



**LEBANON PLANNING BOARD
JULY 14, 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: 476 749 922#). If you have trouble accessing this meeting, please email [Tim Corwin](#).

2. Notice of Regional Impact

3. Public Hearing Items

- A. **Recreo, LLC, 2 Mascoma Street (Tax Map 91, Lot 254), zoned LD:** Applicant received Site Plan approval on July 11, 2022 (PB2022-17-SPR) for a phased redevelopment of the property including construction of two (2) multi-family dwellings containing a total of 152 units together with associated site improvements, which was extended on July 8, 2024 (PB2024-25-EXT). Applicant now requests (1) a waiver from Section 4.10.C of the Site Plan Review Regulations providing that the Planning Board shall grant no more than one extension for any site plan, (2) an additional extension of the timelines associated with obtaining a building permit and for constructing required site improvements, and (3) an amendment to the approved plan to add an additional phase to allow the renovation of the former Village Market space for a proposed food court and restaurant use. **PB2025-13-EXT Postponed from May 12, 2025.**
- B. **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). **PB2025-25-EXT - Continued from June 9, 2025**

4. Other Business

- A. **ReVision Energy (applicant), Cole Partners, LLC (property owner), 90 Great Brook Road (Tax Map 194, Lot 1), zoned RL-1, RL-2 and RL-3:** Conceptual review for a proposed ground-mounted solar array. **PB2025-36-CON**

5. Study Items

- A. 2026 Zoning Amendment Preview

6. Approval of Minutes

- A. May 27, 2025
B. June 9, 2025
C. June 23, 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 who 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

Lebanon Planning Board Agenda
July 14, 2025

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 disrupt virtual or phone connection(s), the meeting will continue without remote access capabilities.

Any person with a disability who wishes to attend this public meeting and needs additional accommodation, please contact the ADA coordinator at City Hall by calling 603-448-4220 at least 72 hours in advance so that the City can make any necessary arrangements.

2 Mascoma Street Redevelopment Project

Extension Request Narrative

6/23/2025; Revised 7/8/2025

Section 4.10 – Expiration of Site Plan Approval

A. Any approved site plan for which a Building Permit has not been obtained within two (2) years of the date of the original approval shall be considered void....

B. Notwithstanding paragraph A above, the Board may grant an extension of up to two (2) additional years beyond the original expiration date....

C. In determining whether to grant such an extension, the Board shall consider the totality of the circumstances, including the extent and complexity of the conditions precedent, the extent of the progress made by the Applicant toward satisfying the conditions-precedent and/or starting construction, and whether the need for more time is attributable to unusual circumstances beyond the control of the Applicant, rather than to the Applicant's neglect or failure to proceed with reasonable promptness....The board shall grant no more than one extension for any site plan....

Last summer we applied for an extension for this project based on a new anticipated construction schedule. That application, which was approved by the Planning Board in August of 2024 included a revised deadline to obtain a building permit for Building 1 (Phase II) by the end of February 2025, an extension of less than a year from the July 11, 2026 deadline allowable by Section 4.10 (the original approval from the Planning Board for the project was on July 11, 2022). We are asking the Board to waive Section 4.10.C and grant the full two-year extension that the project would have been entitled to request last summer (but we chose not to request at that time).

Due to high material costs and a dearth of labor, the construction of new apartment towers has remained untenable to this point. Our prognostication is that the market will allow for construction, albeit on the proposed revised phasing schedule and we need the full two years to move forward on the construction of the towers (Phases II and III). In addition, we have new opportunities for the redevelopment of the existing Village Market building, which, when completed will add aesthetic, programmatic and financial value to the property and provide impetus for the construction of the towers.

We have continued to focus on the renovation of the existing grocery store building; we are excited to announce the upcoming opening of Pellegrino's Italian Market, formerly of Enfield, at the former Village Market. Pellegrino's will be an anchor and the first step of a complete rehabilitation of the second floor of the Market building. We have an exciting concept that includes a food court and a full-service restaurant. On the advice of the planning/zoning staff we have added the redevelopment of the existing market building to the Phasing schedule. It is now Phase I and the development of the housing towers bump to Phases II and III.

We appreciate the Board's continued support of our efforts to bring critically needed retail and housing units to the downtown community.

Mike Davidson, Recreo LLC

Tim Sidore, Recreo LLC

Jim Wasser, Studio Nexus Architects + Planners PC

BUILDING PHASES

Note: In the original site plan review there were only two phases, one for the construction of Apartment Building #1 and one for construction of Apartment Building #2. The existing building was not addressed in this review and was expected to remain as is, a food market on the upper level and a retail building on the lower. In this iteration, there are three phases, with the remodel of the upper level of the existing Village Market building into both a market and a food court plus restaurant as Phase I. The construction of the apartment buildings are now Phases II and III.

Phase I

This phase includes a new food market (the Italian Market), to be completed by the end of August, and a food court with stalls for 11 different food vendors and seating for 80 and a 1,900 SF 60-seat restaurant. As part of the restaurant, we are proposing a 440 SF outdoor patio with 20 additional seats, an access ramp and additional entry doors to the restaurant. The building itself will be opened to the surrounding neighborhood with a bevy of windows providing views and natural light.

The Sunrise Buffet building remains in this phase, as it does in Phase II, however the existing deck, stairs and railings will be removed and replaced with a smaller walkway and parking. Site improvements including paving, striping, landscaping, and lighting will be provided per the original landscape and lighting documents at the site entries and throughout the northeast (upper) portions of the parking lot (see L4.00 and L5.00).

Phases II and III

These phases will be developed as described in the original SPR approval documents, summarized as follows:

- Phase II, construction of Apartment Building 1, consists of a 5-story, 48,028 SF, 72-unit apartment building plus a basement level that sits atop an 8,028 SF, 17-car parking garage. Built on the southern end of the site, the building and its main entry plaza are oriented east—facing the upper level parking lot and Colburn Park beyond. The parking garage is accessed from the north/lower level of the site along the west face of the existing market. The access drive will be rebuilt in this phase and the stormwater system installed just to the west of the laundromat. Landscape and site lighting will be provided per the original landscape and lighting documents throughout the Phase II construction area as shown on L4.00 and L5.00.
- Phase III, construction of Apartment Building 2, consists of a 6-story (plus two walk-out basement levels), 56,800 SF, 80-unit residential building of similar construction and unit mix to Building 1. Located along Water and Mascoma Streets, it reinforces the corner and forms a gateway with the existing National Bank Building as you enter the downtown from the west. Its 5th and 6th floor setbacks reduce its visual height. Again, the building is oriented toward Colburn Park; its main entry and entry plaza—leading to a fully glazed lobby—is approached from the northeast, on the high side of the building pad and provides the building with a public face and connection to the street. Additional entries

are located at the basement level at the corner of Mascoma and Water Streets and at the sub-basement level facing Water Street.

The Sunrise Buffet building will be demolished and landscape and site lighting will be provided per the original landscape and lighting documents throughout the Phase III construction area as shown on L4.00 and L5.00. One-hundred (100) additional parking spaces will be available nights and weekends at 0 Mascoma through a shared use agreement with Whitman Communications per the original plans.

MAJOR MILESTONE DATES SUMMARY

EXISTING BUILDING (PHASE I)

Obtain Building Permit for Italian Market: May 31, 2025 (Already obtained)

Active and Substantial Development for Italian Market: May 31 2025 (Construction underway)

Substantial Completion for Italian Market: July 31, 2025

Obtain Building Permit for Food Court and Exterior Improvements: October 15, 2025

Active and Substantial Development for Food Court and Exterior Improvements: October 31, 2025

Substantial Completion for Food Court and Exterior Improvements: May 15, 2026

BUILDING 1 (PHASE II)

Obtain Building Permit: by July 11, 2026

Active and Substantial Development: September 1, 2026

Substantial Completion: April 30, 2028

BUILDING 2 (PHASE III)

Obtain Building Permit: by October 1, 2027

Active and Substantial Development: October 31, 2027

Substantial Completion: June 17, 2029

A more detailed timeline summary is included on the following page, which also compares this schedule with the one initially approved on July 11, 2022 and then extended in June, 2024.

VEHICLE AND BIKE PARKING

We are providing vehicle parking in each phase per the following table. The location of the parking is best described on the schematic site plans SD1 – SD3.

EV parking will be provided (at a minimum) per the Zoning Code as follows:

- 2% (or 2 spaces) required for Phase I located and installed in the northeast corner of the lot per the non-residential use requirements
- 3% (or 3 spaces) additional installed in or before Phase II in that same location for a minimum of 5% total per the multi-family use requirements
- EV-ready spaces will be provided for each use/phase per the Code.

- 10% (or 10 spaces) in Phase I
- 10% (or 10 spaces) in Phase II
- EV-capable spaces will be provided for each use/phase per the Code.
 - 38% (or 31 spaces) in Phase I
 - 9 additional spaces in Phase II to reach 40%

Bike parking will be provided per the site development regulations as follows:

Phase I – 6 short-term and 3 long-term located on the lower level under the patio seating as shown on drawing A201.

Phase II – An additional 11 short-term scattered throughout the site and 22 long-term in the parking garage of Building 1 and a larger central area in the lower level of the existing Village Market.

Phase III – An additional 12 short-term scattered throughout the site and 24 long-term in the larger central area in the lower level of the existing Village Market.

The long-term bike parking will be lit, signed, and locked.

PHASING SCHEDULE COMPARISON

	Obtain Building Permit By	Project Initiation	Foundation Excavation	Footings/Earth Retention Complete	Steel Erection Complete	Building Envelope Complete	Landscaping/ Hardscaping Complete	Substantial Completion/ Cert. of Occ.
Originally Approved								
Phase II (Building 1)	10/18/2022	11/7/2022	12/1/2022	5/31/2023	8/31/2023	3/20/2024	5/24/2024	6/19/2024
Phase III (Building 2)	10/31/2023	10/31/2023	12/1/2023	4/30/2024	8/31/2024	3/27/2025	6/17/2025	5/28/2025
2024 Extension								
Phase II (Building 1)	3/31/2025	3/31/2025	4/30/2025	11/30/2025	2/28/2026	8/31/2026	10/31/2026	9/30/2026
Phase III (Building 2)	12/31/2025	12/31/2025	1/31/2026	6/30/2026	10/30/2026	4/30/2027	6/30/2027	6/30/2027
2025 Extension								
Phase I (Existing Building)								
Italian Market	Obtained	Underway	N/A	N/A	N/A	N/A	N/A	9/15/2025
Food Court	10/15/2025	10/31/2025	N/A	N/A	N/A	3/15/2026	5/15/2026	5/15/2026
Phase II (Building 1)	7/11/2026	9/1/2026	10/1/2026	3/31/2027	6/31/2027	1/31/2028	5/15/2028	4/30/2028
Phase III (Building 2)	10/1/2027	10/31/2027	12/1/2027	4/30/2028	8/31/2028	3/31/2029	6/17/2029	5/28/2029

MINIMUM PARKING REQUIRED WITH SHARED USE

USE	WEEKDAY		WEEKEND		Nighttime
	Daytime	Evening	Daytime	Evening	
PHASE 1a (Existing Building--Italian Market only)					
Retail/ Personal Service--Grd Flr	17	25.5	28.3	19.8	1.4
Retail/ Personal Service--Upper Flr	9.4	14	15.6	10.9	0.8
Restaurant (Sunrise--75 Seats)	12.5	25	25	25	2.5
Other (Laundromat)	7	7	7	7	0.7
TOTALS	46	72	76	63	5
PHASE 1b (Existing Building--with Food Court)					
Restaurant (Upper Level--160 Seats)	27	53	53	53	5.3
TOTALS	73	125	129	116	10
PHASE 2 (Building 1)					
Residential (69 Studios, 3 one-bedrooms)	36	54	72	57.6	72
TOTALS	109	179	201	174	82
PHASE 3 (Building 2)					
Residential (79 Studios, 1 one-bedrooms)	40	60	80	64	80
No Sunrise Buffet (Less 75 Seats)	-12.5	-25	-25	-25	-2.5
TOTALS	137	214	256	213	160

