provided for in Article(s) III,
Section(s) 311A.2, of the Lebanon Zoning Ordinance.

Please describe your proposed project with as much detail as possible. You can respond in the space provided below or on a separate sheet of paper.

This site has been an auto sales and service site since the 1960's. It lost its conforming status in 2001 due to the city's zone change of the property to RO-1. We wish to obtain a CUP for what has been a longstanding use and restore the property to a conforming status.

III. CONDITIONAL USE PERMIT CRITERIA

In order to obtain a Conditional Use Permit, you must demonstrate to the Planning Board that the proposal satisfies the applicable criteria set forth in Sections A and B below. You must address each criteria in the space provided or on a separate sheet of paper.

A. Specific Criteria

The Conditional Use Permit is authorized by Article III, Section 311A.2 of the Zoning Ordinance which requires the applicant to demonstrate that (please address any criteria set forth in the Zoning Ordinance that specifically apply to your proposed use or project):

There are no specific criteria that apply to vehicular sales in the RO-1 zone.

B. General Criteria per Section 302.4.D

A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following standards:

1. The site is suitable for the proposal. This includes:

- a. Adequate vehicular and pedestrian access for the intended use.

This site has been an auto sales and service site since the 1960's. It has adequate vehicular and pedestrian access.

- b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, safe access, and other municipal services.

The site has adequate access to public services. The site is served by municipal water and sewer. It has access to a city street, Evans Drive, and is adjacent to I-89, Exit 18. There is a city sidewalk across the street from the site. To the applicant's knowledge, there have not been any safety concerns for over 60 years of the site's history.

- c. The absence of environmental constraints (floodplain, steep slope, etc.) proposed to be impacted by the intended use.

The site is existing and the proposal does not impact environmental constraints. The site is in the mapped flood plain, but the used area is well out of the flood plain and has a permit.

- d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater treatment, electricity, and similar utilities.

The site has adequate access to utilities. The site is served by municipal water and sewer. The parking expansion will provide stormwater treatment. The site has electric, telephone and cable access.

2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood shall be commensurate with the impacts of adjacent existing uses or other uses permitted in the zoning district. This shall include, but not be limited to, water runoff, drainage, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood. The proportion of the site proposed to be occupied by impervious surfaces shall be minimized to the extent necessary to preclude unreasonable risk of runoff, erosion, sedimentation, and other potentially adverse on-site or off-site effects.

The site has been in operation for the same use for over 60 years of the site's history. We are not aware of any adverse external impacts.

3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts on abutters, the neighborhood, and nearby public ways and infrastructure. This shall include, but not be limited to, the relationship of the building(s) to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.

The site has been in operation for the same use for over 60 years of the site's history. We are not aware of any aspects of the site that are incompatible with the character of the neighborhood.

4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, locations of access, and visual compatibility with the area.

There are no new buildings or structures proposed at this time.

5. Preservation of natural, cultural, historic, and scenic resources: The proposed use and layout of the site, including all related development activities, shall to the greatest extent practicable preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat and documented wildlife corridors, stonewalls, mature tree lines, identified historic buildings or sites, scenic views, and viewsheds.

There are no changes proposed that would alter the preservation of natural, cultural, historic, or scenic resources. The only change proposed is to pave an existing vehicle storage area.



City of Lebanon, New Hampshire APPLICATION FOR WAIVERS

Office Use Only

Date Received: _____ File No.: _____

PROJECT INFORMATION

Name of Applicant: Cicotte Holdings, LLC
Project Name: Nissan Auto Sales & Service
Project Address: 51 Evans Drive

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).]

1. Section 6 of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

We request a general waiver for having to satisfy the Site Plan regs for the portion of the site outside of the area proposed for development. The proposed improvement add a mere 21 spaces of vehicle display storage.

2. Section 5.1.E.13 (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

We request a waiver from having to provide manufactures specifications for the site lighting. The site lighting is existing and was installed in 2022. The installer claims lighting was installed in coordination with and in accordance with the city's lighting standards for car dealerships

3. Section **6.5.D.5** (circle one) ~~Site Plan Review~~ / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

We request a general waiver for having to provide sidewalks along the property frontage. This property has two very long frontages and does not generate any pedestrian traffic. There are sidewalks on the opposite side of Evans Drive and Route 120 that appear to adequately serve pedestrian traffic.

4. Section **6.7.B.2** (circle one) ~~Site Plan Review~~ / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

Normally, light spill is a concern in residential areas. However, in commercial and industrial areas, public safety prefers light spill to provide better illumination for areas they have to observe to prevent unwanted activity.

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

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

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

8. 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: for owner (D. A.) Date: 27Jan25



27 January 2025

Tim Corwin, Planning Office
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Response to Completeness Issues
Site Plan Amendment Lot 78-40-200
Evans Drive

Dear Mr. Corwin:

This letter is to provide a response to your staff memo included in the Planning Board packet regarding this project dated 18Nov24.

General

1. Staff does not support a waiver from the Section 6.6 stormwater submission and design requirements.

Understood. Submission requirements provided.

2. To the extent that the applicant requests a waiver from Section 6.6 or any portion thereof, the applicant must provide a written statement addressing the stormwater waiver criteria set forth in Section 6.6.I, in addition to the general waiver criteria set forth in Section 7.1.

* Note that per the Application for Waivers submitted, the applicant has only requested a waiver from the requirement to provide an existing conditions stormwater management plan.

See revised waiver requests.

3. Staff does not support the applicant's request to waive the wetlands delineation requirement. Documentation is required 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 (5.1.E.8).

See attached wetland report.

4. On the Application for Waivers, a waiver is requested from Section 5.1.E.13 which relates to trees and vegetation; however, 5.1.E.13 relates to lighting.

See revised waiver requests.

5. The Site Plan Review Regulations apply to the entire property, and not just to the development site as it has been delineated by the applicant. As a result, staff recommends that the applicant request a general waiver from having to satisfy the Site Plan Review Regulations outside the portion of the property that is proposed to be redeveloped.

See revised waiver requests.

6. Identify how the project complies with Section 6.5.E (groundwater protection).

The proposed infiltration trench provides runoff treatment and detention to preserve

groundwater quality.

7. Please address Section 6.5.D.3: "Provisions shall be made to assure that the proposal is consistent with the need to minimize flood damage. For example, sewer, gas, electrical, and water systems should be elevated and constructed to minimize or eliminate flood damage, and adequate drainage should be provided so as to reduce exposure to flood hazards."

The site is approximately 8' above the actual flood plain; the city's mapping is incorrect. The city engineer has advised applicant to seek an LOMR (Letter of Map Revision) to correct this issue. We would be glad to accept this direction as a condition of approval. See attached flood permit.

8. Please address Section 6.5.D.4: "Design provisions shall also be made to minimize or eliminate infiltration of floodwaters into new or replacement water supply systems and/or sanitary sewer systems and, conversely, to minimize or eliminate discharges from these systems into floodwaters. On-site waste disposal systems shall be located so as to avoid impairment of them or contamination from them during flooding."

See note above.

9. Provide manufacturer's specifications for the lighting fixtures (5.1.E.13).

The lighting is existing and was installed in 2022 by Defiance Electric. The installer reports he installed the lighting per the city's guidelines for car dealerships. Lighting specifications should be in that package.

10. Provide an updated Application for Waivers to incorporate any additional required or requested waivers.

* Note that the Board must find either Criteria A or Criteria B (as identified on the Application for Waivers) is satisfied in order to grant the waiver. Each waiver request, therefore, should demonstrate how the request meets either Criteria A or B. It is not clear to staff that all of the necessary requested waivers can be justified, and recommends that the applicant try as much as possible to provide as much of the missing information as possible.

See revised waiver requests.

Plan set, General Comments

1. Depict "drainage infiltration trench" referred to in 11/12/24 "Support Statement" letter.

See sheet C-2 & C-3.

2. The Floodplain District is incorrectly depicted on the plan set. See attached screenshot of FEMA floodplain map.

See Note 7, above.

3. Wetlands on the property need to be delineated on the plan set and stamped by a certified wetlands scientist (5.1.E.8).

See attached Wetlands report.

4. Are contours referenced to USGS datum? (5.1.E.6)

Contours are referenced to NAVD88.

5. Stamp required for PE or LLS who prepared the topo (5.1.E.6).

PE stamp is on plans with topo.

6. Demonstrate compliance with the impervious cover/parking area design requirements of 6.5.E.2.c.

See Sheet D-1.

7. The plans do not address or only partially address the following submission and design requirements:

- * 5.1.E.2 - requiring names and mailing addresses of owners of abutting properties
Address of owner and applicant on cover. Names of abutters on Sheet OA-1.
- * 5.1.E.6 - requiring spot elevations for existing and proposed grades
Existing grades shown on site plan.
- * 5.1.E.8 - requiring delineation of wetlands on the property need to be delineated on the plan set and stamped by a certified wetlands scientist
See attached wetland report.
- * 5.1.E.9 - Requiring the plans to identify the Zoning District of abutting properties within 200 feet of the site boundary
See Sheet OA-1.
- * 5.1.E.10 - Requiring sight distances at curb cuts and dimensions for the inside radii of all curves
See Note 6, Sheet C-1. No curb radii in new pavement.
- * 5.1.E.10 - Requiring loading spaces and facilities used in connection with any structures on the site to be shown
See Sheet C-1.
- * 5.1.E.13 - Requiring the lighting plan to show mounting height and color correlated temperature (CCT) of all exterior free-standing or building-mounted light fixtures
See General Note 9, above.
- * 5.1.E.15 - requiring plans to depict location/boundaries of the Wetlands Conservation District
See attached wetland report.
- * 5.1.E.15 - requiring plan to depict location of the Floodplain District (location of Floodplain District in plan set does not match the FEMA flood map - see attached)
See attached flood permit.
- * 5.1.E.16 - requiring the landscape plan to show parking lot shading calculations
See Sheet L-1.
- * 5.1.E.17 - requiring the plans to depict City storm drainage facilities within 200 ft of the property
N/A. Adjacent facilities belong to NHDOT. Site does not use or connect to them. Surface items shown on plan.
- * 5.1.E.18 - Section 6.6 submission requirements
See Drainage report.
- * 5.1.E.19 & 6.5.F.2 - requiring plans to depict plans for snow removal and storage.
See Sheet C-1 & C-2.
- * 5.1.E.21 - requiring construction details - e.g. for pavement
See Sheet D-1.
- * 6.2.B.2 - requiring perimeter landscaping to include a mix of shade trees, understory trees, and shrubs (understory trees are not provided and/or identified)
See Sheet L-1.
- * 6.2.D.E - parking lot landscaping and shading requirements
See Sheet L-1.
- * 6.5.D.5 - requiring 5 ft. sidewalks along the property's frontage
See waiver request.
- * 6.5.I.3 - bicycle storage and parking requirements for non-residential development
See Sheet C-1.

- * 6.6 - stormwater submission and design requirements
See Drain report.
- * 6.7.B.2 - requiring that the light intensity at adjoining streets or commercial property boundaries shall not exceed 0.5 foot-candles at grade level
See General Note 9, above.
- * 6.7.C.1 - the parking lot uniformity ratios exceed the max
permitted.

See General Note 9, above.

Cover Sheet

- 1 Identify the plan that the proposed "site plan amendment" is amending.
Latest plan in applicants file was Mar2000, Miller Auto. There may be later plans in city files.
- 2 Identify the date and number of floodplain permit obtained.
See attached flood permit.
- 3 The date on the plan set is a date in the future (i.e. December 11, 2024).
Corrected.
- 4 "Zoning Comparison" Table :
 - * Identify:
 - * gross floor area of the existing building (5.1.E.4.e.4)
Done
 - * the maximum number of permitted parking spaces, and include calculation (5.1.E.4.e.5)
See cover and attached calculation spreadsheet.
 - * the number of existing & proposed short-& long-term bicycle storage spaces (5.1.E.4.e.6)
Done
 - * the number of existing and proposed loading spaces (5.1.E.4.e.7)
Done
 - * the number of stories and gross square footage of each story of the existing building (5.1.E.4.e.9)
Done
 - * minimum front yard along Route 120 = 20 ft.
Revised.
 - * 75 non-display parking spaces are proposed - please confirm only 2 handicap spaces are required.
4 required. Plans revised.

Sheet 2 (Legend)

1. Update the legend to match the plan by removing anything that is unrelated.
Using a standard legend sheet. This practice allows for possible unused items that may be added later.

Sheet 3 (Overall Plan)

1. The building footprint shown on what appears to be Lot 64-32-100 does not match the footprint of the building on that lot.
Corrected.

Sheet 5 (Existing Conditions)

1. Add note indicating that the existing pavement identified as "developed area" was installed without site plan approval.
Note Added.
2. Identify the portion of the "developed area" pavement to be removed.
Pavement to be removed shown on Sheet C-1, Proposed Conditions.

Sheet 6 (Site Plan)

1. Remove hatching on west side of parking lot and update Note 1.
Hatching indicates pavement to be removed.
2. 76 non-display parking spaces are identified - the cover sheet indicates 75 are provided. Please clarify/reconcile.
Reconciled.
3. Identify handicap accessible parking spaces.
Indicated on plan.
4. Identify location of waste receptacle(s) and demonstrate compliance with any applicable screening requirements.
Waste receptacles part of existing site; not part of this application.

Sheet 6 (Landscape Plan)

1. Plant list contains typo ("bich").
2. 17 shade trees are required; only 13 are proposed. Please provide all 17 required trees on-site.
3. The number of required shrubs/understory trees = 78. The number of shrubs provided = 78.
4. Remove yellow hatching on west side of parking lot.

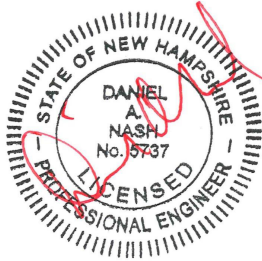
See updated Sheet L-1

Evans Drive
City of Lebanon
27Jan2025

Please let us know if you need any additional materials to support this submittal.

Sincerely,

Daniel A. Nash, PE
Principal



Attached:

- Wetland Delineation Report
- Flood Plain permit
- Parking Calculation Spreadsheet
- Revised Plan Set
- Drainage Report
- Revised Waivers

CC: Edwards Properties

M:\2023_projects\23-006\planning_board\submission_27jan25\col_heater_resptostaffcomments_27jan2025.docx



Natural Resource Consulting Services

December 30, 2024

**Ms. Johanna Cicotte, Owner
Edwards Properties LLC
P.O. Box 600
Lebanon, NH 03766**

RE: Wetland Investigation, Nisan Dealership – Lebanon

Dear Ms. Cicotte:

This letter reports on a wetland investigation that my firm, Natural Resource Consulting Services (NRCS), performed at the above-referenced site located east of NH Route 120 and north of I-89 in Lebanon, NH. Your Engineer, Daniel Nash, P.E., requested that my firm, Natural Resource Consulting Services [NRCS] evaluate the presence or absence of jurisdictional wetlands on the property. I visited the site to perform this work on Dec. 5, 2024 in warm weather with unfrozen ground.

There is a non-jurisdictional ditch [not a wetland] on the southeastern boundary of the property along Route 120. The ditch no longer carries surface water because the water was routed away from this area by the NH Department of Transportation.

Since there is only snowmelt water in it seasonally, the hydrology component of wetland jurisdiction is not met, therefore the ditch cannot meet the definition of a wetland. I did not observe a dominance hydrophytic plants in the ditch [see attached photos] which also fails the wetland test. Additionally, there was very little mottling within 18" of the soil surface – and all such redoximorphic features were, in my opinion, relict in nature. The soils are man-made on this portion of the property. Furthermore, the ditch is a man-made conveyance, the purpose of which was never to drain wet land, but was, in fact, simply to move water from the north to the south across upland. It is my opinion that the ditch is neither City of Lebanon, NHDES nor USACOE jurisdictional from a wetland perspective.

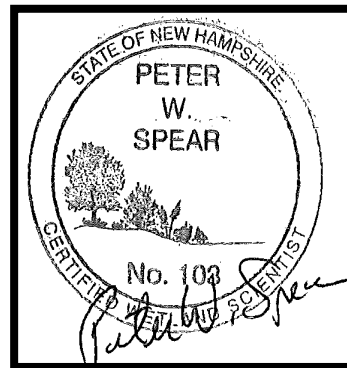
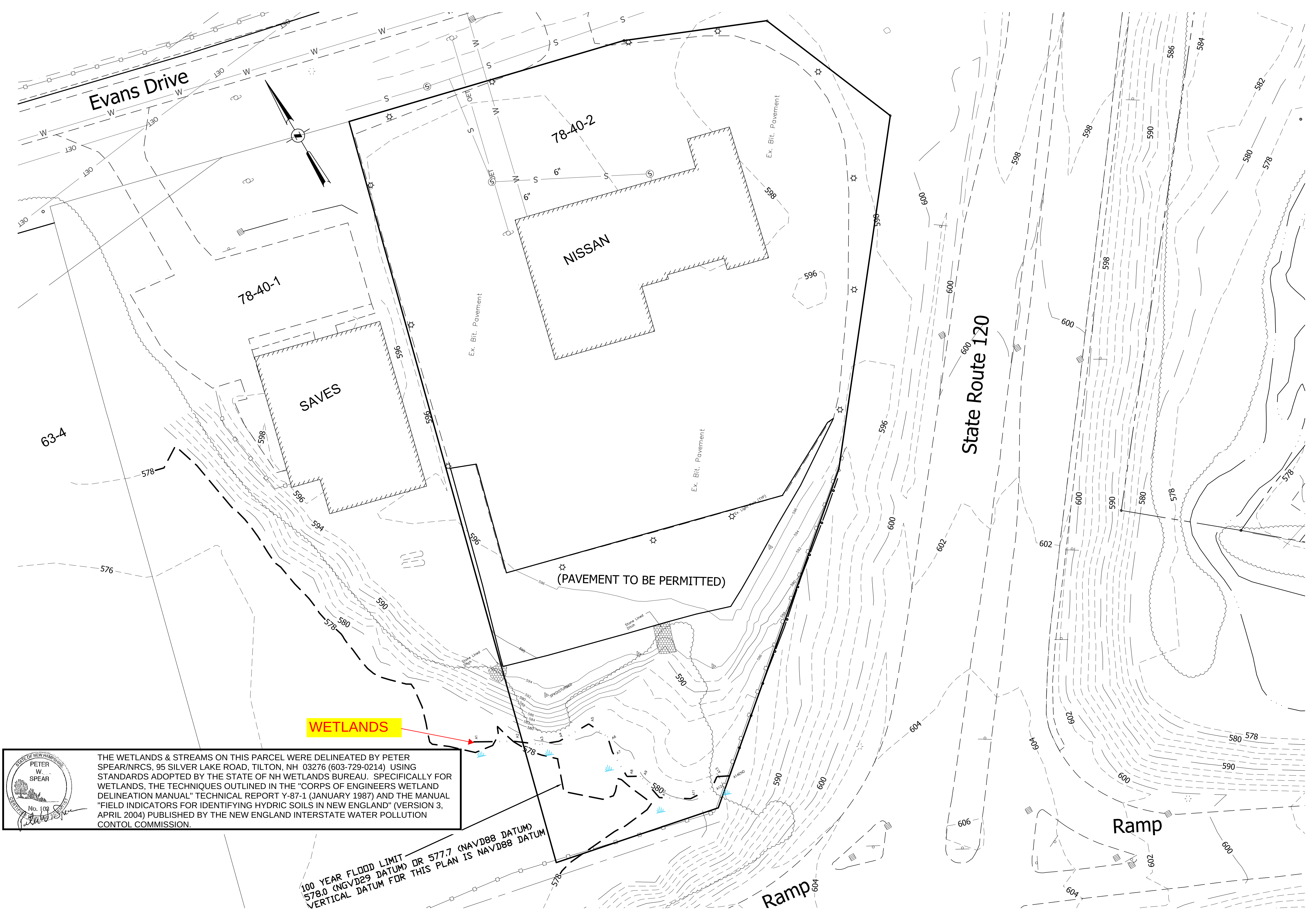
There is a single jurisdictional wetland on the southern end of the property along the I-89 property line. This is a scrub-shrub dominated wetland [speckled alder, glossy buckthorn and red maple]. The edge was delineated with pink flagging and labelled A-1 to A-14. The Nissan dealership parking lot was filled by others decades before the passage of Federal or State wetland regulations, so the fill was performed legally. The edge of wetland is largely at the base of the fill.

I have enjoyed working with you on this project. Please contact me to discuss my findings. Thanking you in advance for your confidence in NRCS, I remain,

Very truly yours,

**Peter W. Spear
Certified Wildlife Biologist (TWS)
Professional Development Certificate (TWS)
Certified in Habitat Evaluation Procedures (USFWS)
NH Certified Wetland Scientist (#103)
Professional Wetland Scientist (SWS)**

cc: Mr. Dan Nash, P.E.



THE WETLANDS & STREAMS ON THIS PARCEL WERE DELINEATED BY PETER SPEAR/NRCS, 95 SILVER LAKE ROAD, TILTON, NH 03276 (603-729-0214) USING STANDARDS ADOPTED BY THE STATE OF NH WETLANDS BUREAU. SPECIFICALLY FOR WETLANDS, THE TECHNIQUES OUTLINED IN THE "CORPS OF ENGINEERS WETLAND DELINEATION MANUAL" TECHNICAL REPORT Y-87-1 (JANUARY 1987) AND THE MANUAL "FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND" (VERSION 3, APRIL 2004) PUBLISHED BY THE NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION.

WETLANDS EXHIBIT
FOR
LEBANON NISSAN
IN
LEBANON, NEW HAMPSHIRE

ADVANCED GEOMATICS & DESIGN
105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766
PHONE: (603) 448 6295
E-MAIL: advancedgeomatics@comcast.net

SURVEYED: GIS
DESIGNED: DAN
DRAWN: DAN
CHECKED: DAN
DATE: 14JAN2025

LEBANON
NISSAN
WETLANDS
EXHIBIT

W-1
© 2025
ADVANCED GEOMATICS & DESIGN
DWG: 23006-BA

CITY OF LEBANON - APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

The undersigned hereby makes application for a permit to develop in a Local Regulatory Floodplain or in a Local Regulatory Conveyance Zone. The work to be performed is as described below and in attachments hereto. The undersigned agrees that all such work shall be done in accordance with the requirements of all local, state, and federal regulations.

Project Name	51 EVANS DRIVE	Date	17MAY2023
Contact Name	DAN NASH, PE	Contact Telephone	603-448-6295
Owner or Developer	CICOTTE HOLDINGS, LLC	Builder/Contractor	-WORK ALREADY COMPLETE
Address	PO BOX 600, LEBANON, NH	Address	
Telephone	603-448-6363	Telephone	
Engineer	DAN NASH, PE 5737	Architect	
License Number		License Number	
Address	105 BANK ST, LEBANON, NH	Address	
Telephone	603-448-6295	Telephone	

SITE DATA

- Property Location (Physical Address) 51 EVANS DRIVE
- City of Lebanon Tax Map 78 Lot 40
- FEMA Flood Map Panel Number 33009C0913E Effective Map Date 20FEB2008
- Type of Development (Check All That Apply):
☐ New Construction ☐ Alteration or Repair of Existing Structure ☒ Site Grading
☐ Filling ☐ Excavation ☐ Other-Please describe:
- Type of Facility (Check All That Apply):
☐ Residential ☐ Functionally Dependent Facility ☐ Critical Facility
☐ Manufactured Home ☒ Other-Please describe: EXISTING AUTO DEALERSHIP
- Description of Development REGRADE SITE, ADD PAVEMENT
- Structure: -NO NEW STRUCTURE
New Structure sq ft _____ + Existing Structure sq ft _____ + Improvement sq ft _____ = Total sq ft _____
Principal Use _____ Accessory Uses _____
- Value of Improvement (Fair Market) \$ N/A Pre-improvement Value of Structure \$ _____
- Is the development located within the Local Regulatory Conveyance Zone? ☐ Yes ☒ No
- Other Permits Required (Check All That Apply):
☐ NHDES Shoreland Permit ☐ NHDES Wetland Permit ☐ NHDES Alteration of Terrain
☐ Other-Please describe: -NONE-

CITY OF LEBANON - APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

ELEVATIONS

1. Elevation of 100-Year Base Flood Elevation (BFE) at development site: 578.00 feet
2. Elevation of lowest floor of structure (minimum one foot above BFE): 598+/- (Exist) feet
3. Elevation of all attendant utilities, including all heating and electrical equipment, servicing the structure for floodproofing (minimum one foot above BFE): N/A-NO NEW STRUCTURE feet
4. Type of flood protection method? Flood Proofing Elevating the development: N/A-NO NEW STRUCTURE
5. Elevation Datum used for determination of BFE: NGVD 1929 X NAVD 1988
6. Has Compensatory Floodplain Storage been provided for all fill areas? Yes X No N/A-NO FILL

I certify that the information on this form is true and correct. I understand that false or inaccurate information submitted to the City of Lebanon on which a permit for proceeding with construction work is issued by the City of Lebanon may be the basis for revocation of the permit or assessment of a civil fine or other penalties. I also understand that construction plans submitted to and approved by the City of Lebanon in the form of a permit issued must be followed and adhered to and any deviance there from not approved by the City of Lebanon may also be the basis for a notice of violation, notice of citation and revocation of the of the permit or assessment of a penalty by the City of Lebanon.

Signature of Owner or Developer

Date

JOHANNA CICOTTE, for CICOTTE HOLDINGS, LLC

Printed Name of Owner or Developer

OFFICIAL USE ONLY

PERMIT APPLICATION IS HEREBY:

✓ APPROVED _____ DENIED

Comments: RECOMMEND THAT YOU APPLY FOR A LETTER OF MAP AMENDMENT
WITH FEMA.

[Signature]
Signature of Authorizing City Official

RODRICK J. FINLEY, P.E.
Printed Name of Authorizing City Official

May 31, 2023
Date

CITY ENGINEER
Title of Authorizing City Official

FLOODPLAIN PERMIT CHECKLIST

51 EVANS DRIVE

17May2023

Project Name

Date

- ☒ 1. A Completed and Signed Permit Form.
- ☒ 2. The Permit Fee (none set at this time)
- ☒ 3. Current survey certified by a land surveyor licensed in NH that shows the following information:
 - ☒ A. North Arrow (MAP PREPARED USING CITY GIS DATA)
 - ☒ B. Scale of the plan
 - ☒ C. Date of the plan and any revisions
 - ☒ D. Perimeter boundaries of the lot(s), including compass bearings, distances, and lot areas
 - ☒ E. Location of existing improvements on the property
 - ☒ F. 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.
 - ☒ G. Width and location of rights-of-way and/or easements on property
 - ☒ H. Existing grades, including topographic contours with spot elevations, prepared by a professional engineer or land surveyor licensed in NH. (Contours shall be at 2 ft. intervals)
- ☒ 4. Proposed development plans showing the following information:
 - ☒ A. Vicinity Sketch (suggested scale: 1"=500')
 - ☒ B. Names and mailing addresses of Owner of record of site, holders of any easements, rights-of-way, or other restrictions
 - ☒ C. Names and business addresses of 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.
 - ☒ D. North Arrow
 - ☒ E. Scale of the plan
 - ☒ F. Date of the plan and any revisions
 - ☒ G. Zoning designation
 - ☒ H. Tax Map and Lot number(s) for the subject property
 - ☒ I. Area of the lot
 - ☒ J. Gross floor area of existing and proposed buildings/additions
 - ☒ K. A legend that clearly indicates all symbols, line types, and shading
 - ☒ L. Perimeter boundaries of the lot(s), including compass bearings, distances, and lot areas
 - ☒ M. Location of existing and proposed improvements on the property
 - ☒ N. 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
 - ☒ O. Width and location of rights-of-way and/or easements on property
 - ☒ P. Existing and proposed grades, including topographic contours with spot elevations, prepared by a professional engineer or land surveyor licensed in NH. (Contours shall be at 2 ft. intervals)
 - ☒ Q. Wetlands on the property, if any, shall be delineated by a NH Certified Wetlands Scientist, whose seal and signature shall appear on the plan (NONE IN AREA OF WORK)
 - ☒ R. The 100-year flood elevation, floodway, and floodplain limits
 - ☒ S. The NHDES Shoreland setback lines, if applicable
 - ☒ T. Size and location of all existing and proposed public and private utilities
- ☒ 5. Calculations for Compensatory Storage
- ☒ 6. Completed Floodplain Permit Checklist

NISSAN					
51 EVANS DRIVE					
LEBANON, NH					
<u>PARKING CALCULATIONS</u>					
	Existing				
	Area				Spaces
<u>Saves</u>	(sf)	Use	Rate	Units	Required
NISSAN	16,348				
		vehicular sales	1/600sf	16,348	27.2
		service bay	4/bay	12	48.0
			sub-total		75.2
			Total required=		76.0
			Total Provided=		
Note: Building area from Property Assessment card.					

CERTIFIED NOTIFICATION LIST

THE CITY OF LEBANON IS REQUIRED UNDER NH RSA 672:3 TO NOTIFY THE FOLLOWING PERSONS OF PUBLIC HEARINGS BEFORE THE PLANNING BOARD: 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.

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

MAP & LOT NUMBER: <u>78-40-2</u>	MAP & LOT NUMBER: <u>78-40-2</u>
PROPERTY OWNER: Cicotte Holdings, LLC PO Box 600 Lebanon, NH 03766	APPLICANT: Cicotte Holdings, LLC PO Box 600 Lebanon, NH 03766
MAP & LOT NUMBER: <u>64-30</u>	MAP & LOT NUMBER: <u>78-40-1</u>
ABUTTER/OTHER: Cicotte Properties, LLC PO Box 600 Lebanon, NH 03766	ABUTTER/OTHER: Evans Drive SPE, LLC PO Box 600 Lebanon, NH 03766
MAP & LOT NUMBER: <u>64-33</u>	MAP & LOT NUMBER: <u>77-127</u>
ABUTTER/OTHER: Lebanon School District 20 Seminary Hill West Lebanon, NH 03784	ABUTTER/OTHER: City of Lebanon 51 North Park Street Lebanon, NH 03766
MAP & LOT NUMBER: <u>78-62</u>	MAP & LOT NUMBER: <u>78-61</u>
ABUTTER/OTHER: City of Lebanon 51 North Park Street Lebanon, NH 03766	ABUTTER/OTHER: Johanna Cicotte PO Box 600 Lebanon, NH 03766
MAP & LOT NUMBER: <u>64-32-100</u>	MAP & LOT NUMBER: _____
ABUTTER/OTHER: 1984 Holdings, LLC PO Box 850 Lebanon, NH 03766	ABUTTER/OTHER: Landscape Design Mara Landscape Design 16 Myrtle Avenue Newburyport, MA 01950
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER: Engineer Advanced Geomatics PO Box 512 Lebanon, NH 03766	ABUTTER/OTHER: Surveyor Paton Land Surveying 150 Southridge Street Springfield, VT 05156

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) 7*\$5.54=38.78+5=\$43.78	\$5.00 + Current USPS rate per certified notice (see below) X 7 notices	\$5.00 \$ 43.78 (abutter certified)
TOTAL DUE AT TIME OF FILING		\$ 398.78
**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).

LEBANON NISSAN
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE
SITE PLAN AMENDMENT

OWNER/APPLICANT
CICOTTE HOLDINGS, LLC
PO BOX 600
LEBANON, NH 03766

CONSULTANTS

CIVIL ENGINEER
DANIEL A. NASH, PE
ADVANCED GEOMATICS AND DESIGN
PO BOX 512
105 BANK STREET
LEBANON, NH 03766
advancedgeomatics@comcast.net

LAND SURVEYOR-TOPO
CHRIS PATON, LLS
PATON LAND SURVEYS, LLC
150 SOUTHRIDGE STREET
SPRINGFIELD, VT 05156

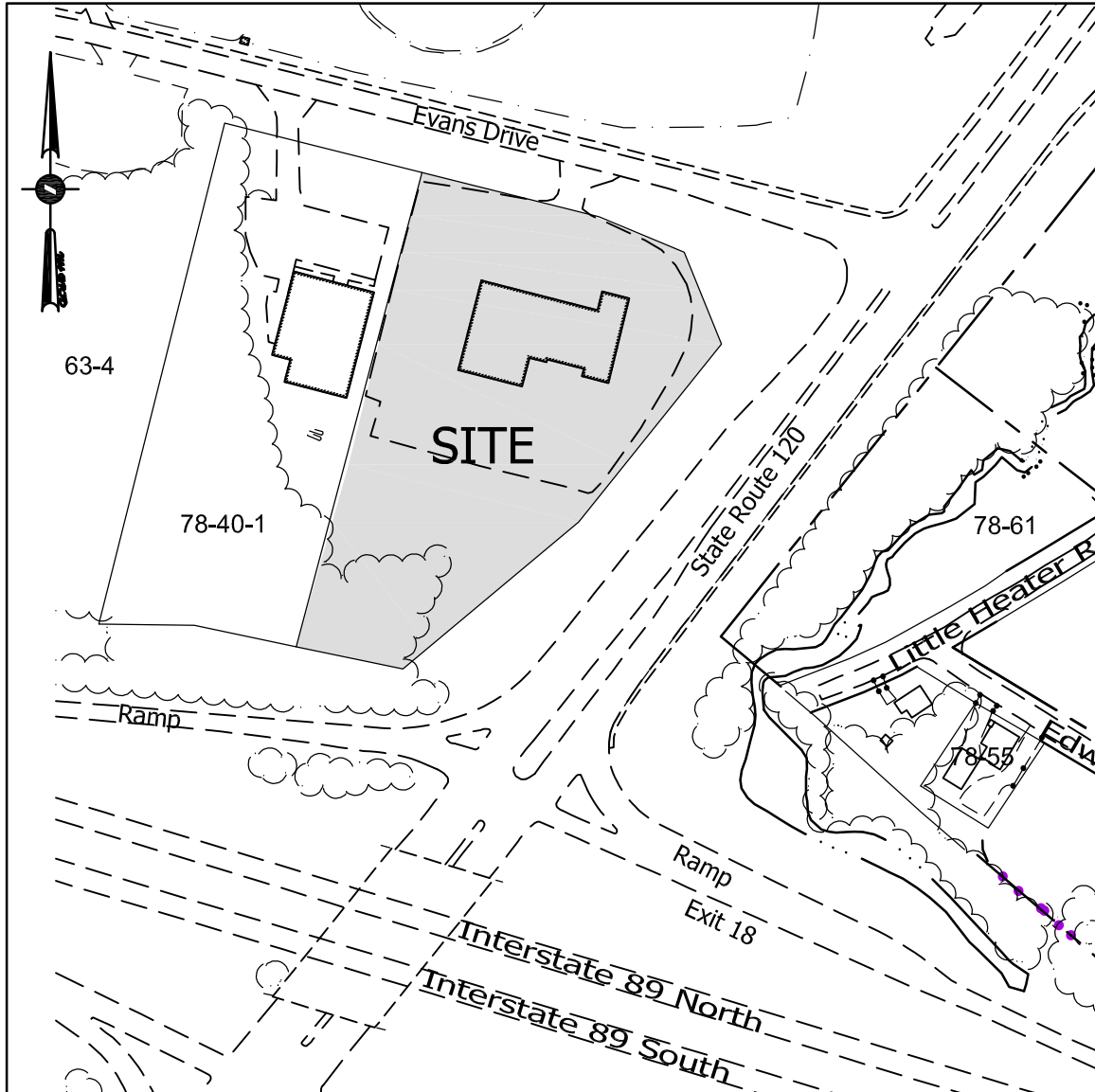
LANDSCAPE DESIGN
MARA ROBINSON
MARA LANDSCAPE DESIGN
16 MYRTLE AVENUE
NEWBURYPORT, MA 01950

SHEET
NUMBER

LEGEND
OVERALL PLAN
BOUNDARY SURVEY
EXISTING CONDITIONS PLAN
SITE PLAN
DETAILED GRADING PLAN
PAVER PANEL DETAIL
LANDSCAPE PLAN
LIGHTING PLAN
SITE DETAILS
EROSION CONTROL DETAILS

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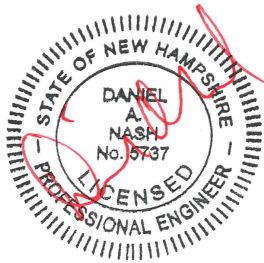
G-1
OA-1
-
X-1
C-1
C-2
C-3
L-1
L-2
D-1
D-5



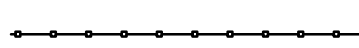
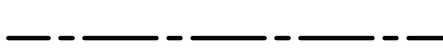
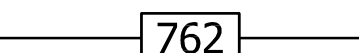
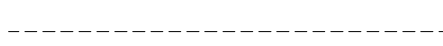
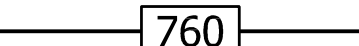
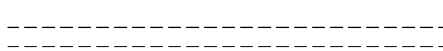
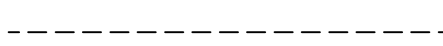
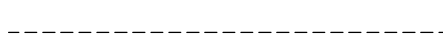
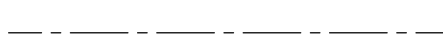
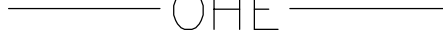
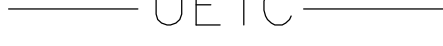
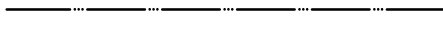
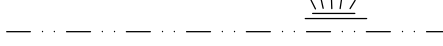
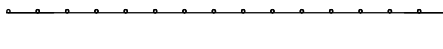
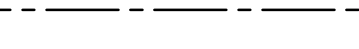
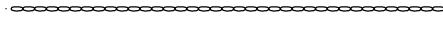
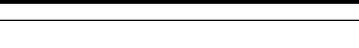
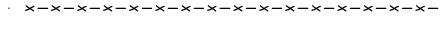
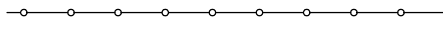
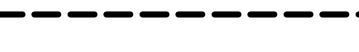
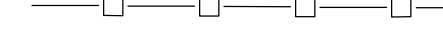
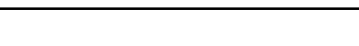
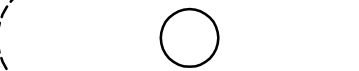
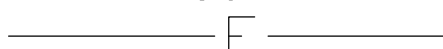
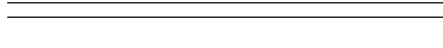
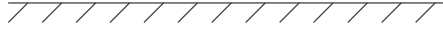
ZONING COMPARISON - R-O-1 DISTRICT			
	EXISTING	PROPOSED	REQUIRED
LOT SIZE	3.32+/- Ac	3.32+/- Ac	10,000SF
FRONTAGE: (EVANS DRIVE)	302'	302'	200'
FRONT YARD: (EVANS DRIVE)	72'	72'	20'
FRONT YARD: (ROUTE 120)	70'	70'	20'
SIDE YARD: (TO WEST)	94'	94'	15'
REAR YARD: (I-89)	334'	334'	20'
GROSS FLOOR AREA (s.f.):	16,348sf	16,348sf	
% BLDG. COVERAGE	11.3%	11.3%	25%
IMPERVIOUS AREA (sf)	96,375sf	108,926sf	
% IMPERVIOUS COV.	66.7%	75.4%	NONE
HEIGHT - ONE STORY	30±'	30±'	45' max.
USE:	VEHICULAR SALES		
PARKING (REG./HC.)			
VEHICULAR SALES	25/2	25/2	27(1/600SF)
SERVICE BAY (12)	46/2	46/2	48(4/BAY)
DISPLAY	88	109	-
TOTAL	161/2	182/2	
LOADING SPACES	1	1	-
BICYCLE SPACES	0	3	3

NOTES:

- 1. THIS PARCEL IS SHOWN AS LOT 78-40-2 THE LEBANON TAX MAPS PHYSICAL ADDRESS IS 51 EVANS DRIVE.
- 2. THIS PARCEL IS SERVED BY MUNICIPAL WATER AND SEWER.
- 3. THIS PARCEL IS SUBJECT TO THE WETLANDS OVERLAY DISTRICT.
- 4. THIS PARCEL IS SUBJECT TO THE FLOOD OVERLAY DISTRICT.
- 5. SUBJECT PARCEL IS ZONED R-O-1.

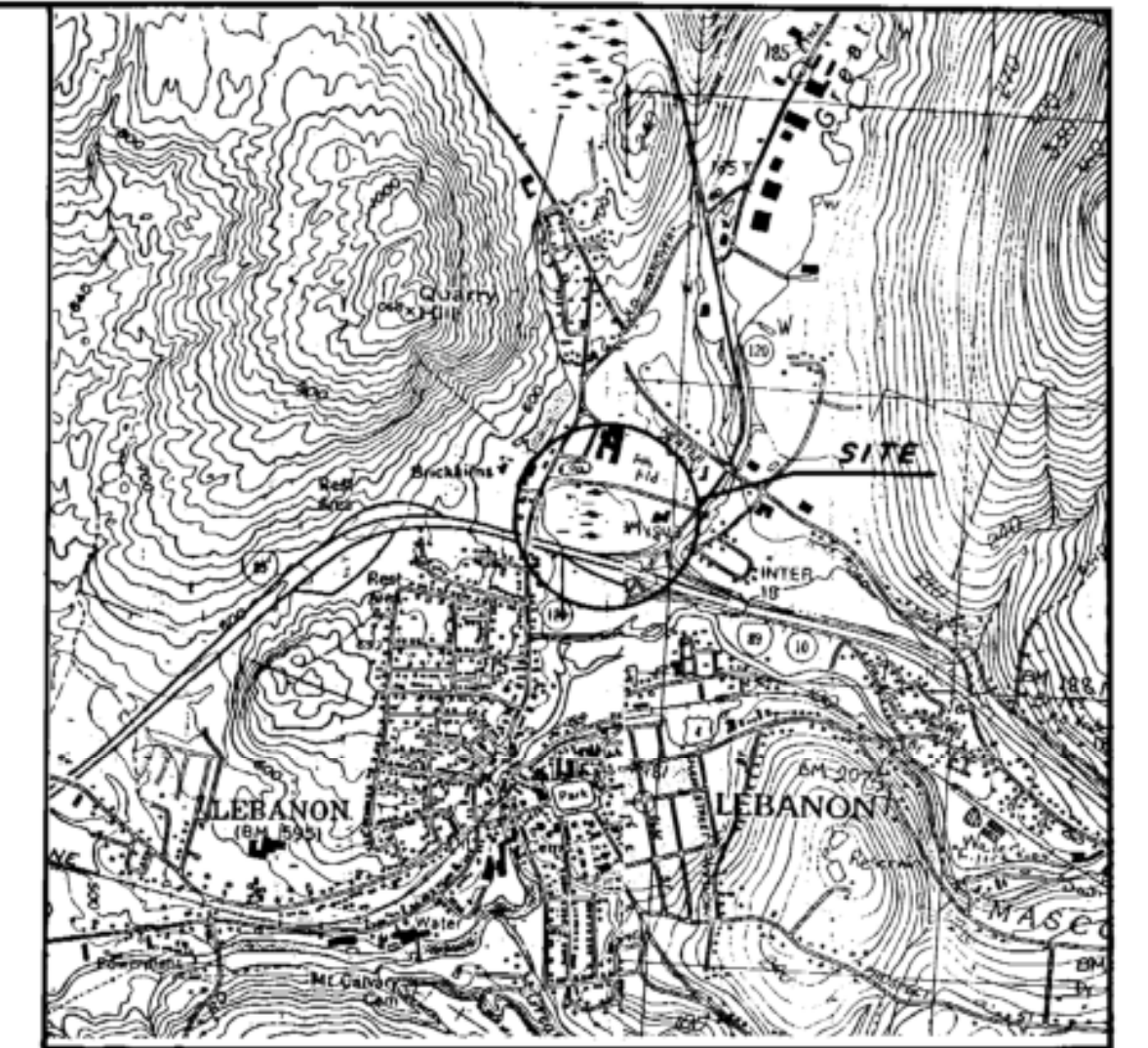
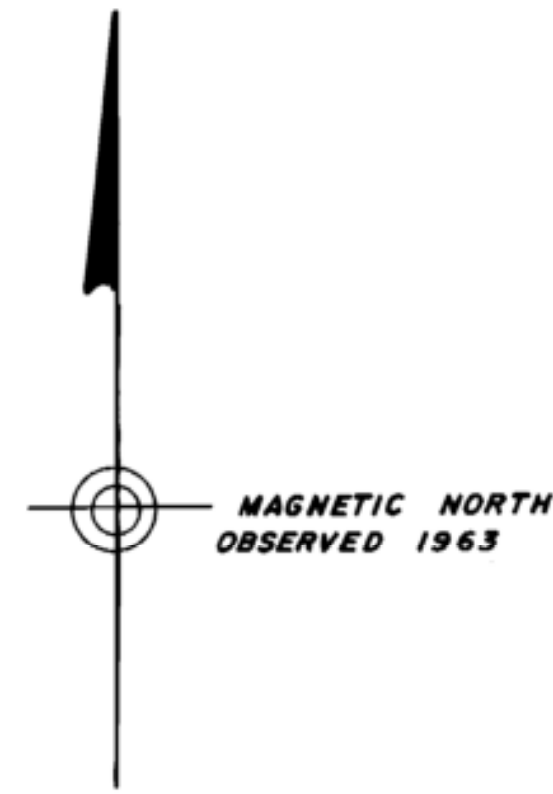


27JAN2025
~~12NOV2024~~
SITE PLAN AMENDMENT
PN: 23-006

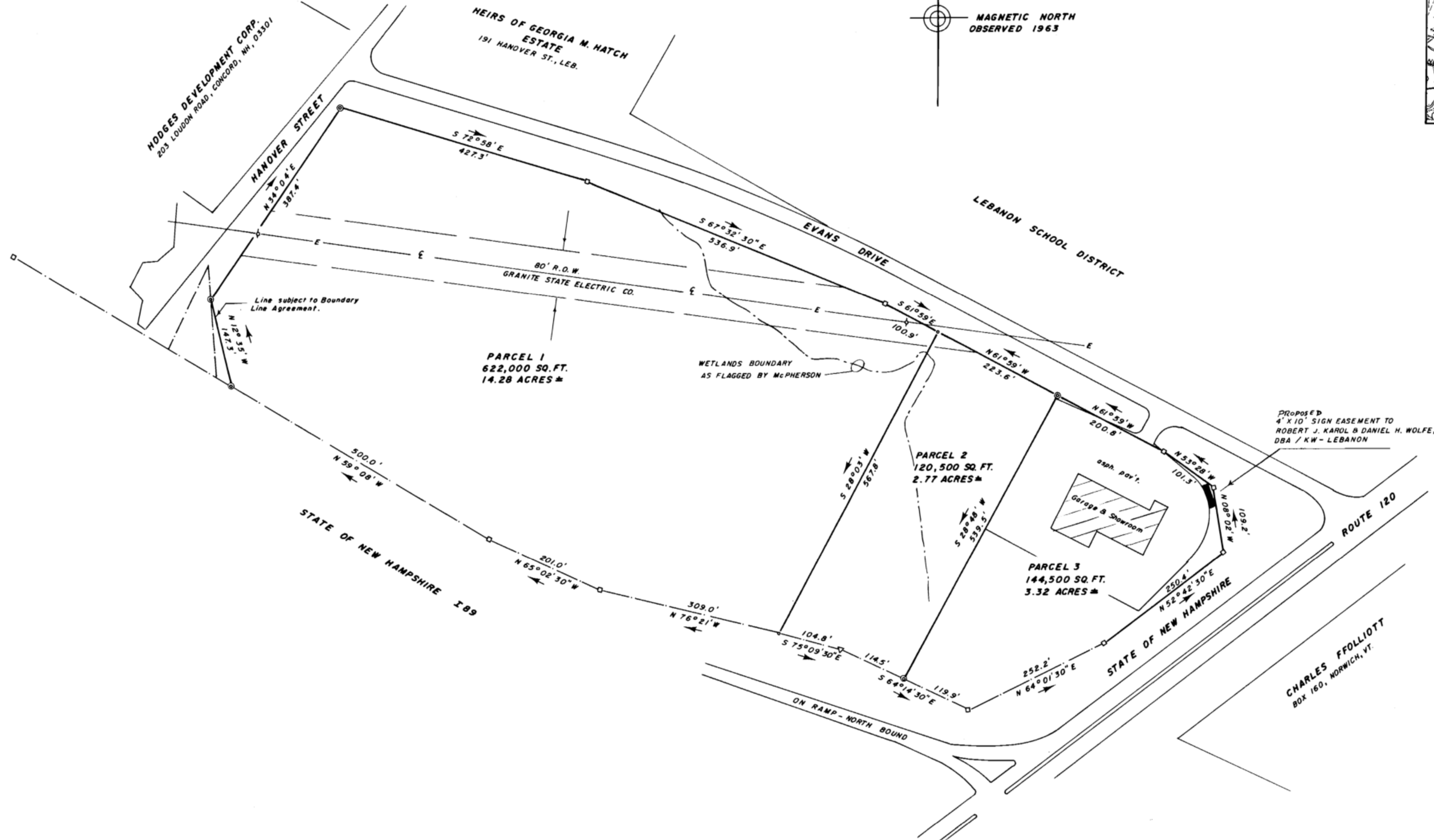
EXISTING LEGEND				EXISTING LEGEND(CONT.)				PROPOSED LEGEND				PROPOSED LEGEND(CONT.)			
	Boundary Corner	X 66.9	Spot Elevation		BOLLARD		DUMPSTER FENCE								
	Iron Pipe (Found)		Approximate Boundary Line		CLEANOUT		PAINTED/NO PARKING								
	Rebar (Found)		Approximate RRight-Of-Way Line		UTILITY POLE		2' CONTOUR								
	Stone Monument (Found)		Existing 1'/2' Contour		UTILITY POLE ANCHOR		10' CONTOUR								
	Survey Traverse Point		Existing 5'/10' Contour		LIGHT POLE		GAS LINE								
	Survey Control Disk		Curb		LIGHT		DRAIN LINE								
	Shrub		Edge Of Pavement		SEWER MANHOLE		UNDERDRAIN LINE								
	Hardwood Tree		Edge Of Gravel		DRAIN MANHOLE		WATER LINE								
	Softwood Tree		Painted White Line		RISER		SEWER LINE								
	Cleanout		Painted Yellow Line		CATCH BASIN		SEWER FORCEMAIN								
	Utility Pole		Overhead Electric/Telephone		YARD DRAIN		U.G. ELECTRIC								
	Light Pole		Overhead Electric		ELECTRIC MANHOLE		U.G. TELEPHONE								
	Bollard Light		Overhead Telephone		TELEPHONE MANHOLE		U.G. ELECTRIC/TELEPHONE								
	Light		U.g. Electric/Telephone/Cable		COMMUNICATION MANHOLE		U.G. ELECTRIC/TELEPHONE/CABLE								
	Utility Pole Anchor		Edge Of Brook/River		PROPANE TANK		RETAINING WALL								
	U.g. Electric Junction Box		Edge Of Wetland		U.G. TELEPHONE BOX		REDI-ROK RETAINING WALL								
	U.g. Electric Transformer		Guard Rail		U.G. CABLE TV BOX		CENTERLINE ROAD								
	U.g. Telephone Box		Stonewall		U.G. ELECTRIC JUNCTION BOX		CURB								
	U.g. Cable Tv Box		Wire Fence		U.G. ELECTRIC TRANSFORMER		EDGE OF WOODS								
	Curb Stop		Chainlink Fence		GATE VALVE		LIMIT OF DISTURBED								
	Gate Valve		Rail Fence		CURB STOP		BARRIER FENCE								
	Fire Hydrant		Drain Line		FIRE HYDRANT		UNDERGROUND PROPANE TANK								
	Drilled Well		Underdrain Line		DRILLED WELL		BUILDING ADDITION								
	Monitor Well		Water Line		SIGN		TOP OF WALL ELEVATION								
	Catch Basin		Sewer Line		PARKING SPACE NUMBER		GREASE TRAP/GRIT-OIL SEPARATOR								
	Drain Manhole		Sewer Forcemain		HANDICAP PARKING SPACE										
	Sewer Manhole		U.g. Electric		STORM WATER TREATMENT DEVICE										
	Riser		U.g. Telephone		DETECTABLE SURFACE (TRUNCATED DOME)										
	Telephone Manhole		Edge Of Woods		SPOT ELEVATION										
	Electric Manhole		Retaining Wall		UNDERDRAIN										
	Communication Manhole		U.g. Propane		DUMPSTER										
	Propane Tank		Edge Of building		BIKE RACK										
	Sign														

[illegible]

012771 Plan # 6670
GRAFTON COUNTY
REGISTRY OF DEEDS
RECEIVED July 30, 1990
RECORDED: LIBER 187 FOLIO 152
EXAMINED ATTEST: C. A. Leclair REGISTER



LOCUS MAP



- LEGEND**
- EXISTING IRON PIPE
 - EXISTING STATE HWY. CONC. BOUND & BOUNDARY POINT.
 - ⊙ SET IRON ROD
 - HWY. FENCE
 - UTILITY POLE
 - POWER LINE

SHEET 4 OF 12



I HEREBY CERTIFY THAT I HAVE MADE A SURVEY OF THE TRACT SHOWN HEREON AND THAT THIS PLAT IS MADE IN ACCORDANCE WITH THE FIELD NOTES OF SAID SURVEY.

K. A. Leclair

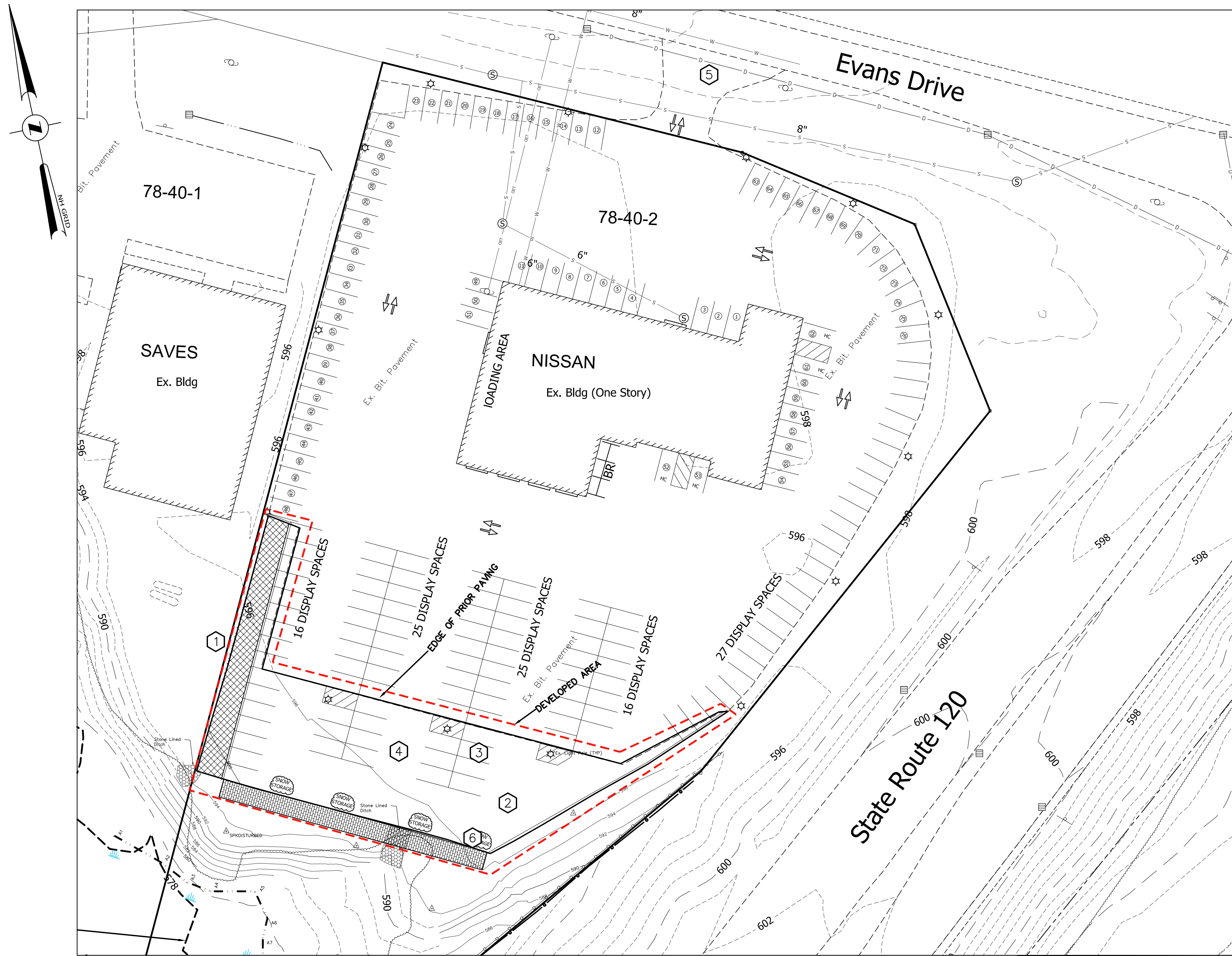


TAX MAP 7 LOTS 30 & 31

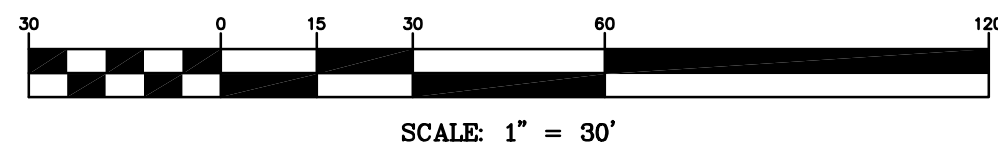
ANNEXATION PLAN
PARCEL 2 TO PARCEL 1

SMITH AUTO. SALES, INC.
ROUTE 120, EVANS DRIVE & HANOVER STREET
GRAFTON COUNTY LEBANON, N.H.
Scale 1" = 100' Date NOV. 15, 1988
Proj. No 60587A
K. A. LECLAIR ASSOC., Inc. Civil Engineers
HANOVER, N.H.

AA-4-87



KEY:
→ -TRAFFIC ARROW
BR -BIKE RACK



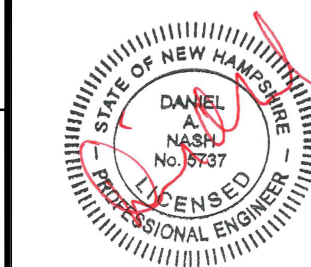
SITE PLAN

NOTES:

- 1 LANDSCAPE AREA. PAVEMENT TO BE REMOVED.
- 2 AREA OF PAVEMENT PLACED BEFORE PERMIT=14,416sf+/-.
PAVEMENT TO BE REMOVED=1,865sf+/-.
NET NEW PAVEMENT=12,551sf+/-.
- 3 VEHICLE PARKING/DISPLAY SPACES 9X18 TYPICAL.
- 4 24' AISLE
- 5 SITE DISTANCE GREATER THAN 300', BOTH DIRECTIONS.
- 6 PAVEMENT PAVERS

ADVANCED GEOMATICS & DESIGN

105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766
PHONE: (603) 448 6295
E-MAIL: advancedgeomatics@comcast.net



SURVEYED: PATON
DESIGNED: DAN
DRAWN: DAN
CHECKED: DAN
DATE: 11/22/2024

LEBANON
NISSAN

SITE
PLAN

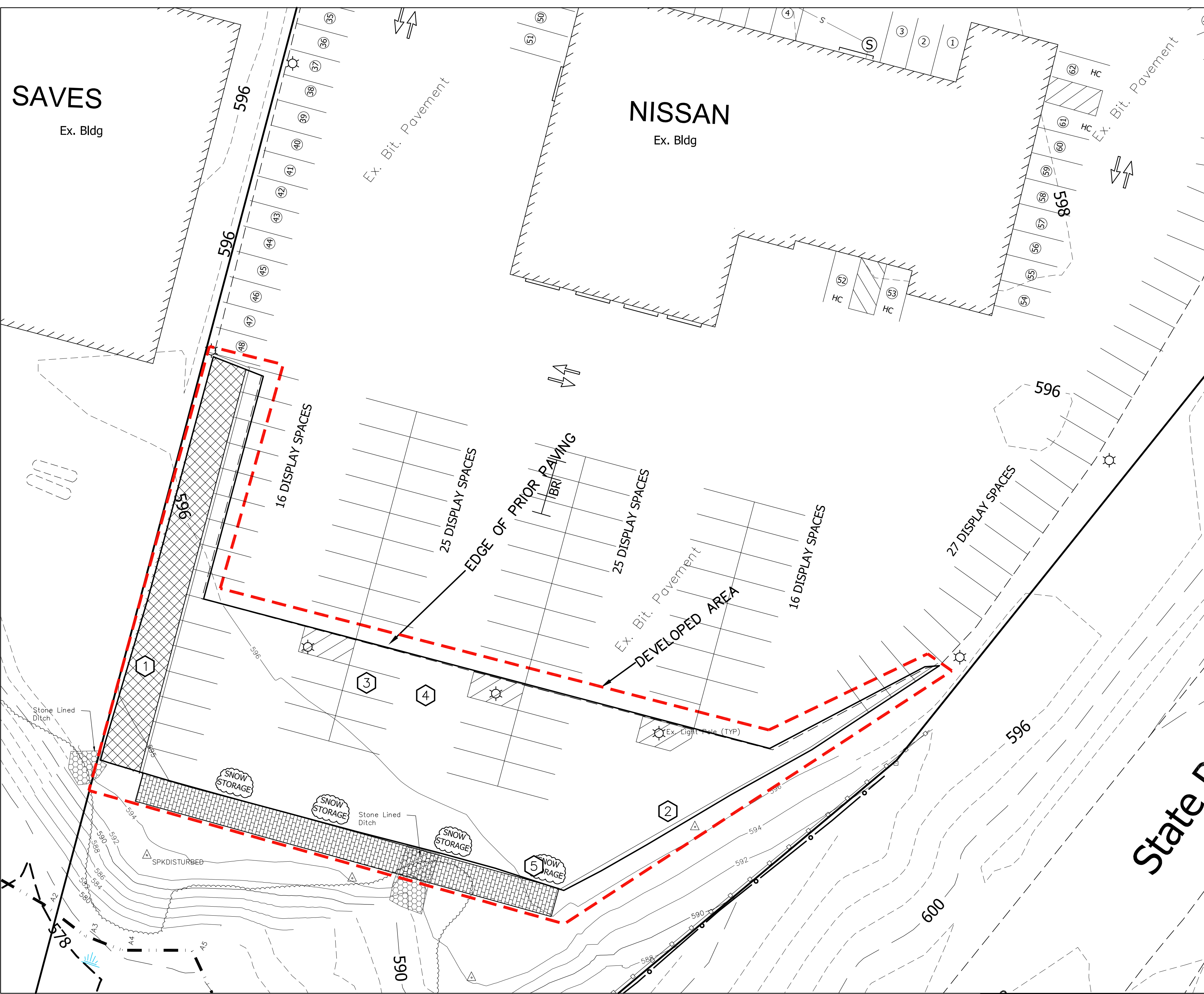
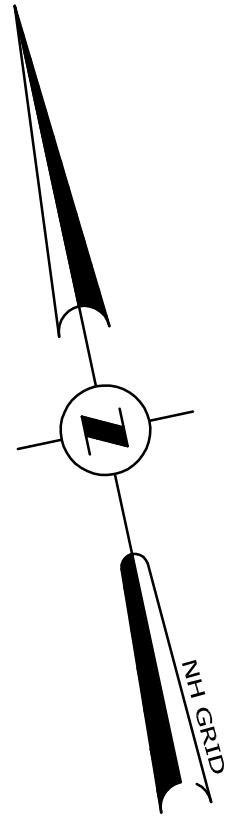
C-1

© 2024
ADVANCED GEOMATICS & DESIGN
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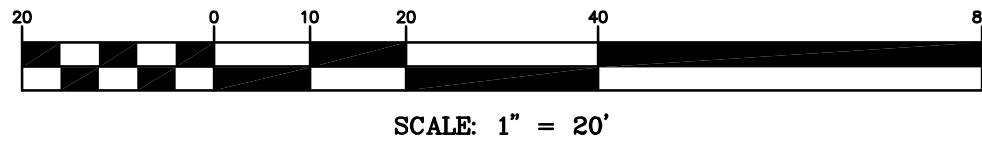
SHEET 6 OF 12

#	REVISIONS	DATE
1	STAFF COMMENTS	27JAN25

SITE PLAN
FOR
LEBANON NISSAN
IN
LEBANON, NH



KEY:
→ -TRAFFIC ARROW
|BR| -BIKE RACK



DETAILED GRADING PLAN

NOTES:

- 1 LANDSCAPE AREA. PAVEMENT TO BE REMOVED.
- 2 AREA OF PAVEMENT PLACED BEFORE PERMIT=14,416sf+/-.
PAVEMENT TO BE REMOVED=1,865sf+/-.
NET NEW PAVEMENT=12,551sf+/-.
- 3 VEHICLE PARKING/DISPLAY SPACES 9X18 TYPICAL.
- 4 24' AISLE
- 5 PAVEMENT PAVERS

#	DATE
1	27JAN25
REVISIONS	
STAFF COMMENTS	

FOR
LEBANON NISSAN
IN
LEBANON, NH

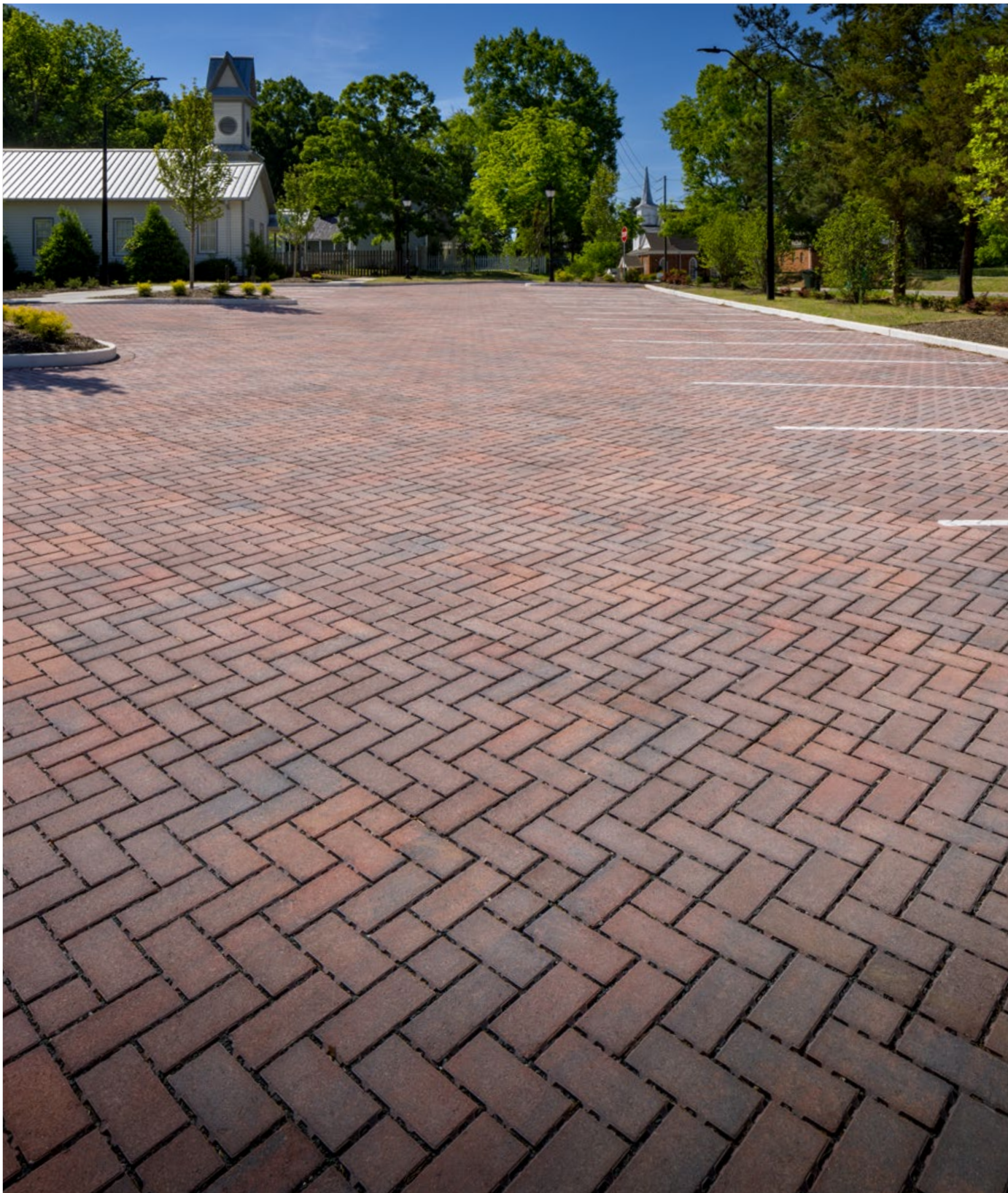
ADVANCED GEOMATICS & DESIGN
105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766
PHONE: (603) 448 6295
E-MAIL: advancedgeomatics@comcast.net



SURVEYED: PATON
DESIGNED: DAN
DRAWN: DAN
CHECKED: DAN
DATE: 12NOV2024

LEBANON NISSAN
DETAILED GRADING PLAN

C-2
© 2024
ADVANCED GEOMATICS & DESIGN
DWG: M:\23006-PL.DWG

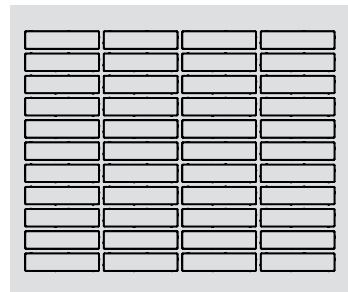


AQUALINE™

3 X 12
PERMEABLE PAVER

LOW MAINTENANCE AND PROVEN
DURABILITY THAT ALLOWS FOR
FLEXIBLE DESIGN OPTIONS

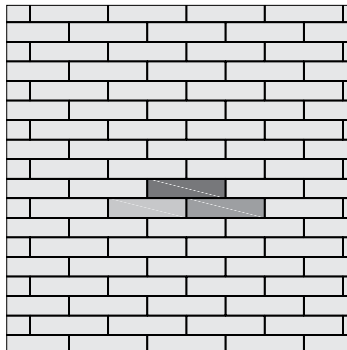
PALLET LAYOUT



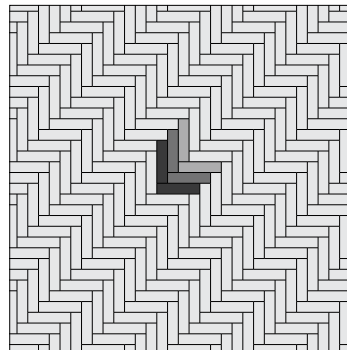
FEATURES & BENEFITS

- Can eliminate stormwater runoff and improve water quality
- Meets the requirements of ASTM C936
- Interlocking spacer bars for increased structural performance
- Smooth surface texture with a micro-chamfer to minimize vibration and enhance wheelchair comfort
- Can be utilized to construct an ADA-compliant pavement
- True installed dimensions for design optimization
- Optimal joint openings for infiltration and maintenance
- Chamfer Width: 3 mm
- Spacer Bar Width: 7 mm
- Surface Infiltration Rate: > 500 inches per hour (varies based on joint infill gradation)
- Surface Open Area: 10%

LAYING PATTERNS



RUNNING BOND



HERRINGBONE

Check with your local Belgard Representative for product availability and color options.