PARKING PROVIDED, PHASE 1a

83

PARKING PROVIDED, PHASE 1

96

PARKING PROVIDED, PHASE 2

100

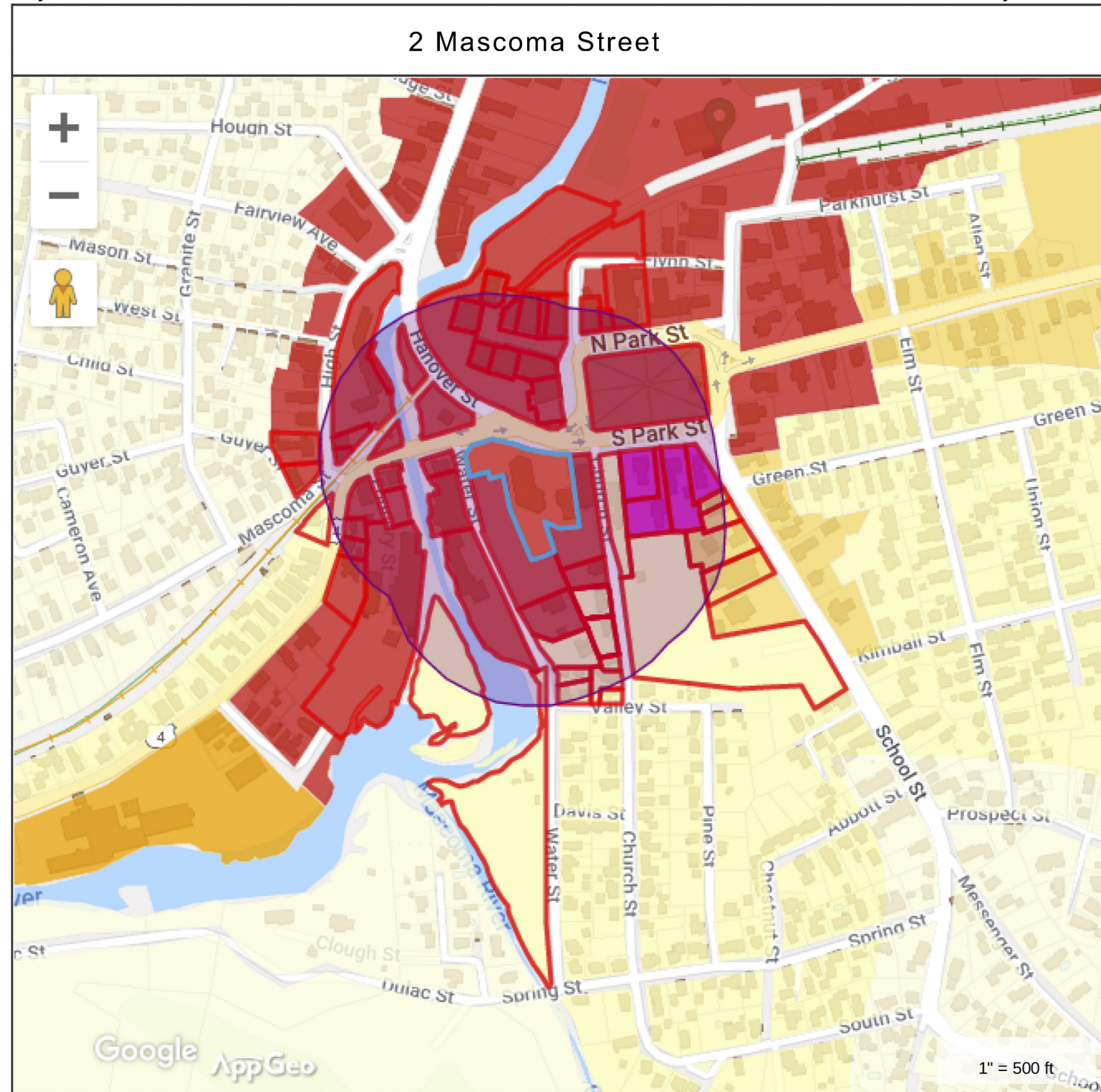
PARKING PROVIDED, PHASE 3

99 +100 at 0 Water St Evenings & Weekends

VILLAGE MARKET REDEVELOPMENT

2 MASCOMA STREET LEBANON NH, 03766 GRAFTON COUNTY

City of Lebanon, NH 1" = 500' VICINITY REFERENCE MAP February 25, 2022

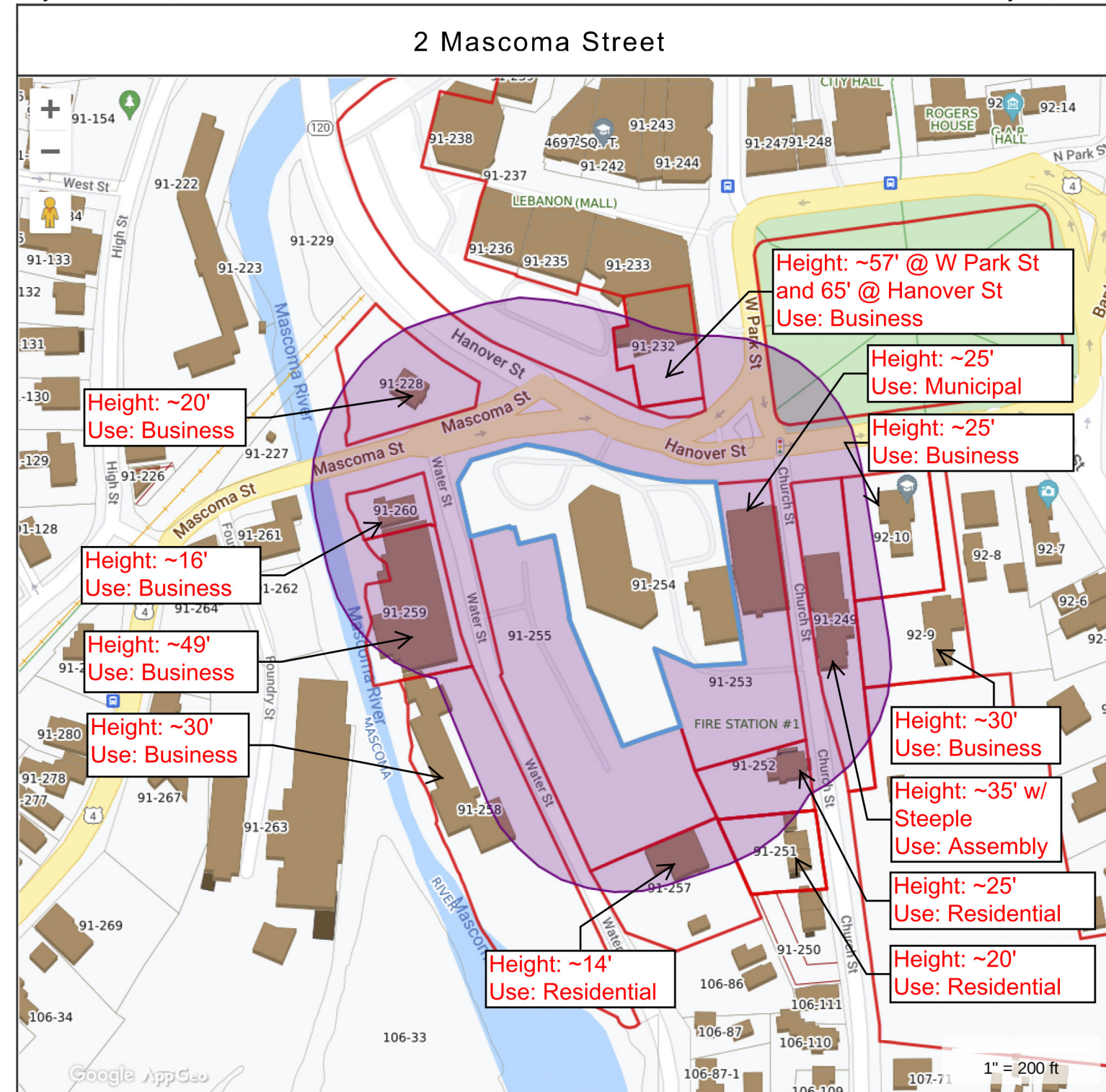


Property	2 MASCOMA ST
Address	2 MASCOMA ST
ID	91-254
Ownership	RECREO LLC
Name	RECREO LLC
Address	461 MAIN ST FRANCONIA, NH 03580

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT
City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.
Geometry updated 12/29/2021
Data updated 1/18/2022

Map Theme Legends
Zoning District
RL-3 - RURAL LAND 3
RL-2 - RURAL LAND 2
RL-1 - RURAL LAND 1
R1 - RESIDENTIAL 1
R2 - RESIDENTIAL 2
R3 - RESIDENTIAL 3
RO - RESIDENTIAL OFFICE
RO1 - RESIDENTIAL OFFICE 1
GC - GENERAL COMMERCIAL
GC1 - GENERAL COMMERCIAL 1
CB - CENTRAL BUSINESS
INDL - INDUSTRIAL LIGHT
INDH - INDUSTRIAL HEAVY
INDH - INDUSTRIAL HEAVY
MC - MEDICAL CENTER
PB - PROFESSIONAL BUSINESS
LD - LEBANON DOWNTOWN

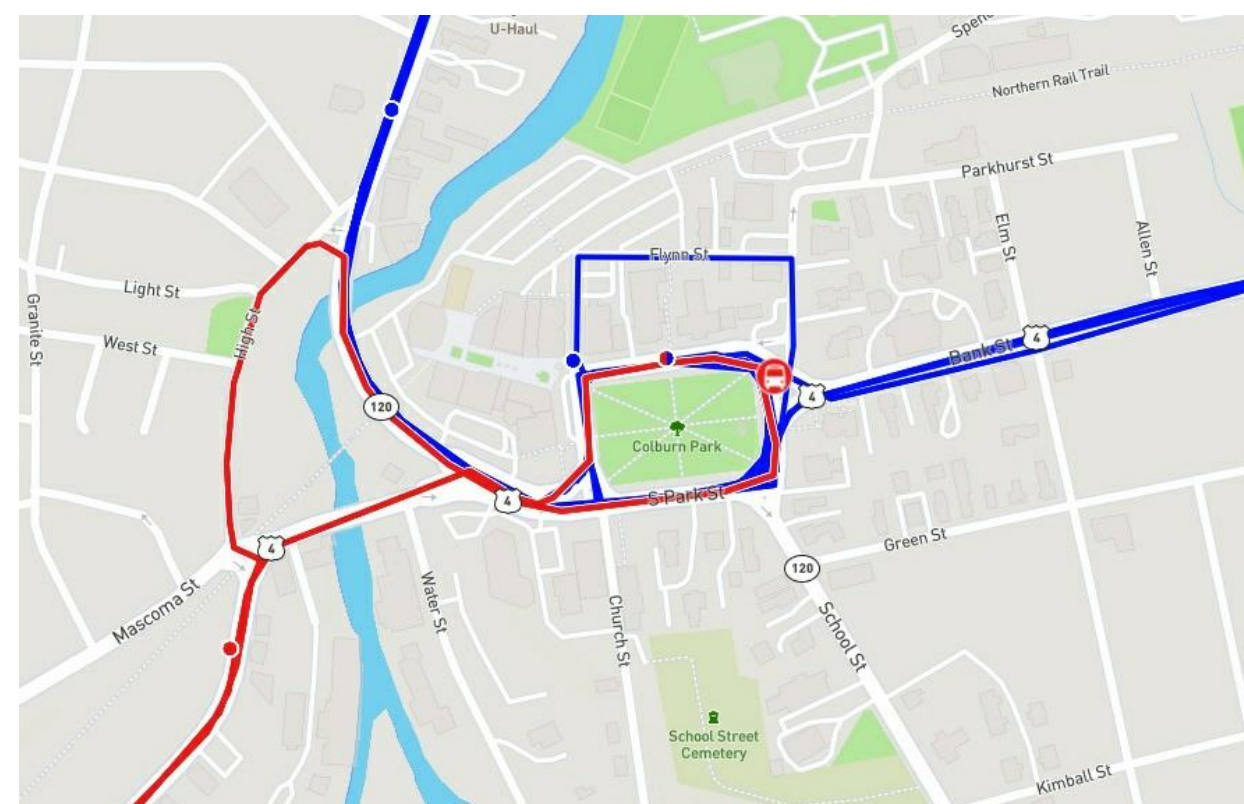
City of Lebanon, NH 1" = 200' ABUTTER REFERENCE MAP February 25, 2022



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Zoning District
RL-3 - RURAL LAND 3
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INDH - INDUSTRIAL HEAVY
MC - MEDICAL CENTER
PB - PROFESSIONAL BUSINESS
LD - LEBANON DOWNTOWN



TRANSIT ROUTE MAP-ADVANCED TRANSIT RED LINE (NOT TO SCALE)

PROJECT TEAM

OWNER:

RECREO LLC
77 BANK STREET
LEBANON, NH 03766

ARCHITECT:

STUDIO NEXUS
ARCHITECTS + PLANNERS, LLC
46 SOUTH MAIN STREET, SUITE 206
PO BOX 275
WHITE RIVER JUNCTION, VT 05001

CONSTRUCTION MANAGER:

JEWETT CONSTRUCTION COMPANY
68A ROUTE 27
PO Box 405
RAYMOND, NH 03077

LANDSCAPE ARCHITECT:

SE GROUP
131 CHURCH STREET, SUITE 200
BURLINGTON, VT 05401

CIVIL ENGINEER:

HORIZONS ENGINEERING INC.
176 NEWPORT ROAD, SUITE 8
NEW LONDON, NH 03257

SURVEYOR:

DIBERNARDO ASSOCIATES, LLC
P.O. BOX 52
BELLOWS FALLS, VT 05001

GEOTECHNICAL ENGINEER:

S.W. COLE ENGINEERING, INC
10 CENTER ROAD
SOMERSWORTH, NH 03878-2926

PHASE I BUILD-OUT

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5 OF 13	C202	PHASE I GRADING & UTILITIES PLAN
6 OF 13	C203	PHASE I INSET PLANS
7 OF 13	L4.00	PLANTING PLAN PHASES
8 OF 13	L5.00	LIGHTING PLAN PHASES
9 OF 13	A2-1	GROUND FLOOR PLAN
10 OF 13	A2-4	FIRST FLOOR PLAN
11 OF 13	A4-3	EXTERIOR ELEVATIONS
12 OF 13	A4-4	EXTERIOR ELEVATIONS
13 OF 13	G-4	RENDERINGS

2 MASCOMA ST. - ZONING TABLE

	ITEM	Required/Allowable
	Street Address	
1	Zoning District/Designation	
2	Tax Map & lot number	
3	Area of Lot (Acres)	10,000 sf Minimum
4	Building Gross Floor Area (SF)	
5	Parking Summary - T.B.D. section 607 of the Zoning Ordinance	*Per planning board, per section 607.4 of the Zoning Ordinance
	Retail space	
	Minimum Upper Level Spaces	See Dwg A2-1
	Minimum Lower Level Spaces	See Dwg A2-4
	Total Minimum Parking spaces	
	On Site Parking Provided Phase 1	
	Parking reduction factor - section 607.6 of the Zoning Ordinance	Reduction Factor Based on Time of Day

2 Mascoma Street, Lebanon NH, Grafton County			
Existing	Building 1	Building 2	Total
2 Mascoma St.	Same	Same	Same
LD	Same	Same	Same
91-254	Same	Same	Same
86,674 (1.98)	-	-	91,331 (2.09)
25,048	56,056	56,801	137,905
94	Includes 25 Sunrise Buffet Spaces		94
35	-		35
129	-		129
96	-		96