SHAPES & SIZES

PAVER



3 x 12 x 3/4"

belgardcommercial.com

877-235-4273

details@belgard.com

This drawing is for illustrative purposes only and should not be used for construction without the signature of a registered professional engineer.

Belgard Permeable Paving Detail PICP Pavement

Scale:

N.T.S.

Drawn by:

MAH

Date:

5/7/18

Drawing number:

PICP_1

PAVER PANEL DETAIL

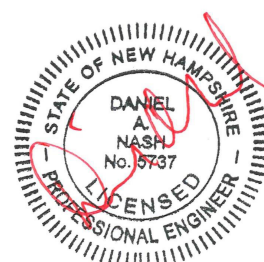
FOR
LEBANON NISSAN
IN
LEBANON, NEW HAMPSHIRE

ADVANCED GEOMATICS & DESIGN

105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766

PHONE: (603) 448 6295

E-MAIL: advancedgeomatrics@comcast.net



SURVEYED: PATON

DESIGNED: DAN

DRAWN: DAN

CHECKED: DAN

DATE: 11/22/2024

EDWARDS
PROPERTIES

PAVER PANEL
DETAIL

C-3

© 2024

ADVANCED GEOMATICS & DESIGN

DWG: C:\

PAVER PANEL DETAIL

N.T.S.

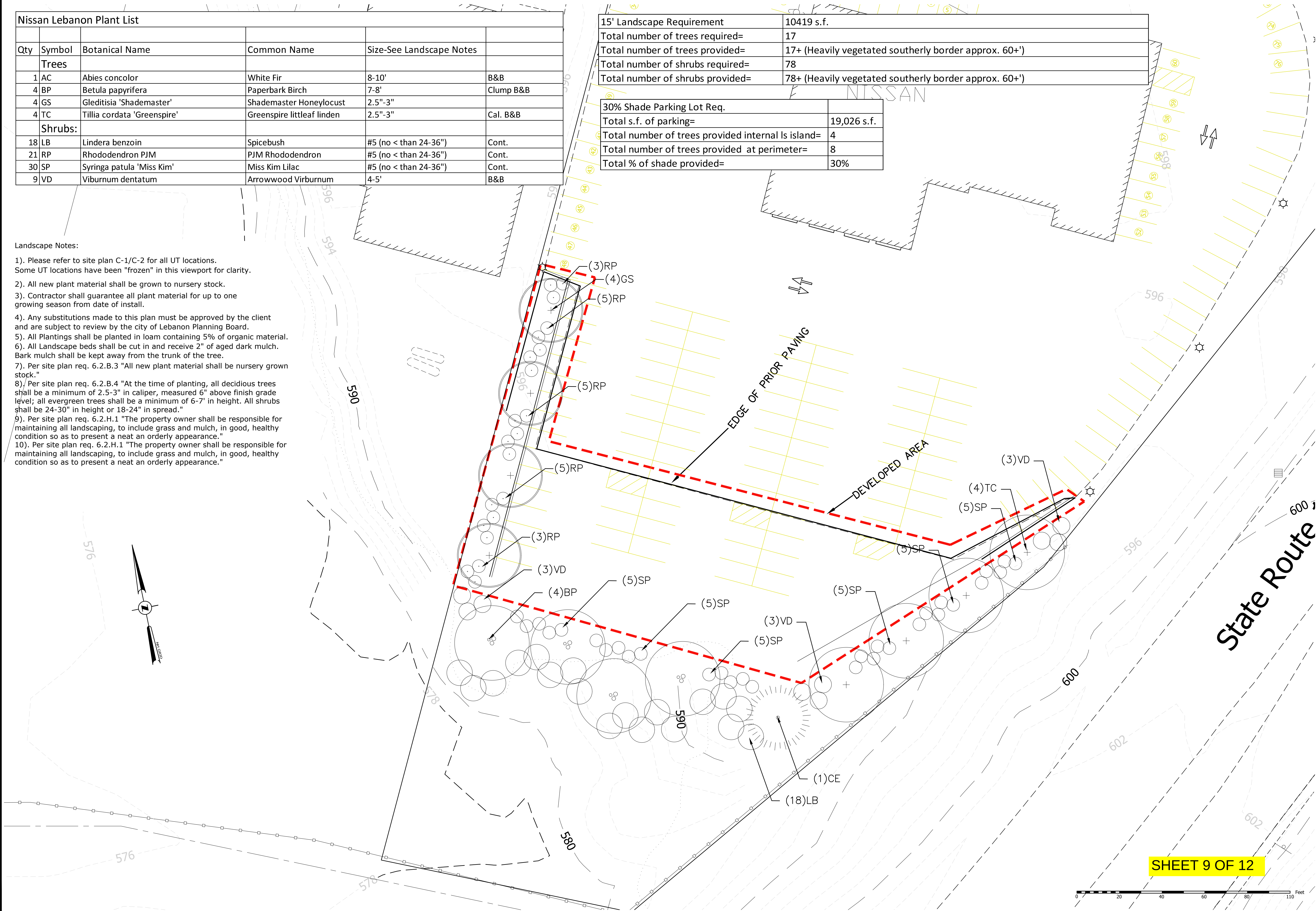
SHEET 8 OF 12

Nissan Lebanon Plant List				
Qty	Symbol	Botanical Name	Common Name	Size-See Landscape Notes
Trees				
1	AC	Abies concolor	White Fir	8-10'
4	BP	Betula papyrifera	Paperbark Birch	7-8'
4	GS	Gleditsia 'Shademaster'	Shademaster Honeylocust	2.5"-3"
4	TC	Tillia cordata 'Greenspire'	Greenspire littleleaf linden	2.5"-3"
Shrubs:				
18	LB	Lindera benzoin	Spicebush	#5 (no < than 24-36")
21	RP	Rhododendron PJM	PJM Rhododendron	#5 (no < than 24-36")
30	SP	Syringa patula 'Miss Kim'	Miss Kim Lilac	#5 (no < than 24-36")
9	VD	Viburnum dentatum	Arrowwood Virburnum	4-5'

15' Landscape Requirement	10419 s.f.
Total number of trees required=	17
Total number of trees provided=	17+ (Heavily vegetated southerly border approx. 60+')
Total number of shrubs required=	78
Total number of shrubs provided=	78+ (Heavily vegetated southerly border approx. 60+')

30% Shade Parking Lot Req.	
Total s.f. of parking=	19,026 s.f.
Total number of trees provided internal ls island=	4
Total number of trees provided at perimeter=	8
Total % of shade provided=	30%

- Landscape Notes:
- Please refer to site plan C-1/C-2 for all UT locations. Some UT locations have been "frozen" in this viewport for clarity.
 - All new plant material shall be grown to nursery stock.
 - Contractor shall guarantee all plant material for up to one growing season from date of install.
 - Any substitutions made to this plan must be approved by the client and are subject to review by the city of Lebanon Planning Board.
 - All Plantings shall be planted in loam containing 5% of organic material.
 - All Landscape beds shall be cut in and receive 2" of aged dark mulch. Bark mulch shall be kept away from the trunk of the tree.
 - Per site plan req. 6.2.B.3 "All new plant material shall be nursery grown stock."
 - Per site plan req. 6.2.B.4 "At the time of planting, all deciduous trees shall be a minimum of 2.5-3" in caliper, measured 6" above finish grade level; all evergreen trees shall be a minimum of 6-7' in height. All shrubs shall be 24-30" in height or 18-24" in spread."
 - Per site plan req. 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 an orderly appearance."
 - Per site plan req. 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 an orderly appearance."



L-1

Scale: 1"=20'

Rev. 1.23.25

Landscape Plan

created for:

Lebanon Nissan

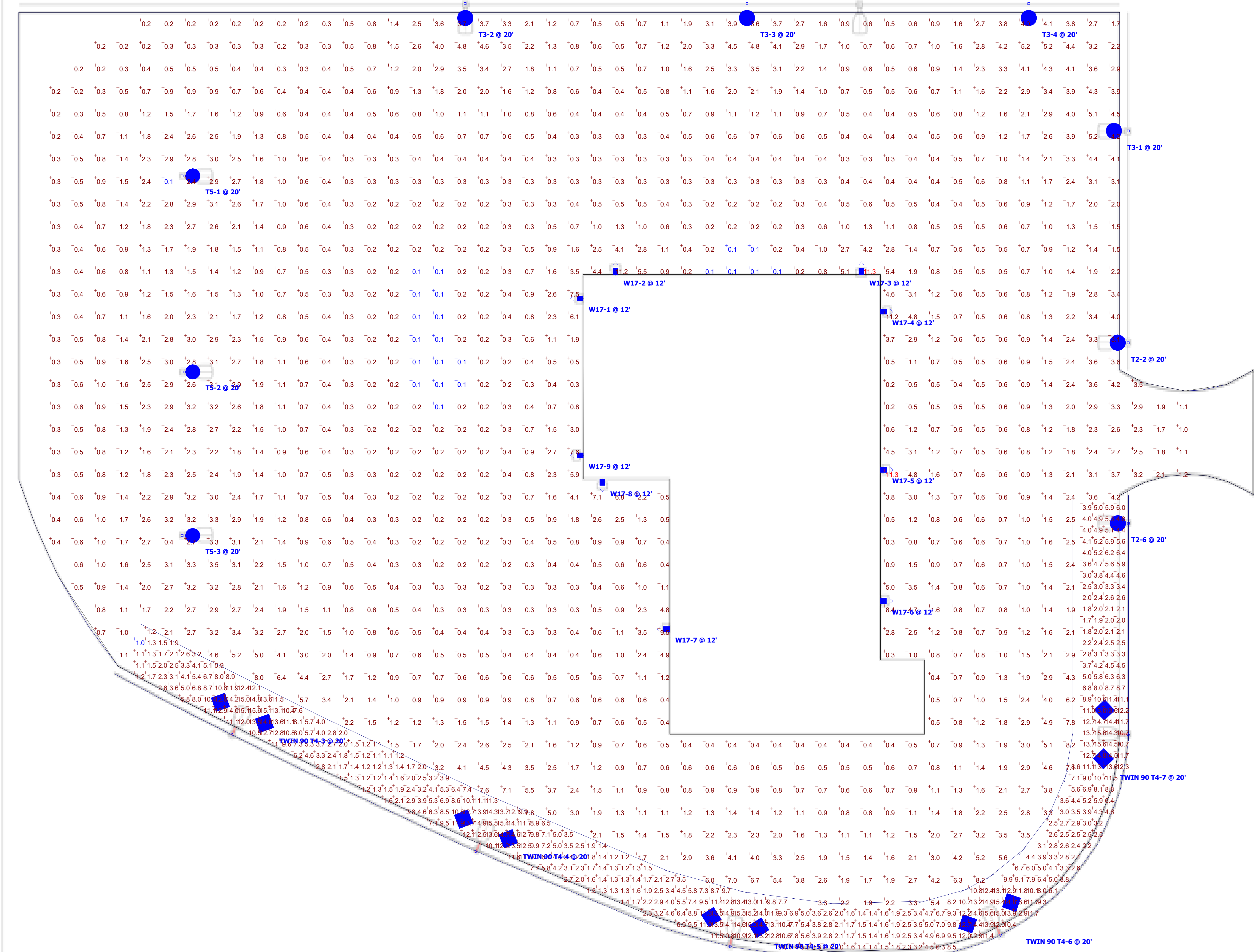
Located in:

Lebanon, NH

Mara landscape design, LLC

16 Myrtle Ave. Newburyport, MA 01950 105 BANK STREET Lebanon, NH 03766

maralandscape@gmail.com 978.868.0331



Plan View

Schedule							
Symbol	Label	Quantity	Manufacturer	Catalog Number	Description	Lumens Per Lamp	Wattage
	W17	9	RAB Lighting Inc.	W17-30L-830	Ultra Economy Low Profile Wall Pack	2678	27.4729
	T2	2	RAB LIGHTING INC. RC LIGHTING	IVAT2-100LSF730KU		10172	92.7632
	TWIN 90 T4	5	RAB LIGHTING INC. RC LIGHTING	IVAT4-130LSF730KU		13237	234.622
	T5	3	RAB LIGHTING INC.	IVAT55-100LPA730KU		10036	94.4661
	T3	4	RAB LIGHTING INC. RC LIGHTING	IVAT3-100LPA730KU		9591	91.0899

Statistics

Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
Car Line	+	6.5 fc	15.6 fc	1.0 fc	15.6:1	6.5:1
Parking Lot Calc	+	1.4 fc	11.3 fc	0.1 fc	113.0:1	14.0:1

- Note**
- AUTO "SHOW LINE" - IES RECOMMENDED LEVELS FOR AUTO RETAIL - LOW ACTIVITY = 5.0 FC AVERAGE @ 4'-0" ABOVE FINISHED GRADE
 - CALCULATION PLANE FOR GENERAL PARKING LOT @ GRADE.

The diagram shows a white wheelchair symbol on a blue square background. The symbol is composed of a circle with a horizontal bar and a person figure. Dimensions are indicated by arrows and text:

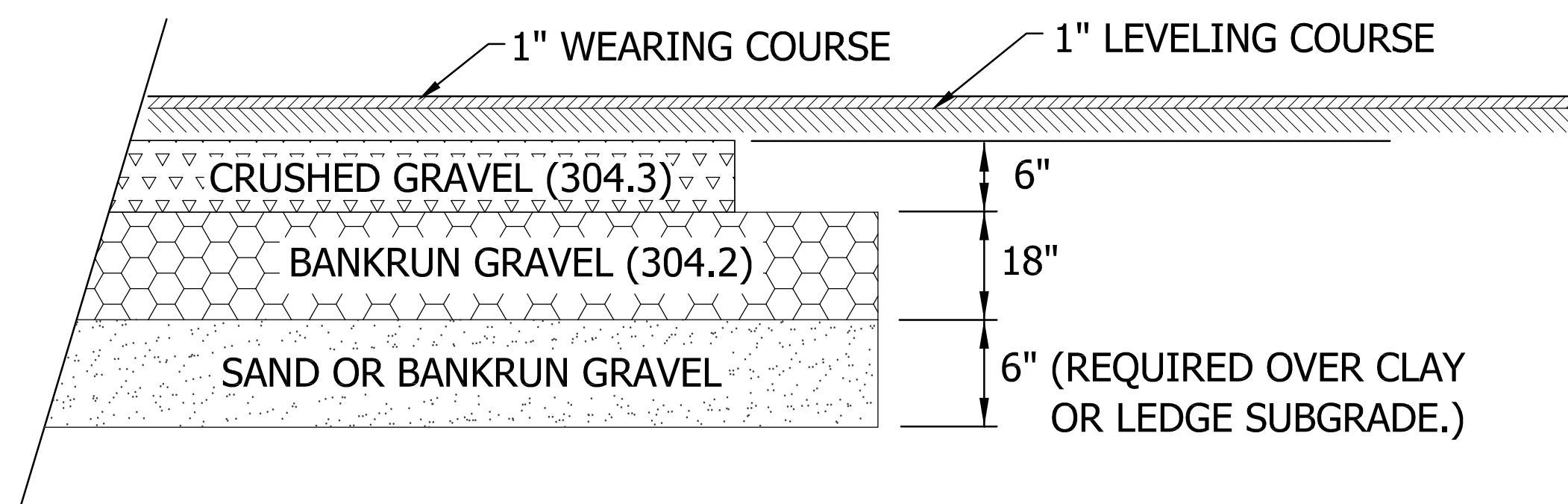
- Height of symbol:**
 - Minimum = 28 inches
 - Special = 41 inches
- Width of symbol:**
 - Minimum = 24 inches
 - Special = 36 inches
- Stroke width:**
 - Minimum = 3 inches
 - Special = 4 inches

Note: Blue background and white border are optional

RESERVED PARKING

R7-8
Reserved Parking (Accessible)

Diagram illustrating the cross-section of a sloped granite curb. The curb is shown on a sloped base (SUB-BASE) and is topped with 4" TOPSOIL. The curb face is 12" high. The curb is composed of stones, with joints between stones to be mortared. The curb is 6" thick at the top and 1" thick at the bottom. The curb is 11" MIN. to 13" MAX. wide at the top and 5" MIN. to 7" MAX. wide at the bottom. The curb is labeled EDGING TO BE PLACED PRIOR TO PLACING TOP SURFACE COURSE.



DE.)

CLASS A RESTORATION

SLOPED GRANITE CURB

6"

TOP COURSE OF PAVEMENT

BOTTOM COURSE OF PAVEMENT

6"

NON-STRUCTURAL CONCRETE

UNDISTURBED OR 95% COMPACTED MATERIAL (TYP.)

CURB SETTING DETAIL

N.T.S.

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ADVANCED GEOMATICS & DESIGN
DWG: 23006\23006-DET

EROSION CONTROL PLAN
ROAD, PARKING, BUILDING AND UTILITY CONSTRUCTION

DESIGN BASIS

THE MAJORITY OF THE SOIL TO BE DISTURBED DURING THE PROGRESS OF CONSTRUCTION ON THIS SITE WILL RESULT DURING THE ROAD, PARKING, BUILDING AND UTILITY CONSTRUCTION. CERTAIN CONSIDERATIONS HAVE BEEN MADE AND INCORPORATED IN THE CONSTRUCTION PLAN TO INSURE THAT A RETURN TO THE NATURAL STATE WILL BE EXPEDITIOUS AND RESULT IN PERMANENT CONTROL AGAINST SOIL EROSION AFTER THE PROJECT IS COMPLETE.

SITE PREPARATION

THE ENTIRE CONSTRUCTION SITE MAY BE CLEARED (TREES CUT) ALL AT ONCE BUT STOPPING AND/OR GRUBBING SHALL BE UNDERTAKEN IN A PHASED MANNER ALLOWING FOR COMPLETION WITHIN A REASONABLE TIME PERIOD, USUALLY NOT MORE THAN TWO WEEKS.

- 1) ALL NECESSARY AND REQUIRED EROSION CONTROL WILL NEED TO BE INSTALLED AND IN PLACE PRIOR TO ANY CLEARING AND GRUBBING.
- 2) ONCE THE TEMPORARY EROSION CONTROL MEASURES, AS DESCRIBED ON THE PLAN AND AS REQUIRED IN THE FIELD, ARE IN PLACE, GRUBBING, GRADING AND EARTHWORK MAY BEGIN IN PHASES. EACH PHASE, FROM THE BEGINNING OF CLEARING TO FINAL STABILIZATION OF SEEDING AND MULCHING, SHOULD BE ACCOMPLISHED WITHIN A REASONABLE PERIOD OF TIME, USUALLY TWO WEEKS. ALL DISTURBED AREAS SHALL BE STABILIZED WITHIN 45 DAYS OF DISTURBANCE THROUGH THE APPLICATION OF TEMPORARY OR PERMANENT EROSION CONTROL MEASURES DESCRIBED HEREIN. IN NO CASE SHALL A DISTURBED AREA REMAIN UNSTABILIZED FOR ANY MORE THAN 45 DAYS.
- 3) ALL BLASTING WILL BE COMPLETED UNDER BLAST MATS OR EARTH OVERBURDEN IN ORDER TO PREVENT UNCONTROLLED EJECTION OF ROCK FRAGMENTS. BLASTING SHALL ALSO CONFORM TO ALL STATE AND FEDERAL STANDARDS.
- 4) SLOPES WILL BE BROUGHT TO FINAL GRADE AS RAPIDLY AS POSSIBLE. AT THE END OF EACH DAY'S OPERATION, THE SEGMENT OF THE SLOPE UNDER CONSTRUCTION WILL EITHER BE SEEDED AND MULCHED UPON COMPLETION OF FINAL GRADE, OR ALL EROSION CONTROL MEASURES INSPECTED TO INSURE THAT THEY WOULD FUNCTION PROPERLY IN THE EVENT OF A RAIN DURING THE NON-WORKING PERIODS.
- 5) AREAS GRUBBED AND NOT GRADED SHALL BE MULCHED AND TRACKED IN WITH A BULLDOZER OR ROLLER WITHIN 7 DAYS. ANY GRADED AREAS NOT BEING WORKED (ROADWAYS, BUILDING PADS) SHALL BE MULCHED AND TRACKED IN WITHIN 7 DAYS OF DISTURBANCE.
- 6) THE DISTURBED AREA SHALL BE KEPT TO THE SMALLEST AREA PRACTICABLE. IN NO CASE SHALL UNSTABILIZED DISTURBED AREA EXCEED 5 ACRES.

THE BASIS OF DESIGN TO INSURE A MINIMUM OF SOIL EROSION DURING CONSTRUCTION IS AS FOLLOWS:

1) TEMPORARY EROSION CONTROL

ALL FINISH GRADED AREAS SHALL BE MULCHED AND SEEDED EXPEDITIOUSLY AS SOON AS THEY ARE SO GRADED. IT SHOULD BE POSSIBLE TO PLACE SEED AND MULCH WITHIN ONE WEEK OF FINISH GRADING. ALL DITCHES, SWALES, AND THE TREATMENT SWALE SHALL BE STABILIZED PRIOR TO DIRECTING FLOW INTO THEM.

PROBLEM AREAS SUCH AS WET SITE AND INTERMITTENT WATER COURSES WILL BE GIVEN PRELIMINARY SEED AND MULCH COATS PRIOR TO FINAL PLANTING AS AN EXTRA PRECAUTION.

TOP SOIL STOCKPILED FOR FUTURE USE IS TO BE PROTECTED FROM EROSION. IF TOPSOIL IS TO BE STOCKPILED, IT SHALL ONLY BE DONE OUTSIDE ANY DRAINAGE WAYS OR WATER COURSES. A SWALE NOT LESS THAN TWELVE INCHES DEEP SHALL BE CONSTRUCTED AROUND THE PERIMETER OF THE STOCKPILE AND A SILT FENCE SHALL BE CONSTRUCTED AROUND THE SWALE, ON THE DOWNSTREAM HALF OF THE PILE. IF THE STOCKPILE IS TO REMAIN IN POSITION FOR MORE THAN ONE MONTH IT WILL BE SEEDED AND MULCHED. (SEE STOCKPILE TREATMENT DETAIL)

AN AREA SHALL BE CONSIDERED STABLE IF ONE OF THE FOLLOWING HAS OCCURRED:

- BASE COURSE GRAVELS HAVE BEEN INSTALLED IN AREAS TO BE PAVED;
- A MINIMUM OF 85% VEGETATED GROWTH HAS BEEN ESTABLISHED;
- A MINIMUM OF 3" OF NON-EROSIVE MATERIAL SUCH AS STONE RIPRAP HAS BEEN INSTALLED; OR
- EROSION CONTROL BLANKETS HAVE BEEN PROPERLY INSTALLED.

2) TEMPORARY SEEDING AND MULCHING

ALL ESSENTIAL GRADING AND ALL TEMPORARY STRUCTURES, SUCH AS DIVERSIONS, DAMS, DITCHES, AND DRAINS NEEDED TO PREVENT GULLYING AND REDUCE SILTATION SHOULD BE COMPLETED PRIOR TO SEEDING. REMOVE STONES AND TRASH THAT WILL INTERFERE WITH SEEDING THE AREA. WHERE FEASIBLE, TILL THE SOIL TO A DEPTH OF ABOUT 3 INCHES TO PREPARE A SEEDED AND MIX FERTILIZER 15%. THE SEEDED SHOULD BE LEFT IN A FIRM AND SMOOTH CONDITION. THE LAST TILLAGE OPERATION SHOULD BE PERFORMED ACROSS THE SLOPE WHEREVER POSSIBLE. FERTILIZER SHOULD BE UNIFORMLY SPREAD OVER THE AREA PRIOR TO BEING INCORPORATED INTO THE SOIL. A MINIMUM OF 300 POUNDS PER ACRE (7 POUNDS PER 1,000 SQUARE FEET) OF 10-10-10 FERTILIZER, OR ITS EQUIVALENT, SHOULD BE APPLIED. SEED AND SEEDING RATES MAY BE SELECTED FROM THE TABLE BELOW. THE SELECTION WILL BE BASED ON THE TIME OF YEAR THE SEEDING IS TO BE MADE AND THE LENGTH OF TIME THE VEGETATION IS TO AFFORD THE PROTECTION. THE SEED SHOULD BE SPREAD UNIFORMLY OVER THE AREA. AFTER SEEDING, THE SOIL SHOULD BE FIRMED BY ROLLING OR PACKING. WHERE ROLLING OR PACKING IS NOT FEASIBLE, THE SEED SHOULD BE COVERED LIGHTLY BY RAKING, DISKING, OR DRAGGING. WHERE IT IS IMPRACTICABLE TO INCORPORATE FERTILIZER AND SEED INTO MOIST SOIL, THE SEEDED AREA SHOULD BE MULCHED TO FACILITATE GERMINATION.

SPECIES	PER ACRE	PER 1000 SQ.FT.	REMARKS
WINTER RYE	2 BU. OR 112 LBS.	2.5 LBS.	BEST FOR ALL SEEDING. SEED FROM AUGUST 15 TO SEPTEMBER 5 FOR BEST COVER. SEED TO A DEPTH OF 1 INCH.
OATS	2.5 BU. OR 80 LBS.	2 LBS.	BEST FOR SPRING SEEDINGS. SEED NO LATER THAN MAY 15 FOR SUMMER PROTECTION. SEED TO A DEPTH OF 1 INCH.
ANNUAL RYEGRASS	40 LBS.	1 LB.	GROWS QUICKLY, BUT IS OF SHORT DURATION. USE WHERE APPEARANCES ARE IMPORTANT. SEED EARLY SPRING AND/OR BETWEEN AUGUST 15 AND SEPTEMBER 15. COVER THE SEED WITH NO MORE THAN 0.25 INCHES OF SOIL.
PERENNIAL RYEGRASS	30 LBS.	0.7 LBS.	GOOD COVER WHICH IS LONGER LASTING THAN ANNUAL RYEGRASS. SEED BETWEEN APRIL 1 AND JUNE 1 AND/OR BETWEEN AUGUST 15 AND SEPTEMBER 15. MULCHING WILL ALLOW SEEDING THROUGHOUT THE GROWING SEASON. SEED TO A DEPTH OF APPROXIMATELY 0.5 INCH.

3) ROADWAY

THE ROADWAY IS A TYPICAL CUT/FILL OPERATION. IN AREAS WHERE SOILS MAY BE SATURATED BY SEASONAL OR PERMANENT WATER TABLES, IT MAY BE NECESSARY TO PROVIDE ARTIFICIAL SLOPE STABILIZATION BY UNDERDRAIN MEASURES TAKEN AS THEY ARE UNCOVERED DURING CONSTRUCTION. WHERE SATURATED SOILS ARE OBVIOUS WITHOUT EXPLORATION, CUT SECTIONS HAVE BEEN AVOIDED IN AS MUCH AS IS PRACTICAL.

- 4) CLEARING AND GRUBBING STUMPS ARE TO BE CHIPPED IN PLACE AND ALLOWED TO DECOMPOSE, PLACED IN NON STRUCTURAL FILL SECTIONS OR SHALL BE REMOVED TO AN APPROVED STUMP DUMP.
- 5) SEEDING AND MULCHING

ALL AREAS WHERE THE NATURAL GROUND SURFACE HAS BEEN DISTURBED AND NATURAL VEGETATION REMOVED OR DESTROYED ARE TO BE SEEDED, FERTILIZED AND MULCHED WITHIN THE WORK PERIOD SPECIFIED TO AVOID SOIL DISPLACEMENT BY EROSION BOTH DURING AND AFTER CONSTRUCTION. STANDARD SOIL CONSERVATION SEED MIX IS TO BE APPLIED AT A RATE OF 60 LBS. PER ACRE (TALL FESCUE - 24 LBS., RED FESCUE - 20 LBS., RED TOP - 2 LBS., AND BIRDSFOOT TREFOIL- 4 LBS.). 10-10-10 FERTILIZER IS TO BE WORKED INTO THE TOP 3 OR 4 INCHES OF SOIL (HYDRAULIC APPLICATION PREFERRED) AT A RATE OF 1,000 LBS. PER ACRE. MULCH CONSISTING OF RIPE SEED CARRYING HAY SHALL BE APPLIED OVER SEEDED AND FERTILIZED AREAS AT A RATE OF 2 TONS PER ACRE.

6) EROSION CONTROL DURING BUILDING CONSTRUCTION

ALL PLACES WHERE NATURAL VEGETATION IS REMOVED OR DESTROYED DURING CONSTRUCTION WILL BE SEEDED AND MULCHED SO AS TO PREVENT DISPLACEMENT OF SOIL BY EROSION. WORK TO BE PERFORMED IN THESE PHASES OF CONSTRUCTION WILL BE SCHEDULED IN SUCH A WAY TO INSURE EROSION WILL BE EFFECTIVELY CONTROLLED.

IN CASES OF PROLONGED INCLEMENT WEATHER LEADING TO RUNOFF, EXPOSURE OF NEW SOIL WILL BE TEMPORARILY HALTED; AND ANY AREAS WHERE SOIL DISPLACEMENT BY EROSION IS OCCURRING WILL BE PROTECTED BY METHODS SUCH AS MULCHING, HAY BALES, DIVERSION DITCHES, ETC.

7) COMMENCEMENT AND COMPLETION

ALL WORK INVOLVING EARTHWORK, LANDSCAPING OR ANY OTHER DISTURBANCES OF THE GROUND SURFACE RESULTING IN THE REMOVAL OR DESTRUCTION OF NATURAL GROUND COVER SHALL NOT BE COMMENCED UNTIL APRIL 1 AND ALL AREAS SO DISTURBED SHALL BE FINISH GRADED, SEEDED AND MULCHED OR TEMPORARILY SEEDED AND MULCHED PRIOR TO NOVEMBER 15. SHOULD THERE BE A NEED TO EXTEND BEYOND THIS DATE, EXTRAORDINARY EROSION CONTROL MEASURES WILL BE INSTITUTED, SUBJECT TO THE REVIEW AND APPROVAL FROM THE DEPARTMENT OF ENVIRONMENTAL SERVICES AND OTHER APPLICABLE PERMITTING AGENCIES. PROCESSES SUCH AS THE PLACEMENT OF GRAVEL, PAVING, PLACEMENT OF STONE FILL, CONSTRUCTION OF HEADWALLS, ETC., MAY BE ACCOMPLISHED OUTSIDE OF THESE INCLUSIVE DATES.

8) DUST CONTROL

THE CONTRACTOR IS RESPONSIBLE FOR DUST CONTROL WITHIN THE PROJECT LIMITS.

CALCIUM CHLORIDE OR WATER WILL BE USED AS NEEDED TO CONTROL DUST.

AT THE END OF EACH DAY OR PRIOR TO CONSTRUCTION SHUTDOWNS FOR WEEKENDS OR FOR LONG PERIODS, ALL EROSION CONTROL MEASURES WILL BE INSPECTED AND WHATEVER MAINTENANCE THAT WOULD BE REQUIRED, BE PERFORMED IN ORDER TO INSURE THAT THE ENTIRE EROSION CONTROL SYSTEM WOULD FUNCTION PROPERLY DURING A RAINFALL EVENT.

WINTER CONSTRUCTION NOTES:

- ALL PROPOSED VEGETATED AREAS WHICH DO NOT EXHIBIT A MINIMUM OF 85% 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 NETTING. ELSEWHERE, THE INSTALLATION OF EROSION CONTROL BLANKETS OR MULCH AND NETTING SHALL NOT OCCUR OVER ACCUMULATED SNOW OR FROZEN GROUND AND SHALL BE COMPLETED IN ADVANCE OF THAW OR SPRING MELT EVENTS;
- ALL DITCHES OR SWALES WHICH DO NOT EXHIBIT A MINIMUM OF 85% 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
- 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 NHDOT ITEM 304.3.

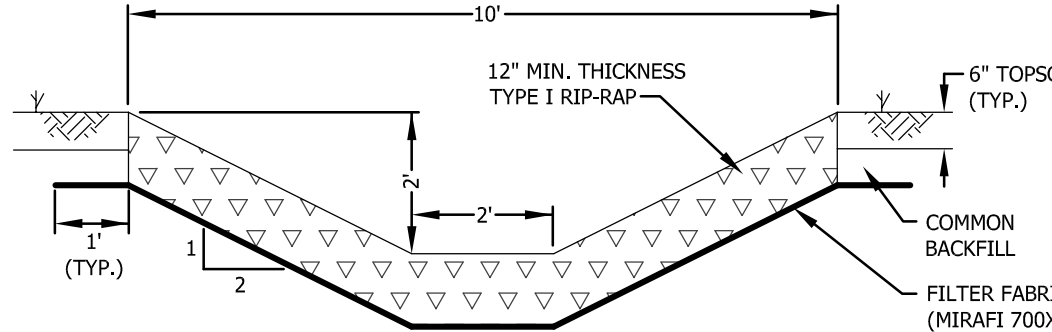
EROSION CONTROL CHART

ACTIVITY:	TYPE OF CONTROL:	MAINTENANCE (*):
1) CLEARING AND GRUBBING	SILT FENCE	B
2) ACCESS ROADS AND PARKING	STACKED HAY BALES	B
	GRASS SEED AND MULCH	A
	SILT FENCE	B
3) DRAINAGE STRUCTURES	STACKED HAY BALES	B
	GRASS SEED AND MULCH	A
4) HOUSE SITES	SILT FENCE	B
	STACKED HAY BALES	B
	GRASS SEED AND MULCH	A
5) UTILITIES	GRASS SEED AND MULCH	A

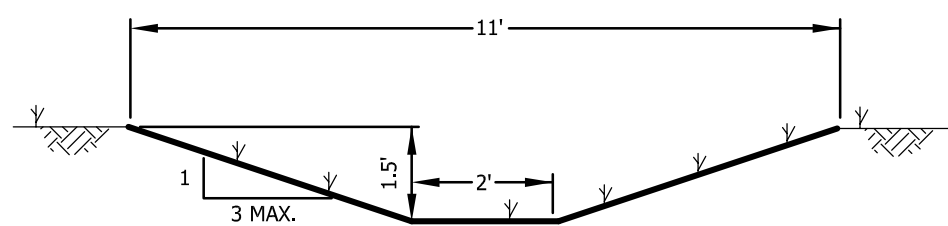
MAINTENANCE INDEX

*) DAMAGED EROSION CONTROL MEASURES WILL BE REPAIRED AND/OR REPLACED AS SOON AS POSSIBLE. DAMAGE TO ANY EROSION CONTROL MEASURE AS A RESULT OF CONSTRUCTION ACTIVITIES SHALL BE REPAIRED IMMEDIATELY. EROSION CONTROL MEASURES THAT TRAP SEDIMENT WILL BE EMPTIED WHEN HALF FULL. SEE EROSION CONTROL TEXT FOR IMPLEMENTATION OF THESE EROSION CONTROL MEASURES.

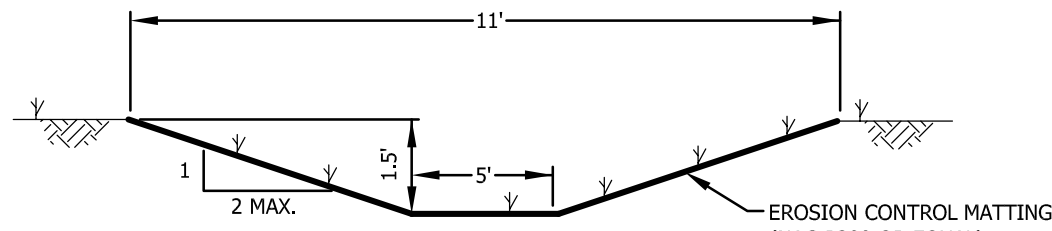
- A) TO BE INSPECTED DAILY.
- B) TO BE INSPECTED ONCE A WEEK AND AFTER RUNOFF OF 0.5" OR GREATER. REPAIRS SHALL BE MADE WITHIN 24 HOURS OF INSPECTION.



STONE LINED DITCH
(AS NOTED AND ON ROAD DITCHES > 5%)



GRASS LINED DITCH



GRASS LINED DITCH

STONE FOR RIP-RAP

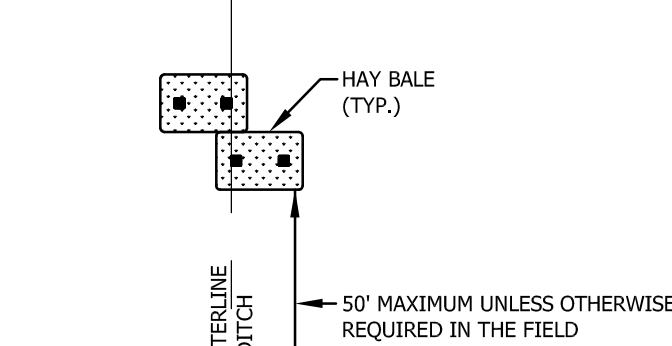
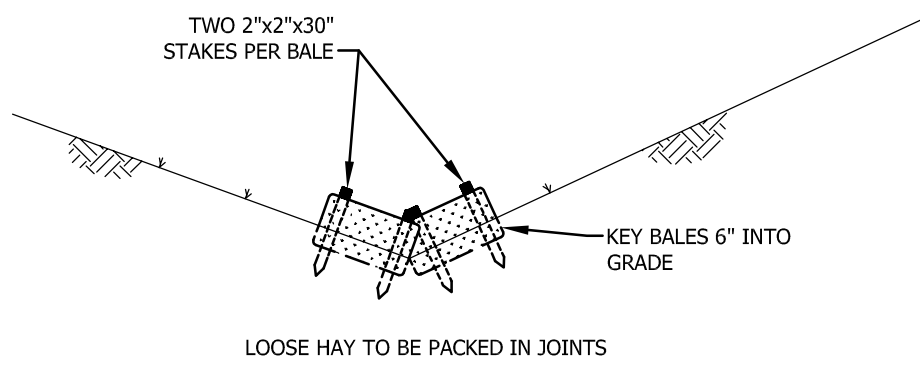
STONE FOR RIP-RAP SHALL BE APPROVED, HARD, BLASTED ANGULAR ROCK OTHER THAN SERPENTINE ROCK CONTAINING THE FIBROUS VARIETY CHRYSOTILE (ASBESTOS). THE LEAST DIMENSION OF THE STONE SHALL BE GREATER THAN 1/3 OF THE LONGEST DIMENSION. THE STONE FILL SHALL BE REASONABLY WELL GRADED FROM THE SMALLEST TO THE MAXIMUM SIZE STONE SPECIFIED SO AS TO FORM A COMPACT MASS WHEN IN PLACE.

- (A) TYPE I. THE LONGEST DIMENSION OF THE STONE SHALL VARY FROM 1 INCH TO 12 INCHES, AND AT LEAST 50 PERCENT OF THE VOLUME SHALL HAVE A LEAST DIMENSION OF 4 INCHES.
- (B) TYPE II. THE LONGEST DIMENSION OF THE STONE SHALL VARY FROM 2 INCHES TO 36 INCHES, AND AT LEAST 50 PERCENT OF THE VOLUME SHALL HAVE A LEAST DIMENSION OF 12 INCHES.

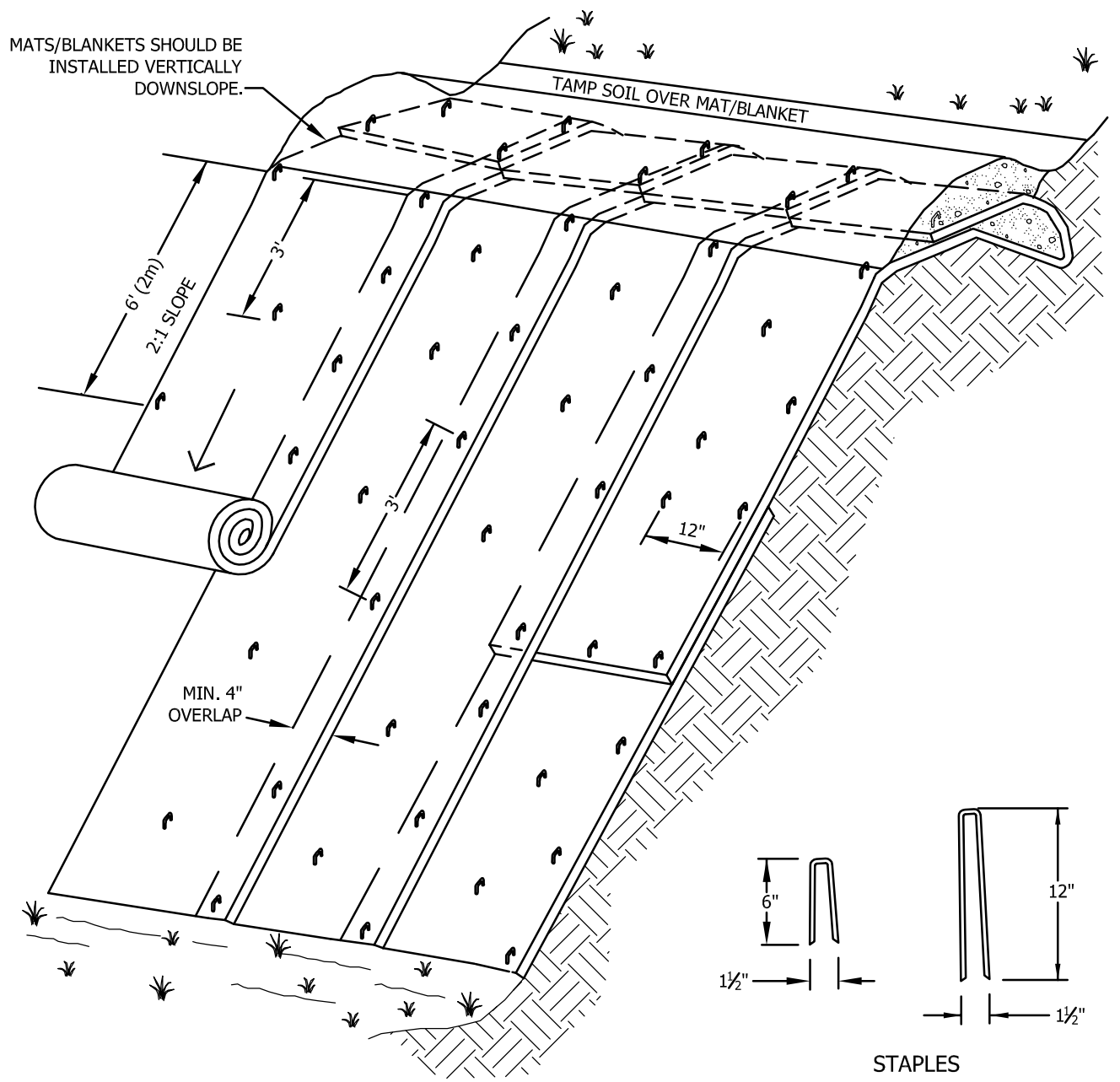
TYPICAL DRAINAGE DITCH SECTIONS

N.T.S.

IN THE EVENT THAT AN UNUSUAL RAINFALL EVENT OCCURS DURING NON-WORKING HOURS, IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO INSPECT THE EROSION CONTROL MEASURES (WHILE IT IS RAINING) AND TAKE WHATEVER MEASURES THAT ARE NECESSARY WHERE EROSION CONTROL MEASURES ARE NOT FUNCTIONING PROPERLY.



STAKED HAY BALES (BMP-SHB)
N.T.S.

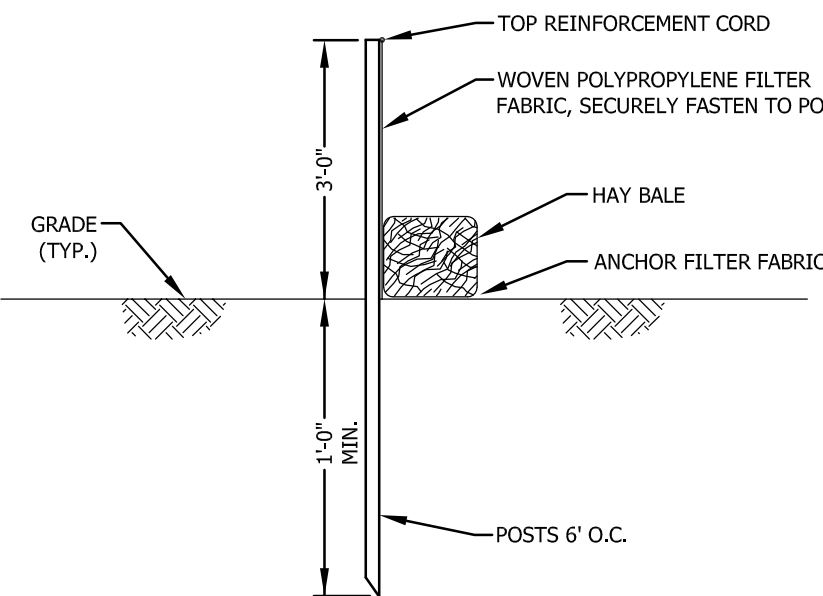


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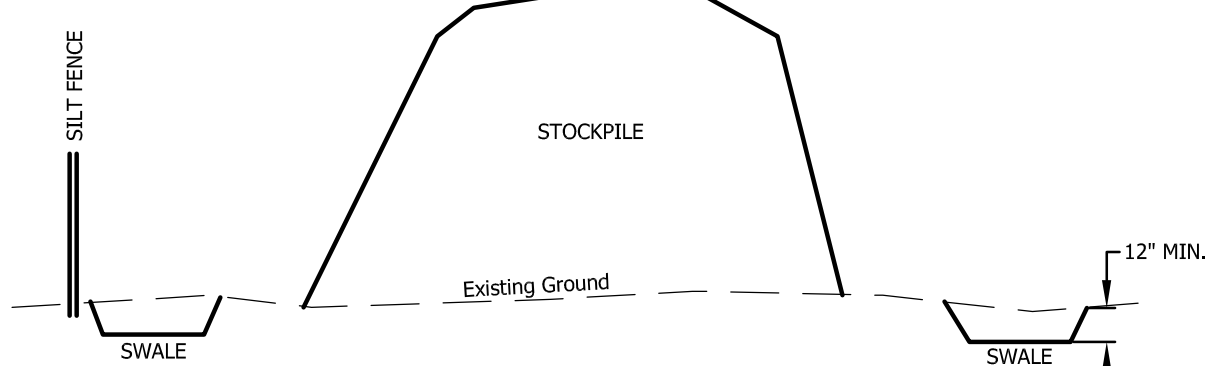
- 1) SLOPE SURFACE SHALL BE FREE OF ROCKS, CLODS, STICKS AND GRASS. MATS/BLANKETS SHALL HAVE GOOD SOIL CONTACT.
- 2) APPLY PERMANENT SEEDING BEFORE PLACING BLANKETS.
- 3) LAY BLANKETS LOOSELY AND STAKE OR STAPLE TO MAINTAIN DIRECT CONTACT WITH THE SOIL. DO NOT STRETCH.

EROSION CONTROL MATTING

N.T.S.



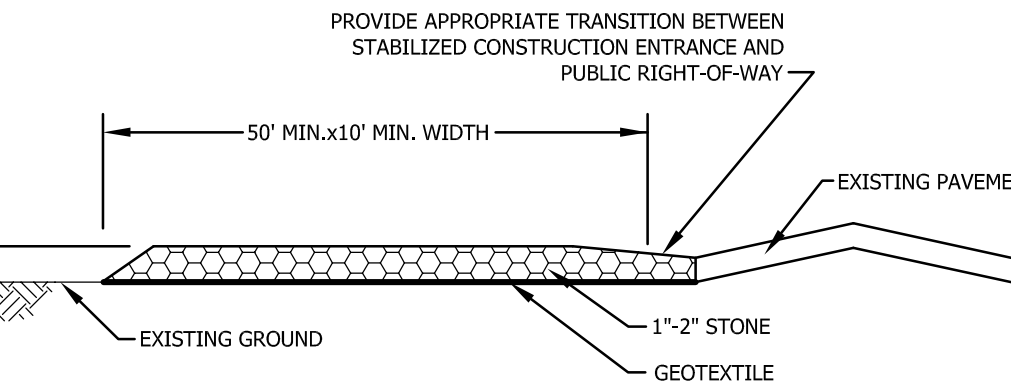
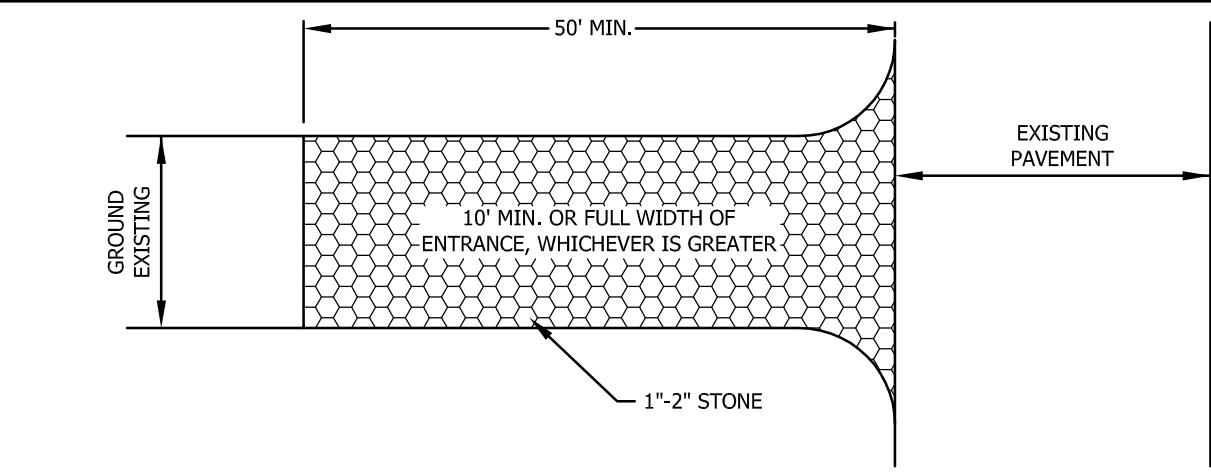
SILT FENCE DETAIL (BMP-SF)
N.T.S.



STOCKPILE TREATMENT DETAIL
N.T.S.

NOTES:

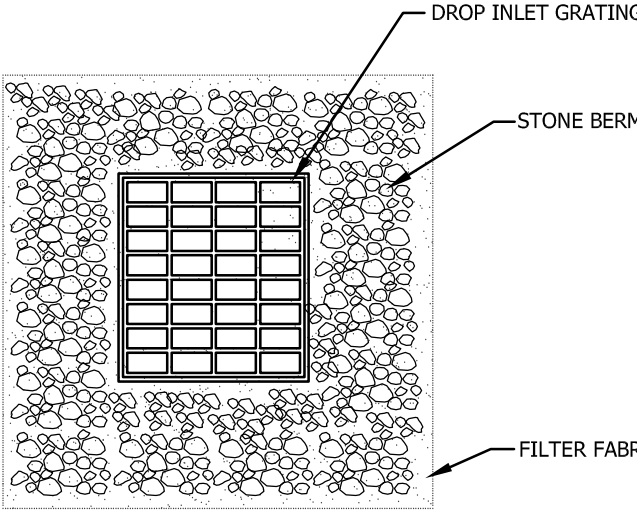
- 1) SWALE AROUND ENTIRE STOCKPILE, MINIMUM 12" DEEP.
- 2) SILT FENCE AROUND SWALE ON DOWNSTREAM HALF OF PILE.
- 3) STOCKPILE LEFT OVER 30 DAYS SHALL BE SEEDED AND MULCHED.



STABILIZED CONSTRUCTION ENTRANCE (BMP-SCE)
N.T.S.

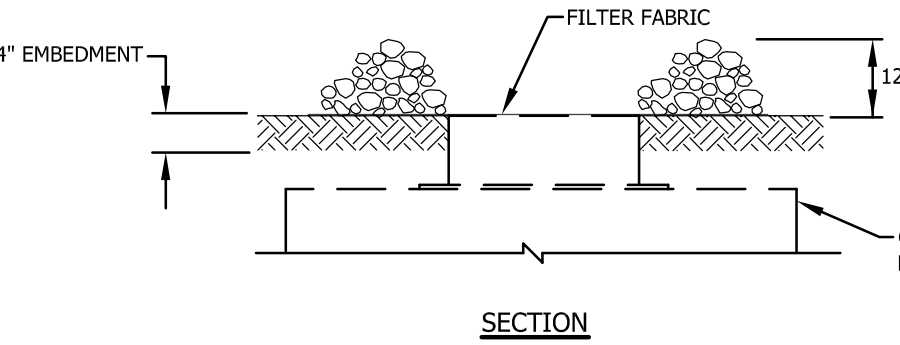
NOTES:

- 1) THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING, WASHING, OR FLOWING OF SEDIMENT INTO PUBLIC RIGHT-OF-WAY.
- 2) ALL SEDIMENT SPILLED, DROPPED, TRACKED OR WASHED ONTO PUBLIC RIGHT-OF-WAY MUST BE REMOVED IMMEDIATELY.



PLAN VIEW

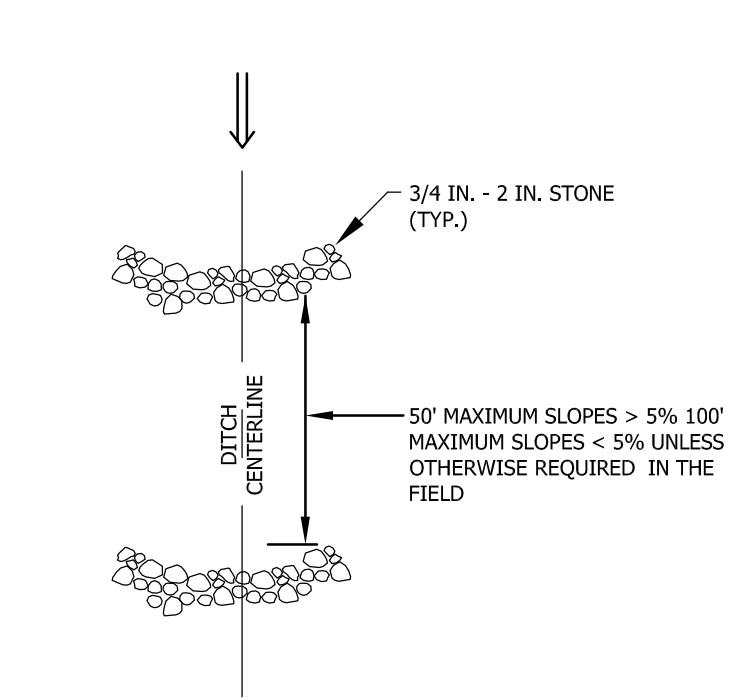
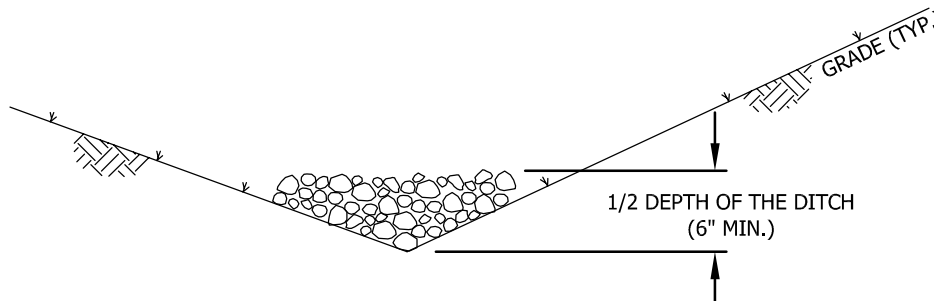
NOTE: PLACE STONE BERM AROUND GRATING AS SHOWN ON EROSION CONTROL PLAN



SECTION

TEMPORARY STONE INLET PROTECTION (BMP-SIP)
N.T.S.

*NOTE: TO BE USED AT ALL CATCH BASINS



STONE CHECK DAMS (BMP-SCD)
N.T.S.

EROSION CONTROL DETAILS

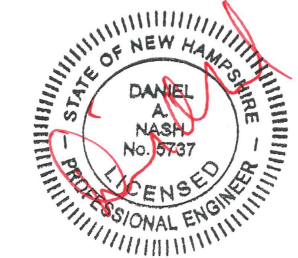
FOR
LEBANON NISSAN

IN
LEBANON, NH

ADVANCED GEOMATICS & DESIGN

105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766

PHONE: (603) 448-6295
E-MAIL: advancedgeomatics@comcast.net



SURVEYED: N/A
DESIGNED: DAN
DRAWN: DAN
CHECKED: DAN
DATE: 27JAN2025

LEBANON
NISSAN

EROSION CONTROL
DETAILS

D-5

© 2025

ADVANCED GEOMATICS & DESIGN

DWG: 23006\23006-DET



27 January 2025

Brian Vincent, PE, City Engineer
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Drainage Report
51 Evans Drive
Lot 78-40-2

Dear Mr. Vincent:

Attached are our drainage calculations for the 51 Evans Drive vehicular sales facility on Evans Drive.

The site has one discharge point. The Discharge point, DP#1 is at the southerly edge of the parking lot. The entire site is approximately 3.3 Acres. The discharge point serves two drain areas. Drain Area #1 is essentially the building and paved portion of the site. The new pavement added represents approximately 12,551sf, roughly 0.25Ac, of new impervious area. Drain Area #2 is the northeast corner of the site and a portion of the Route 120 ROW/shoulder. There is no change to this drain area.

The proposed project adds 21 paved vehicle storage spaces south of the dealership. The use of an infiltration trench serves to protect water quality. The first inch of rain runoff is the "dirtiest" as it contains dust, sands and potential contaminants. The infiltration nature of the pavers accept this first flus and have capacity to store it until it can be infiltrated. The process of infiltration provides filtration/treatment. The volume of stone under the pavers serves to store runoff and control site runoff to the pre-development flow.

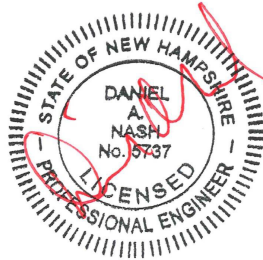
This summary is followed by a comparison sheet. The Sheet compares the 2, 10, 25, 50, and 100 year storms. The project provides a modest overall decrease. Drainage from the new parking will be routed to an infiltration trench. Excess runoff follow the existing flow path for the existing site.

Please let us know if you need any additional materials or information to support this report.

Drainage
Lot 78-40-2
51 Evans Drive
27Jan25

Sincerely,

Daniel A. Nash, PE
Principal



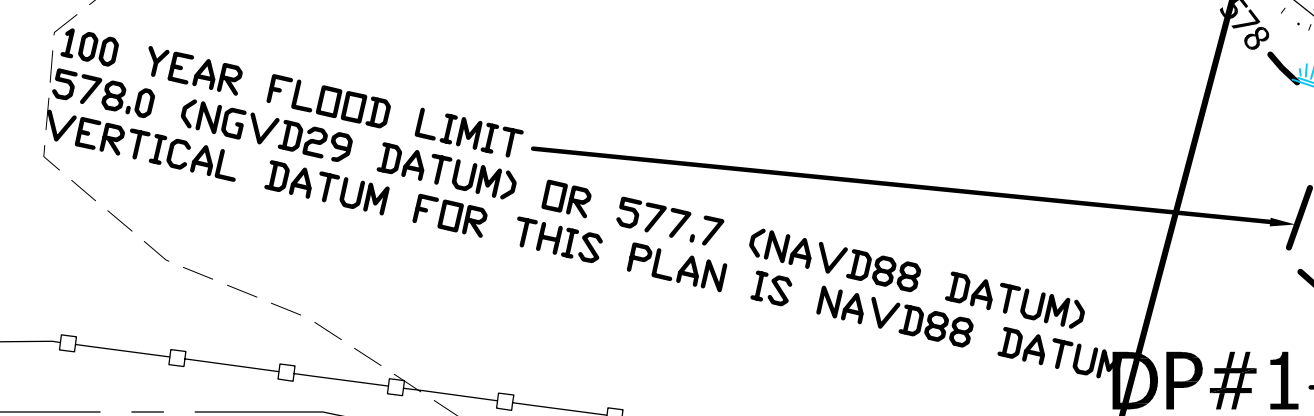
Attachments:

- Comparison Sheet
- Drain Maps, DR-1&2
- Existing runoff calculations
- Post runoff calculations, without infiltration
- Post runoff calculations, with infiltration
- Trench Performance calculations
- Volume calculations, "PRE"
- Volume calculations, "POST"
- Volume calculations, "POST-w/ INFILTRATION"
- Volume calculations, comparison
- WQV calculation
- OMP
- Soils Testing Report

CC: Edwards Properties

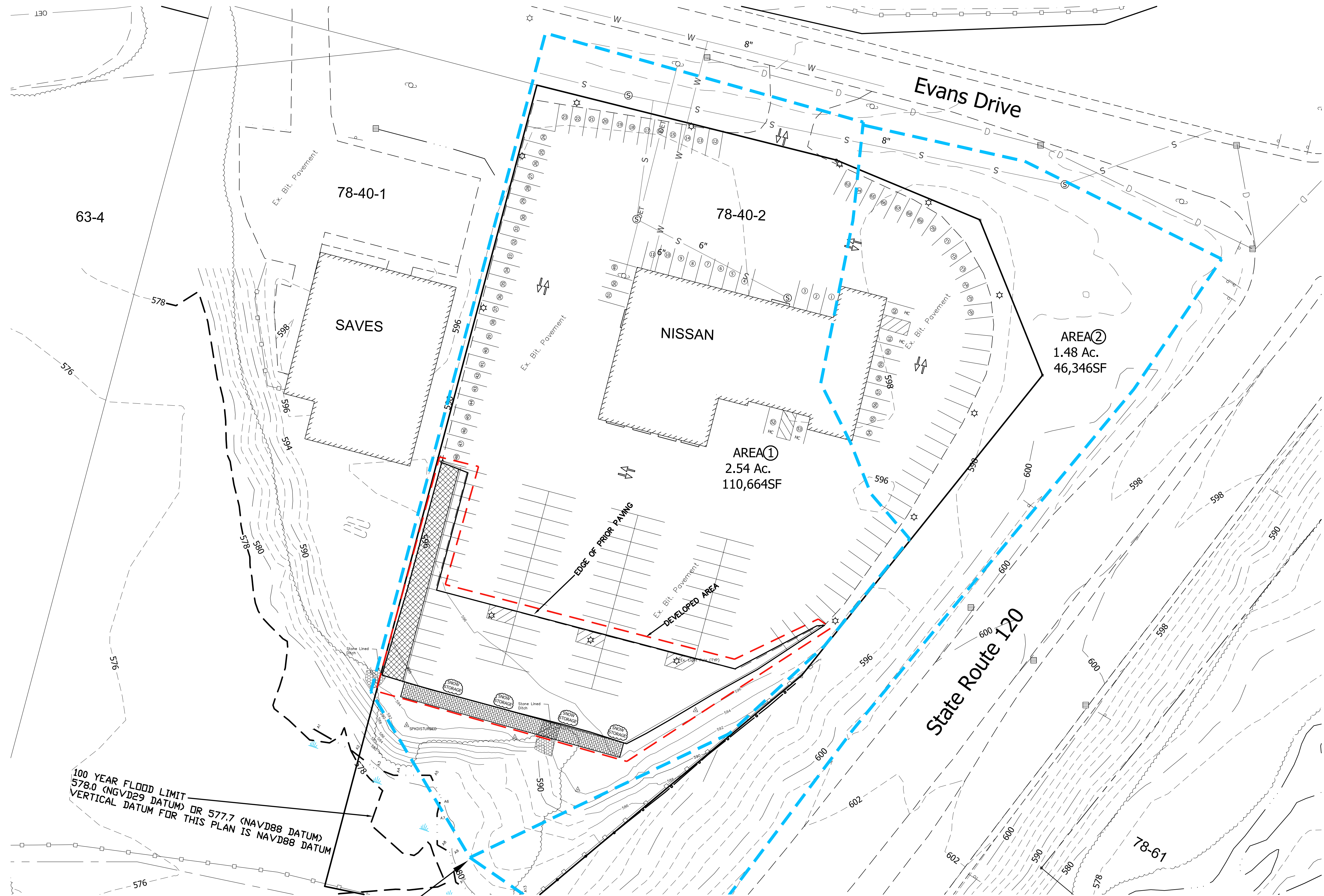
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NISSAN				
51 EVANS DRIVE				
LEBANON, NH				
<u>PRE/POST COMPARISONS</u>				
<u>2 YEAR STORM COMPARISON</u>				
AREA	PRE Q-2		POST Q-2	POST Q-2
			(without infiltration)	(with infiltration)
DP#1	7.3		7.6	1.8
<u>10 YEAR STORM COMPARISON</u>				
AREA	PRE Q-10		POST Q-10	POST Q-10
			(without infiltration)	(with infiltration)
DP#1	12.2		12.6	12.0
<u>25 YEAR STORM COMPARISON</u>				
AREA	PRE Q-25		POST Q-25	POST Q-25
			(without infiltration)	(with infiltration)
DP#1	14.1		14.6	13.4
<u>50 YEAR STORM COMPARISON</u>				
AREA	PRE Q-50		POST Q-50	POST Q-50
			(without infiltration)	(with infiltration)
DP#1	16.2		16.8	14.5
<u>100 YEAR STORM COMPARISON</u>				
AREA	PRE Q-100		POST Q-100	POST Q-100
			(without infiltration)	(with infiltration)
DP#1	17.0		17.7	16.7