USE	WEEKDAY Daytime		Evening	WEEKEND Daytime		Evening	Nighttime
PHASE 1a (Existing Building--Italian Market only)							
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TOTALS	46	72		76	63		5
PHASE 1b (Existing Building--with Food Court)							
Restaurant (Upper Level--160 Seats)	27	53		53	53		5.3
PHASE I TOTALS	73	125		129	116		10
ST = 9 spaces	ST = 11 spaces LT = 22 spaces	ST = 12 spaces LT = 24 spaces	Total Provided ST = 32 spaces LT = 46 spaces				
1	1	1	3				
30	55	65	-				
2	5	6	-				
0	8,028	0	-				
0	0	3,373	-				
12,003	7,888	5,893	-				
13,045	8,028	8,547	-				
0	8,028	8,680	-				
0	8,028	8,680	-				
0	8,028	8,680	-				
0	8,028	8,680	-				
0	0	4,268	-				
Restaurant/ Retail/Laundromat	Multi Family Housing	Multi Family Housing	Restaurant/ Retail/Laundromat / Multi Family Housing				
0	0	0	0				
0	0	0	0				
10	10	10	10				
86,674			91,331				
69,904			76,584				
80.7%			83.9%				
None			None				

6	Bike Parking Summary - Number of Short Term (ST) and Long Term (LT) bicycle storage spaces - section 6.5.1 of the Site Plan Review regulations	Non Res Short Term - 10% of parking spaces Short Term - 15% of units Long Term - 30% of units
7	Number of Loading Spaces	
8	Building Height (FT)	55' (Maximum)
9	Number of Stories	
	ParkingLevel	
	Sub Basement	
	Basement	
	First	
	Second	
	Third	
	Fourth	
	Fifth	
	Sixth	
10	Use	Restaurant/ Retail/Laundromat
11	Setbacks (Ft)	
	Front	0
	Side	0
	Rear	10
12	Lot Area (SF)	3,000 sf (Minimum)
	Total Building Coverage on Lot (SF)	(Pavement, Gravel, Roof)
	Impervious surfaces (%)	
13	Overlay District	



STUDIO NEXUS

ARCHITECTS + PLANNERS

PO Box 275, White River Junction, VT 05001
802 275 5110 | studionexusarch.com

VILLAGE MARKET REDEVELOPMENT

RECREO LLC

Issued For:

SITE PLAN REVIEW

PRELIMINARY NOT FOR CONSTRUCTION

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Issue Date:

July 8, 2025

Revisions

No.	Description	Date

COVER SHEET & PROJECT TEAM

Project No.: 2119

G-1a



MINIMUM PARKING REQUIRED WITH SHARED USE					
USE	WEEKDAY		WEEKEND		Nighttime
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PARKING PROVIDED, PHASE 1a	83				
PARKING PROVIDED, PHASE 1	96				
PARKING PROVIDED, PHASE 2	100				
PARKING PROVIDED, PHASE 3	99 +100 at 0 Water St Evenings & Weekends				

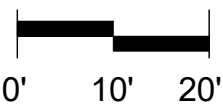
TABLE 607.6. SHARED PARKING RATIO REDUCTION FACTORS

(A)	Weekday		Weekend		(F)
	(B)	(C)	(D)	(E)	
Land Use	Daytime (9:00 am to 4:00 pm)	Evening (6:00 pm to midnight)	Daytime (9:00 am to 4:00 pm)	Evening (6:00 pm to midnight)	Nighttime (midnight to 6:00 am)
Office /Industrial	100%	10%	10%	5%	5%
Retail/ <i>Personal service</i>	60%	90%	100%	70%	5%
Hotel	75%	100%	75%	100%	75%
Residential	50%	75%	100%	80%	100%
Restaurant	50%	100%	100%	100%	10%
Entertainment/Recreational	40%	100%	80%	100%	10%
All other uses	100%	100%	100%	100%	10%



STUDIO NEXUS
ARCHITECTS+PLANNERS
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Village Market Redevelopment Recreo LLC



PROJECT NORTH

Phase 1 Site Plan
SD 1
JULY 8, 2025
1" = 20'-0"



STUDIO NEXUS

ARCHITECTS + PLANNERS

PO Box 275, White River Junction, VT 05001
802 275 5110 | studionexusarch.com

horizons Engineering

Civil and Structural Engineering
Land Surveying and
Environmental Consulting
MAINE • NEW HAMPSHIRE • VERMONT
www.horizonsengineering.com

RECRO LLC

Issued For:
ISSUED FOR SITE PLAN REVIEW

Issue Date: JUNE 23, 2025

Revisions		
No.	Description	Date

EXISTING CONDITIONS PLAN

Project No.: 2303

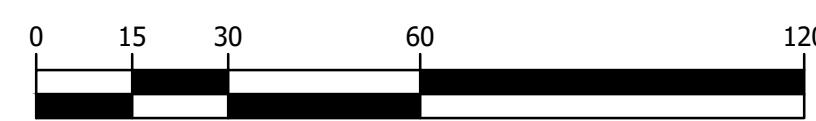
C-101

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LEGEND

	PROPERTY LINE
	CONCRETE BOUND FOUND
	IRON PIN FOUND
	5/8" Ø IRON ROD SET
	STOCK FENCE
	UTILITY POLE
	LPG TANK RISER
	STORM SEWER MANHOLE
	SANITARY SEWER MANHOLE
	GATE VALVE
	CATCH BASIN
	BOLLARD
	LIGHT POLE
	TRAFFIC SIGNAL
	FIRE HYDRANT
	GUY ANCHOR
	GUARD RAIL
	ASPHALT SURFACE
	CONCRETE SURFACE
	GRAVEL SURFACE
	SANITARY SEWER LINE
	LPG GAS LINE
	STORMWATER SEWER LINE
	SOIL BORING
	TEST PIT
	WATER LINE
	UNDERGROUND TEL. COM.
	UNDERGROUND ELECTRIC
	OVERHEAD UTILITIES
	WATER MANHOLE
	PHOTO LOCATION

NOTE: INFRASTRUCTURE TO BE DEMOLISHED OR REMOVED IS
DEPICTED IN A LIGHTER SHADE ON THIS PLAN SHEET, AND NOT
DEPICTED ON SUBSEQUENT SITE PLAN SHEETS.



DATE OF PRINT
JUNE 23 2025
HORIZONS ENGINEERING



EXISTING CONDITIONS NOTES

- OWNER OF RECORD:
RECRO, LLC
77 BANK STREET
LEBANON, NH 03766
PARCEL ID: 91-254
ZONING DESIGNATION: LEBANON DOWNTOWN DISTRICT (LD)
- DEED REFERENCES:
N/A
- PLAN REFERENCES
(A) A PLAN ENTITLED "PLAN SHOWING EXISTING CONDITIONS PROPERTY OF " DATED:
FEBRUARY 17, 2022 PREPARED BY: DIBERNARDO ASSOCIATES, LLC, NOT
RECORDED, PREPARED FOR RECRO, LLC EXCLUSIVE USE.
(B) A PLAN ENTITLED "PLAN SHOWING BOUNDARY LINE ADJUSTMENT BETWEEN
PROPERTIES OF RECRO, LLC AND CITY OF LEBANON" DATED: FEBRUARY 17, 2022
PREPARED BY: DIBERNARDO ASSOCIATES, LLC, APPROVED BY LEBANON PLANNING
BOARD ON 12 APRIL 2022 (PB2022-16-BLA), NOT RECORDED.
- THE EXISTING CONDITIONS BOUNDARY, PLANIMETRICS AND TOPOGRAPHY SHOWN IS
REFERENCED FROM PLAN REFERENCE "A".
- EXISTING PRIMARY BUILDINGS SHOWN ON LOTS WITHIN 200' OF THE SUBJECT PARCEL
ARE FOR REFERENCE ONLY AND ARE BASED ON THE CITY OF LEBANON GIS DATABASE.
- UTILITY LOCATIONS ARE BASED ON THE BEST AVAILABLE INFORMATION. THE
CONTRACTOR IS RESPONSIBLE FOR LOCATION AND PROTECTION OF EXISTING UTILITIES
AND SHALL REPAIR ANY DAMAGE AS QUICKLY AS POSSIBLE AT HIS OWN EXPENSE. ALL
UTILITIES ENCOUNTERED SHALL BE LOCATED BY DEPTH AND TIES AND SHOWN BY THE
CONTRACTOR ON HIS "AS BUILT" DRAWINGS. HAND EXCAVATION SHALL BE DONE
WHEREVER UNDERGROUND UTILITIES ARE SHOWN OR ANTICIPATED. THE CONTRACTOR
SHALL CONTACT DIG SAFE AND THE APPROPRIATE AUTHORITIES PRIOR TO ANY
CONSTRUCTION IN ORDER TO VERIFY EXISTING CONDITIONS AND UTILITY LOCATIONS.
- THE CLASSIFICATION OF SOILS FOR THE ENTIRETY OF THE SITE WAS COMPLETED BY
CINDY BALCIUS OF STONEY RIDGE ENVIRONMENTAL AND CONSISTS OF WINDSOR
LOAMY SAND, 3-8% SLOPES, HYDROLOGIC SOIL GROUP A/1.
- THE SUBJECT LOT IS NOT WITHIN THE FEMA 100-YEAR FLOOD ELEVATION.