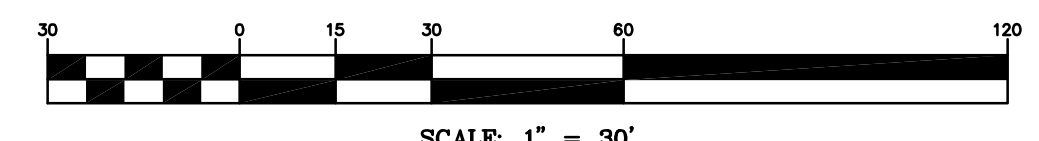
SCALE: 1" = 30'

	
SURVEYED: PATON/GIS	
DESIGNED: DAN	
DRAWN: DAN	
CHECKED: DAN	
DATE: 22NOV2024	
LEBANON NISSAN	
PRE DRAINAGE PLAN	
DR-1	
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DWG: 23006/23006-DR	



100 YEAR FLOOD LIMIT
578.0 (NGVD29 DATUM) OR 577.7 (NAVD88 DATUM)
VERTICAL DATUM FOR THIS PLAN IS NAVD88 DATUM

KEY
→ FLOW ARROW



POST DRAINAGE PLAN	
FOR	
LEBANON NISSAN	
IN	
LEBANON, NEW HAMPSHIRE	
ADVANCED GEOMATICS & DESIGN	105 BANK STREET - PO BOX 512 LEBANON, NEW HAMPSHIRE 03766 PHONE: (603) 448 6295 E-MAIL: advancedgeomatics@comcast.net
SURVEYED: PATON/GIS	DESIGNED: DAN
DRAWN: DAN	CHECKED: DAN
DATE: 12NOV2024	
LEBANON NISSAN	
POST DRAINAGE PLAN	
DR-2	
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REVISIONS	
#	DATE
1	

NISSAN					
51 EVANS DRIVE					
LEBANON, NH					
DRAIN CALCULATIONS					
EXISTING RUNOFF					
AREA	AREA	AREA	AREA	AREA	weighted
DESIGNATION	c=.9	c=.5	c=.3	TOTAL	"C"
-TO DISCHARGE POINT #1					
Area 1	2.03	0.33	0.18	2.54	0.81
Area 2	0.36		1.12	1.48	0.45
sub-totals by type=	2.39	0.33	1.30		
	Sub-total=			4.02 Ac	
		Weighted "c"=			0.67
Q-2					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-2	"c"	Q-2	
Area 1	2.54	2.7	0.81	5.52	
Area 2	1.48	2.7	0.45	1.78	
2 year discharge			Total=	7.31	cfs
Q-10					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-10	"c"	Q-10	
Area 1	2.54	4.5	0.81	9.21	
Area 2	1.48	4.5	0.45	2.97	
10 year discharge				12.18	cfs
Q-25					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-25	"c"	Q-25	
Area 1	2.54	5.2	0.81	10.64	
Area 2	1.48	5.2	0.45	3.43	
25 year discharge				14.07	cfs
Q-50					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-50	"c"	Q-50	
Area 1	2.54	6.0	0.81	12.28	
Area 2	1.48	6.0	0.45	3.96	
50 year discharge				16.24	cfs
Q-100					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-100	"c"	Q-100	
Area 1	2.54	6.3	0.81	12.89	
Area 2	1.48	6.3	0.45	4.16	
100 year discharge				17.05	cfs
Note: Tc=10 minutes (minimum).					
From Cornell, i-100, for Tc=10 minutes, i-100=0.105inch/minute; 6.3in/hour					

NISSAN					
51 EVANS DRIVE					
LEBANON, NH					
DRAIN CALCULATIONS					
POST-DEVELOPMENT RUNOFF (WITHOUT INFILTRATION)					
AREA	AREA	AREA	AREA	AREA	weighted
DESIGNATION	c=.9	c=.6	c=.3	TOTAL	"C"
-TO DISCHARGE POINT #1					
Area 1	2.31	0.00	0.23	2.54	0.85
Area 2	0.36		1.12	1.48	0.45
sub-totals by type=	2.67	0.00	1.35		
	Sub-total=			4.02	Ac
Q-2					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-2	"c"	Q-2	
Area 1	2.54	2.7	0.85	5.80	
Area 2	1.48	2.7	0.45	1.78	
2 year discharge			Total=	7.58	cfs
Q-10					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-10	"c"	Q-10	
Area 1	2.54	4.5	0.85	9.67	
Area 2	1.48	4.5	0.45	2.97	
10 year discharge			Total=	12.64	cfs
Q-25					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-25	"c"	Q-25	
Area 1	2.54	5.2	0.85	11.17	
Area 2	1.48	5.2	0.45	3.43	
25 year discharge			Total=	14.60	cfs
Q-50					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-50	"c"	Q-50	
Area 1	2.54	6.0	0.85	12.89	
Area 2	1.48	6.0	0.45	3.96	
50 year discharge			Total=	16.85	cfs
Q-100					
-TO DISCHARGE POINT #1					
	Area (Ac)	i-100	"c"	Q-100	
Area 1	2.54	6.3	0.85	13.53	
Area 2	1.48	6.3	0.45	4.16	
100 year discharge			Total=	17.69	cfs
Note: Tc=10 minutes (minimum).					
From Cornell, i-100, for Tc=10 minutes, i-100=0.105inch/minute; 6.3in/hour					

NISSAN								
51 EVANS DRIVE								
LEBANON, NH								
DRAIN CALCULATIONS								
POST-DEVELOPMENT RUNOFF (WITH INFILTRATION)								
AREA	AREA	AREA	AREA	AREA	weighted			
DESIGNATION	c=.9	c=.6	c=.3	TOTAL	"C"			
-TO DISCHARGE POINT #1								
Area 1					**see paver performance chart			
Area 2	0.36		1.12	1.48	0.45			
Q-2							With	
-TO DISCHARGE POINT #1							Infiltration	
	Area (Ac)	i-2	"c"	Q-2				
Area 1				0.00				
Area 2	1.48	2.7	0.45	1.78				
2 year discharge			Total=	1.78 cfs				
Q-10								
-TO DISCHARGE POINT #1								
	Area (Ac)	i-10	"c"	Q-10				
Area 1				9.00				
Area 2	1.48	4.5	0.45	2.97				
10 year discharge			Total=	11.97 cfs				
Q-25								
-TO DISCHARGE POINT #1								
	Area (Ac)	i-25	"c"	Q-25				
Area 1				10.00				
Area 2	1.48	5.2	0.45	3.43				
25 year discharge			Total=	13.43 cfs				
Q-50								
-TO DISCHARGE POINT #1								
	Area (Ac)	i-50	"c"	Q-50				
Area 1				10.50				
Area 2	1.48	6.0	0.45	3.96				
50 year discharge			Total=	14.46 cfs				
Q-100								
-TO DISCHARGE POINT #1								
	Area (Ac)	i-100	"c"	Q-100				
Area 1				12.50				
Area 2	1.48	6.3	0.45	4.16				
100 year discharge			Total=	16.66 cfs				
Note: Tc=10 minutes (minimum) .								
From Cornell, i-100, for Tc=10 minutes, i-100=0.105inch/minute; 6.3in/hour								

NISSAN												
51 EVANS DRIVE												
LEBANON, NH												
							TRENCH		DISCHARGE			
INFILTRATION TRENCH PERFORMANCE					STORAGE	VOLUME		RATE				
	Area (Ac)	"c"	cA			(cf)		(cfs)				
Area 1	2.54	0.85	2.16			1960		0.130				
2 year storm												
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	420
"I" (in/hr)	2.7	1.9	1.6	1.4	1.3	1.1	0.65	0.51	0.43	0.38	0.32	0.29
Q-in (cfs)	5.83	4.10	3.45	3.02	2.81	2.37	1.40	1.10	0.93	0.82	0.69	0.63
Q-out (cfs)	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Delta (cfs)	5.70	3.97	3.32	2.89	2.68	2.25	1.27	0.97	0.80	0.69	0.56	0.50
Volume to Store (cf)	1,710	2,383	1,995	1,736	1,606	1,347	4,585	3,497	2,875	2,487	2,021	1,787
Volume Available (cf)	1,960	250	-2,133	-4,128	-5,864	-7,470	-8,817	-13,403	-16,900	-19,776	-22,262	-24,283
Balance (cf)	250	-2,133	-4,128	-5,864	-7,470	-8,817	-13,403	-16,900	-19,776	-22,262	-24,283	-26,070
Volume used (cf)	1,710	4,093	6,088	7,824	9,430	10,777	15,363	18,860	21,736	24,222	26,243	28,030
Area 1	0.00	3.80	3.32	2.89	2.68	2.25	1.27	0.97	0.80	0.69	0.56	0.50
10 year storm												
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	420
"I" (in/hr)	4.5	3.8	2.6	2.2	1.8	1.7	1.1	0.79	0.65	0.58	0.48	0.40
Q-in (cfs)	9.72	8.20	5.61	4.75	3.89	3.67	2.37	1.71	1.40	1.25	1.04	0.86
Q-out (cfs)	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Delta (cfs)	9.59	8.07	5.48	4.62	3.76	3.54	2.25	1.58	1.27	1.12	0.91	0.73
Volume to Store (cf)	2,876	4,845	3,290	2,772	2,254	2,124	8,083	5,674	4,585	4,041	3,264	2,642
Volume Available (cf)	1,960	-916	-5,761	-9,051	-11,823	-14,077	-16,201	-24,284	-29,958	-34,543	-38,584	-41,849
Balance (cf)	-916	-5,761	-9,051	-11,823	-14,077	-16,201	-24,284	-29,958	-34,543	-38,584	-41,849	-44,491
Volume used (cf)	2,876	7,721	11,011	13,783	16,037	18,161	26,244	31,918	36,503	40,544	43,809	46,451
Area 1	9.00	8.07	5.48	4.62	3.76	3.54	2.25	1.58	1.27	1.12	0.91	0.73
25 year storm												
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	420
"I" (in/hr)	5.2	3.8	3.0	2.5	2.2	1.8	1.2	0.9	0.75	0.64	0.55	0.51
Q-in (cfs)	11.23	8.20	6.48	5.40	4.75	3.89	2.59	1.94	1.62	1.38	1.19	1.10
Q-out (cfs)	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Delta (cfs)	11.10	8.07	6.35	5.27	4.62	3.76	2.46	1.81	1.49	1.25	1.06	0.97
Volume to Store (cf)	3,329	4,845	3,808	3,161	2,772	2,254	8,860	6,528	5,363	4,508	3,808	3,497
Volume Available (cf)	1,960	-1,369	-6,214	-10,022	-13,183	-15,955	-18,209	-27,069	-33,598	-38,960	-43,468	-47,276
Balance (cf)	-1,369	-6,214	-10,022	-13,183	-15,955	-18,209	-27,069	-33,598	-38,960	-43,468	-47,276	-50,774
Volume used (cf)	3,329	8,174	11,982	15,143	17,915	20,169	29,029	35,558	40,920	45,428	49,236	52,734
Area 1	10.00	8.07	6.35	5.27	4.62	3.76	2.46	1.81	1.49	1.25	1.06	0.97
50 year storm												
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	420
"I" (in/hr)	5.4	3.6	3.0	2.6	2.4	2.4	1.2	0.92	0.74	0.62	0.55	0.49
Q-in (cfs)	11.66	7.77	6.48	5.61	5.18	5.18	2.59	1.99	1.60	1.34	1.19	1.06
Q-out (cfs)	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Delta (cfs)	11.53	7.64	6.35	5.48	5.05	5.05	2.46	1.86	1.47	1.21	1.06	0.93
Volume to Store (cf)	3,459	4,586	3,808	3,290	3,031	3,031	8,860	6,684	5,285	4,352	3,808	3,342
Volume Available (cf)	1,960	-1,499	-6,084	-9,893	-13,183	-16,214	-19,245	-28,106	-34,790	-40,074	-44,427	-48,235
Balance (cf)	-1,499	-6,084	-9,893	-13,183	-16,214	-19,245	-28,106	-34,790	-40,074	-44,427	-48,235	-51,577
Volume used (cf)	3,459	8,044	11,853	15,143	18,174	21,205	30,066	36,750	42,034	46,387	50,195	53,537
Area 1	10.50	7.64	6.35	5.48	5.05	5.05	2.46	1.86	1.47	1.21	1.06	0.93
100 year storm												
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	420
"I" (in/hr)	6.3	4.5	3.8	3.2	2.8	2.6	1.5	1.1	0.86	0.73	0.64	0.57
Q-in (cfs)	13.60	9.72	8.20	6.91	6.05	5.61	3.24	2.37	1.86	1.58	1.38	1.23
Q-out (cfs)	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
Delta (cfs)	13.47	9.59	8.07	6.78	5.92	5.48	3.11	2.25	1.73	1.45	1.25	1.10
Volume to Store (cf)	4,042	5,752	4,845	4,068	3,549	3,290	11,192	8,083	6,218	5,207	4,508	3,964
Volume Available (cf)	1,960	-2,082	-7,833	-12,678	-16,745	-20,295	-23,585	-34,777	-42,860	-49,077	-54,285	-58,792
Balance (cf)	-2,082	-7,833	-12,678	-16,745	-20,295	-23,585	-34,777	-42,860	-49,077	-54,285	-58,792	-62,756
Volume used (cf)	4,042	9,793	14,638	18,705	22,255	25,545	36,737	44,820	51,037	56,245	60,752	64,716
Area 1	12.50	9.59	8.07	6.78	5.92	5.48	3.11	2.25	1.73	1.45	1.25	1.10

NISSAN														
51 EVANS DRIVE														
LEBANON, NH														
<u>RUNOFF VOLUMES (DP-1)</u>														
DP#1 Overall land area total=	4.02	Ac												
DP#1 Overall weighted "c"=	0.67													
DP#1 cA=	2.693													
<u>2 year storm</u>						1hr		3hr			6hr	12hr	18hr	24hr
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	2.7	2.0	1.6	1.3	1.2	1.1	0.7	0.50	0.44	0.38	0.32	0.20	0.15	0.12
DP#1 cA=	2.693													
Q	3.64	5.39	4.31	3.50	3.23	2.96	1.83	1.35	1.19	1.02	0.86	0.54	0.40	0.32
Volume (cf)	1,091	3,232	2,586	2,101	1,939	1,778	6,593	4,848	4,266	3,685	3,103	11,635	8,727	6,981
Cumulative Volume (cf)	1,091	4,323	6,909	9,009	10,949	12,726	19,320	24,168	28,434	32,119	35,222	46,857	55,584	62,565
												total=		62,565
<u>10 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	4.5	3.2	2.6	2.2	1.8	1.7	1.1	0.8	0.65	0.55	0.49	0.30	0.23	0.18
DP#1 cA=	2.693													
Q	6.06	8.62	7.00	5.93	4.85	4.58	2.96	2.13	1.75	1.48	1.32	0.81	0.62	0.48
Volume (cf)	1,818	5,171	4,202	3,555	2,909	2,747	10,666	7,660	6,303	5,333	4,751	17,453	13,381	10,472
Cumulative Volume (cf)	1,818	6,989	11,191	14,746	17,655	20,403	31,068	38,728	45,031	50,364	55,115	72,568	85,949	96,421
												total=		96,421
<u>25 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	5.3	3.6	3.0	2.5	2.2	1.8	1.3	0.9	0.75	0.58	0.55	0.38	0.27	0.23
DP#1 cA=	2.693													
Q	7.14	9.70	8.08	6.73	5.93	4.85	3.50	2.42	2.02	1.56	1.48	1.02	0.73	0.62
Volume (cf)	2,141	5,818	4,848	4,040	3,555	2,909	12,605	8,727	7,272	5,624	5,333	22,107	15,708	13,381
Cumulative Volume (cf)	2,141	7,959	12,807	16,847	20,403	23,311	35,916	44,643	51,915	57,539	62,872	84,979	100,687	114,068
												total=		114,068
<u>50 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	5.4	3.7	3.5	2.8	2.4	2.4	1.5	1.2	0.90	0.78	0.55	0.40	0.30	0.25
DP#1 cA=	2.693													
Q	7.27	9.97	9.43	7.54	6.46	6.46	4.04	3.23	2.42	2.10	1.48	1.08	0.81	0.67
Volume (cf)	2,182	5,979	5,656	4,525	3,878	3,878	14,544	11,635	8,727	7,563	5,333	23,271	17,453	14,544
Cumulative Volume (cf)	2,182	8,161	13,817	18,342	22,221	26,099	40,643	52,279	61,006	68,569	73,902	97,172	114,626	129,170
												total=		129,170
<u>100 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	6.3	4.5	3.8	3.2	2.8	2.6	1.5	1.1	0.86	0.73	0.64	0.40	0.31	0.26
DP#1 cA=	2.693													
Q	8.48	12.12	10.23	8.62	7.54	7.00	4.04	2.96	2.32	1.97	1.72	1.08	0.83	0.70
Volume (cf)	2,545	7,272	6,141	5,171	4,525	4,202	14,544	10,666	8,339	7,078	6,206	23,271	18,035	15,126
Cumulative Volume (cf)	2,545	9,817	15,958	21,130	25,655	29,856	44,401	55,067	63,405	70,484	76,689	99,960	117,995	133,121
												total=		133,121

NISSAN														
51 EVANS DRIVE														
LEBANON, NH														
<u>RUNOFF VOLUMES (DP-1)</u>														
	Land area =	4.02	Ac	(non-recharge)										
	Overall weighted "c"=	0.7												
cA=		2.814	(non-recharge)											
<u>2 year storm</u>														
						1hr		3hr			6hr	12hr	18hr	
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	2.7	2.0	1.6	1.3	1.2	1.1	0.7	0.50	0.44	0.38	0.32	0.20	0.15	0.12
Q(cfs)	3.80	5.63	4.50	3.66	3.38	3.10	1.91	1.41	1.24	1.07	0.90	0.56	0.42	0.34
Volume (cf)	1,140	3,377	2,701	2,195	2,026	1,857	6,889	5,065	4,457	3,850	3,242	12,156	9,117	7,294
Overflow Q(cfs)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Overflow Volume (cf)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Vol(this period)	1,140	3,377	2,701	2,195	2,026	1,857	6,889	5,065	4,457	3,850	3,242	12,156	9,117	7,294
Cumulative Volume (cf)	1,140	4,516	7,218	9,413	11,439	13,296	20,185	25,250	29,707	33,557	36,799	48,955	58,073	65,366
<u>10 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	4.5	3.2	2.6	2.2	1.8	1.7	1.1	0.8	0.65	0.55	0.49	0.30	0.23	0.18
Q	6.33	9.00	7.32	6.19	5.07	4.78	3.10	2.22	1.83	1.55	1.38	0.84	0.65	0.51
Volume (cf)	1,899	5,403	4,390	3,714	3,039	2,870	11,143	8,003	6,585	5,572	4,964	18,235	13,980	10,941
Overflow Q(cfs)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Overflow Volume (cf)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Vol(this period)	1,899	5,403	4,390	3,714	3,039	2,870	11,143	8,003	6,585	5,572	4,964	18,235	13,980	10,941
Cumulative Volume (cf)	1,899	7,302	11,692	15,407	18,446	21,316	32,459	40,463	47,047	52,619	57,583	75,818	89,798	100,738
<u>25 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	5.3	3.7	3.0	2.5	2.2	1.8	1.2	0.9	0.75	0.64	0.55	0.38	0.27	0.23
Q	7.46	10.41	8.44	7.04	6.19	5.07	3.38	2.53	2.11	1.80	1.55	1.07	0.76	0.65
Volume (cf)	2,237	6,247	5,065	4,221	3,714	3,039	12,156	9,117	7,598	6,483	5,572	23,097	16,411	13,980
Overflow Q(cfs)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Overflow Volume (cf)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Vol(this period)	2,237	6,247	5,065	4,221	3,714	3,039	12,156	9,117	7,598	6,483	5,572	23,097	16,411	13,980
Cumulative Volume (cf)	2,237	8,484	13,549	17,770	21,485	24,524	36,680	45,798	53,396	59,879	65,451	88,548	104,959	118,939

NISSAN														
51 EVANS DRIVE														
LEBANON, NH														
<u>RUNOFF VOLUMES (DP-1)</u>														
	Land area =	4.02	Ac	(non-recharge)										
	Overall weighted "c"=	0.7												
cA=	2.814	(non-recharge)												
<u>50 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"i" (in/hr)	6.0	3.6	3.0	2.5	2.4	2.4	1.2	0.9	0.74	0.62	0.55	0.40	0.30	0.25
Q	8.44	10.13	8.44	7.04	6.75	6.75	3.38	2.59	2.08	1.74	1.55	1.13	0.84	0.70
Volume (cf)	2,533	6,078	5,065	4,221	4,052	4,052	12,156	9,320	7,496	6,281	5,572	24,313	18,235	15,196
Overflow Q(cfs)	0	0	0	0	0	0	0.00	0.00	0.00	0	0	0	0	0
Overflow Volume (cf)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Vol(this period)	2,533	6,078	5,065	4,221	4,052	4,052	12,156	9,320	7,496	6,281	5,572	24,313	18,235	15,196
Cumulative Volume (cf)	2,533	8,611	13,676	17,897	21,949	26,001	38,158	47,478	54,974	61,255	66,827	91,140	109,375	124,570
<u>100 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"i" (in/hr)	6.3	4.5	3.8	3.2	2.8	2.6	1.5	1.1	0.86	0.73	0.64	0.40	0.31	0.26
Q	8.86	12.66	10.69	9.00	7.88	7.32	4.22	3.10	2.42	2.05	1.80	1.13	0.87	0.73
Volume (cf)	2,659	7,598	6,416	5,403	4,728	4,390	15,196	11,143	8,712	7,395	6,483	24,313	18,843	15,803
Overflow Q(cfs)	0	0	0	0	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Overflow Volume (cf)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Vol(this period)	2,659	7,598	6,416	5,403	4,728	4,390	15,196	11,143	8,712	7,395	6,483	24,313	18,843	15,803
Cumulative Volume (cf)	2,659	10,257	16,673	22,076	26,803	31,193	46,389	57,532	66,244	73,640	80,123	104,436	123,279	139,082

NISSAN														
51 EVANS DRIVE														
LEBANON, NH														
<u>RUNOFF VOLUMES (POST w/ INFILTRATION)</u>														
	Land area =	1.48	Ac	(non-recharge)										
	Overall weighted "c"=	0.45												
cA=	0.666	(non-recharge)												
<u>2 year storm</u>														
						1hr		3hr			6hr	12hr	18hr	
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	2.7	2.0	1.6	1.3	1.2	1.1	0.7	0.50	0.44	0.38	0.32	0.20	0.15	0.12
Q(cfs)	0.90	1.33	1.07	0.87	0.80	0.73	0.45	0.33	0.29	0.25	0.21	0.13	0.10	0.08
Volume (cf)	270	799	639	519	480	440	1,630	1,199	1,055	911	767	2,877	2,158	1,726
Overflow Q(cfs)	0	3.80	3.32	2.89	2.68	2.25	1.27	0.97	0.80	0.69	0.56	0.43	0.32	0.26
Overflow Volume (cf)	0	2,280	1,995	1,736	1,606	1,347	764	583	479	414	337	259	194	156
Total Vol(this period)	270	3,079	2,634	2,255	2,086	1,787	2,395	1,782	1,534	1,326	1,104	3,136	2,352	1,882
Cumulative Volume (cf)	270	3,349	5,983	8,238	10,324	12,111	14,505	16,287	17,821	19,147	20,251	23,387	25,739	27,621
<u>10 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	4.5	3.2	2.6	2.2	1.8	1.7	1.1	0.8	0.65	0.55	0.49	0.30	0.23	0.18
Q	1.50	2.13	1.73	1.47	1.20	1.13	0.73	0.53	0.43	0.37	0.33	0.20	0.15	0.12
Volume (cf)	450	1,279	1,039	879	719	679	2,637	1,894	1,558	1,319	1,175	4,316	3,309	2,589
Overflow Q(cfs)	9.00	8.07	5.48	4.62	3.76	3.54	2.25	1.58	1.27	1.12	0.91	0.65	0.50	0.39
Overflow Volume (cf)	5,400	4,845	3,290	2,772	2,254	2,124	1,347	946	764	674	544	389	298	233
Total Vol(this period)	5,850	6,123	4,329	3,651	2,973	2,804	3,985	2,840	2,323	1,992	1,719	4,704	3,607	2,823
Cumulative Volume (cf)	5,850	11,973	16,302	19,953	22,927	25,730	29,715	32,555	34,877	36,870	38,588	43,293	46,900	49,722
<u>25 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"I" (in/hr)	5.3	3.7	3.0	2.5	2.2	1.8	1.2	0.9	0.75	0.64	0.55	0.38	0.27	0.23
Q	1.76	2.46	2.00	1.67	1.47	1.20	0.80	0.60	0.50	0.43	0.37	0.25	0.18	0.15
Volume (cf)	529	1,479	1,199	999	879	719	2,877	2,158	1,798	1,534	1,319	5,467	3,884	3,309
Overflow Q(cfs)	10.00	8.07	6.35	5.27	4.62	3.76	2.46	1.81	1.49	1.25	1.06	0.82	0.58	0.50
Overflow Volume (cf)	6,000	4,845	3,808	3,161	2,772	2,254	1,477	1,088	894	751	635	492	350	298
Total Vol(this period)	6,529	6,323	5,007	4,160	3,651	2,973	4,354	3,246	2,692	2,286	1,953	5,959	4,234	3,607
Cumulative Volume (cf)	6,529	12,853	17,860	22,020	25,671	28,644	32,998	36,244	38,936	41,222	43,175	49,134	53,368	56,975

NISSAN														
51 EVANS DRIVE														
LEBANON, NH														
<u>RUNOFF VOLUMES (POST w/ INFILTRATION)</u>														
	Land area =	1.48	Ac	(non-recharge)										
	Overall weighted "c"=	0.45												
cA=	0.666	(non-recharge)												
<u>50 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"i" (in/hr)	6.0	3.6	3.0	2.5	2.4	2.4	1.2	0.9	0.74	0.62	0.55	0.40	0.30	0.25
Q	2.00	2.40	2.00	1.67	1.60	1.60	0.80	0.61	0.49	0.41	0.37	0.27	0.20	0.17
Volume (cf)	599	1,439	1,199	999	959	959	2,877	2,206	1,774	1,487	1,319	5,754	4,316	3,596
Overflow Q(cfs)	10.50	7.64	6.35	5.48	5.05	5.05	2.46	1.86	1.47	1.21	1.06	0.86	0.65	0.54
Overflow Volume (cf)	6,300	4,586	3,808	3,290	3,031	3,031	1,477	1,114	881	725	635	518	389	324
Total Vol(this period)	6,899	6,024	5,007	4,289	3,990	3,990	4,354	3,320	2,655	2,212	1,953	6,273	4,704	3,920
Cumulative Volume (cf)	6,899	12,924	17,931	22,220	26,210	30,201	34,554	37,874	40,529	42,741	44,694	50,967	55,672	59,592
<u>100 year storm</u>														
TIME (minutes)	10	20	30	40	50	60	120	180	240	300	360	720	1080	1440
"i" (in/hr)	6.3	4.5	3.8	3.2	2.8	2.6	1.5	1.1	0.86	0.73	0.64	0.40	0.31	0.26
Q	2.10	3.00	2.53	2.13	1.86	1.73	1.00	0.73	0.57	0.49	0.43	0.27	0.21	0.17
Volume (cf)	629	1,798	1,518	1,279	1,119	1,039	3,596	2,637	2,062	1,750	1,534	5,754	4,460	3,740
Overflow Q(cfs)	12.50	9.59	8.07	6.78	5.92	5.48	3.11	2.25	1.73	1.45	1.25	0.86	0.67	0.56
Overflow Volume (cf)	194	194	194	194	194	194	194	194	194	194	194	259	194	156
Total Vol(this period)	824	1,993	1,713	1,473	1,313	1,233	3,791	2,832	2,256	1,945	1,729	6,013	4,654	3,896
Cumulative Volume (cf)	824	2,816	4,529	6,002	7,316	8,549	12,340	15,172	17,428	19,373	21,101	27,115	31,769	35,665

NISSAN							
51 EVANS DRIVE							
LEBANON, NH							
<u>RUNOFF VOLUME COMPARISONS</u>							
		Vol(cf)		Vol(cf)		Vol(cf)	
		PRE		DP#1	w/o	POST	with infil
<u>2 year storm</u>		62,565		65,366		27,621	
<u>10 year storm</u>		96,421		100,738		49,722	
<u>25 year storm</u>		114,068		118,939		56,975	
<u>50 year storm</u>		129,170		124,570		59,592	
<u>100 year storm</u>		133,121		139,082		35,665	

NISSAN									
51 EVANS DRIVE									
LEBANON, NH									
<u>WATER QUALITY VOLUME</u>									
<u>Paver Panel</u>									
A	2.540	Ac		A=Area draining to the practice					
Ai	2.310	Ac		Ai=Impervious area draining to the practice					
I	0.909			I=percent impervious area draining to the practice, in decimal form					
Rv	0.869			Rv=Runoff coefficient = $0.05 + (0.9 \times I)$					
WQV(Ac-in)	2.206	Ac-in		WQV = $1" \times Rv \times A$					
WQV(cf)	8,008	cf		WQV Conversion (Ac-in x 43,560sf/Ac x 1ft/12")					

**Edwards Properties, LLC
Lebanon, NH
Operations and Maintenance Plan (OMP)
27 January 2025**

Goal:

This manual was developed by Advanced Geomatics and Design, LLC (A) to assist owners in their regulatory inspections and maintenance (OMP) activities for the stormwater measures implemented at 51 Evans Drive

Site Location and Description:

This project is located on Evans Drive in Lebanon, New Hampshire. The site consists of a vehicular sales facility and a 184 space parking lot in the rear of the dealership.

Owner and Operator:

BMP Owner..... **Edwards Properties, LLC**

I&M Responsible Party..... **Edwards Properties, LLC**
(Reporting, inspection, and maintenance activities)

Introduction:

This scope of this manual encompasses the 184 space parking lot in the rear of the building, and the infiltration basin that collects runoff.

First Few Months Post Construction Activity:

Following construction commencement, the site will need to be inspected after every major storm event for the following three months. Once the infil basins have become more established, less frequent inspections are required.

Key Inspection Check Points (first three months following construction)

- Inspect drainage:
 - Runoff should be seen to infiltrate after a rain event. Standing high water for long periods of time could indicate sediment inundation or functionality issues.
- Inspect vegetation:
 - Vegetation should be flourishing. If this is not the case consider watering, removing dead or unhealthy plants, or replanting areas that are poorly established.
- Inspect for erosion or short circuiting:
 - If erosion or short circuiting is occurring in the grass filter strip, fill the area with more soil, compact lightly, and re-seed to prevent further erosion.
- Inspect inlets and outlets for proper function:

- Clean out debris or leaf litter when necessary.

Post construction Activity:

As the grass filter strip becomes established, less frequent inspections are necessary. Inspection of the grass filter strip and adjacent infiltration basin should be performed biannually for two years after implementation and checked after any major storm events to maintain a productive system. If the grass filter strip has a healthy establishment of vegetation after two years, inspection frequency can decrease to annually.

Key Inspection Check Points (post-construction)

- Inspect drainage:
 - Runoff should be seen to infiltrate after a rain event. Standing high water for long periods of time could indicate sediment inundation or functionality issues.
- Inspect vegetation:
 - Vegetation should be forming a dense root mat and becoming well established. If this is not the case consider watering, removing decaying or unhealthy vegetation, or performing reinforcement planting to develop robust coverage throughout the system.
 - Keep the grass filter mowed to a medium height. :k.
- Inspect for erosion or short circuiting:
 - If erosion or short circuiting is occurring in the grass filter strip, fill the area with more soil, compact lightly, and re-seed to prevent further erosion.
 - Look for animal burrowing that could also short circuit the system, burrowing would also need to be filled and re-seeded.
- Inspect inlets and outlets for proper function:
 - Clean out debris or leaf litter when necessary.
 - If there is any evidence of structural damage or deterioration, parts should be replaced.
- Inspect for sediment buildup:
 - Sediment buildup should be removed properly and when needed from the rain gardens.

Inspections Sheets and Documentation:

Upon the completion of construction activities that direct stormwater to the grass filter strip and infiltration basin, I&M activities will be initiated. Owner may choose to contract with outside parties to perform I&M on the site, but Owner will still be responsible for long term effectiveness of the stormwater system.

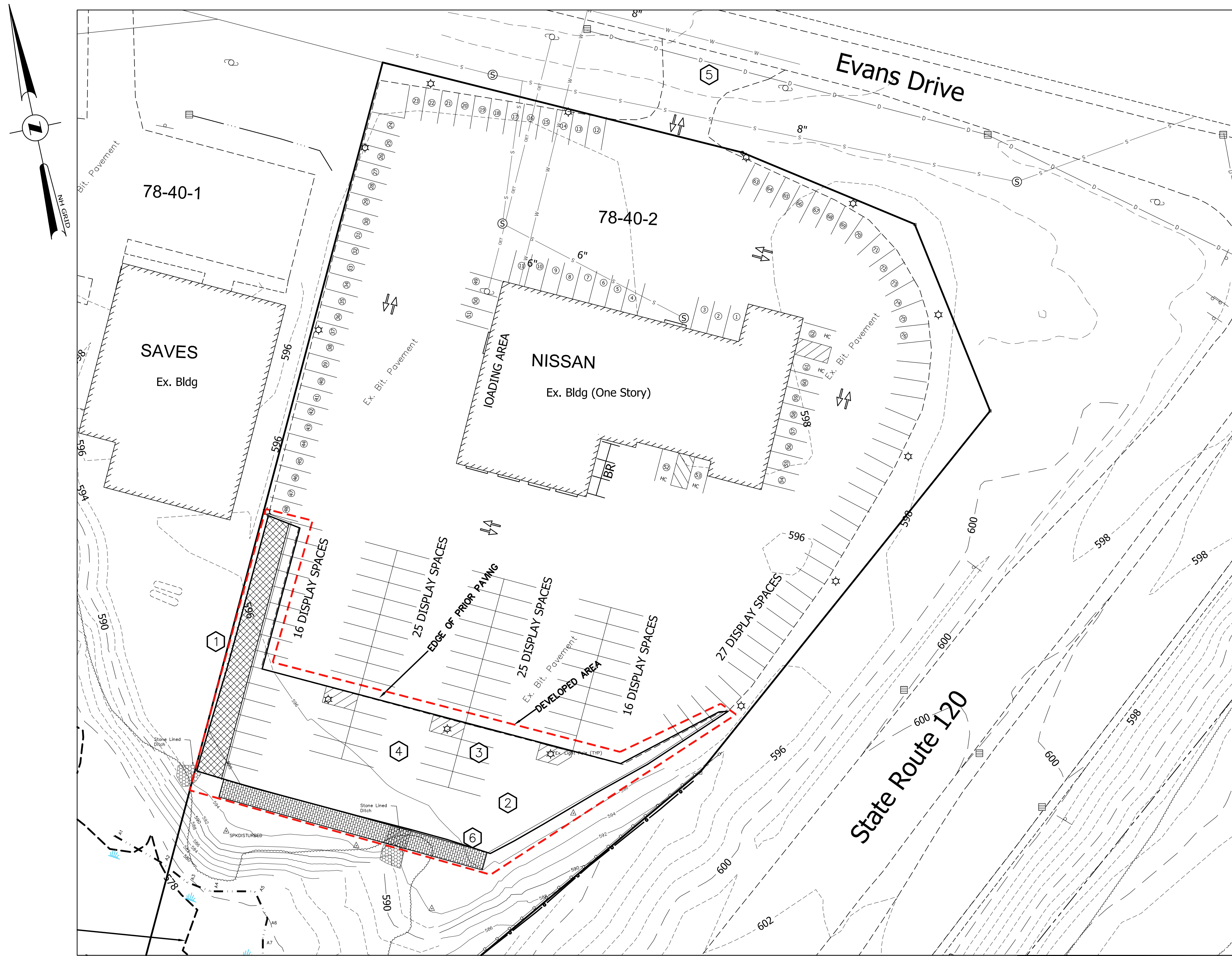
An I&M log will also need to be kept up to date and on file to clearly document the dates of each inspection and maintenance required.

All of the record will need to be kept up to date and maintained by the party responsible and be made available to the department upon request.

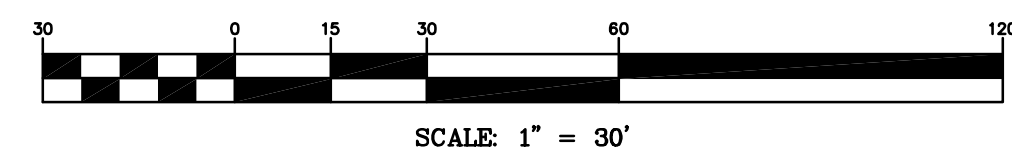
Appendix:

Attachment 1 Sheet C-1, site plan.

Attachment 2 I&M Log



KEY:
→ -TRAFFIC ARROW
BR -BIKE RACK

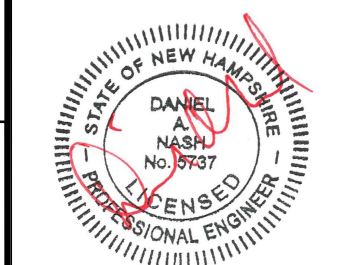


SITE PLAN

NOTES:

- 1 LANDSCAPE AREA. PAVEMENT TO BE REMOVED.
- 2 AREA OF PAVEMENT PLACED BEFORE PERMIT=14,416sf+/-.
PAVEMENT TO BE REMOVED=1,865sf+/-.
NET NEW PAVEMENT=12,551sf+/-.
- 3 VEHICLE PARKING/DISPLAY SPACES 9X18 TYPICAL.
- 4 24' AISLE
- 5 SITE DISTANCE GREATER THAN 300', BOTH DIRECTIONS.
- 6 PAVEMENT PAVERS

ADVANCED GEOMATICS & DESIGN
105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766
PHONE: (603) 448 6295
E-MAIL: advancedgeomatics@comcast.net



SURVEYED: PATON
DESIGNED: DAN
DRAWN: DAN
CHECKED: DAN
DATE: 11/22/2024

LEBANON
NISSAN

SITE
PLAN

C-1

© 2024
ADVANCED GEOMATICS & DESIGN

DWG: M:\23006-PL.DWG

#	REVISIONS	DATE
1	STAFF COMMENTS	27JAN25

SITE PLAN
FOR
LEBANON NISSAN
IN
LEBANON, NH

Edwards Properties, LLCInspection and Maintenance (I&M)

**Edwards Properties, LLC
Lebanon, NH
Inspections and Maintenance (I&M) Log**

Facility Name:	Lebanon Nissan, LLC
Address:	51 Evans Drive Lebanon, NH 03766
Begin Date:	

Date of Inspection	Inspected By	Comments and Actions Taken	Other Notes

Edwards Properties, LLC

Inspection and Maintenance (I&M)

Date of Inspection	Inspected By	Comments and Actions Taken	Other Notes

12-7-2023

Dan Nash
Advanced Geomatics & Design
105 Bank Street, PO Box 512
Lebanon, NH 03766

re: Infiltration test pits and field test results
Lebanon, Nissan of Lebanon, 51 Evans Drive

Dear Dan,

Yesterday morning I witnessed the excavation of one test pit on the above referenced site. This pit was located in a current lawn area, between the edge of asphalt paving and the top of fill slope. DR Key supplied an excavator and operator to dig the test pit. You were on site during the test pit excavation, and provided guidance on the subsequent infiltration testing.

I prepared a test pit log based on my observations and measurements. The test pit log is attached. Also attached is a copy of your Existing Conditions Plan, with the location of the test pit shown. Soils in this area are all fills, generally described as silty sand. The test pit was extended to a depth of 6.5 feet before it was terminated. No water was observed, soils were found to be moist but not wet.

After viewing the soil types and depths, you asked me to run the infiltration test at 4 feet below grade. The excavator set over from the test pit location, and dug to 3.5'. I finished digging to 3'10" with a hand shovel, and then set a piece of 4" PVC pipe. The pipe was pushed and rotated to the 4' depth, providing a firm fit into the soil. The pipe was filled with water to begin a 24-hour soaking period.

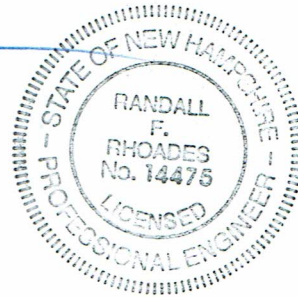
I returned to the site this morning to run the infiltration test. 4.5 hours of infiltration was completed, more than what is required by the State test method. Based on my measurements, an infiltration rate of **5 inches/hour** was calculated. I would recommend that you actually design for an infiltration rate of around **4 inches/hour** to account for longer term saturation.

I will be happy to answer any questions you have following your review of this report.

Sincerely,



Randall Rhoades, PE
Principal/Geotechnical Engineer



TEST PIT FIELD LOG

M&W Soils Engineering, Inc.
159 East Street
Charlestown, NH 03603

PROJECT
DESCRIPTION Nissan of Lebanon
LOCATION 51 Evans Drive, Lebanon

TEST PIT No. TP-1
FILE No. _____
DATE 12-6-23

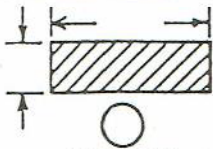
ENGINEER R. Rhoades
WEATHER Clear, 35 deg

EXCAVATION EQUIPMENT
CONTRACTOR Key
OPERATOR P. Bly
MAKE Kubota MODEL KX 040
CAPACITY _____ cu.yd. REACH _____ ft.

GROUND ELEV. _____
TIME STARTED _____
TIME COMPLETED _____

DEPTH	SOIL DESCRIPTION	EXCAV. EFFORT	BOULDER COUNT QTY. CLASS.	REMARK No.
0				
1'	Topsoil to sandy fill			
2'				
3'	Olive grey and olive brown silty sand fill, some cobbles			
4'				
5'				
6'				
6.5'	Bottom of pit, no water present ESHWT >6.5'			
7'				
8'				
9'				
10'	Set open-bottom 4" pipe to 4' below grade			
11'				
12'				
13'				
14'				

REMARKS: See map for location

TEST PIT PLAN  VOLUME = _____ cu.yd.	LEGEND: BOULDER COUNT <table border="1"> <tr> <th>SIZE RANGE</th> <th>LETTER DESIGNATION</th> </tr> <tr> <td>6" - 18"</td> <td>A</td> </tr> <tr> <td>18" - 36"</td> <td>B</td> </tr> <tr> <td>36" AND LARGER</td> <td>C</td> </tr> </table>	SIZE RANGE	LETTER DESIGNATION	6" - 18"	A	18" - 36"	B	36" AND LARGER	C	PROPORTIONS USED <table border="1"> <tr> <td>TRACE (TR.)</td> <td>0 - 10%</td> </tr> <tr> <td>LITTLE (LI.)</td> <td>10 - 20%</td> </tr> <tr> <td>SOME (SQ)</td> <td>20 - 35%</td> </tr> <tr> <td>AND</td> <td>35 - 50%</td> </tr> </table>	TRACE (TR.)	0 - 10%	LITTLE (LI.)	10 - 20%	SOME (SQ)	20 - 35%	AND	35 - 50%	ABBREVIATIONS F - FINE M - MEDIUM C - COARSE F/M - FINE TO MEDIUM F/C - FINE TO COARSE V - VERY GR. - GRAY BN. - BROWN YEL. - YELLOW	EXCAVATION EFFORT E - EASY M - MODERATE D - DIFFICULT GROUNDWATER ELAPSED TIME TO READING (HRS)  G.W.L.
	SIZE RANGE	LETTER DESIGNATION																		
6" - 18"	A																			
18" - 36"	B																			
36" AND LARGER	C																			
TRACE (TR.)	0 - 10%																			
LITTLE (LI.)	10 - 20%																			
SOME (SQ)	20 - 35%																			
AND	35 - 50%																			
Page 309 of 360																				



REVISIONS		DATE
EXISTING CONDITIONS PLAN		
FOR		
CICOTTE PROPERTIES, LLC		
IN		
LEBANON, NEW HAMPSHIRE		
ADVANCED GEOMATICS & DESIGN		
105 BANK STREET - PO BOX 512		
LEBANON, NEW HAMPSHIRE 03766		
PHONE: (603) 448-6295		
E-MAIL: advancedgeomatix@gmail.com		
SURVEYED: GIS		
DESIGNED: DAN		
DRAWN: DAN		
CHECKED: DAN		
DATE: 06/20/2023		
CICOTTE PROPERTIES		
EXISTING CONDITIONS		
X-1		
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DWG: 23006-04A		

SITE PLAN REVIEW REGULATIONS
MINOR SITE PLAN & CONCEPTUAL REVIEW
DRAFT AMENDMENTS

ARTICLE III – ADMINISTRATION

[...]

Section 3.2 – Minor Site Plan Review

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 ~~C~~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 Senior Planner or Associate Planner and may, at his or her discretion, serve as chair while substituting.~~ A majority of the [Committee](#) members shall constitute ~~the~~ [a](#) quorum necessary to transact business.

[...]

ARTICLE IV – PROCEDURE

[...]

Section 4.3 – Conceptual Review

- A. [Purpose.](#) Conceptual review pursuant to RSA 676:4, II(a) is recommended for all [land development](#) that requires Planning Board review pursuant to Section 3.1.D in order to help identify and resolve issues at an early stage and save the applicant the time and cost of changes at a later date. Conceptual review also allows the Board and applicant to identify available and qualified expertise within the City's boards and committees to help inform the variety and scope of studies or other activities that inform the project design and, in turn, the technical review of the submitted application.

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. 50 or more new dwelling units;
2. Ten (10) or more detached one- and/or two-family dwellings;
3. More than one (1) principal multi-family, non-residential or mixed use building; and/or
4. Any new building of 5,000 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
3. Tree Advisory Board
4. Heritage Commission (if located within the Historic District)

Public notice is not required for optional conceptual reviews. ~~is not required, but such discussions shall only take place at a formal meeting of the Board.~~ For

~~Such conceptual consultation shall not bind either the applicant or the Board in any manner, and statements made by Board members shall not be the basis for disqualifying said members or invalidating any action taken.~~

~~While a Conceptual Review is optional, it is strongly recommended, particularly for larger developments, as it can help identify and resolve issues at an early stage and save the applicant the time and cost of changes at a later date.~~

EB. Submission Requirements. ~~Not less than two weeks before the date of the scheduled conceptual review, the~~ The Applicant shall provide a project description, a written statement addressing how the concept conforms with the Master Plan, and a sketch plan of sufficient accuracy and quality, based on a United States Geological Survey map or similar map, showing the following:

1. Existing property lines of the parcel(s) under review;
2. General topography, to include highlight of slopes in excess of 25%;
3. Prominent natural features of the site, including but not limited to: tree lines, watercourses, flood plains, wetlands, and ledge outcrops;

4. The approximate location and size of existing and proposed buildings, parking areas, roadways, and other improvements.

5. When conceptual review is required:

- a. A properly completed and signed application form.
- b. The appropriate fees as established by the Board's fee schedule.
- c. A list of the name(s) and address(es) of all persons to be notified by certified mail in accordance with RSA 676:4, I(d), including the following:
 - i. The Applicant(s):
 - ii. The Owner(s) of record of the site:
 - iii. The Owners of abutting properties:
 - iv. Every surveyor, engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board:
 - v. 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.):
 - vi. 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.).

FG. Procedures. Conceptual review shall be an informal discussion with the Board, conducted in general terms, of the basic concept of the proposed development ~~The conceptual review shall be limited to a discussion of the concept in general terms,~~ for the purpose of familiarizing the Board with the location and type of development, and familiarizing the Applicant with the issues and concerns of the Board. The Board shall consider whether the proposed development is an allowed use in the Zoning Ordinance and in accordance with the Master Plan. The Board shall determine whether the development is compatible with any plans for existing or future roads, utilities, and services. The Board shall focus on the characteristics of the site and its relationship to the surrounding area to determine how well the proposed development fits into the natural environment and the cultural landscape, including historical resources.

Discussions held during any conceptual review shall not bind either the applicant or the Board in any manner, and statements made by Board members shall not be the basis for disqualifying said members or invalidating any action taken.

DRAFT

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. [PB2025-04-FMAJSPRCUP](#)

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), [and Tom D'Aguiar](#) (all both of VHB) and Mr. Gil Alexio (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 ~~these~~~~that~~ could be
 7 made 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~~~~Ford Burley~~ asked if the applicant
 37 would commit to working with Dartmouth to clear a trail leading from the parking lot to the trails
 38 to make them more accessible. Mr. ~~Dietrich~~ said the applicant has committed to the 6 parking
 39 spaces for public access and a connector trail to the existing trail network. He said they have not
 40 committed to a trail 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~~ Mr. Plourde 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.

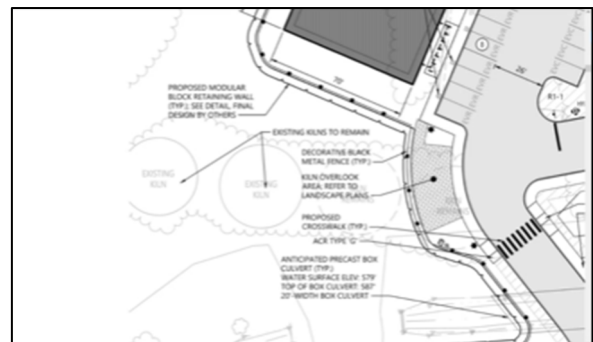
Mr. Douglas Ostler (Weston & Sampson) said his firm ~~has been~~ is contacted by the Planning Board to provide peer review and recommendations regarding the development. He said they did discuss the benefits of the all-ways stop versus adding additional lanes to this intersection. He said they agreed 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 ~~therein~~ 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 ~~specifying~~ that 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, ~~but that~~ ~~so~~ residents will not be ~~allowed~~ 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.



1 Natural Resources

2 Chair Faunce said there have been concerns raised regarding the inflow and outflow of the pond
3 on the site and suggested a condition of approval related to the maintenance and inspection of the
4 pond could be added. ~~Mr.~~ Mr. Fenstermacher said this [project](#) will have an AOT Permit associated
5 with it and, as part of the AOT permit, there are regular operation and maintenance inspections
6 required.
7

8 Chair Faunce asked if an access management [plan](#) (for recreational use of the pond) has been
9 developed. Mr. Alexio confirmed that they do not want people in the pond. He noted that deeds
10 for the houses directly in front of the pond (on Hanover St) include access to the pond. He said
11 they use the pond at their own risk, and he cannot stop them from using it. He said he will be
12 talking to their attorneys regarding liability for the use of the pond (if it is as an ice rink or for
13 fishing). Mr. Corwin said they could discuss at another time whether the City should be concerned
14 whether the developer has a risk management plan related to the pond.
15

16 Mr. Rutter asked if there was any garbage in the pond. Mr. D'Aguiar said they will analyze the
17 hydraulic connection of these streams, the overall watershed, the pond, and the outlet culvert to the
18 south as it goes to the adjacent property. He said they will be submitting the bathymetric cross
19 sections to the state as part of a larger study that the state will look at, which will help determine
20 the final size and design of these wildlife crossings and culverts. He said the City will receive a
21 copy of this study. Mr. Rutter noted that he has not seen any comments about the soil conditions.
22 Mr. Fenstermacher said ~~they did~~ [the applicant had performed](#) a Phase I [environmental](#) review.
23

24 Mr. Ford Burley asked about ownership of the open space. He said the regulations seem to require
25 specified ownership of the open space. Mr. Fenstermacher said the [applicant](#) ~~y~~ would [provide](#) ~~do~~ a
26 defined easement. Mr. Ford Burley said the site plan needs to include how the open space is
27 delineated and defined. Mr. Fenstermacher said signage will be added and those details will be
28 added to the site plan.
29

30 Mr. Fenstermacher said there is no real development plan right now for the lot above the
31 development that has been defined. Mr. Ford Burley asked if the townhouse construction could
32 begin after Phase 3A instead of 3D. Mr. Fenstermacher said the phasing plan is being updated.
33

34 Chair Faunce said the next meeting will cover the following:

- 35 • Clarification of waivers still in place
 - 36 • ~~Cleaning up~~ [clarifying](#) the phasing
 - 37 • Crafting language of the conditions of approval
- 38

39 Chair Faunce suggested that the Board should read the information provided about the waivers,
40 phasing plan, and the draft conditions of approval and be ready to discuss them at the next
41 meeting.
42

43 The results of a straw poll showed that enough members of the Board would be available to make
44 a quorum if they met on December 17, 2025. The group decided to hold a special meeting on
45 December 17, 2025 at 7:00pm ~~in~~ [at](#) City Council Chambers to discuss these items.
46

1 Chair Faunce opened the public comment portion of the meeting.

2 Chair Faunce closed the public comment portion of the meeting.

3 Mr. Fenstermacher said he will submit a written request for a 40-day extension to Staff.

5 At 8:05pm, Chair Faunce called for a brief recess.

6 At 8:14pm, the meeting resumed.

8 **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**

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

17 *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.*

22 **Roll Call Vote:**

23 ***Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, Mr. Rutter***

25 ***Voting Against – None***

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

29 Mr. Jeff Merritt (Granite Engineering), [Ms. Ditha Alonzo](#) (Executive Director of LHA), [Mr. Jerry Wuebbolt](#) (Right Track Design), [and Mr. Justin Daniel](#) (Granite Engineering) were present on behalf of the applicant.

33 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 [available for plantings](#) on one side of the building.

39 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.

44 ***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:***

- 1 • **Section 6.2.B – perimeter landscaping requirements**
- 2 • **Section 6.2.D – landscaping around buildings requirements**
- 3 • **Article VI – design requirements as applied to the property outside of the proposed**
- 4 **development area**

5

6 ***The Motion was seconded by Eric Stacy.***

7

8 ***Roll Call Vote:***

9 ***Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Ford Burley, Mr. Faunce, Mr.***

10 ***Rutter***

11 ***Voting Against – None***

12

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

14

15

16 Mr. Corwin noted that a draft motion, prepared for the approval of the site plan, has been provided

17 to the Board. He said a few exceptions have been highlighted in yellow that are related to third-

18 party review.

19

20 He said the following sentence has been added to Condition #15:

21 ***“If the City Engineer performs the on-site inspection as set forth in Condition 18, the reviewing***

22 ***engineer fees shall be paid prior to the issuance of a Certificate of Occupancy.”***

23

24 He read the following second paragraph, which was added to the General Condition #18:

25 ***“Alternatively, at the discretion of the Department of Public Works, the applicant shall coordinate***

26 ***with the City Engineer to observe the installation of the site infrastructure. Such coordination***

27 ***shall include preparing a tentative construction schedule and agreeing to provide the City***

28 ***Engineer a minimum of 7 days’ notice prior to a required or requested inspection. The City***

29 ***Engineer’s time shall be billed to the applicant in accordance with Section 4.7.E.1 of the Site Plan***

30 ***Review Regulations and shall be paid pursuant to Condition 15.”***

31

32 And he read a new Condition #24:

33 ***“The applicant shall provide digital as built plans (PDF format and CAD .dwg format using NH***

34 ***State Plane Coordinate system) to the satisfaction of the Department of Public Works and to the***

35 ***Planning & Development Department.”***

36

37 ***A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approve the***

38 ***application of Lebanon Housing Authority regarding 31 Romano Circle (Tax Map 101, Lot 20),***

39 ***zoned R-2, PB2024-41-SPR, for Site Plan approval to construct a +/- 3,882 sq ft. two story***

40 ***accessory office building for the existing multi-family complex together with associated site***

41 ***improvements, as shown on a plan set titled “Residential Site Plan – Lebanon Housing***

42 ***Authority,” prepared by Granite Engineering, LLC, dated 10/14/24, revised 11/25/24 (15***

43 ***sheets), including any and all submissions and testimony provided for and during the public***

44 ***hearing.***

45

In support of its decision, the Board finds that the applicant has submitted plans, testimony, technical data, information, reports, and studies – variously prepared by a professional civil engineer, a licensed land surveyor, an architect, and a licensed landscape architect – that together satisfactorily demonstrate compliance with the applicable requirements of the Site Plan Review Regulations, except as may reasonably be addressed through the imposition of certain conditions of approval, set forth below, and except as may have been waived pursuant to Section 7.1.

This approval is subject to the conditions as set forth in the December 09, 2025 Planning Board meeting agenda packet, and subject to the amendments read out by Mr. Tim Corwin.

The Motion was seconded by Jeremy Rutter.

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).*

C. 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 - Postponed to January 13, 2025

D. 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 to January 13, 2025

A MOTION was made by Andrew Faunce to postpone Agenda Items 3C and 3D (Grafton County Senior Citizens Council, Inc., ~~Lincoln's~~ City of Lebanon, and ~~Psychotic~~ Cicotte Holdings LLC, ~~Council Chambers~~ 51 Evans Drive) to the January 13, 2025 Planning Board meeting at City Council Chambers at 6:30pm. The Motion was seconded by Richard Ford Burley.

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).*

4. CONCEPTUAL REVIEW

A. 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: Conceptual Review of a proposed Planned Business Park and Major Subdivision. PB2024-47-CON

Mr. Jay Champion and Mr. Dan Nash (Advanced Geomatics & Design) were present on behalf of the applicant.

Mr. Champion 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. Champion 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. Champion 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. Champion said he would do some further research into how to deal with that situation. Mr. Champion said there are proposed clarifications in the zoning amendments package that clarify exactly how that is to be treated. Mr. Champion 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. Champion 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* (completion 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

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

7. APPROVAL OF MINUTES

- October 14, 2025
- November 12, 2025
- November 25, 2025

A MOTION was made by Richard Ford Burley to approve the proposed ~~additions~~ paragraph to the October 14, 2024 Planning Board meeting minutes, written and submitted by Chair Faunce. The Motion was seconded by Jeremy Rutter.

Ms. Romano recused herself from the vote, because she had recused herself from the discussion (during the October 14, 2025 meeting) of the item for which Chair Faunce had written the proposed paragraph. Ms. Romano noted her name was misspelled.

Roll Call Vote:

Voting For – Mr. Kennelly, Ms. Appleton, Mr. Ford Burley, Mr. Faunce, and Mr. Rutter

Voting Against – None

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

Mr. Rutter noted several other edits to the rest of the meeting minutes, which had been reviewed by Staff.

A MOTION was made by Richard Ford Burley to accept the additional suggested edits from ~~Jeremy~~ Rutter to the October 14, 2024 Planning Board meeting minutes. The Motion was seconded by Andrew Faunce.

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

A MOTION was made by Richard Ford Burley to approve the October 14, 2024 Planning Board meeting minutes as amended. 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).**

A MOTION was made by Richard Ford Burley to postpone review of the November 12, 2024 and November 25, 2025 Planning Board meeting minutes to the January 13~~7~~, 2025 Planning Board meeting. The Motion was seconded by Eric Stacy.

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).***

8. ADJOURNMENT

A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:32pm. The Motion was seconded by Eric Stacy.

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).***

The meeting adjourned at 9:32pm.

Respectfully submitted,

Paula Roux

Recording Secretary

Suggested Edits to Minutes for PB Meeting of December 17, 2024

By J. Rutter

p.1, heading, line 4: Change “LEBANNONNH.GOV/LIVE” to “**LEBANONNH.GOV/LIVE**”

p.1, line 21: Change “Aleixo” to “**Alexio**”; change “. . . Trust), . . .” “**. . . Trust)** . . .” (i.e. eliminate comma).

p.2, Condition 1a, line 3: Change “. . . or in the alternative the applicant shall provide . . .” to “. . . **or, as an alternative,** the applicant shall provide . . .”.

p.2, Condition 1b, lines 3-4: Where is the remainder of Condition 1b?? It is altogether unclear how many lines may be missing

p.3, line 23: Insert “**and**” before “December 9, 2024 . . .”.

p.4, COA #14, line 1: Change “off site” to “**off-site**”.

p.4, COA #14, line 3: Add “**to determine an afternoon dismissal time interval**” after “. . . and shall coordinate with the office of the school district superintendent.”

p.5, COA #15b, line 1: Change “Contribute funds to an amount to be determined by the City . . .” to “Contribute funds **in an amount** to be determined by the City . . .”.

p.5, COA #15b, lines 4-5: Change “. . . a coordinated plan for or construction or rehabilitation of pedestrian facilities in the vicinity of . . .” to “. . . a coordinated plan **for, or** construction or rehabilitation **of, pedestrian** facilities in the vicinity of . . .”.

p.5, COA #16, lines 2-3: Change “. . . recommended by the Reviewing Engineer, and Evans Dr/Hanover St Ext intersection improvements . . .” to “. . . recommended by the Reviewing Engineer, **as well as the** Evans Dr/Hanover St Ext intersection improvements . . .”.

p.5, COA #17, line 2: Change “. . . between the development’s southern entrance to the I-89 Pedestrian Bridge . . .” to “. . . between the development’s southern entrance **and** the I-89 Pedestrian Bridge . . .”.

p.6, COA #27f, line 2: Change “Condition of Approval #3.” to “Condition of Approval **#4.**”.

p.6, COA #28, line 1: Change “. . . the engineer or record or other qualified . . .” to “. . . the engineer **of** record or other qualified . . .”

p.6, COA #30, line 3: Change “. . . Works, and Fire Department, in order to . . .” to “. . . Works, and Fire **Department in** order to . . .” (i.e. eliminate comma).

p.7, COA #36, lines 2-3: Change “. . . pursuant to Section 8t.3 of the Site Plan Review **Regulations,** in an amount and form acceptable to the Department of Public Works and the City’s legal counsel, to serve as . . .” to “. . . pursuant to Section 8t.3 of the Site Plan Review Regulations in an amount and form acceptable to the Department of Public Works and the City’s legal counsel, to serve as . . .” (i.e. insert comma).

p.7, COA #36, line 6: Change “. . . within the public right-of-way at Hanover Street.” to “. . . within the public right-of-way **on Hanover Street Ext.**”.

p.7, COA's #35 and 36, second iteration of both of these Conditions: eliminate both.

p.7, COA #41, line 7: Change "... at the time of building permit issuance." to "... at the time of a later building permit issuance."

p.8, COA #43: This is a repetition of COA #33 on p.6 above. #43 should therefore be eliminated, but this will require all subsequent COA's (#44-52) to be renumbered.

p.8, COA #52, line 1: Unclear why "... completed, and ..." is highlighted in blue ... eliminate highlighting?

p.9, line 1: Change "... discussed what "active and substantial" development and completion mean ..." to "... discussed what "active and substantial" development and "substantial completion" mean ..." ?

p.9, line 27: Reword "... backs up from Evans Dr. all the way to Hanover Street, almost to the Hypertherm during the 5pm hour ..." to "... backs up on Evans Dr. all the way to Hanover Street Ext. during the 5:00 to 6:00 PM hour ..." ?

p.9, line 32: Change "... after important persons to the Brickyard operation ..." to "... after important persons in the history of the Brickyard operation ...".

p.9, line 40: Change "... from DHMC. (Condition 15)." to "... from DHMC (Condition 15)." (i.e. eliminate period).

p.9, line 41: Eliminate parentheses after "crosswalk".

p.9, line 42: Change "... the design with the extension of the sidewalk and crossing just Hanover St is better than ..." to "... the design with the extension of the sidewalk further south on the west side of Hanover St and crossing only that street is better than ..." ?

p.9, line 44: Change "... can't make the corner ..." to "... can't negotiate the corner ...".

p.9, line 48: Change "Mr. Corwin said all zones for the site will remain." to "Mr. Corwin said all zoning boundaries for the site will remain as they currently are."

p.10, lines 1-2: Change "... would be completed. (Condition 49)." to "... would be completed (Condition 49)." (i.e. eliminate period).

p.10, lines 2-3: Change "... two studies will be done, one year after the issuance of a certificate of occupancy of Building 3 and after issuance of a certificate of the final building." to "... two studies will be done, the first one year after the issuance of a certificate of occupancy for Building 3, and the second after issuance of a certificate for the final building."

p.10, lines 6-7: Change "Mr. Stacy said in the financial data, there was a Nexus challenge to the school's Impact Fees (Condition 50)." to "Mr. Stacy observed that in the financial data there was a Nexus challenge to the school's Impact Fees (Conditions 41 and 50)."

p.10, line 14: Change "... because they are less than 500 square feet ..." to "... because they measure less than 500 square feet ...".

p.10, lines 24-25: Change "... signage is considered "reasonable" safety measures." to "... signage is considered a "reasonable" safety measure."

p.10, lines 28-29: Change “. . . the density bonus is the size of the 51 townhomes and if the bonus is not granted, the townhomes will not be built.” to “. . . the density bonus **corresponds with** the size of the 51 **townhomes: if** the bonus is not granted, the townhomes will not be built.”

p.11, line 2: Change “those exceptions” to “**these concessions**”.

p.11, line 43: Change “Section 501.2.D” to “**Section 501.2.D.1**”.

p.11, lines 45-49 and p.12, lines 1-3: Section 501.2.D.1 of the Zoning Ordinance is inaccurately quoted here when compared to the text of the February 7, 2024 version of the Ordinance (ca. 10 or more typos/errors). Correct?

p.12, line 42: The application here is identified as PB2024-22-SPRCUP, but on p.1, line 18 the application is identified as PB2024-22-**CUPSPR**. Is it acceptable for the same application to have mildly different reference numbers of this kind?

p.13, line 29: Change “. . . for the proposal Section 302.4.D.1.” to “. . . for the **proposal. Section 302.4.D.1.**” (i.e. insert period).

p.13, line 36: Change “Does satisfy the criteria section 302.4.D.4” to “**The proposal does** satisfy the criteria **of Section** 302.4.D.4”

p.13, line 38: Capitalize “**Section**”.

p.13, line 40: Change “. . . four and five . . .” to “. . . 4 and 5 . . .”, as in line 43.

p.13, line 47: Eliminate the word “September”.

p.14, lines 9-16: The text of this portion of RFB’s motion should be identical to that of the previous motion quoted on p.12, lines 35-42. The text on p.14, however, has 5 typos in lines 9, 10, 13, and 14. Copy the text from p. 12?

p.14, line 29: Change the first use of “is” to “**consists of**”.

p.15, lines 5-6: Move “307.6.B.2” from line 16 to the first position in the series of Section citations in line 15 and delete “to Section 307.6.B.2” from lines 15-16 in the submitted text.

p.15, line 8: Eliminate one of the two repetitions of “the Board must” in this line.

p.15, footnote 1: The conditions cited in this footnote should be referred to as Condition 1a-e (quoted in full on p.2 between lines 10 and 32) and Condition 2a-b (quoted in full on p.2, lines 43-50 and p.3, lines 2-9).

p.16, line 11: Change “SBRCUP” to “**SPRCUP**”.

p.16, line 15: Change “. . . as shown on plan set . . .” to “. . . as shown on a plan set . . .”.

p.16, line 16: Change “. . . December 4, . . .” to “. . . **December 11,** . . .”.

p.16, line 26: Eliminate “. . . at quite . . .”.

p.16, lines 41-42: Change “. . . changes to the use codes to the proposed GC1 area for the Route 120 area . . .” to “. . . changes to the use codes **for** the proposed GC1 area **in** the Route 120 area . . .”.

p.16, footnote 2: Add to the end of the sentence as it stands: “. . . and continue to p.8, line 48.”