n/f
CC&C OF LEBANON LLC
12 WATER ST LEBANON, NH 03766
TAX MAP 91 LOT 258
BUSINESS USE
30' APPROX. HEIGHT

n/f
S&W INVESTMENT CO
10 WATER ST LEBANON, NH 03766
TAX MAP 91 LOT 255

n/f
GULICK HOLDINGS LLC
2468 US ROUTE 5
FAIRLEE, VT 05045
TAX MAP 91 LOT 260
BUSINESS USE
16' APPROX. HEIGHT

n/f
WATER STREET MILL LLC
10 WATER ST LEBANON, NH 03766
TAX MAP 91 LOT 259
BUSINESS USE
49' APPROX. HEIGHT

n/f
HOWARD W. LOGAN TTEE
23 ALICE PECK DAY DR LEBANON, NH 03766
TAX MAP 91 LOT 228
BUSINESS USE
20' APPROX. HEIGHT

DMH 1 RIM: 565.32
30" CONC IN: 554.62
12" CPP IN: 558.12
12" CPP OUT: 559.47
30" CONC OUT: 554.77

CB 5 RIM: 564.95
12" CPP IN: 558.45
12" CPP OUT: 558.43
SUMP: 558.43

SMH 7 RIM: 559.66
12" CLAY IN: 549.86
12" CLAY IN: 549.51
12" PVC OUT: 549.36

SMH 8 RIM: 559.76
30" CONC IN: 543.30
30" CONC OUT: 543.25

SMH 9 RIM: 556.13
12" PVC IN: 543.10
12" METAL IN: 543.64
12" PVC OUT: 542.74

CB 7 RIM: 556.01
12" CPP OUT: 547.28
SUMP: 547.23

SMH 1 RIM: 559.18
12" PVC IN: 542.07
12" PVC OUT: 542.02

DMH RIM: 575.65
12" CONC IN: 569.36
12" CONC IN: 569.31
30" CONC IN: 564.86
30" CONC OUT: 564.84

CB 2 RIM: 577.46

CB 3 RIM: 574.65
12" CONC OUT: 569.53
SUMP: 568.92

CB 6 RIM: 567.43
12" CPP IN: 561.29
SUMP: 561.27

SMH 4 RIM: 577.16
12" CLAY IN: 565.84
12" CLAY IN: 565.46
12" CLAY OUT: 565.90

DMH RIM: 579.40
12" CPP IN: 573.12
30" CONC IN: 571.78
30" CONC OUT: 571.74

CB 1 RIM: 584.43
30" CONC IN: 573.72
30" CONC OUT: 573.62

SMH 4 RIM: 585.12
12" CLAY IN: 577.42
8" CLAY IN: 578.52
12" CLAY OUT: 577.49

SMH 6 RIM: 587.70
4" PVC IN: 584.31
4" PVC OUT: 584.27
TO REMAIN

TBM #1 - 594.92
BOLT WITH ARROW
POINTING TO IT

n/f
FIRST CONG CHURCH
OF LEBANON
PO BOX 230 LEBANON, NH 03766
TAX MAP 91 LOT 249
ASSEMBLY USE
25' APPROX. HEIGHT

LANDS OF
CITY OF LEBANON
12 S PARK ST LEBANON, NH 03766
TAX MAP 91 LOT 253
MUNICIPAL USE
25' APPROX. HEIGHT

LANDS OF
RECRO LLC
461 MAIN ST FRANCONIA, NH 03580
TAX MAP 91 LOT 254

SLAB ELEV: 592.02

SLAB ELEV: 575.79

SLAB ELEV: 592.04

SLAB ELEV: 592.08

SLAB ELEV: 592.00

SLAB ELEV: 597.48

SLAB ELEV: 597.56

SLAB ELEV: 597.48

SLAB ELEV: 597.48

SLAB ELEV: 597.48

SLAB ELEV: 597.48

SLAB ELEV: 597.48

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SLAB ELEV: 597.48

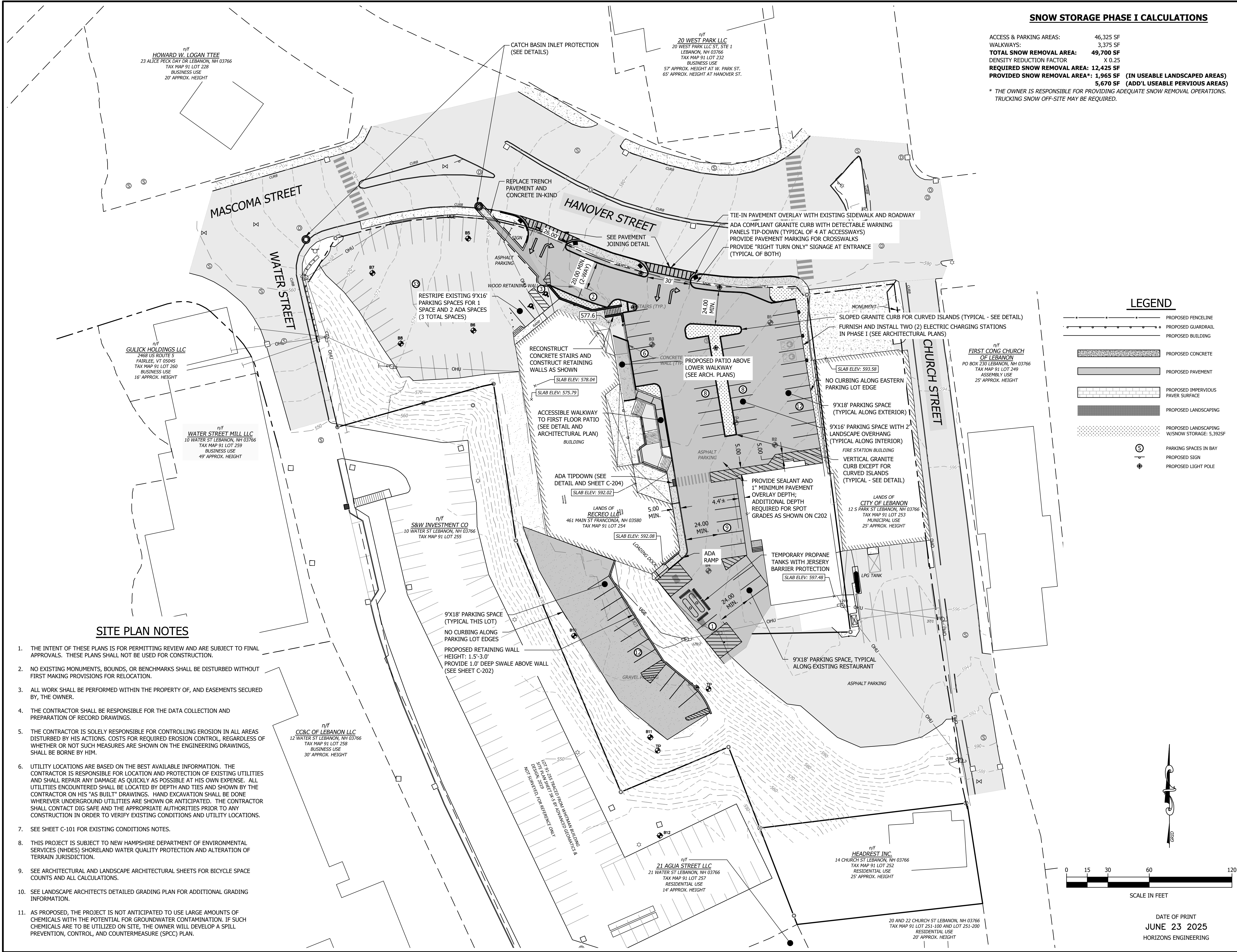
SLAB ELEV: 597.48

SLAB ELEV: 597.48

SLAB ELEV: 597.48

SLAB ELEV: 597.48

Z:\proj_202\10184-S-N-2-Mascoma-SHOWING-Final2-184_CulSheet-Phase-01.dwg, C201, 6/23/2025 11:41:15 AM, Drawn:MerDammot



SNOW STORAGE PHASE I CALCULATIONS

ACCESS & PARKING AREAS: 46,325 SF
WALKWAYS: 3,375 SF
TOTAL SNOW REMOVAL AREA: 49,700 SF
DENSITY REDUCTION FACTOR X 0.25
REQUIRED SNOW REMOVAL AREA*: 12,425 SF (IN USEABLE LANDSCAPED AREAS)
PROVIDED SNOW REMOVAL AREA*: 5,670 SF (ADD'L USEABLE PERVIOUS AREAS)
* THE OWNER IS RESPONSIBLE FOR PROVIDING ADEQUATE SNOW REMOVAL OPERATIONS. TRUCKING SNOW OFF-SITE MAY BE REQUIRED.

LEGEND

- PROPOSED FENCELINE
- PROPOSED GUARDRAIL
- PROPOSED BUILDING
- PROPOSED CONCRETE
- PROPOSED PAVEMENT
- PROPOSED IMPERVIOUS PAVEMENT SURFACE
- PROPOSED LANDSCAPING
- PROPOSED LANDSCAPING W/SNOW STORAGE: 5,392SF
- PARKING SPACES IN BAY
- PROPOSED SIGN
- PROPOSED LIGHT POLE

SITE PLAN NOTES

- THE INTENT OF THESE PLANS IS FOR PERMITTING REVIEW AND ARE SUBJECT TO FINAL APPROVALS. THESE PLANS SHALL NOT BE USED FOR CONSTRUCTION.
- NO EXISTING MONUMENTS, BOUNDS, OR BENCHMARKS SHALL BE DISTURBED WITHOUT FIRST MAKING PROVISIONS FOR RELOCATION.
- ALL WORK SHALL BE PERFORMED WITHIN THE PROPERTY OF, AND EASEMENTS SECURED BY, THE OWNER.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DATA COLLECTION AND PREPARATION OF RECORD DRAWINGS.
- THE CONTRACTOR IS SOLELY RESPONSIBLE FOR CONTROLLING EROSION IN ALL AREAS DISTURBED BY HIS ACTIONS. COSTS FOR REQUIRED EROSION CONTROL, REGARDLESS OF WHETHER OR NOT SUCH MEASURES ARE SHOWN ON THE ENGINEERING DRAWINGS, SHALL BE BORNE BY HIM.
- UTILITY LOCATIONS ARE BASED ON THE BEST AVAILABLE INFORMATION. THE CONTRACTOR IS RESPONSIBLE FOR LOCATION AND PROTECTION OF EXISTING UTILITIES AND SHALL REPAIR ANY DAMAGE AS QUICKLY AS POSSIBLE AT HIS OWN EXPENSE. ALL UTILITIES ENCOUNTERED SHALL BE LOCATED BY DEPTH AND TIES AND SHOWN BY THE CONTRACTOR ON HIS "AS BUILT" DRAWINGS. HAND EXCAVATION SHALL BE DONE WHEREVER UNDERGROUND UTILITIES ARE SHOWN OR ANTICIPATED. THE CONTRACTOR SHALL CONTACT DIG SAFE AND THE APPROPRIATE AUTHORITIES PRIOR TO ANY CONSTRUCTION IN ORDER TO VERIFY EXISTING CONDITIONS AND UTILITY LOCATIONS.
- SEE SHEET C-101 FOR EXISTING CONDITIONS NOTES.
- THIS PROJECT IS SUBJECT TO NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES (NHDES) SHORELAND WATER QUALITY PROTECTION AND ALTERATION OF TERRAIN JURISDICTION.
- SEE ARCHITECTURAL AND LANDSCAPE ARCHITECTURAL SHEETS FOR BICYCLE SPACE COUNTS AND ALL CALCULATIONS.
- SEE LANDSCAPE ARCHITECTS DETAILED GRADING PLAN FOR ADDITIONAL GRADING INFORMATION.
- AS PROPOSED, THE PROJECT IS NOT ANTICIPATED TO USE LARGE AMOUNTS OF CHEMICALS WITH THE POTENTIAL FOR GROUNDWATER CONTAMINATION. IF SUCH CHEMICALS ARE TO BE UTILIZED ON SITE, THE OWNER WILL DEVELOP A SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) PLAN.



STUDIO NEXUS

ARCHITECTS + PLANNERS

PO Box 275, White River Junction, VT 05001
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RECREO LLC

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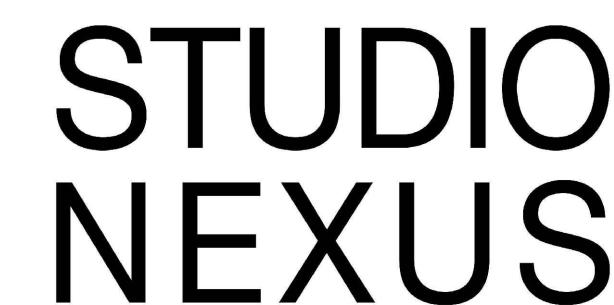
Revisions		
No.	Description	Date