DRAFT

**LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
TUESDAY, DECEMBER 17, 2024 7:00 PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Patrick Kennelly, Jeremy Rutter, Eric Stacy (alt), Brian Ceglarski (alt)

MEMBERS ABSENT: Karen Zook (City Council Rep), Kathie Romano, Kellen Appleton

STAFF PRESENT: Tim Corwin (Deputy Planning Director), Nate Reichert (Director of Planning & Development / Zoning Administrator), Brian Vincent (City Engineer)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 7:02pm. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. 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 December 9, 2024**

Mr. Dave Fenstermacher (VHB) and Mr. Gil Aleixo (Brickyard One Nominee Trust), were present on behalf of the applicant. Mr. Fenstermacher noted that the most significant change to the site plans since the last meeting was the addition of signage and delineation of the site's Open Spaces. He also noted that the team did receive the peer review of the December 05, 2024 plan.

Conditions of Approval

Mr. Corwin stated that draft conditions of approval had been sent to the Board members two hours prior to the meeting. Chair Faunce suggested a recess to give the Board members time to review the document.

1
2 At 7:12pm, Chair Faunce called for a recess.

3 At 7:30pm, the meeting resumed.

4
5 The Board reviewed each draft Condition of Approval. They discussed each and made edits as
6 needed. Chair Faunce noted that, in the absence of Board Members Zook and Romano, Mr. Stacy
7 and Mr. Ceglarski would participate as voting members for any decisions at this meeting.

8
9 Mr. Corwin said the first two conditions were related to the PURD:

10 1. Prior to application for a Building Permit and prior to the start of any construction activities:

- 11
12 a. In order to better aesthetically harmonize the development with the surrounding area and
13 historical character of the site, no less than 20% of the buildings' cladding will have the
14 appearance of red brick; or in the alternative the applicant shall provide final architectural
15 renderings and designs for review by the Planning Board and Heritage Commission to
16 ensure that the legacy of the Densmore Brickyard is appropriately honored.
- 17 b. The applicant shall construct and maintain in perpetuity to a reasonable standard of
18 access the trail listed on Sheet C2.3 "Layout and Materials Plan 3" as "Approx. Upper
19 Valley Bike Association Trail Connection" and shall work with the City and relevant
- 20 c. The applicant shall work with the City and, as needed, the NH Department of
21 Transportation, to design and implement landscaping and other aesthetic changes to the
22 pedestrian access from the southern access road, due south along Hanover Street, to the
23 pedestrian bridge over I-89, in order to better integrate the development into the
24 surrounding neighborhood per Section 501.1.G.1 of the Zoning Ordinance, as well as to
25 create a visual sense of connection with the Lebanon downtown.
- 26 d. The applicant shall provide satisfactory responses to any/all outstanding Planning &
27 Development Department Staff comments or requests conveyed by Staff memo, email, or
28 other documentation, including but not limited to the applicable PURD comments made
29 via e-mail sent on November 11, 2024, and comments made regarding the project's
30 compliance with the PURD open space regulations as set forth in an e-mail sent on
31 December 8, 2024 from the Planning & Development Department to the applicant.
- 32 e. Per Section 501.1.F.7.b of the Lebanon Zoning Ordinance, the applicant shall, in the
33 absence of lot lines delineating the open space as depicted on Sheet C1.2 "Open Space
34 Plan," amend Sheet C1.2 to show the means of physical delineation and distinguishing of
35 the open space from the other areas of the development.

36 Mr. Fenstermacher said brick will be used for the buildings, perhaps in the lobbies and accent
37 walls in the interior of the buildings. Resident Margie Godfrey (Dartmouth Ave) said she was glad
38 to see the use of brick for the project, which honors the former Brickyard. She said the trails and
39 wildlife patterns in the area have been adversely impacted in recent years. She said maintenance
40 of the trails has been less than conducive to nurturing. She suggested the Board ensure that the
41 Conservation Commission and NH Fish & Game are aware of the activity related to this project.

42 Mr. Corwin noted that Condition #2 (below) was suggested by the Heritage Commission and has
43 been discussed with Staff and the applicant prior to this meeting:

44 2. Prior to issuance of a Certificate of Occupancy:

- 45 a. The applicant shall prepare and record an open space covenant or deed restriction
46 for the open space as depicted on the approved plan set. The open space
47 covenant or restriction shall satisfy the requirements of Section 501.1.F of the
48 Zoning Ordinance and shall be in a form and content acceptable to the Planning
49 and Development Department and the City Attorney. The open space boundaries
50 shall be described in metes and bounds.

- 1
- 2 b. The applicant shall adequately document the structure and current condition of the
- 3 kilns. The applicant (and any subsequent property owner) shall make reasonable
- 4 efforts to maintain the structural integrity of the kilns (labeled "Existing Kilns" in the
- 5 PURD approved plan set) in perpetuity. The applicant and any subsequent
- 6 property owner shall allow and maintain pedestrian access to the kiln area, and
- 7 such access shall be open to the public. In collaboration with the city, the applicant
- 8 shall produce interpretive materials to document the history of the site and to
- 9 educate the public.

10

11 Resident Jenny Lamb asked what the commitment of the applicant is to ensure the safety and

12 integrity of the kilns. She asked what happens if they do not uphold their commitment. Chair

13 Faunce said interior access to the kilns by the public has been requested but is not a Condition of

14 Approval. Mr. Corwin said penalties/fees would be enforced if the applicant violates any

15 conditions of approval. Mr. Fenstermacher said it has been a desire of the applicant to preserve the

16 kilns and make them accessible to the public.

17

18 The group reviewed the proposed General Conditions of Approval.

19

20 **General Conditions**

- 21
- 22 1. This approval is based on all plans and materials provided by the applicant and included in the
- 23 July 8, 2024, August 12, 2024, September 9, 2024, October 14, 2024, November 12, 2024,
- 24 December 9, 2024 Planning Board meeting agenda packets. The materials included with the
- 25 agenda packet for the December 17, 2024 special meeting of the Planning Board will be reviewed
- 26 by staff to verify the project's compliance with the conditions below, in addition to any other revised
- 27 materials submitted by the applicant following the issuance of this decision in response to the
- 28 conditions of approval set forth below.
- 29
- 30 2. This approval shall automatically expire and be deemed void upon failure to meet any of the
- 31 conditions of approval set forth herein within the timeframes specified. It shall be the applicant's
- 32 responsibility to be familiar with and aware of these conditions of approval, and it shall be the
- 33 applicant's responsibility to satisfy these conditions of approval and to satisfy them within the
- 34 relevant timeframes outlined below.
- 35
- 36 3. The development is subject to the Site Plan Review Regulations adopted May 13, 1991, last
- 37 revised January 23, 2023, and the Zoning Ordinance adopted January 16, 2013, last amended
- 38 April 3, 2024, which are the regulations in effect at the time the application was submitted.
- 39
- 40 4. Pursuant to Section 4.10.A of the Site Plan Review Regulations which permits the Board, for good
- 41 cause, to specify an alternative timeframe for obtaining a Building Permit, a building permit must
- 42 be applied for *and issued* for each building by the following dates, subject to an extension if
- 43 applied for by the applicant and if approved by the Planning Board per Section 4.10.B:
- 44

- a) Maintenance Building: February 1, 2026
 - b) Building 1: March 1, 2026
 - c) Building 2: March 1, 2027
 - d) Building 3: March 1, 2028
 - e) Building 4: March 1, 2029
 - f) Building 5: March 1, 2030
 - g) Townhouse Cluster 8: March 1, 2027
 - h) Townhouse Cluster 7: September 1, 2027
 - i) Townhouse Cluster 6: March 1, 2028
 - j) Townhouse Cluster 5: September 1, 2028
 - k) Townhouse Cluster 4: March 1, 2029
 - l) Townhouse Cluster 3: September 1, 2029
 - m) Townhouse Cluster 2: March 1, 2030
 - n) Townhouse Cluster 1: September 1, 2030
5. "Active and substantial development," as defined in Section 8.4.A.1 of the Site Plan Review Regulations, shall be achieved within two (2) years of the date of this approval (8.4.A.2), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 8.4.A.3. If active and substantial development is not achieved within two (2) years of the date of the Planning Board's approval, the development shall be subject to any changes in the City's land use regulations.
6. "Substantial completion," as defined in Section 8.4.B.1 of the Site Plan Review Regulations, shall be achieved within five (5) years of the date of this approval. If substantial completion is not achieved within five (5) years of the date of the Planning Board's approval, the development shall be subject to any changes in the City's land use regulations.
7. All required landscape plantings shall meet the minimum size requirements for such plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.
8. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.
9. Prior to the start of any construction activities on the property, erosion control measures, including edge-of-disturbance fencing if applicable, shall be installed and maintained before and during any site work, to be verified by the City Engineer or City's third-party inspector on site.
10. The property owner is responsible for the maintenance and operation of the stormwater management system in accord with the O&M plan, and such responsibility shall run with the land. (Section 6.6.H.2.b of the Site Plan Review Regulations).
11. All service areas and facilities including garbage and waste disposal containers, recycling bins, electrical and mechanical equipment such as transformers and compressors, meter clusters, and other utility elements must be screened in accordance with Section 6.2.B.8 of the Site Plan Review Regulations.
12. Changes to underground utilities that do not impact surface conditions may be approved administratively unless determined by the City Engineer and the Planning & Development Department to materially alter the development and the approved site plan, in which case such changes shall be reviewed pursuant to Article IX of the Site Plan Review Regulations.
13. Pursuant to Section 5.1.E.14 of the Site Plan Review Regulations, any future proposed ground-mounted / freestanding signage for the development that does not appear on the approved plan set shall require an amendment to the approved site plan set pursuant to Article IX of the Site Plan Review Regulations, as well as compliance with Section 608 of the Zoning Ordinance.
14. The developer's contractor shall limit off site construction activities during school arrival in the mornings (typically between 7:00 am to 8:15 am) and school dismissal in the afternoons, while school is in session, and shall coordinate with the office of the school district superintendent.

1 15. In lieu of installing sidewalks along the entire property's frontages as required by Section 6.5.D.5
2 of the Site Plan Review Regulations, the applicant shall:

3 a) Construct sidewalks as proposed on the approved site plans, prepared by VHB and as
4 amended based on comments received from the Reviewing Engineer. These comments
5 include extending the proposed sidewalk an additional 200 feet south along the west side
6 of Hanover Street Extension terminating at a painted crosswalk which extends to existing
7 sidewalk on the easterly side of Hanover Street Extension immediately adjacent to the site
8 driveway to Lebanon High School.

9 b) Contribute funds to an amount to be determined by the City to be equal to the cost of the
10 sidewalk no longer than the balance of the frontage of the applicant's property along
11 Hanover Street Extension. Said monies may be pooled with other funds from properties
12 within the corridor to pay for the development of a coordinated plan for or construction or
13 rehabilitation of pedestrian facilities in the vicinity of Hanover Street Extension.

14 16. The applicant shall coordinate the final proposed design of the Old Etna Rd/Hanover St Ext and/or
15 the Hanover Street crossing recommended by the Reviewing Engineer, and Evans Dr/Hanover
16 St Ext intersection improvements (as conceptually depicted in the approved plan set) with the
17 Department of Public Works and the Planning & Development Department, with review and
18 advisory comment by the Lebanon Pedestrian and Bicyclist Advisory Committee.

19 17. The applicant shall make and maintain reasonable improvements (landscaping, signage, street
20 striping/graphics, etc.) between the development's southern entrance to the I-89 Pedestrian
21 Bridge to improve the aesthetic and promote public recognition of that important means of
22 connection into Lebanon Downtown. The applicant shall develop a plan in coordination with the
23 Department of Public Works, the Planning & Development Department, and as needed, the NH
24 Department of Transportation, to contribute to the enhancement of the aesthetics of the existing
25 Pedestrian Bridge. Unless otherwise agreed to by the Department of Public Works, the applicant
26 shall be responsible for maintaining all such improvements.

27 18. The applicant shall address any outstanding comments from Weston & Sampson regarding the
28 applicant's traffic study and related design improvements, including but not limited to the
29 recommendation that the driveways shall be designed to allow any garbage trucks and firetrucks
30 that may arrive southbound on Hanover Street Extension to turn right into the site without being
31 required to stop and wait for exiting traffic to move.

32 19. A water pressure and flow test on Hanover Street Extension shall be completed by the applicant
33 to be witnessed and approved by the Lebanon Fire Department and the Department of Public
34 Works.

35 20. The applicant shall address all comments set forth in the letter dated December 9, 2024, from
36 Steve Keach, PE, of Keach-Nordstrom Associates, Inc., to the satisfaction of the City Engineer.
37 Any substantive changes to the approved site plan that result from the applicant's response to
38 the Reviewing Engineer's comments shall require review and approval by the Planning Board.

39 21. The applicant shall provide satisfactory responses to any/all outstanding Planning Staff comments
40 or requests conveyed by Staff memo, email, or other documentation, including but not limited to
41 the 32 comments made via e-mail sent on November 11, 2024.

42 22. The applicant shall demonstrate satisfactory compliance with the requirements of Section 6.2
43 (landscaping) and Section 6.7 (lighting) of the Site Plan Review Regulations.

44 23. The interior access drive shall be named and the buildings and dwelling units shall be given
45 addresses in accordance with City of Lebanon policies and procedures.

24. The applicant shall satisfactorily address the following comments of the Lebanon Fire Department:
 - a) Sheet 9.1: the Fire Department Vehicle Tracking does not show any tracking path into or out of Building 1. The applicant shall confirm that the entrance/parking design continues to conform to all applicable Fire Code requirements.
 - b) Sheet 9.1: the Applicant shall confirm that a fire engine is able to access the rear parking lot behind Building 4 in the event of a car fire.
25. The applicant shall verify whether the US Postal Service will require a mail kiosk and, if so, shall update the plan set accordingly.
26. Condition #1 of the concurrent PURD Conditional Use approval shall be satisfied.
27. Within 45 days of the Planning Board's approval, the applicant shall make the following revisions to the plan set to the satisfaction of the Planning and Development Department and the City Engineer:
 - a) Any changes necessitated in response to Condition #1 of the concurrent PURD Conditional Use approval.
 - b) Any changes necessitated in response to any of the preceding Site Plan conditions of approval (i.e. #1-#26), as applicable.
 - c) Add plan notes and update plan set as needed to memorialize and reflect the preceding conditions of approval (i.e. #1-#26), as applicable.
 - d) Provide a 5 ft. wide easement along the property frontage for potential future sidewalk improvements. (Section 6.5.C.5.c)
 - e) Add a plan note indicating that the trailhead parking will be available for use by the general public.
 - f) Replace phasing plan sheets with a building permit schedule sheet in accordance with Condition of Approval #3.
 - g) Conferring with the Heritage Commission, identify names of multi-family buildings utilizing historic names associated with the Densmore Brickyard.
 - h) Amend the cover sheet to provide description of plan revisions (5.1.E.4.d).
- The applicant shall provide the Planning and Development Department a digital copy of the revised plan set saved in a PDF-A format for archival purposes.
28. The applicant shall provide a letter or certification from the engineer or record or other qualified design professional confirming that the approved plan set meets the accessibility standards of the State of New Hampshire Building Code.
29. Prior to any construction activities and prior to the application for a Building Permit, the applicant shall apply to the Planning and Development Department for a voluntary merger of the subject properties. Upon approval, the voluntary merger shall be recorded at the Grafton County Registry of Deeds.
30. The applicant shall schedule and hold a pre-building permit application meeting with the Planning and Development Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process and to review applicable code requirements.
31. The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the City Code.
32. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations. (Note: applicant can request an invoice from the Department of Public Works).
33. If required by the Department of Public Works, the applicant shall apply for and obtain an Excavation Permit, Driveway Permit, and Stormwater Permit.

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

34. The applicant shall create and support a scheduled maintenance plan in accordance with state and local regulations for maintaining inflow and outflow of water from the pond, paying particular attention to those sections over which new driveways will be constructed.
35. The applicant and future landowners shall put in place and maintain reasonable controls for regulating access to the pond perimeter and the pond itself.
36. Prior to the start of any construction activities on the property, the applicant shall provide a performance guarantee pursuant to Section 8.3 of the Site Plan Review Regulations in an amount and form acceptable to the Department of Public Works and the City's legal counsel, to serve as a financial surety for: site restoration in the event of abandonment; installation and maintenance of appropriate erosion and sedimentation controls throughout construction; and full and final completion of public improvements and/or work within the public right-of-way at Hanover Street.
35. The applicant shall put in place and maintain reasonable controls for regulating access to the pond perimeter and the pond itself.
36. Prior to the start of any construction activities on the property, the applicant shall provide a performance guarantee pursuant to Section 8.3 of the Site Plan Review Regulations in an amount and form acceptable to the Department of Public Works and the City's legal counsel, to serve as a financial surety for: site restoration in the event of abandonment; installation and maintenance of appropriate erosion and sedimentation controls throughout construction; and full and final completion of public improvements and/or work within the public right-of-way at Hanover Street.
37. Prior to the start of any construction activities on the property for which construction inspection is required pursuant to this decision or any applicable ordinance or code, the City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to (a) on-site work related to sewer, water, temporary sedimentation and erosion control, and drainage improvements, and (b) all off-site work within the City's right-of-way (including but not limited to water, sewer, driveways, drainage), in accordance with Section 8.2 of the Site Plan Review Regulations. The applicant shall provide funding for inspection services in a form and amount acceptable to the City and shall sign an Infrastructure Inspection Agreement.
38. The applicant shall request approval pursuant to City Code Chapter 182, Section 182-40.B, to extend the water main from Hanover Street Extension through the development. The applicant shall request that the City Council, at the time of approval of the connection of the utilities, delegate to the City Manager the authority to accept on the City's behalf, a conveyance, which would include the water mains and hydrants within the development, excluding service connections beyond the curb shut-off valves, and all appropriate easements for their continued maintenance by the City, such conveyance to be recorded prior to acceptance of any utility improvements by the City.
39. The applicant shall sign a Water Extension Agreement in accordance with Chapter 182 of the City Code.
40. Prior to the start of any construction activities on the property, the applicant shall record in the Grafton County Registry of Deeds notice of the stormwater management and erosion and sediment control plans as required per Section 6.6.H.2.d of the Site Plan Review Regulations. Such notice shall be reviewed by the Planning & Development Department prior to recording.
41. The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on May 20, 2024. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for five years from the date of approval; however, any building permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.

- 1 42. All water and sewer fees shall be paid as set forth in City Code Chapter 68.
- 2
- 3 43. If required by the Department of Public Works, the applicant shall obtain an Excavation Permit,
- 4 Driveway Permit, and Stormwater Permit.
- 5
- 6 44. Prior to the start of any construction activities on the property, the applicant shall obtain or update
- 7 (if appropriate) any required Federal or State approvals, including but not limited to:
- 8 a) EPA Stormwater Pollution Prevention Plan (SWPPP)
- 9 b) NHDES Sewer Connection Permit
- 10 c) NHDES Wetlands Permit
- 11 d) NHDES Alteration of Terrain Permit

12 **Conditions to be Satisfied Prior to the Issuance of a Temporary Certificate of Occupancy**

- 13 45. Condition #2 of the concurrent PURD Conditional Use approval shall be satisfied.
- 14
- 15 46. The applicant shall dedicate the completed water mains and the on-site hydrant(s), excluding
- 16 service connections beyond the curb shut-off valves, to the City for ownership and maintenance,
- 17 subject to appropriate easements. Said conveyance and easements shall be approved by the
- 18 City Attorney and the Department of Public Works and recorded in the Grafton County Registry
- 19 of Deeds prior to the issuance of a final Certificate of Occupancy for the project and prior to the
- 20 acceptance of the utility improvements. The easement shall be described in metes and bounds in
- 21 the easement deed and on the easement plan. Said easement shall not be recorded until
- 22 satisfactory completion of Condition of Approval #51 requiring the provision of as built plans.
- 23
- 24 47. The Applicant shall perform maintenance on the existing 48" CMP culvert that will be used for
- 25 stormwater discharge of the project site, which also extends across Hanover Street Extension, to
- 26 include both clearing of the culvert inlet and outlet of debris, and restore the condition of the
- 27 headwall, to minimize the risk of culvert failure (capacity) to the satisfaction of the City Engineer
- 28 and the Planning & Development Department. In addition, the applicant shall perform an
- 29 inspection of the invert of the existing culvert and report its condition, in writing, to the City
- 30 Engineer for review. The City will coordinate access to the right-of-way and any abutting property
- 31 for maintenance. Maintenance activities shall be in accordance with NHDES standards.
- 32
- 33 48. The applicant shall implement all recommendations set forth in the applicant's traffic study.
- 34
- 35 49. One (1) year following the issuance of a certificate of occupancy of Building 3 and then again one
- 36 (1) year after the issuance of a certificate of occupancy of the final building in the development,
- 37 the applicant shall prepare a post-construction traffic study. Based on the traffic evaluation results,
- 38 the applicant shall be required to work with the Lebanon Police Department, the Department of
- 39 Public Works, and the Planning & Development Department to identify and provide additional
- 40 mitigation to ensure safe and efficient traffic patterns at the intersections studied. The applicant
- 41 shall post a performance security with the City of Lebanon in an amount adequate to cover the
- 42 cost of traffic evaluation to ensure its satisfactory completion pursuant to this condition. Pursuant
- 43 to the recommendation of the Lebanon Pedestrian and Bicyclist Advisory Committee,
- 44 traffic/pedestrian/bicycle counts for the post-construction traffic studies shall be performed in
- 45 September or May.
- 46
- 47 50. The impact fee calculated pursuant to Condition of Approval #41 shall be paid.
- 48
- 49 51. Third-party engineer or design engineer inspection reports and as-built drawings provided by the
- 50 applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate System),
- 51 including tie sheets, shall be reviewed and approved by the City Engineer.
- 52
- 53 52. All improvements depicted on the plan shall be completed, and shall be constructed as depicted
- 54 on the approved plan, including any modifications to the plan as may be approved by the Planning
- 55 Board in accordance with the Site Plan Review Regulations.

1 The group discussed what “active and substantial” development and completion mean (**Conditions**
2 **5&6**). Mr. Stacy asked what happens if the market turns after the first few buildings are built -
3 could Buildings 4 & 5 not be built because of adverse market conditions. Mr. Alexio said it is hard
4 to say because they do not know what the market will be like in the future.

5
6 The group discussed how to determine the appropriate hours to limit construction (**Condition 14**).
7 Resident Margie Godfrey suggested the Board consult the School Board. Resident Bill Lamb
8 suggested mandatory penalties be enforced if work is done outside permitted hours.

9
10 Mr. Colin Smith, Chair of the Lebanon Pedestrian & Bicycle Committee, said the conditions
11 related to sidewalks (**Condition 15**) are what was suggested by his committee.

12
13 Mr. Corwin said lighting is not specifically addressed in **Condition 16**, but the Board can add
14 specifications. ~~He suggested a review of lighting designs for the crosswalks could be conducted.~~

15
16 Resident Margie Godfrey said it would be a wonderful commitment of the applicant to rehabilitate
17 the pedestrian bridge (with more than just aesthetic changes) near the project site (**Condition 17**).
18 The group discussed whether the bridge is owned/maintained by the City or the state. Chair Faunce
19 said he had no concrete idea about how to craft a condition for a commitment by the applicant to
20 maintain more than the aesthetic aspects of the bridge.

21
22 The group discussed the traffic study (**Condition 18**) completed by the applicant. Mr. Stacy said
23 he conducted his own study at the intersection of Wolf Road and Old Etna Road from 7am to 8am
24 on a Friday. He said he was surprised to see there was little to no traffic at that time at that
25 intersection. He said he no longer has concerns about that intersection not being included in the
26 traffic study. Resident Kathy Harrington said she lives on Mt. Support Rd. and she said traffic
27 backs up from Evans Dr. all the way to Hanover Street, almost to the Hypertherm during the 5pm
28 hour. She said it would be a good idea to study the traffic in that area in the evening. Mr.
29 Fenstermacher said the traffic study did include those areas at rush hour.

30
31 Chair Faunce suggested that the access road leading to the development be named Densmore Dr.
32 and that the buildings within the site be named after important persons to the Brickyard operation,
33 such as Moffitt and Smith (**Condition 23**). Mr. Corwin added these suggestions to **Condition 27**.

34
35 Resident Margie Godfrey asked about safety around the pond on the site. Chair Faunce noted the
36 pond would be addressed in **Condition 35**.

37
38 Resident Eugene Boisvert said he is the property owner at 237 Hanover Street (where Gilly’s Auto
39 is). He said there are already traffic problems in his area in the mornings, afternoons, during school
40 functions and during the commuter times from DHMC. (**Condition 15**). He said he did not think
41 the proposed crosswalk (at Old Etna Rd and Hanover St) is going to help, but he did think the
42 design with the extension of the sidewalk and crossing just Hanover St is better than the design
43 with the island. He said the City should focus on the development’s entrance on the North side,
44 which is near his property, because trucks can’t make the corner and have to go through the store’s
45 parking lot. He said the problem will only get worse with more traffic.

46
47 Resident Bill Lamb asked if the lots that the site would occupy will be combined into one zone
48 (**Condition 29**). Mr. Corwin said all zones for the site will remain.

1 The group discussed the timing of when a post-construction traffic study would be completed.
2 **(Condition 49)**. They agreed to include language that two studies will be done one year after the
3 issuance of a certificate of occupancy of Building 3 and after issuance of a certificate of occupancy
4 of the final building. Mr. Fenstermacher said their plan is to build a new building each year.

5
6 Mr. Stacy said in the financial data, there was a Nexus challenge to the school's Impact Fees
7 **(Condition 50)**. He asked if the Planning Board needed to address that challenge when calculating
8 its Impact Fee. Mr. Corwin explained that the City Council authorized the Planning Board to adopt
9 Impact Fees, which are collected from new developments for capital impacts (namely to police,
10 fire, school, and recreation facilities) necessitated by the new developments. He said the public-
11 school portion of the Impact Fees can be waived for age-restricted residential units and
12 studios/one-bedroom units with a gross living area of 500 square feet or less. He said the challenge
13 that has been presented is claiming that there won't be any Impact Fees collected for the
14 studio/one-bedroom units in the Brickyard development because they are less than 500 square feet.
15 It was agreed the Planning Board did not need to address this challenge at this time.

16 17 18 **Board Questions to Applicant RE: Waivers Requested**

19 Chair Faunce asked about the heights of Buildings 2, 4, and 5. Mr. Fenstermacher said the height
20 is measured from the front of the buildings, so all are 45 feet tall. He said the design for the other
21 buildings is higher (for which the variance is requested) because they are built into the hill.

22
23 Mr. Ceglarski asked if a fence would be erected around the pond. Mr. Fenstermacher said there
24 would not be a fence but there would be signage. Chair Faunce noted that signage is considered
25 "reasonable" safety measures. It was suggested the owner could make safety rules for the pond a
26 part of the contract that tenants sign when they lease the units.

27
28 The group discussed the density bonus and confirmed that the density bonus is the size of the 51
29 townhomes, and if the bonus is not granted, the townhomes will not be built. Mr. Fenstermacher
30 said they would have to redesign the plan to what would be feasible financially.

31
32 The group discussed the rents that would be imposed for the units. Mr. Fenstermacher said they
33 are planning to ask \$2000/month for the studio apartments. He said they will have 12-month lease
34 terms. Mr. Stacy suggested a third-party evaluation to assess the units and the rents being proposed,
35 based on comparable units that already exist in Lebanon.

36
37 Mr. Rutter said the numbers do not seem to be accurate in the Financial Impact Statement and Mr.
38 Kennelly agreed the statement appears to be sloppy. Mr. Corwin said, in the past, the City Assessor
39 had reviewed other applicants' Impact Studies. He said a project's Impact Study provides
40 information to the Board that does not provide much that can be used to alter the project. Mr.
41 Corwin suggested the role of the Impact Study would be a good topic for a future work session.
42 He noted that Mr. Mark Frazier, who is a reputable professional, wrote the Impact Study report for
43 this project.

44 45 **Public Comment**

46 Chair Faunce opened the public comment portion of the public hearing.

47
48 Mr. Bill Lamb (Ward 3) explained the assessment process to the Board. He noted that corporately
49 owned residential developments are assessed differently from condominium owners and pay half

1 the taxes. He said this applicant is asking for conditional use concessions, but it is within the power
2 of the Planning Board to say no and not grant those exceptions. He asked the Board members to
3 reconsider what the revenue of the project to the City will be. He said the real question is whether
4 the taxes this owner will pay will really cover the services that they're going to use.

5
6 ***A MOTION was made by Richard Ford Burley to extend the meeting to 10:30pm. The MOTION***
7 ***was seconded by Eric Stacy.***

8
9 ****The MOTION was approved (6-0).***

10
11 At 9:45pm, Chair Faunce called for a recess.

12 At 9:58pm, the meeting resumed.

13
14 Chair Faunce closed the public comment portion of the public hearing.

15
16
17 **Waiver Requests Discussion & Approval**

18
19
20 ***A MOTION was made by Richard Ford Burley that, for the application of Brickyard One***
21 ***Nominee Trust, PB2024-22-SPRCUP, the Lebanon Planning Board approves***
22 ***partial waivers from the following sections of the Site Plan Review Regulations:***

- 23 • ***Section 5.1.E.7 – Requirement to provide information relative to buildings within 200 feet***
24 ***of the site.***
25 • ***Section 5.1.E.16 – Requirement to count existing trees if used to meet landscape***
26 ***requirements.***
27 • ***Section 6.6.C.1.2.K – Requiring test pit data for stormwater management design.***
28 • ***Section 6.5.D.5 – Requiring construction of a sidewalk along length of property's frontage.***
29

30 ***The MOTION was seconded by Eric Stacy.***

31
32 ****The MOTION was approved (6-0).***

33 The group discussed the waiver request to increase the maximum permitted building height from
34 45 feet to 55 feet for Buildings 4 and 5. The group agreed that the additional 10 feet would not
35 make a noticeable difference. They discussed the impact of the structures to the line of view. Chair
36 Faunce noted that the most prominent building (Building 2) is the one closest to the pond and is
37 not one of the buildings that would be 55 feet tall if the waiver is approved. The group noted that
38 they have never received renderings from ground level. The group discussed the surrounding area
39 and whether abutters would be impacted by the taller height of Buildings 4 and 5 (if the waiver is
40 approved).

41
42 The group also discussed the residential characteristics of the project and site, and the meaning of
43 the density bonus at length. Mr. Corwin explained Section 501.2.D:

44
45 ***"The PUD provisions of this ordinance provide applicants with a development approach intended***
46 ***to promote flexibility and innovation in land planning. Within this context, the density regulations***
47 ***that are established are intended to be maximum allowable densities each tract of land possesses***
48 ***different unique development characteristics and limitations. What is allowed on any particular***
49 ***track will be a function of innovative land planning and building design, interacting with the***

1 *special characteristics and limitations of the property. The density regulation set forth below or*
2 *intended support development on areas most suitable for development while conserving the site*
3 *resources.”*

4
5 The group discussed the median income for single people in a household (\$95,000 per year) and
6 the median income for a married couple in a household (\$133,000 per year) in Lebanon, and how
7 the proposed rents are in keeping with the City’s current residential environment. The group
8 discussed the changes that the developers made to include townhouses in the project, and that, if
9 the density bonus is not granted, the townhouses might be eliminated from the project.

10
11
12 ***A MOTION was made by Richard Ford Burley to extend the meeting to 10:45pm. The MOTION***
13 ***was seconded by Eric Stacy.***

14
15 ****The MOTION was approved (6-0).***

16
17
18 ***A MOTION was made by Richard Ford Burley that, for the application of Brickyard One***
19 ***Nominee Trust, PB2024-22-SPRCUP, the Lebanon Planning Board approves a density bonus***
20 ***of 51 dwelling units per section. 501.2.D of the Zoning Ordinance and in support thereof finds***
21 ***that:***

- 22 ***1. Pursuant to Section 501.2.D of the Zoning Ordinance, the maximum permitted density of***
23 ***the proposed PURD is 423 dwelling units.***
24 ***2. Section 507 of the Zoning Ordinance allows the Board to grant up to a 12% density bonus***
25 ***for PURDs.***
26 ***3. The applicant requests a density bonus of 51 units, which is the maximum number of***
27 ***additional units that the board may allow, pursuant to Section 507.***
28 ***4. A density bonus of 51 units is appropriate as the number and type of proposed additional***
29 ***units is in the best interest of the residents of the City of Lebanon.***

30
31 ***The MOTION was seconded by Patrick Kennelly.***

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

33 ***A MOTION was made by Richard Ford Burley that:***

34
35 ***At duly-noticed meetings of the Lebanon Planning Board held on July 8, 2024, August 12, 2024,***
36 ***September 9, 2024, October 14, 2024, November 12, 2024, December 9, 2024, and December 17,***
37 ***2024, there appeared representatives on behalf of Brickyard One Nominee Trust regarding 174***
38 ***Hanover Street (Tax Map 48, Lot 4), 0 Hanover Street (Tax Map 48, Lot 2), 0 Hanover Street***
39 ***(Tax Map 48, Lot 1), and 238 Hanover Street (Tax Map 63, Lot 1), zoned R-1, R-O-1, R-3 &***
40 ***RL-3, requesting a Conditional Use Permit pursuant to Section 308.4 of the Zoning Ordinance***
41 ***to allow an increase in the maximum permitted building height from 45 ft. to 55 ft. for Buildings***
42 ***4 and 5 as identified in the PURD plan set. PB2024-22-SPRCUP.***

43
44 **FINDINGS OF FACT**

45 Based on testimony given, application materials presented, and supporting documents submitted,
46 the Planning Board makes the following findings of fact:

1. 45 ft. is the maximum building height in the R-1 District. Per Section 308.4 of the Zoning Ordinance, the Planning Board may allow building height of up to 55 ft. by Conditional Use Permit.
2. Section 308.4 provides as follows: "By conditional use permit per Section 302.4, the maximum building height for a proposed building may be increased up to 10 additional feet if the increase in building height is for the purpose of accommodating a parking structure underneath or within the proposed building, and provided that the building is set back from the setback line a minimum distance equal to two (2) feet for every one (1) foot of additional building height over 45 feet."
3. Pursuant to Section 308.4, the applicant requests a Conditional Use Permit to allow the two multi-family buildings that are located wholly within the R-1 District (i.e. Buildings 4 and 5 as labeled in the plan set) to have a height of 55 ft.
4. In order to grant the requested Conditional Use Permit, the Board must find the applicant's proposal satisfies the Enhanced Performance Standards set forth in Section 302.4.D as well as the specific requirements of Section 308.4. The applicant has addressed the Section 302.4.D and Section 308.4 criteria in an Application for Conditional Use Permit Support Statement (found on pages 48-50 of the agenda packet for the August 12, 2024 Planning Board meeting).

CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Planning Board concludes the following with respect to the Enhanced Performance Standards set forth in section 302.4.D and the criteria set forth in Section 308.4 of the Zoning Ordinance:

1. *The site is suitable for the proposal Section 302.4.D.1.*
2. *The external impacts of the proposed use on abutting properties and the neighborhood are commensurate with the impacts of adjacent existing uses or other uses permitted in the zoning district. Section 302.4.D.2*
3. *The proposal does satisfy the criteria of Section 302.4.D.3.*
4. *Does satisfy the criteria section 302.4.D.4*
5. *The proposal does satisfy the criteria of section 302.4.D.5*
6. *The additional height for Buildings four and five is for the purpose of accommodating a parking structure underneath or within the proposed buildings. (Section 308.4)*
7. *Buildings 4 and 5 are set back from the setback line a minimum distance equal to two feet for every one foot of additional building height over 45 feet. (Section 308.4)*

Decision

Now therefore ~~it~~ be it resolved that the Planning Board, on this September 17th day of December 2024, hereby grants the request of Brickyard One Nominee Trust for a Conditional Use Permit per Section 308.4 for a height of 55 feet for Buildings 4 and 5 as identified in the PURD plan set as set forth above and per testimony, plans, and materials submitted.

The MOTION was seconded by Jeremy Rutter.

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

A MOTION was made by Richard Ford Burley that:

At a noticed meetings of the Lebanon Planning Board held on July 8, 2024, August 12, 2024, September 9, 2024, October 14, 2024, November 12, 2024, December 9, 2024 and December 17, 2024 there appeared representatives on behalf of Brickyard One Nominee Trust regarding 174 Hanover St. (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. Requesting a Conditional Use Permit per Sections 308.2, 310.2, 311A.2, and 501.2 of Zoning Ordinance for a proposed 474-unit multi-family Planned Unit Residential Development (PURD). PB2024-22-SPRCUP

FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Planning Board makes the following findings of fact:

1. The applicant owns the following 4 properties which they intend to merge into a single property following Planning Board approval of the subject application (collectively, referred to as the "Property"):
 - 174 Hanover St (Tax Map 48, Lot 4)
 - 0 Hanover St (Tax Map 48, Lot 2)
 - 0 Hanover St (Tax Map 48, Lot 1)
 - 238 Hanover St (Tax Map 63, Lot 1)
2. Per the applicant's application materials, the property is a total of +/-135.98 acres and is split-zoned R-O-1, R-3, R-1, and RL-3. A portion of the Property is the site of the former Densmore Brickyard. Other than vacant structures formerly occupied by the Densmore Brickyard, a vacant cottage at the north end of Densmore Pond, and a single family residence at what is currently 238 Hanover Street, the Property is vacant and undeveloped.
3. The applicant proposes to develop the +/-38.18 [acre](#) portion of the Property zoned R-O-1, R-3, R-1 as a 474-unit multi-building, multi-family Planned Unit Residential Development (PURD). All existing structures on the Property will be demolished except for some of the Densmore Brickyard kilns that are still standing. The remainder of the Property – zoned RL-3 and containing 97.8 acres – is not included as part of the PURD and is proposed to remain vacant at this time.
4. When the subject application was originally submitted, the applicant had proposed to construct ten (10) multi-family dwellings with a total of 473 dwelling units (and a maintenance building with an additional dwelling unit). Following feedback from the Planning Board and the public at the August and September Planning Board meetings, the applicant substantially revised their plans and is now proposing 5 multi-family buildings

with a total of 422 units at the southern end of the development site and 8 clusters of townhouses with 51 units at the northern end of the development site (and a maintenance building with an additional unit at the proposed northern entrance to development).

5. Pursuant to Sections 308.2, 310.2, 311A.2, and 501.2 of the Zoning Ordinance to Section 307.6.B.2, the applicant requests a Conditional Use Permit for the proposed PURD.
6. In order to grant the requested Conditional Use Permit, ~~the Board must~~ the Board must determine that the applicant has satisfied the criteria set forth in Section 501.1.J.1 ("Approval of CUP Application") of the Zoning Ordinance.

CONCLUSIONS OF LAW

As a result of the above findings of fact, and based on testimony given, application materials presented, and supporting documents submitted, the Planning Board concludes the following with respect to the criteria set forth in Section 501.1.J.1 of the Zoning Ordinance.

- a. *The site plan prepared pursuant to Section 501.1.E.1 above meets the purpose statement set forth in section 501.1.A (PUD Purpose) and the following standards:*
 - i. *In consideration of the Site Resources, the portions of the property most suitable for Open Space preservation and those portions most appropriate for development have been designated on the plans for those purposes.*
 - ii. *The layout of the designated Open Space area provides the greatest feasible public benefit, which is compatible with the applicant's permissible development goals, and there is no feasible alternative layout which would yield a significantly improved Open Space public benefit, while still fulfilling the applicant's otherwise permissible development objectives.*
 - iii. *To the maximum extent practicable, the plan adheres to the design guidelines set forth in section 501.1.G.*
- b. *All applicable requirements of Section 501.1.E ("Application Requirements"), Section 501.1.F ("Open Space"), Section 501.1.H, ("Dimensional Requirements"), and Section 501.2 ("Planned Residential Developments") have been met.*
- c. *The types of housing units and/or other buildings proposed within the PUD do not adversely impact the character of the area.*
- d. *The PUD does not have any substantial negative or undue impact on the environment or on transportation systems, community facilities, utilities and services.*
- e. *The PUD complies with all requirements of the Site Plan Review Regulations.*

DECISION

Now therefore be it resolved that the Planning Board, on this 17th day of December, 2024, hereby grants the request of Brickyard One Nominee Trust for a Conditional Use Permit for Sections 308.2, 310.2, 311A. 2, and 501.2 of the Zoning Ordinance for a 474-unit PURD as set forth above, and per testimony, plans, and materials submitted and per the conditions that have been read at great length earlier in this meeting¹.

The MOTION was seconded by Brian Ceglarski.

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

¹ [The referenced conditions are found on page 2, line 10 and page 2, line 43.](#)

A MOTION was made by Richard Ford Burley to extend the meeting to 11:00pm. The MOTION was seconded by Eric Stacy.

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

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the application of Brickyard One Nominee Trust regarding 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, PB2024-22-SBRCUP, for Site Plan approval to construct a proposed 474 unit multi-family Planned Unit Residential Development including five multi-family buildings containing 422 units and eight townhouse clusters containing 51 units, and a maintenance building containing one unit, together with parking, utilities, landscaping, access and other related site improvements as shown on plan set titled, "The Brickyard Residential Development," dated May 10, 2024, latest issue December 4, 2024, prepared by VHB EV Project: 52933.00 (53 sheets plus cover sheet), including any and all submissions and testimony provided for and during the public hearing.

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

The approval is subject to the conditions gone over at quite a² great length earlier in this meeting².

The MOTION was seconded by Eric Stacy.

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

3. STUDY ITEMS

A. Review of Proposed Amendments to the Zoning Ordinance and Zoning Map Discussion continued from December 09, 2024 Planning Board Meeting

Mr. Reichert said the draft amendments in the agenda packet are the current state of the zoning approvals based on applicant feedback, board feedback, and public input.

He said Staff recommends the changes to the use codes to the proposed GC1 area for the Route 120 area that are included in the agenda packet for this meeting. He said the City Council has asked that vehicular sales no longer be a non-conforming use in the GC1 zone. He said the City Council suggested two options:

- Add vehicular sales to the GC1 use code and allow that to happen within the entirety of the rezoned area.
- Refrain from rezoning all the IND-L area south of Heater Rd.

² The referenced conditions are found beginning on page 3, line 20.

After discussion, the group agreed that the second option was preferable and agreed to keep all IND-L areas south of Heater Road as IND-L.

Mr. Reichert said another question was whether to add the R3 zoning district to the Recovery House, which is managed by Headrest. He said they are in the process of buying a property within the R3 zoning district, and a Recovery House would not be a permissible use in that zone. He said it will allow the Recovery House to be built within close proximity to bus stops, which is an important resource for residents of the House. Mr. Reichert noted the agenda packet includes updated maps for the pattern zones that have been discussed in previous meetings. The group discussed clarifying the definition of one-family and two-family dwellings.

A MOTION was made by Richard Ford Burley that the Planning Board endorses the 2024-25 proposed Zoning Amendments as presented on December 17, 2024 to the Planning Board. The MOTION was seconded by Jeremy Rutter.

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

4. APPROVAL OF MINUTES

Chair Faunce said they would postpone the review of the November 12, 2024 and November 25, 2024 meeting minutes to a future meeting.

5. ADJOURNMENT

A MOTION was made by Richard Ford Burley to adjourn the meeting at 10:55pm. The MOTION was seconded by Eric Stacy.

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

The meeting was adjourned at 10:55pm.

Respectfully submitted,
Paula Roux
Recording Secretary

DRAFT

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

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Patrick Kennelly, Jeremy Rutter, Karen Zook (City Council Rep), Kathie Romano (REMOTE), Kellen Appleton, Eric Stacy (alt), Brian Ceglarski (alt)

MEMBERS ABSENT: None

STAFF PRESENT: Tim Corwin (Deputy Planning & Development Director), ~~David Brooks (Deputy City Manager)~~, Nate Reichert (Director of Planning & Development / Zoning Administrator), ~~Red Finley~~ Brian Vincent (City Engineer)

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.

Ms. Romano said she was attending remotely because she was out of town. She said no one was in the room with her while attending the meeting.

2. NOTICE OF REGIONAL IMPACT

The following application was received by the Planning and Development Department:

- **XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & Tax Map 44, Lot 7), zoned CBD, IND-L and R-3: Applicant requests a 2-year extension of the River Park Site Plan approval (PB2010-25-SPR), as most recently amended on September 9, 2019 (PB2018-34-SPA) and extended on October 12, 2021 (PB2021-29-EXT). PB2025-05-EXT**

Mr. Corwin said this application was on the agenda for this meeting as Item 4A OTHER BUSINESS. He said the City's legal counsel has requested that the public hearing for this application be held at the February 10 Planning Board meeting instead of at this meeting.

Mr. Corwin said Staff recommends the application does not have the potential for regional impact.

Mr. David Clem, manager of XYZ Dairy, was present on behalf of the applicant. He asked that the Planning Board make sure that not only the agent but the applicant be informed of all communications coming from the planning staff. He said he received conflicting information regarding this hearing. He said he was told to file for the February hearing, which he said he did this morning. He said he delivered the five printed copies that were requested by the Planning Department, as well as in addition to the electronic application. He said seeing a different communication from the Planning Staff saying the application was going to be on the agenda as OTHER BUSINESS was quite confusing. He asked that Staff notify not only the agent, but also the actual applicant on all communications so there's no confusion.

A MOTION was made by Richard Ford Burley that the application of XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & Tax Map 44, Lot 7), zoned CBD, IND-L and R-3: Applicant requests a 2-year extension of the River Park Site Plan approval (PB2010-25-SPR), as most recently amended on September 9, 2019 (PB2018-34-SPA) and extended on October 12, 2021 (PB2021-29-EXT). PB2025-05-EXT does not have the potential for regional impact. The MOTION was seconded by Patrick Kennelly.

Ms. Romano recused herself from the vote. Ms. Zook arrived at the meeting at 6:37pm, which was after the discussion of this application. She abstained from the vote.

Roll Call Vote:

Voting For – Ms. Appleton, Mr. Rutter, Mr. Ford Burley, Mr. Faunce, Mr. Kennelly

Voting Against – None

Abstaining – Ms. Romano, Ms. Zook

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

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**

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

A MOTION was made by Richard Ford Burley that the application of 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 is complete enough for the Planning Board to accept jurisdiction and commence review. The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.

Faunce, Mr. Kennelly
Voting Against – None

***The MOTION was approved (7-0).**

Deputy City Manager David Brooks explained that, during an evaluation of the parking lots behind City Hall, the City became aware that a portion of land owned by the Grafton County Senior Citizens Council (GCSCC) extends into the parking lot that has been used by the City. He said the GCSCC has agreed to adjust the boundary line to give ownership of that portion to the City. He said the portion in question is about 2,200 square feet. Ms. Romano asked why the GCSCC boundary line was not extended to include the portion in question. Dep. City Manager Brooks said the GCSCC asked the City to be responsible for two large trees on that portion of the property and because, as a municipality, it has the appropriate liability protections.

Chair Faunce opened the public comment portion of the hearing. [No one from the public attending either in person or on-line spoke.](#)

Chair Faunce closed the public comment portion of the hearing.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the application of Grafton County Senior Citizens Council, Inc. and City of Lebanon, for a proposed Boundary Line Adjustment between Tax Map 92, Lot 23 and Tax Map 92, Lot 17 and a Voluntary Lot Merger of Tax Map 92, Lot 17 and Tax Map 91, Lot 245, PB2024-~~39~~46-BLA, as shown on a plat titled "Boundary Line Adjustment & Merger Plan," prepared by Paton Land Surveying, dated September 12, 2024, revised November 26, 2024, including any and all supplemental submissions and testimony provided during the public hearing, subject to 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 applicants 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)***

- 1 **3. The applicants shall submit the executed deeds of the land transfer together with**
2 **applicable recording fees to the Planning & Development Department to be recorded**
3 **contemporaneously with the plat.**

4
5 **The MOTION was seconded by Kellen Appleton.**

6
7 **Roll Call Vote:**

8 **Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.**
9 **Faunce, Mr. Kennelly**

10 **Voting Against – None**

11
12 ***The MOTION was approved (7-0).**

13
14
15 **A MOTION was made by Richard Ford Burley that the Lebanon Planning Board authorizes**
16 **the Chair to sign the plat of Grafton County Senior Citizens Council, Inc. and City of**
17 **Lebanon, PB2024-46-BLAVLM, titled “Boundary Line Adjustment & Merger Plan,” prepared**
18 **by Paton Land Surveying, dated September 12, 2024, revised November 26, 2024.**

19
20 **The MOTION was seconded by Brian Ceglarski.**

21
22 **Roll Call Vote:**

23 **Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.**
24 **Faunce, Mr. Kennelly**

25 **Voting Against – None**

26
27 ***The MOTION was approved (7-0).**

- 28
29 **B. Cicotte Holdings, LLC, 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), zoned R-O-**
30 **1: Request for a Conditional Use Permit pursuant to Section 311A.2 of the Lebanon**
31 **Zoning Ordinance and for Site Plan Review per Section 3.1.D of the Site Plan**
32 **Review Regulations to expand the outdoor vehicular storage area for an existing**
33 **vehicular sales use together with associated site improvements including**
34 **landscaping and lighting. PB2024-48-SPRCUP - Postponed from December 9, 2024**

35
36 Mr. Corwin said Staff has not received a response to comment from this applicant. He said the
37 applicant has requested a postponement of this hearing to complete its wetlands delineation,
38 which would be the second postponement for this application. Mr. Corwin noted that the
39 Planning Board recently updated its procedures (specifically Article 6.6.1) to limit the number of
40 times an applicant can postpone a hearing for an application. Chair Faunce confirmed that the
41 Board would grant this postponement but not any others. He confirmed that no one was present
42 on behalf of the applicant at this meeting. Mr. Corwin said Staff will notify the applicant that no
43 future postponement requests will be granted.

- 44
45 **C. Robert & Brenda Owens and Dustin & Tong Fei Meltzer, 163 Meriden Road (Tax**
46 **Map 121, Lot 6) and 0 School Street (Tax Map 121, Lot 5), zoned R-3: Request for a**
47 **Boundary Line Adjustment. PB2025-01-BLA**
48

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

A MOTION was made by Richard Ford Burley that the application of 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 is complete enough for the Planning Board to accept jurisdiction and commence review. The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.

Faunce, Mr. Kennelly

Voting Against – None

****The MOTION was approved (7-0).***

Mr. Robert and Mrs. Brenda Owens, with Attorney Barry Schuster, were present on behalf of the applicants. Mr. Owens said he spoke with [co-applicant](#) Mr. Dustin Meltzer about appearing at this public hearing, but he said Mr. Meltzer was working and unavailable. He explained that both parties were in agreement to adjust the boundaries of the properties.

Mr. Rutter noted that the application has many references to disturbed rebars. Mr. Schuster said the relocation/adjustment of rebars needs to be noted for surveyors. He said Mr. Payton used new pins to mark the corners of the areas in question.

Chair Faunce opened the public comment portion of the hearing. [No one from the public attending either in person or on-line spoke.](#)

Chair Faunce closed the public comment portion of the hearing.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the application of PB2025-01-BLA, for a proposed Boundary Line Adjustment between 163 Meriden Road (Tax Map 121, Lot 6) and 0 School Street (Tax Map 121, Lot 5), PB2025-01-BLA, as shown on a plat titled “Lot Line Adjustment Plan prepared for Dustin Meltzer & Tong Fei Meltzer and Robert E. Owens & Brenda L. Owens,” prepared by Vive Libre Geomatics, dated November 12, 2024, Drawing 24035-bo, including any and all supplemental submissions and testimony provided during the public hearing, subject to 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 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)

2. The applicants 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.

The MOTION was seconded by Kellen Appleton.

Mr. Schuster asked if the recording of deeds could be done electronically. Mr. Corwin said Staff can work with the applicant to reasonably apply that condition because the City has an account with the registry and its electronic process.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr. Faunce, Mr. Kennelly

Voting Against – None

****The MOTION was approved (7-0).***

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board authorizes the Chair to sign the plat of Robert & Brenda Owens and Dustin & Tong Fei Meltzer, PB2025-01-BLA, titled “Lot Line Adjustment Plan prepared for Dustin Meltzer & Tong Fei Meltzer and Robert E. Owens & Brenda L. Owens,” prepared by Vive Libre Geomatics, dated November 12, 2024, Drawing 24035-bo.

The MOTION was seconded by Eric Stacy.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr. Faunce, Mr. Kennelly

Voting Against – None

****The MOTION was approved (7-0).***

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.

Mr. Corwin said this application has been withdrawn by the applicant.

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

Mr. Corwin said this applicant has submitted a variance to the Zoning Board for one aspect of the plan, so this application is being withdrawn for this meeting and will be brought back once the application has attained the variance.

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

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

A MOTION was made by Richard Ford Burley that the application of 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 is complete enough for the Planning Board to accept jurisdiction and commence review.

The MOTION was seconded by Jeremy Rutter.

Roll Call Vote:

Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr. Faunce, Mr. Kennelly

Voting Against – None

***The MOTION was approved (7-0).**

Deputy City Manager Brooks, Mr. Paul Simon (Park Architecture), and City Engineer Rod Finley were present on behalf of the applicant. Dep. City Manager Brooks said Mayor Tim MacNamara is also part of the project team.

Dep. City Manager Brooks gave an overview of the work that has been done since the last time they were before the Planning Board (in August 2024). He noted that, at that time, they had received wetlands approval from DES to impact the small wetland area and avoid the larger wetland at the northern end of the site.

He said site work, including clearing and filling the site, has been accomplished. Mr. Finley said boulders from another project site (Kimball Street / Forest Ave project) have been broken up and used as fill at the 0 Barrows Street site to raise and level the elevation for the cottage foundations. He said they installed some erosion setting control to stabilize the site.

1
2 Mr. Simon reviewed the site plan layout and the cottage style for all five cottages planned for the
3 development. He said Cottage 1 will have lower first-floor elevations because the plan is to make
4 it an ADA accessible unit. He said carports, which include some storage space, will have EV
5 Charging stations. He said snow storage space will be included behind the carports.

6
7 He gave an overview of the erosion control plan. He said silt fencing would be needed around
8 the existing wetland, removal of the existing paved surface and then along the south side of the
9 property. He said the dumpster area would be fenced in and that rip-rap will be tied into the
10 retaining wall behind the carports and near the dumpsters.

11
12 Chair Faunce asked about snow removal – in particular ~~that~~ whether the site will be plowed, and
13 if fire trucks will have clear access during the winter, both of which Mr. Simon confirmed. Chair
14 Faunce also asked about the fencing around the dumpster, which Mr. Simon confirmed would
15 otherwise be visible to neighbors of the property.

16
17 Mr. Finley discussed the underground stormwater detention system. He said the water off the
18 parking area will drain into the stormwater system, and overflow will go into storm drain that
19 directs water to the north side of the property.

20
21 Mr. Simon said the plan includes a patio area and natural stone boulders will be positioned near
22 the patio ~~for~~ as natural seating elements. Mr. Finley said the electrical/communication/telephone
23 cables will be buried underground.

24
25 Mr. Simon reviewed the landscaping plan. ~~He said,~~ sSince the plan will not affect at least half the
26 perimeters, ~~they are~~ the City is requesting waivers on portions of the permanent landscape
27 requirements. He discussed the lighting plan for the site, particularly what is planned for the
28 parking areas.

29
30 Dep. City Manager Brooks said the cottage cluster development layout consists of five, one-story
31 detached residential units surrounding a central courtyard. He said each unit has approximately
32 930 square feet of gross living space. The group discussed how the cottages would have a below-
33 grade level but, although it would not be a finished space (appropriate for a bedroom) at the time
34 of the sale of the property, it is designed to be habitable. The group also discussed parking,
35 which would be directly off Barrows Street.

36
37 The group discussed at length the challenge of building these units so as to offer them at an
38 affordable price to potential owners. Dep. City Manager Brooks said the City plans to ~~build~~ sell
39 the units at cost and offer them in a lottery system for qualified applicants employed by the City,
40 School District ~~and or~~ Lebanon Housing Authority. He said the City's legal counsel is working
41 on the purchase and resale documentation language so the affordability will be retained after the
42 initial sale, should the initial owners desire to sell the properties in the future. He said the City
43 hopes to be able to sell the units for \$350,000-\$375,000, and the group discussed the viability of
44 selling in that price range. Dep. City Manager Brooks said details regarding ownership and resale
45 of the properties ~~is~~ are under review by the City's legal counsel.

46
47 Chair Faunce opened the public comment portion of the hearing.
48

Ms. Rebecca Kidder said she is an abutter to the property. She said she has gone to City Council meetings and brought up issues, one of which she said was ignored. She said her pet cemetery was dug up even though she said she was told numerous times that work would not be going on in that area. She said she has several trees that have been gifted to her that she does not want moved without her knowing it.

She said she has gone to City Hall and asked people to explain what is going to happen on the site, but this is the first time she has seen this plan. Chair Faunce asked if the trees in question are located on City property and Ms. Kidder confirmed they are. Mr. Finley said he spoke with Ms. Kidder and said the City would relocate the trees. Chair Faunce suggested perhaps City employees could mark where on her property the trees would be relocated.

Mr. David Clem said he is in support of what's proposed, but he said there are aspects of this application that bear a little more discussion from the Planning Board. He said it would be interesting for the Planning Board to ask the City what third-party consultant expenditures were necessary in order to meet the application requirements. He suggested the Board take that total ~~one~~ and divide by 5 to calculate a cost per unit. He said it is misleading if anyone thinks these units are going to cost \$350,000. He ~~said~~ noted that, even if land costs are free, ~~but~~ factoring in all the staff time, ~~and~~ the expenditures thus far, ~~and~~ the consultant time, and what the cost of construction is in today's world, ~~I don't~~ he didn't think this project should be sold as workforce housing.

He said the issues of control and limited return on investment for the initial owners ~~—he said this will be~~ will constitute some form of subsidy to the first buyers. ~~He said~~ however the City conditions ~~their~~ the first buyers' approval in terms of municipal employment, if they are going to have full property rights ~~there is~~, they are likely to ~~be~~ benefit from significant appreciation. He said the original intent of this prototype model of low-cost development may be lost if ~~it transfers~~ the properties are sold within some short period of time.

He said the City doesn't have to invent the wheel on this because there are multiple agencies that have addressed this issue and they have boiler-plate material as to how to deal with it. ~~He said, if the City is going to give someone a subsidy going in, then it's in his experience not uncommon to limit their piece of the rock going out if they choose to sell it.~~
~~Council Chambers 1 hour 49 minutes 14 seconds~~

He said there are 14 waiver requests in this application. He said the Planning Board needs to understand each of them because it is setting a precedent in terms of future activity that's not related to the City and some of those waiver requests are significant. He said the fact that these waivers are requests ~~are~~ asked by the City itself means that the City's regulations are too complex and too expensive to implement, and it really isn't an incentive for a private property owner to go down this route. He said when the City creates a cottage housing zone and then, almost less than a year later, changes the terms of it, it is sending a mixed message as to what the expectations are for this to be a prototype.

Ms. Sarah Riley, Chair of the Conservation Commission, asked if this meeting would be the only opportunity for public comment and if a site visit is planned. Chair Faunce said a site visit was conducted during the summer and this is the only opportunity for public comment at this meeting. He said if the Board is not comfortable enough to go into deliberation tonight, the public hearing may continue to a future meeting.

1
2 Ms. Riley asked if ~~the it's~~ it is the Board's policy to always include wetlands and unbuildable
3 space when calculating percentages, such as required space per cottage. Mr. Corwin said the
4 presence of wetlands on a property can come into play when calculating the permissible density
5 for a planned unit residential development.

6
7 Ms. Riley suggested the number of parking spaces could be examined closely, ~~and if~~ as could
8 alternatives to paved surfaces (such as grass pavers) for the parking areas ~~could be considered~~.
9 She asked for more details about the stormwater, drainage and snow storage plans for the site.
10 She asked if the landscaping plan could include more native plants, and whether more varieties
11 of trees could be used. She said she did not know if the Tree Advisory Board had been consulted
12 regarding the types of trees proposed for the site. Chair Faunce suggested that the proposed list
13 of plants could be reviewed by the Tree Advisory Board as a Conditions of Approval. Mr. Simon
14 said he could look at areas of the site where alternative surfaces could be used instead of
15 pavement. Mr. Finley said the cost of pervious surfaces can be higher because of extra materials
16 required. He said use of that type of surface could possibly be replace the proposed drainage
17 system.

18
19 Rebecca Kattamis (Ward 2) expressed concerns about keeping the costs of the units with in the
20 suggested budget and about snow removal (where the snow will go because the site is tight).

21
22 She said she hopes the City will add some robust regulations regarding the resale of these
23 properties because otherwise it is not fair to the rest of ~~the~~ Lebanon residents. She asked, if the
24 costs to build are higher than the target and the units are priced at more than anticipated, ~~will~~
25 whether the difference would be made up with a subsidy by Lebanon residents/taxpayers.

26
27 Mr. Corwin commented that questions of affordability of workforce housing and ownership
28 restrictions and resale of these properties are beyond the scope of the Planning Board. He said,
29 there are no Conditions of Approval that the Board can attach to this project relative to
30 affordability and resale. He said it has been helpful to have ~~these~~ comments concerns surfaced
31 raised in this forum, such that Staff can ~~take these ideas~~ address them and hopefully come up
32 with a satisfactory response.

33
34 Ms. Riley clarified that she was referring to permeable surfaces that can be driven on, such as
35 grass pavers. She said this is a great opportunity, if it's a City project, for the City to truly try to
36 be as sustainable as possible.

37
38 She said she would also like to hear more about the lighting plan for the project. Mr. Simon
39 described the proposed types and locations of the lighting for the project.

40
41 Dep. City Manager Brooks said it is the City's plan and expectation to ~~make~~ construct these units
42 as inexpensively as possible and still have ~~it~~ them be a good demonstration project ~~of this~~ of this
43 type of development. He said it may not meet workforce housing statute and levels of
44 affordability.

45 He said the City is trying to use modular techniques and will get as creative as it can get to end
46 up with a desirable project that the city can be proud of. He said they will continue to work with
47 the City's attorneys to incorporate the appropriate language in the owners' documents and the
48 deeds to ensure affordability as well as to prevent a windfall for initial owners at resale. He said
49 he may send Mr. Clem an email tomorrow to get samples of those organizations that are already

1 doing this. He said the City will build in language it feels ~~it~~ is appropriate and that can be
2 approved by the Attorney General's Office as part of condominium documents. He said some of
3 these decisions will be policy decisions that will likely be part of future public meetings, whether
4 it's here or in front of the City Council. He confirmed that site development costs would be split
5 among the five units and added to the overall cost of development.

6
7 Mr. Ford Burley said this project is being used as a way of helping the Board refine its
8 regulations. Mr. Corwin said this is the first cottage development project since the adoption of
9 Section 509 of [the Zoning Ordinance](#), which are the cottage development regulations, to come
10 before the Board as a full package for review. He said this is a good test case in some ways for
11 the Board's regulations because it requires a Conditional Use permit from the Zoning Board and
12 Site Plan review under the Site Plan Review regulations and constitutes a major subdivision and
13 so requires compliance with that layer of regulations as well.

14
15 Chair Faunce closed the public comment portion of the hearing.

16
17 The group discussed the waivers requested by the applicant at length. Chair Faunce said the
18 Board members can learn more about what is being requested before a decision is made at a
19 future meeting.

20
21 Mr. Corwin said the plans refer to a partial waiver from [Site Plan Review Regulation Section](#)
22 [6.2-B](#) (Perimeter Landscape Requirements), which was left out of the draft motion for waiver
23 requests included in the materials for this meeting. He said the language of item #4 should
24 include 5.1.E-16 and 6.2-B.

25
26 Ms. Romano asked if the parts of the property not included in the development could be
27 developable in the future, because she said the owners of the five units would have control over
28 the entire property. Dep. City Manager Brooks said the rest of the property is almost exclusively
29 wetlands and he did not believe it is developable.

30
31 ***A MOTION was made by Richard Ford Burley to extend the meeting to 9:40pm. The***
32 ***MOTION was seconded by Andrew Faunce.***

33
34 ***Roll Call Vote:***

35 ***Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.***
36 ***Faunce, Mr. Kennelly***

37 ***Voting Against – None***

38
39 ****The MOTION was approved (7-0).***

40
41
42 ***A MOTION was made by Eric Stacy to continue the public hearing ~~for~~ to the January 27,***
43 ***2025 Planning Board meeting. The MOTION was seconded by Richard Ford Burley.***

44
45 ***Roll Call Vote:***

46 ***Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.***
47 ***Faunce, Mr. Kennelly***

48 ***Voting Against – None***

1
2 ***The MOTION was approved (7-0).**

3
4
5 **4. OTHER BUSINESS**

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

7 This item was discussed earlier in the meeting. It ~~has been postponed to~~ will be scheduled
8 for a public hearing at the February 10, 2025 Planning Board meeting.
9

10 **5. APPROVAL OF MINUTES**

11 **• November 12, 2024**

12 Amendments - Page 2 Line 2: Change to lower case a
13 Page 3, Line 6: Change other to others
14 Edit header to read LEBANONNH.GOV
15

16 **• November 25, 2024**

17 Amendments - Page 2 Line 46: Add “Ms. Romano said her concern was that requiring
18 fuel tanks to be behind the building would make it difficult for fuel delivery trucks to
19 access them because access is constrained.”
20

21 ***A MOTION was made by Richard Ford Burley to approve the November 12, 2025 and***
22 ***November 25, 2025 Planning Board meeting minutes as amended. The MOTION was***
23 ***seconded by Eric Stacy.***
24

25 ***Roll Call Vote:***

26 ***Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.***
27 ***Faunce, Mr. Kennelly***

28 ***Voting Against – None***
29

30 ***The MOTION was approved (7-0).**

- 31 **• December 09, 2024 – Chair Faunce said these minutes would be approved at a future**
32 **meeting**
33

34 **6. ELECTION OF OFFICERS**
35

36 ***A MOTION was made by Richard Ford Burley to nominate Andrew Faunce as Chair of the***
37 ***Planning Board. The MOTION was seconded by Kathie Romano.***
38

39 ***Roll Call Vote:***

40 ***Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.***
41 ***Faunce, Mr. Kennelly***

42 ***Voting Against – None***
43

44 ***The MOTION was approved (7-0).**
45
46

1 *A MOTION was made by Andrew Faunce to nominate Richard Ford Burley as Vice Chair of*
2 *the Planning Board. The MOTION was seconded by Jeremy Rutter.*

3
4 *Roll Call Vote:*

5 *Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.*
6 *Faunce, Mr. Kennelly*

7 *Voting Against – None*

8
9 **The MOTION was approved (7-0).*

10
11 **7. ADJOURNMENT**

12
13 *A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:32pm. The*
14 *MOTION was seconded by Patrick Kennelly.*

15
16 *Roll Call Vote:*

17 *Voting For – Ms. Romano, Ms. Appleton, Ms. Zook, Mr. Rutter, Mr. Ford Burley, Mr.*
18 *Faunce, Mr. Kennelly*

19 *Voting Against – None*

20
21 **The MOTION was approved (7-0).*

22
23 The meeting was adjourned at 9:32pm.

24 Respectfully submitted,
25 Paula Roux
26 Recording Secretary
27