PHASE I
LAYOUT PLAN

Project No.: 2303

C-201

DATE OF PRINT
JUNE 23 2025
HORIZONS ENGINEERING



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Issue Date: JUNE 23, 2022

Revisions		
No.	Description	Date

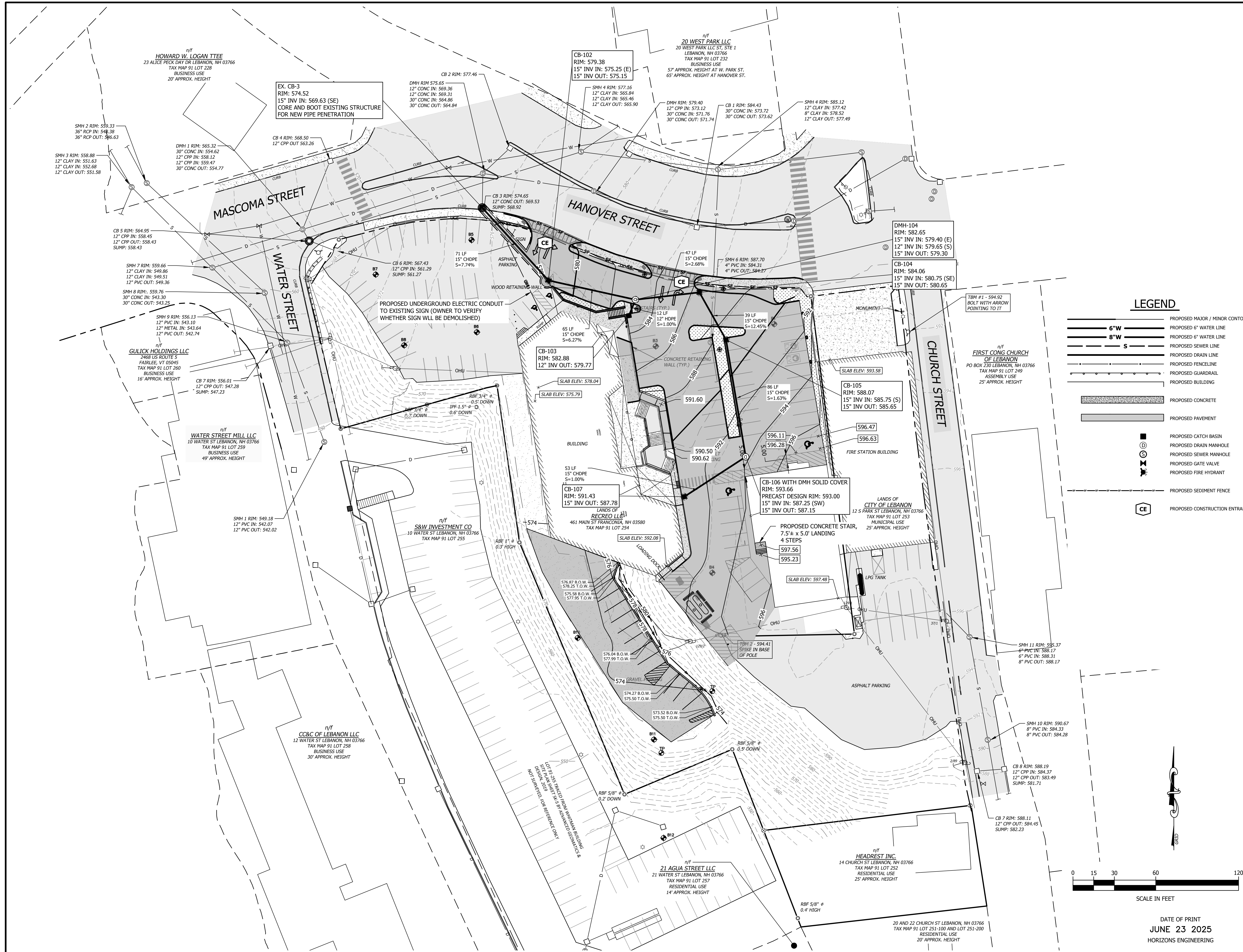
PHASE I GRADING AND UTILITIES PLAN

Project No.: 2303

C-202

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Page 14 of 36

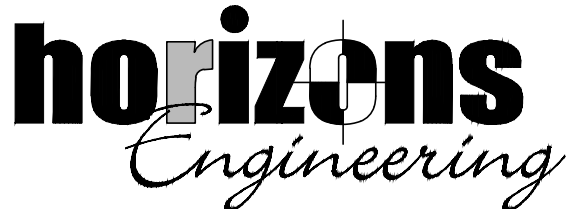




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Issue Date: JUNE 23, 2025

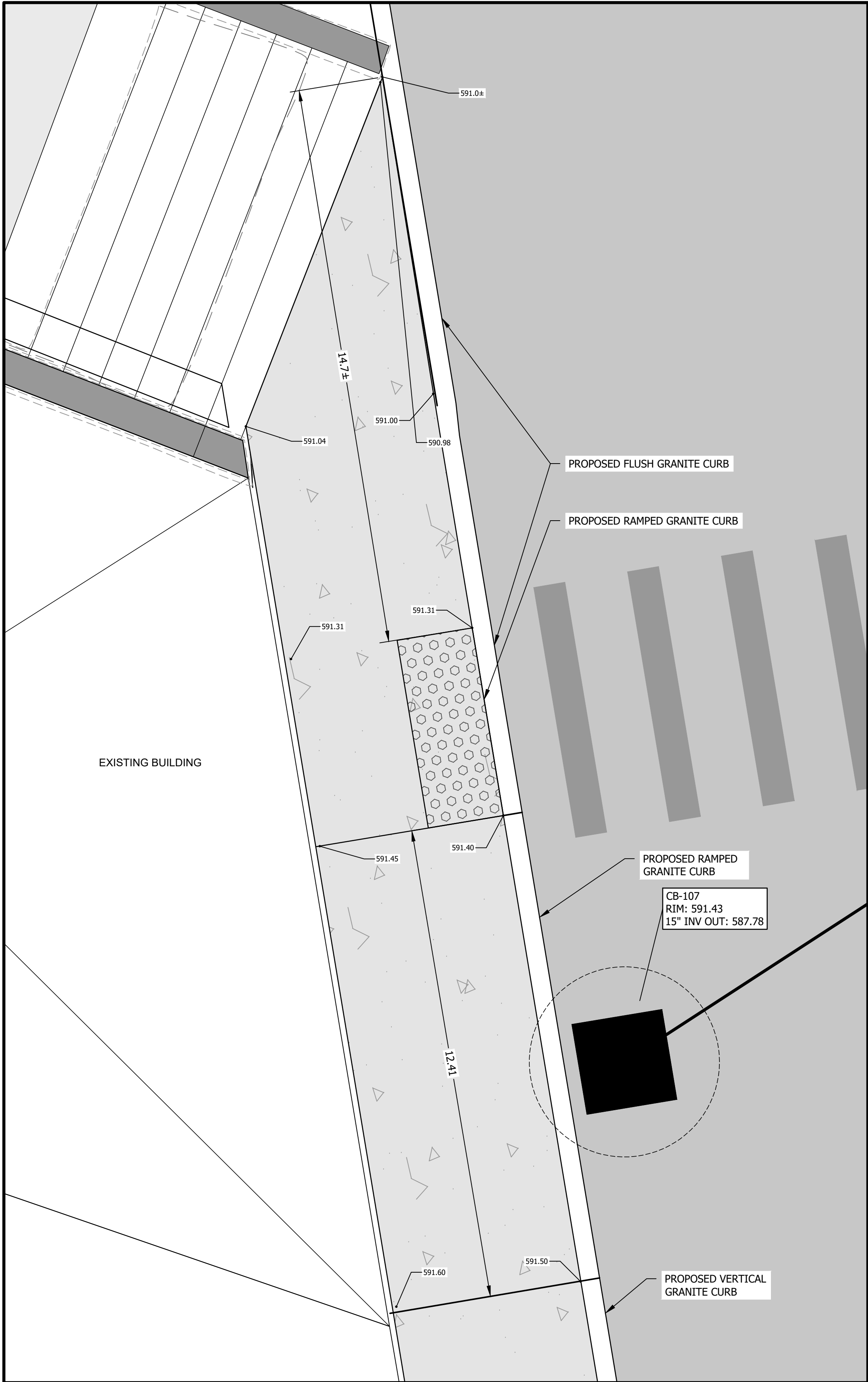
Revisions		
No.	Description	Date

PHASE I
INSET PLANS

Project No.: 2303

C-203

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VILLAGE MARKET - EAST ADA RAMP

DATE OF PRINT
JUNE 23 2025
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Landscape Architects and Planners

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www.segroup.com



VILLAGE MARKET REDEVELOPMENT

RECREO LLC

Issued For:

SITE PLAN REVIEW

PRELIMINARY NOT FOR CONSTRUCTION

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Issue Date: March 14, 2022

Revisions

No.	Description	Date
1	Revision 1	04/22/22

PLANTING PLAN

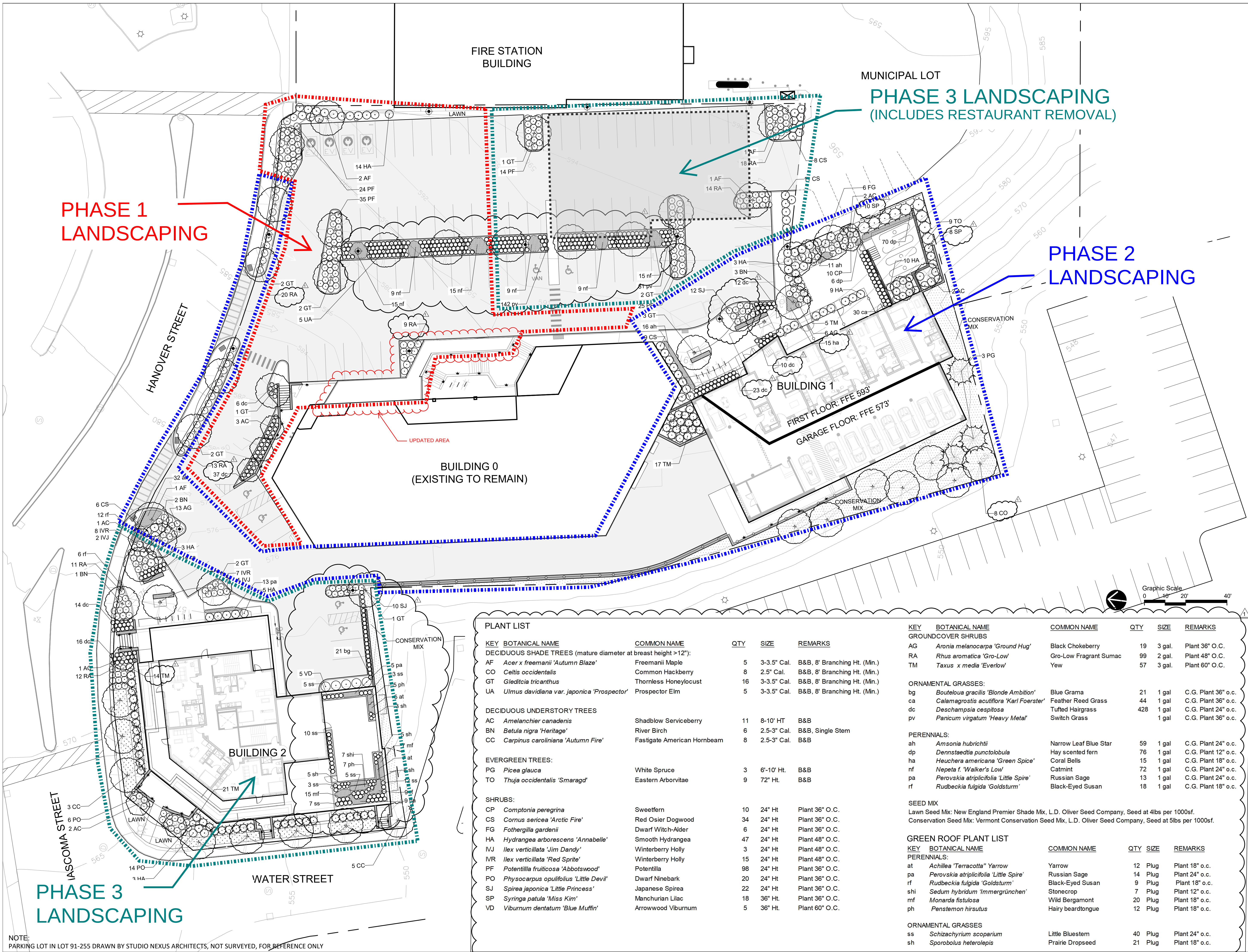
PHASING PLAN
UPDATED BY STUDIO
NEXUS ARCHITECTS,
6.23.2025

Project No.: 2119

L4.00

SHEET 33 OF 37

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PLANT LIST

KEY	BOTANICAL NAME	COMMON NAME	QTY	SIZE	REMARKS
DECIDUOUS SHADE TREES (mature diameter at breast height >12"):					
AF	<i>Acer x freemanii</i> 'Autumn Blaze'	Freemanii Maple	5	3-3.5" Cal.	B&B, 8' Branching Ht. (Min.)
CO	<i>Celtis occidentalis</i>	Common Hackberry	8	2.5" Cal.	B&B, 8' Branching Ht. (Min.)
GT	<i>Gleditsia tricanthus</i>	Thornless Honeylocust	16	3-3.5" Cal.	B&B, 8' Branching Ht. (Min.)
UA	<i>Ulmus davidiana</i> var. <i>japonica</i> 'Prospector'	Prospector Elm	5	3-3.5" Cal.	B&B, 8' Branching Ht. (Min.)
DECIDUOUS UNDERSTORY TREES					
AC	<i>Amelanchier canadensis</i>	Shadblow Serviceberry	11	8-10' HT	B&B
BN	<i>Betula nigra</i> 'Heritage'	River Birch	6	2.5-3" Cal.	B&B, Single Stem
CC	<i>Carpinus caroliniana</i> 'Autumn Fire'	Fastigate American Hornbeam	8	2.5-3" Cal.	B&B
EVERGREEN TREES:					
PG	<i>Picea glauca</i>	White Spruce	3	6'-10' Ht.	B&B
TO	<i>Thuja occidentalis</i> 'Smaragd'	Eastern Arborvitae	9	72" Ht.	B&B
SHRUBS:					
CP	<i>Comptonia peregrina</i>	Sweetfern	10	24" Ht	Plant 36" O.C.
CS	<i>Cornus sericea</i> 'Arctic Fire'	Red Osier Dogwood	34	24" Ht	Plant 36" O.C.
FG	<i>Fothergilla gardenii</i>	Dwarf Witch-Alder	6	24" Ht	Plant 36" O.C.
HA	<i>Hydrangea arborescens</i> 'Annabelle'	Smooth Hydrangea	47	24" Ht	Plant 48" O.C.
IVJ	<i>Ilex verticillata</i> 'Jim Dandy'	Winterberry Holly	3	24" Ht	Plant 48" O.C.
IVR	<i>Ilex verticillata</i> 'Red Sprite'	Winterberry Holly	15	24" Ht	Plant 48" O.C.
PF	<i>Potentilla fruticosa</i> 'Abbotswood'	Potentilla	98	24" Ht	Plant 36" O.C.
PO	<i>Physocarpus opulifolius</i> 'Little Devil'	Dwarf Ninebark	20	24" Ht	Plant 36" O.C.
SJ	<i>Spirea japonica</i> 'Little Princess'	Japanese Spirea	22	24" Ht	Plant 36" O.C.
SP	<i>Syringa patula</i> 'Miss Kim'	Manchurian Lilac	18	36" Ht.	Plant 36" O.C.
VD	<i>Viburnum dentatum</i> 'Blue Muffin'	Arrowwood Viburnum	5	36" Ht.	Plant 60" O.C.

KEY	BOTANICAL NAME	COMMON NAME	QTY	SIZE	REMARKS
GROUND COVER SHRUBS					
AG	<i>Aronia melanocarpa</i> 'Ground Hug'	Black Chokeberry	19	3 gal.	Plant 36" O.C.
RA	<i>Rhus aromatica</i> 'Gro-Low'	Gro-Low Fragrant Sumac	99	2 gal.	Plant 48" O.C.
TM	<i>Taxus x media</i> 'Everlow'	Yew	57	3 gal.	Plant 60" O.C.

ORNAMENTAL GRASSES:					
bg	<i>Bouteloua gracilis</i> 'Blonde Ambition'	Blue Grama	21	1 gal	C.G. Plant 36" o.c.
ca	<i>Calamagrostis acutiflora</i> 'Karl Foerster'	Feather Reed Grass	44	1 gal	C.G. Plant 36" o.c.
dc	<i>Deschampsia cespitosa</i>	Tufted Hairgrass	428	1 gal	C.G. Plant 24" o.c.
pv	<i>Panicum virgatum</i> 'Heavy Metal'	Switch Grass	1 gal		C.G. Plant 36" o.c.

PERENNIALS:					
ah	<i>Amsonia hubrichtii</i>	Narrow Leaf Blue Star	59	1 gal	C.G. Plant 24" o.c.
dp	<i>Dennstaedtia punctolobula</i>	Hay scented fern	76	1 gal	C.G. Plant 12" o.c.
ha	<i>Heuchera americana</i> 'Green Spice'	Coral Bells	15	1 gal	C.G. Plant 18" o.c.
nf	<i>Nepeta f. 'Walker's Low'</i>	Catmint	72	1 gal	C.G. Plant 24" o.c.
pa	<i>Perovskia atriplicifolia</i> 'Little Spire'	Russian Sage	13	1 gal	C.G. Plant 24" o.c.
rf	<i>Rudbeckia fulgida</i> 'Goldsturm'	Black-Eyed Susan	18	1 gal	C.G. Plant 18" o.c.

SEED MIX
Lawn Seed Mix: New England Premier Shade Mix, L.D. Oliver Seed Company, Seed at 4lbs per 1000sf.
Conservation Seed Mix: Vermont Conservation Seed Mix, L.D. Oliver Seed Company, Seed at 5lbs per 1000sf.

KEY	BOTANICAL NAME	COMMON NAME	QTY	SIZE	REMARKS
PERENNIALS:					
at	<i>Achillea 'Terracotta'</i> 'Yarrow'	Yarrow	12	Plug	Plant 18" o.c.
pa	<i>Perovskia atriplicifolia</i> 'Little Spire'	Russian Sage	14	Plug	Plant 24" o.c.
rf	<i>Rudbeckia fulgida</i> 'Goldsturm'	Black-Eyed Susan	9	Plug	Plant 18" o.c.
shi	<i>Sedum hybridum</i> 'Immergrünchen'	Stonecrop	7	Plug	Plant 12" o.c.
mf	<i>Monarda fistulosa</i>	Wild Bergamont	20	Plug	Plant 18" o.c.
ph	<i>Penstemon hirsutus</i>	Hairy beardtongue	12	Plug	Plant 18" o.c.

ORNAMENTAL GRASSES					
ss	<i>Schizachyrium scoparium</i>	Little Bluestem	40	Plug	Plant 24" o.c.
sh	<i>Sporobolus heterolepis</i>	Prairie Dropseed	21	Plug	Plant 18" o.c.

NOTE: PARKING LOT IN LOT 91-255 DRAWN BY STUDIO NEXUS ARCHITECTS, NOT SURVEYED, FOR REFERENCE ONLY

4/18/2022 3:50:12 PM These drawings & specific building design for the client identified on this page are the property of Studio Nexus Architects and Planners LLC. Unauthorized reproduction for any purpose is an infringement upon copyright laws. Violators will be prosecuted to the fullest extent of the law.

CALCULATION SUMMARY

Area	Average (Fc)	Max	Min	Avg./Min.
Parking Lot	1.13	2.60	0.30	3.77
Building 2 and Existing Lots	0.68	1.20	0.30	2.27
Building 2 Parking Lot	0.93	2.30	0.30	3.10
Building 1 Rear entry	0.43	0.70	0.20	2.15
Building 0 Rear Drive	0.96	2.40	0.30	3.20
Building 2 Entry Plaza	2.74	3.70	2.10	1.30
Building 0 Ramp	0.70	1.50	0.30	2.33
Walkway Building 0 to Building 1	0.57	0.60	0.50	1.14
Building 1 Patio Area	0.89	2.90	0.30	2.97
Building 2, Rear and Side	0.70	2.00	0.00	n/a

ISO-CONTOUR	FOOTCANDLE VALUE
	3.00
	1.00
	0.50
	0.20

PHASE 1
LIGHTINGFIRE STATION
BUILDING

BALCONY LIGHTING - TYPICAL

J.

PHASE 3 LIGHTING

Graphic Scale
0 2' 4' 8'PHASE 2
LIGHTINGBUILDING 0
(EXISTING TO REMAIN)

BUILDING 1

Graphic Scale
0 10' 20' 40'

Notes:

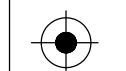
1. Contractor to provide shop drawings of all light fixtures and accessories for review and approval.
2. No light fixture substitutions will be allowed without prior approval from SE Group (Landscape Architect)
3. Refer to lighting plans and lighting details for additional information.
4. Contractor to take special care to make sure light fixtures are installed in the locations identified on the lighting plans, avoiding conflicts with trees and other plant material.
5. Refer to lighting details for light horizontal offset when pole mounted lights are located next to walks and plazas.
6. Refer to lighting details for light pole bases and fixture installation requirements.
7. Refer to Electrical Engineering drawings for service, conduit, and voltage requirements - and additional light fixtures)

FIXTURE AND POLE SPECIFICATIONS



EX

EXISTING LIGHT POLE TO REMAIN

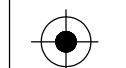


Fixture A3:

Manufacturer: NLS Lighting
Part #: HRZ-1-T3-16L-35-30K-HSS
Fixture: Horizon PT
Distribution: Type 3
CCT: 3000K
Watts: 56
Notes:

POLE INFORMATION:
STRAIGHT ROUND ALUMINUM
3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



Fixture A4:

Manufacturer: NLS Lighting
Part #: HRZ-1-Tx-16L-35-30K-UNV-HSS
Fixture: Horizon PT
Distribution: Type 4
CCT: 3000K
Watts: 56
Notes:

POLE INFORMATION:
STRAIGHT ROUND ALUMINUM
3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail

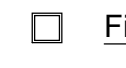


Fixture A5:

Manufacturer: NLS Lighting
Part #: HRZ-1-T5-16L-35-30K-UNV
Fixture: Horizon PT
Distribution: Type 5
CCT: 3000K
Watts: 56
Notes:

POLE INFORMATION:
STRAIGHT ROUND ALUMINUM
3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



Fixture C:

Manufacturer: Ligman
Fixture: Prague 1 Small Bollard
Part #: PRA-10002-T3-W30
Voltage: 120V
S/T/L: LED-3000K
Finish: Black RAL
Watts: 10.2

Refer to D/L5.01 for Bollard Light Detail



Fixture D:

Manufacturer: WAC Lighting
Fixture: LEDme Step Light
Part #: WL-LED100-C-SS
Voltage: 120V
S/T/L: LED-3000K
Finish: SS
Watts: 3.9

Refer to E/L5.01 for Recessed Wall Light Detail



Fixture E:

Manufacturer: NOVAFLEX
Fixture: NF-PRO-O-120-24V-3000K
Part #: 120V
Voltage: 120V
S/T/L: LED-3000K
Watts: N/A

Refer to F/L5.01 for Fence Light Detail



Fixture G:

Manufacturer: WAC
Fixture: Caliber Outdoor Wall Sconce
Part #: WS-W36610-BZ
Voltage: 120V
S/T/L: 3000K
Finish: BZ-Bronze
Watts: 11.09

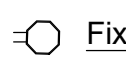
Refer to Architectural Drawings for Detail



Fixture H:

Manufacturer: Ligman
Fixture: Leeds 1 Wedge Downlight
Part #: ULEW-30001-T1-W30
Voltage: 120V
S/T/L: LED-3000K
Finish: Black RAL
Watts: 8

Refer to Architectural Drawings for Detail



Fixture J:

Manufacturer: WAC
Fixture: Wall Cylinder
Part #: WS-W190212
Voltage: 120V
S/T/L: 3000K
Finish: Black
Watts: 11.13

Refer to Architectural Drawings for Detail



Fixture K:

Manufacturer: DMF Lighting
Fixture: Surface Mount Downlight
Part #: DRD5S-4R-10930
Voltage: 120V
S/T/L: LED-3000K
Watts: 11.8

Refer to Architectural Drawings for Detail

PHASE 3
LIGHTING

PHOTOMETRIC CALCULATIONS AND FIXTURE SELECTION BY REFLEX LIGHTING

NOTE:
PARKING LOT IN LOT 91-255 DRAWN BY STUDIO NEXUS ARCHITECTS, NOT SURVEYED, FOR REFERENCE ONLY

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Revisions		
No.	Description	Date
1	Revision 1	04/22/22

LIGHTING PLAN

PHASING PLAN
UPDATED BY STUDIO
NEXUS ARCHITECTS,
6.23.2025

Project No.: 2119

L5.00

SHEET 36 OF 37

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RECREO LLC FOOD COURT & ITALIAN MARKET

2 Masoma Street
Lebanon, NH 03766

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GROUND FLOOR PLAN

Project No.: 2303

A2-1



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GROUND FLOOR
35.3 TOTAL PARKING
SPACES REQUIRED
(W/O SHARED PARKING
REDUCTIONS)

LOWER LEVEL 11,640 GSF

**LAUNDROMAT
STORAGE 378 SF**
STORAGE FOR
LAUNDROMAT 600 SF
PER VEHICLE OR 0.7
PARKING SPACES

**REVELS NORTH
STORAGE &
REHEARSAL
SPACE
2,349 SF**

PERSONAL
SERVICES 250 SF
PER VEHICLE OR 9.8
PARKING SPACES

**MARTIAL ARTS
STUDIO
1,860 SF**

PERSONAL SERVICES
250 SF PER VEHICLE OR 7.4
PARKING SPACES

**LAUNDROMAT
3,626 SF TOTAL**

OTHER COMMERCIAL
600 SF PER VEHICLE AND
PERSONAL SERVICES 250
SF/ OR 6.3 PARKING
SPACES

**PRIVATE RECREATION CLUB
3,321 SF**

PRIVATE MEMBERSHIP CLUB
300 SF PER VEHICLE OR 11.1
PARKING SPACES

HALLWAY 213 SF

19 WALL-MOUNTED BIKE
RACKS FOR PHASES II AND
III BIKE PARKING

9 WALL-MOUNTED BIKE RACKS FOR
PHASE I BIKE PARKING

LONG-TERM BIKE PARKING FOR
PHASES II AND III.

22 GROUND FLOOR
1/8" = 1'-0"

C:\Users\dougs\OneDrive\2303 Village Market Retail & Offices\500 Drawings\2025 0513 - 2303 Village Market Redevelopment.rvt

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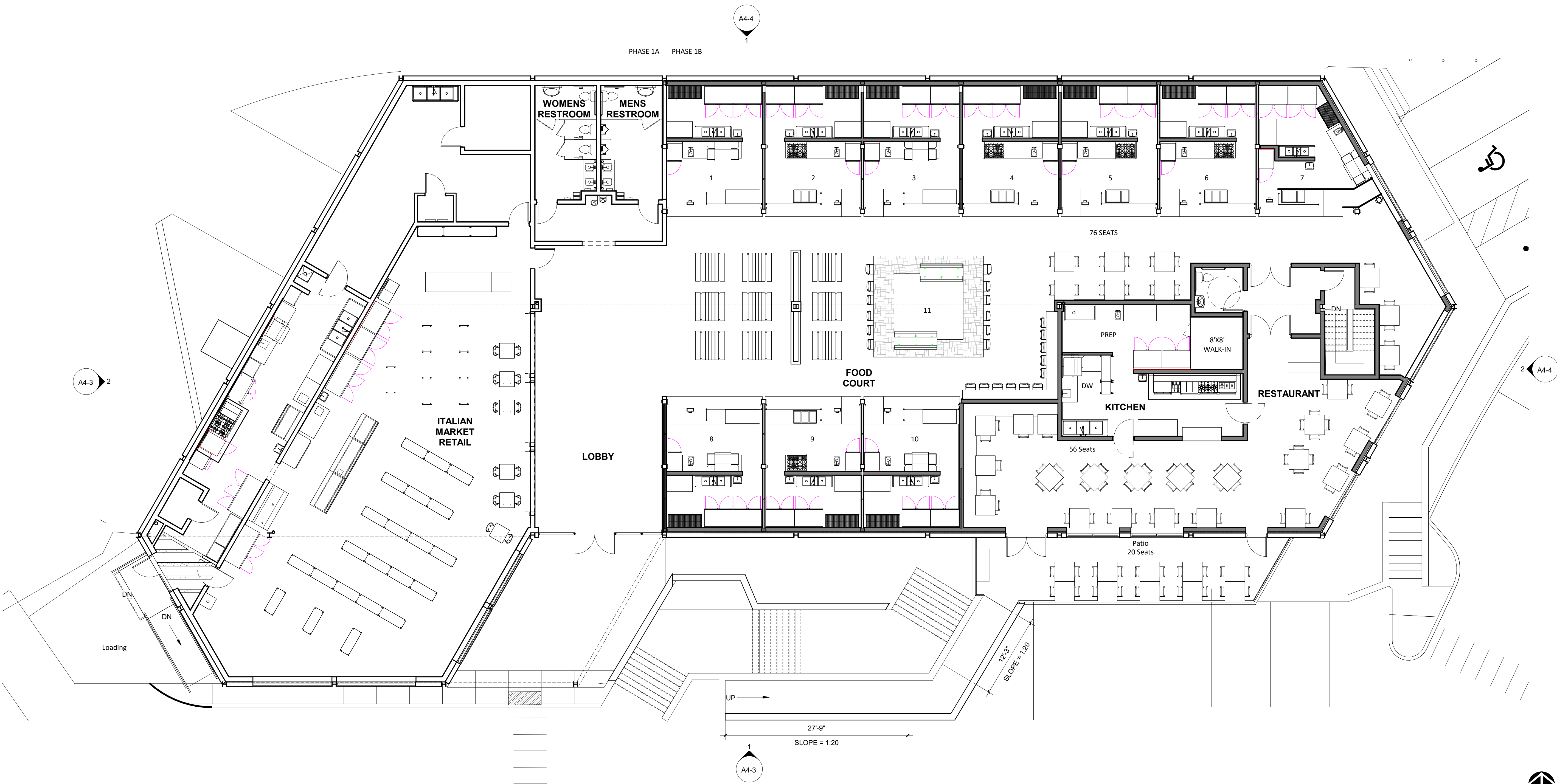


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BUILDING FLOOR AREA SUMMARY	
TOTAL FIRST FLOOR AREA (GSF) = 12,906 GSF	
FOOD HALL = 5,585 GSF	
RESTAURANT= 2,022 GSF	
ITALIAN MARKET = 3,891 GSF	
LOBBY/RESTROOM =1,408 GSF	
EXTERIOR SPACE	
PATIO= 440 GSF	



1 First Floor Plan
1/8" = 1'-0"

RECREO LLC FOOD COURT & ITALIAN MARKET

2 Masoma Street
Lebanon, NH 03766

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FIRST FLOOR PLAN

Project No.: 2303

A2-4



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2 SOUTH ELEVATION
1/8" = 1'-0"



1 EAST ELEVATION
1/8" = 1'-0"



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FOOD COURT &
ITALIAN MARKET

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No.	Description	Date

EXTERIOR
ELEVATIONS

Project No.: 2303

A4-3



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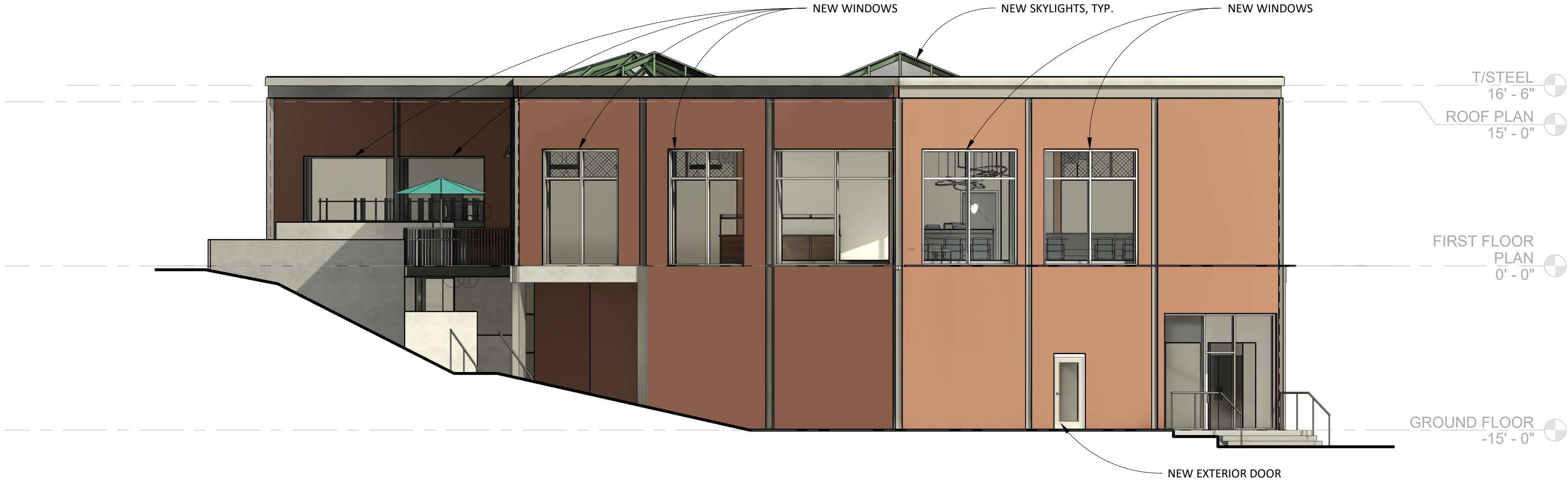
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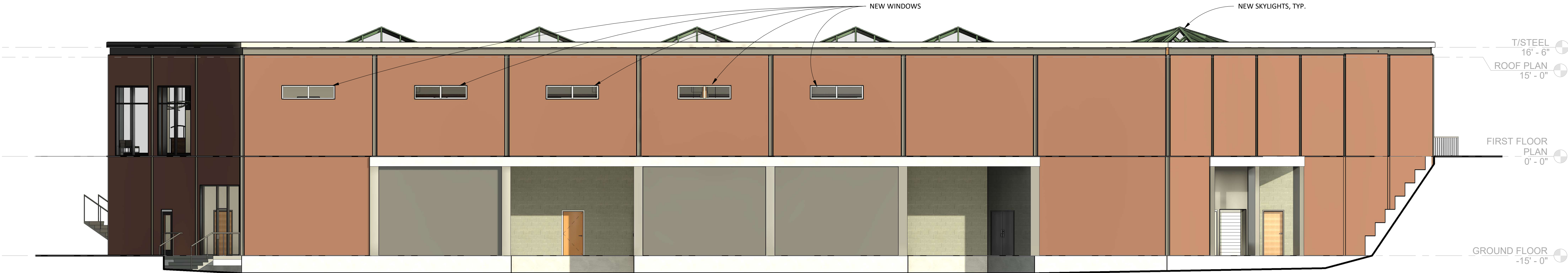
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2 NORTH ELEVATION
1/8" = 1'-0"



1 WEST ELEVATION
1/8" = 1'-0"

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RECREO LLC
ITALIAN MARKET
AND FOOD HALL

2 Masoma Street
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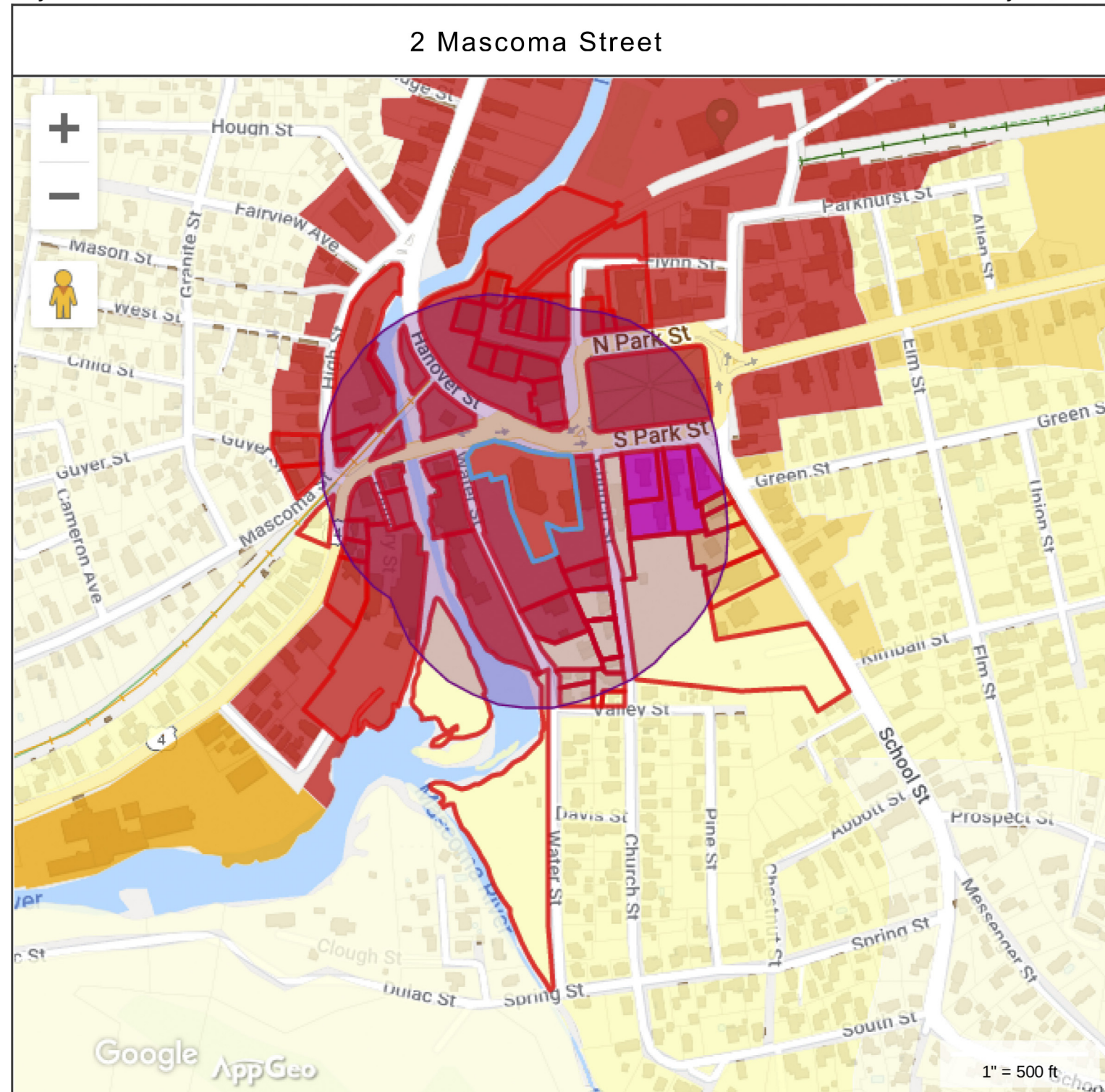
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G-4

VILLAGE MARKET REDEVELOPMENT

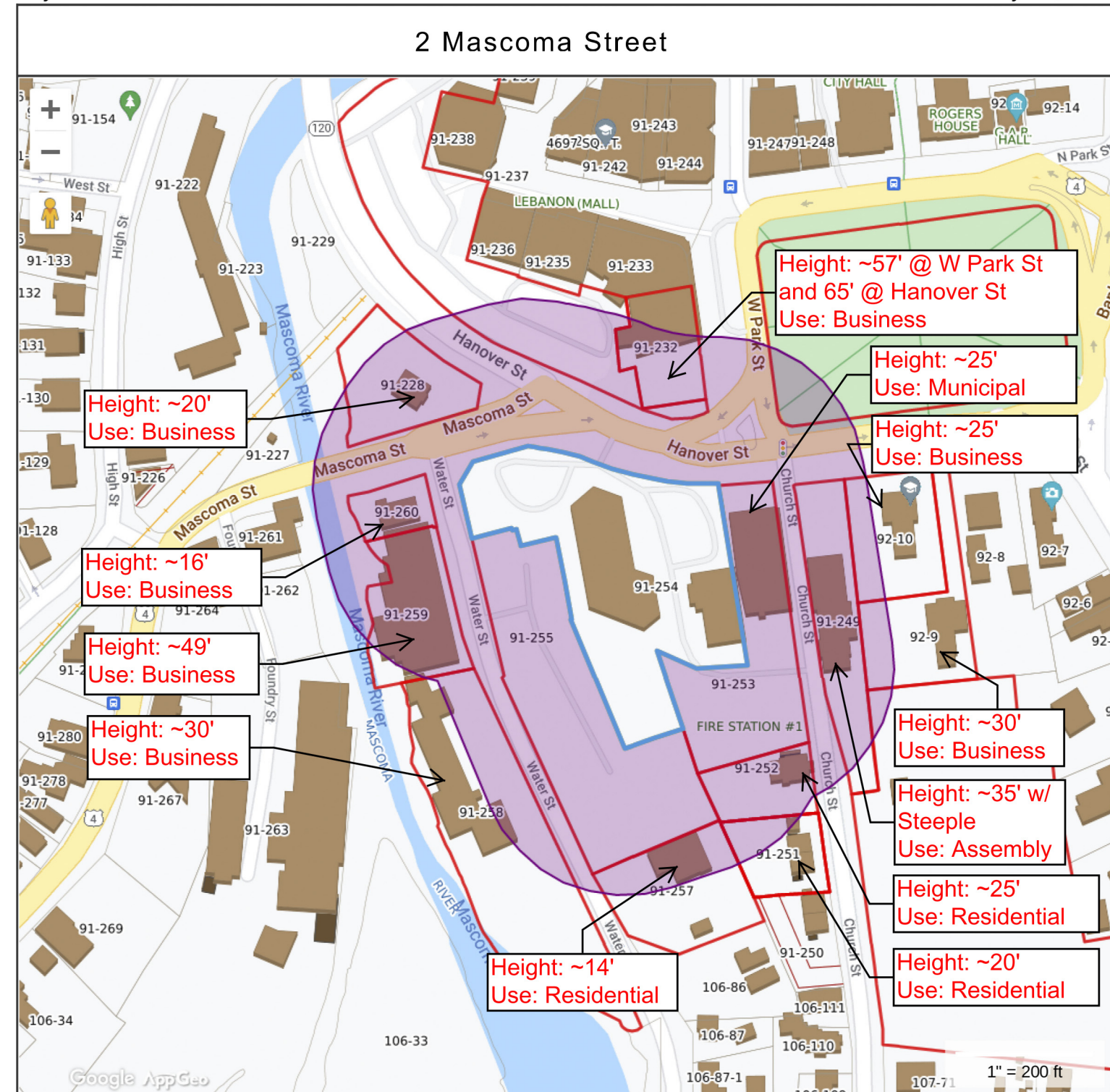
2 MASCOMA STREET LEBANON NH, 03766 GRAFTON COUNTY

City of Lebanon, NH 1" = 500' VICINITY REFERENCE MAP February 25, 2022

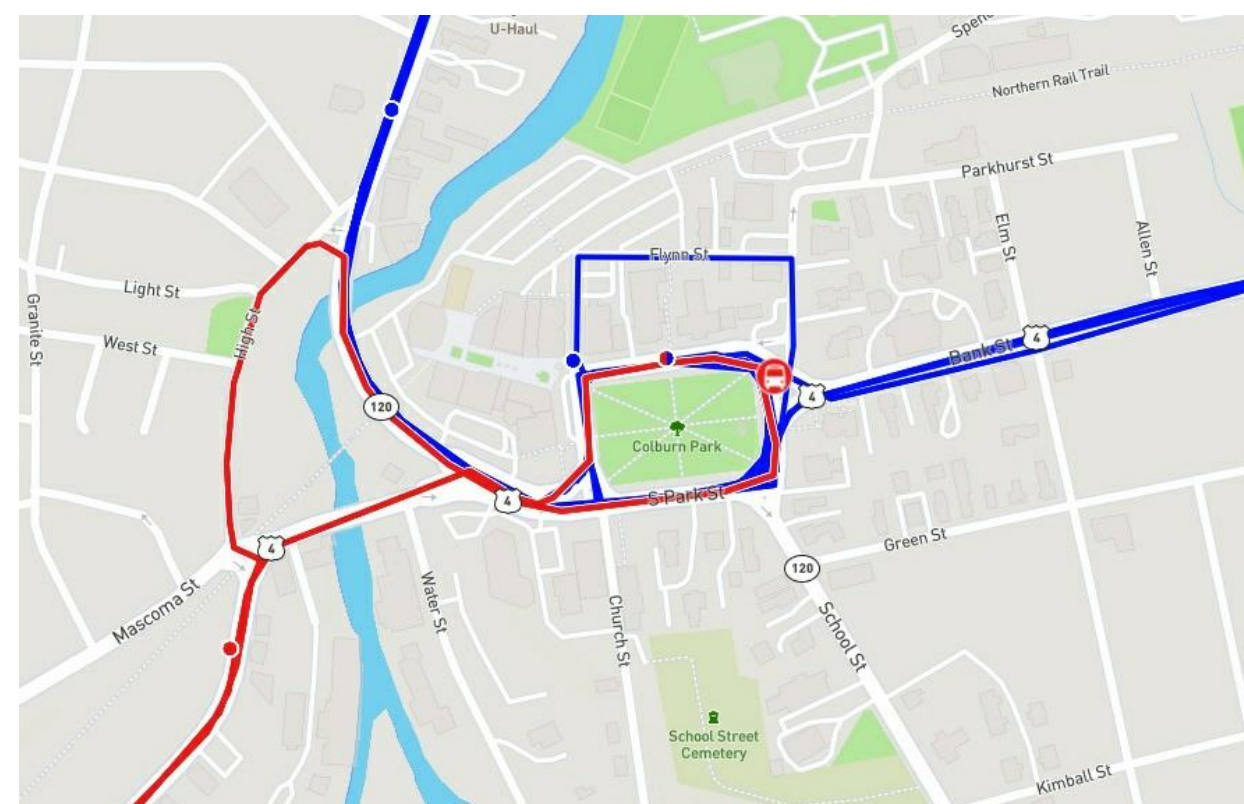


Property	MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT	Map Theme Legends
Address 2 MASCOMA ST	City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/29/2021 Data updated 1/18/2018	Zoning District - RL-3 - RURAL LAND 3 - RL-2 - RURAL LAND 2 - RL-1 - RURAL LAND 1 - R1 - RESIDENTIAL 1 - R2 - RESIDENTIAL 2 - R3 - RESIDENTIAL 3 - RO - RESIDENTIAL OFFICE - RO1 - RESIDENTIAL OFFICE 1 - GC - GENERAL COMMERCIAL - GC1 - GENERAL COMMERCIAL 1 - CB - CENTRAL BUSINESS - IND-L - INDUSTRIAL LIGHT - IND-RA - INDUSTRIAL RAIL ACCESS - IND-H - INDUSTRIAL HEAVY - MC - MEDICAL CENTER - PB - PROFESSIONAL BUSINESS - LD - LEBANON DOWNTOWN
ID 91-254		
Ownership		
Name RECRO LLC		
Address 461 MAIN ST FRANCONIA, NH 03580		

City of Lebanon, NH 1" = 200' ABUTTER REFERENCE MAP February 25, 2022



Property	MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT	Map Theme Legends
Address 2 MASCOMA ST	City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/29/2021 Data updated 1/18/2018	Zoning District - RL-3 - RURAL LAND 3 - RL-2 - RURAL LAND 2 - RL-1 - RURAL LAND 1 - R1 - RESIDENTIAL 1 - R2 - RESIDENTIAL 2 - R3 - RESIDENTIAL 3 - RO - RESIDENTIAL OFFICE - RO1 - RESIDENTIAL OFFICE 1 - GC - GENERAL COMMERCIAL - GC1 - GENERAL COMMERCIAL 1 - CB - CENTRAL BUSINESS - IND-L - INDUSTRIAL LIGHT - IND-RA - INDUSTRIAL RAIL ACCESS - IND-H - INDUSTRIAL HEAVY - MC - MEDICAL CENTER - PB - PROFESSIONAL BUSINESS - LD - LEBANON DOWNTOWN
ID 91-254		
Ownership		
Name RECRO LLC		
Address 461 MAIN ST FRANCONIA, NH 03580		



TRANSIT ROUTE MAP-ADVANCED TRANSIT RED LINE (NOT TO SCALE)

PROJECT TEAM

OWNER:

RECRO LLC
77 BANK STREET
LEBANON, NH 03766

ARCHITECT:

STUDIO NEXUS
ARCHITECTS + PLANNERS, LLC
46 SOUTH MAIN STREET, SUITE 206
PO BOX 275
WHITE RIVER JUNCTION, VT 05001

CONSTRUCTION MANAGER:

JEWETT CONSTRUCTION COMPANY
68A ROUTE 27
PO Box 405
RAYMOND, NH 03077

LANDSCAPE ARCHITECT:

SE GROUP
131 CHURCH STREET, SUITE 200
BURLINGTON, VT 05401

CIVIL ENGINEER:

HORIZONS ENGINEERING INC.
176 NEWPORT ROAD, SUITE 8
NEW LONDON, NH 03257

SURVEYOR:

DIBERNARDO ASSOCIATES, LLC
P.O. BOX 52
BELLOWS FALLS, VT 05001

GEOTECHNICAL ENGINEER:

S.W. COLE ENGINEERING, INC
10 CENTER ROAD
SOMERSWORTH, NH 03878-2926

PHASE II BUILD-OUT

TABLE OF CONTENTS

1 OF 7	G1 b	COVER SHEET & PROJECT TEAM
2 OF 7	SD-2	PHASE II SCHEMATIC SITE PLAN
3 OF 7	C204	PHASE II LAYOUT PLAN
4 OF 7	C205	PHASE II GRADING & UTILITIES PLAN
5 OF 7	C206	PHASE II SEWER PLAN AND PROFILE
6 OF 7	L4.00	PLANTING PLAN PHASES
7 OF 7	L5.00	LIGHTING PLAN PHASES

2 MASCOMA ST. - ZONING TABLE

ITEM	Required/Allowable
Street Address	
1 Zoning District/Designation	
2 Tax Map & lot number	
3 Area of Lot (Acres)	10,000 sf Minimum
4 Building Gross Floor Area (SF)	
5 Parking Summary - T.B.D. section 607 of the Zoning Ordinance	*Per planning board, per section 607.4 of the Zoning Ordinance
Number of Units per Building	
Residential - Studio units	1 space/unit
Residential -1 Bedroom units	1 space/unit
Minimum Residential Spaces	
Retail space	
Minimum Upper Level Spaces	See Dwg A2-1
Minimum Lower Level Spaces	See Dwg A2-4
Total Minimum Parking spaces	
On Site Parking Provided Phases 1 + 2	
Parking reduction factor - section 607.6 of the Zoning Ordinance	Reduction Factor Based on Time of Day

2 Mascoma Street, Lebanon NH, Grafton County			
Existing	Building 1	Building 2	Total
2 Mascoma St.	Same	Same	Same
LD	Same	Same	Same
91-254	Same	Same	Same
86,674 (1.98)	-	-	91,331 (2.09)
25,048	56,056	56,801	137,905
-	72	-	72
-	69	-	69
-	3	-	3
-	-	-	72
94	Includes 25 Sunrise Buffet Spaces		94
35	-	-	35
129	-	-	129
96	4	-	100
USE		WEEKDAY Daytime Evening	WEEKEND Daytime Evening Nighttime
PHASE 2 (Building 1)			
Residential (69 Studios, 3 one-bedrooms)		36 54	72 57.6 72
PHASE 1 + 2 TOTALS		109 179	201 174 82

6	Bike Parking Summary - Number of Short Term (ST) and Long Term (LT) bicycle storage spaces - section 6.5.1 of the Site Plan Review regulations	Non Res Short Term - 10% of parking spaces Short Term - 15% of units Long Term - 30% of units
7	Number of Loading Spaces	
8	Building Height (FT)	55' (Maximum)
9	Number of Stories	
ParkingLevel		
Sub Basement		
Basement		
First		
Second		
Third		
Fourth		
Fifth		
Sixth		
10	Use	Restaurant/ Retail/Laundromat
11	Setbacks (Ft)	
	Front	0
	Side	0
	Rear	10
12	Lot Area (SF)	3,000 sf (Minimum)
	Total Building Coverage on Lot (SF)	(Pavement, Gravel, Roof)
	Impervious surfaces (%)	
13	Overlay District	

ST = 9 spaces	ST = 11 spaces LT = 22 spaces	ST = 12 spaces LT = 24 spaces	Total Provided ST = 32 spaces LT = 46 spaces
1	1	1	3
30	55	65	-
2	5	6	-
0	8,028	0	-
0	0	3,373	-
12,003	7,888	5,893	-
13,045	8,028	8,547	-
0	8,028	8,680	-
0	8,028	8,680	-
0	8,028	8,680	-
0	8,028	8,680	-
0	8,028	8,680	-
0	0	4,268	-
Restaurant/ Retail/Laundromat	Multi Family Housing	Multi Family Housing	Restaurant/ Retail/Laundromat / Multi Family Housing
0	0	0	0
0	0	0	0
10	10	10	10
86,674	91,331		
69,904	76,584		
80.7%	83.9%		
None	None		



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VILLAGE MARKET REDEVELOPMENT

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COVER SHEET & PROJECT TEAM

Project No.: 2119

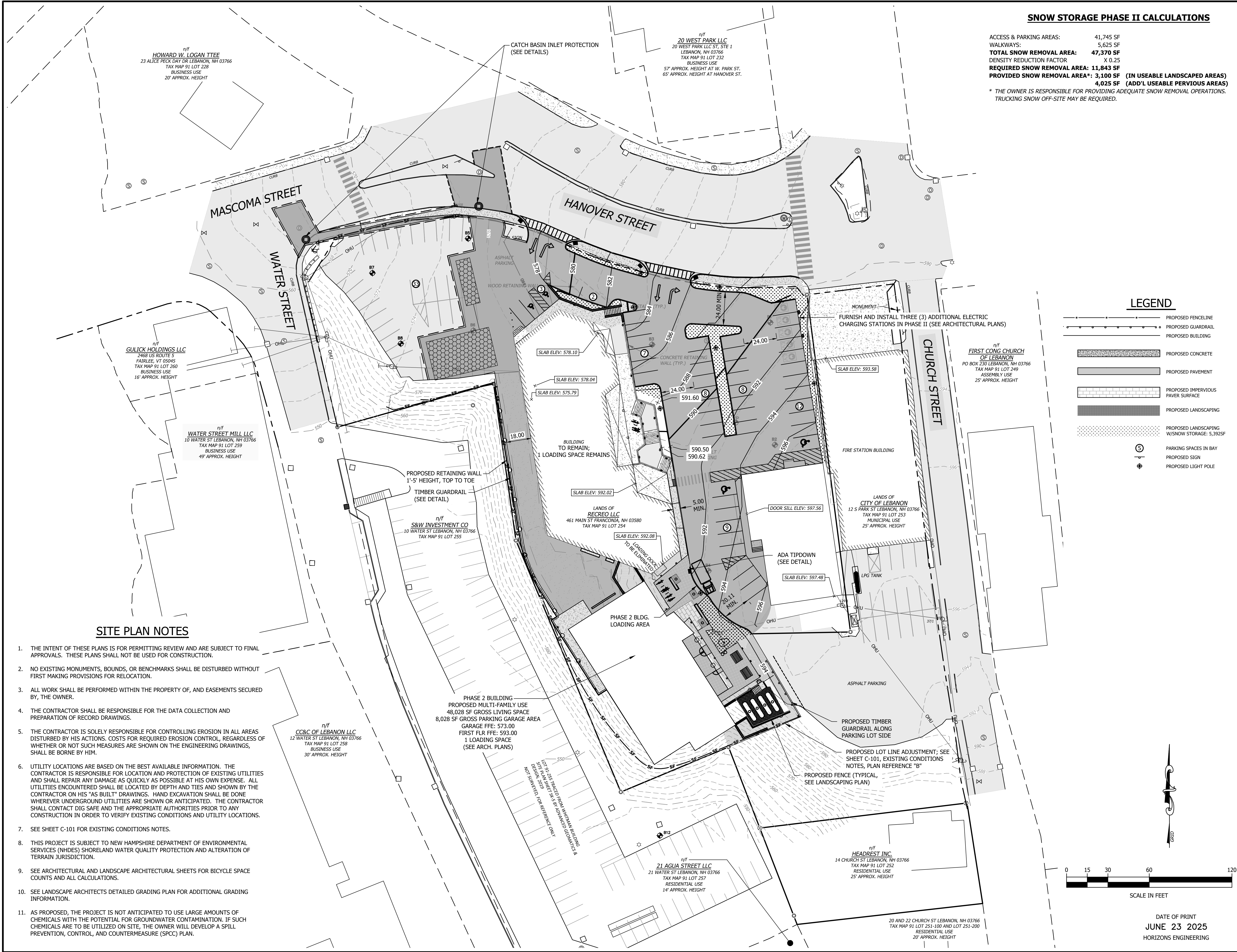
G-1b



MINIMUM PARKING REQUIRED WITH SHARED USE					
USE	WEEKDAY		WEEKEND		Nighttime
	Daytime	Evening	Daytime	Evening	
PHASE 1a (Existing Building--Italian Market only)					
Retail/ Personal Service--Grd Flr	17	25.5	28.3	19.8	1.4
Retail/ Personal Service--Upper Flr	9.4	14	15.6	10.9	0.8
Restaurant (Sunrise--75 Seats)	12.5	25	25	25	2.5
Other (Laundromat)	7	7	7	7	0.7
TOTALS	46	72	76	63	5
PHASE 1b (Existing Building--with Food Court)					
Restaurant (Upper Level--160 Seats)	27	53	53	53	5.3
TOTALS	73	125	129	116	10
PHASE 2 (Building 1)					
Residential (69 Studios, 3 one-bedrooms)	36	54	72	57.6	72
TOTALS	109	179	201	174	82
PHASE 3 (Building 2)					
Residential (79 Studios, 1 one-bedrooms)	40	60	80	64	80
No Sunrise Buffet (Less 75 Seats)	-12.5	-25	-25	-25	-2.5
TOTALS	137	214	256	213	160
PARKING PROVIDED, PHASE 1a	83				
PARKING PROVIDED, PHASE 1	96				
PARKING PROVIDED, PHASE 2	100				
PARKING PROVIDED, PHASE 3	99	+100 at 0 Water St Evenings & Weekends			

TABLE 607.6. SHARED PARKING RATIO REDUCTION FACTORS					
(A)	Weekday		Weekend		(F)
	(B)	(C)	(D)	(E)	
Land Use	Daytime (9:00 am to 4:00 pm)	Evening (6:00 pm to midnight)	Daytime (9:00 am to 4:00 pm)	Evening (6:00 pm to midnight)	Nighttime (midnight to 6:00 am)
Office /Industrial	100%	10%	10%	5%	5%
Retail/Personal service	60%	90%	100%	70%	5%
Hotel	75%	100%	75%	100%	75%
Residential	50%	75%	100%	80%	100%
Restaurant	50%	100%	100%	100%	10%
Entertainment/Recreational	40%	100%	80%	100%	10%
All other uses	100%	100%	100%	100%	10%

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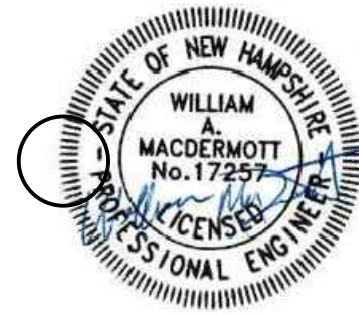
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**PHASE II
LAYOUT PLAN**

Project No.: 2303

C-204

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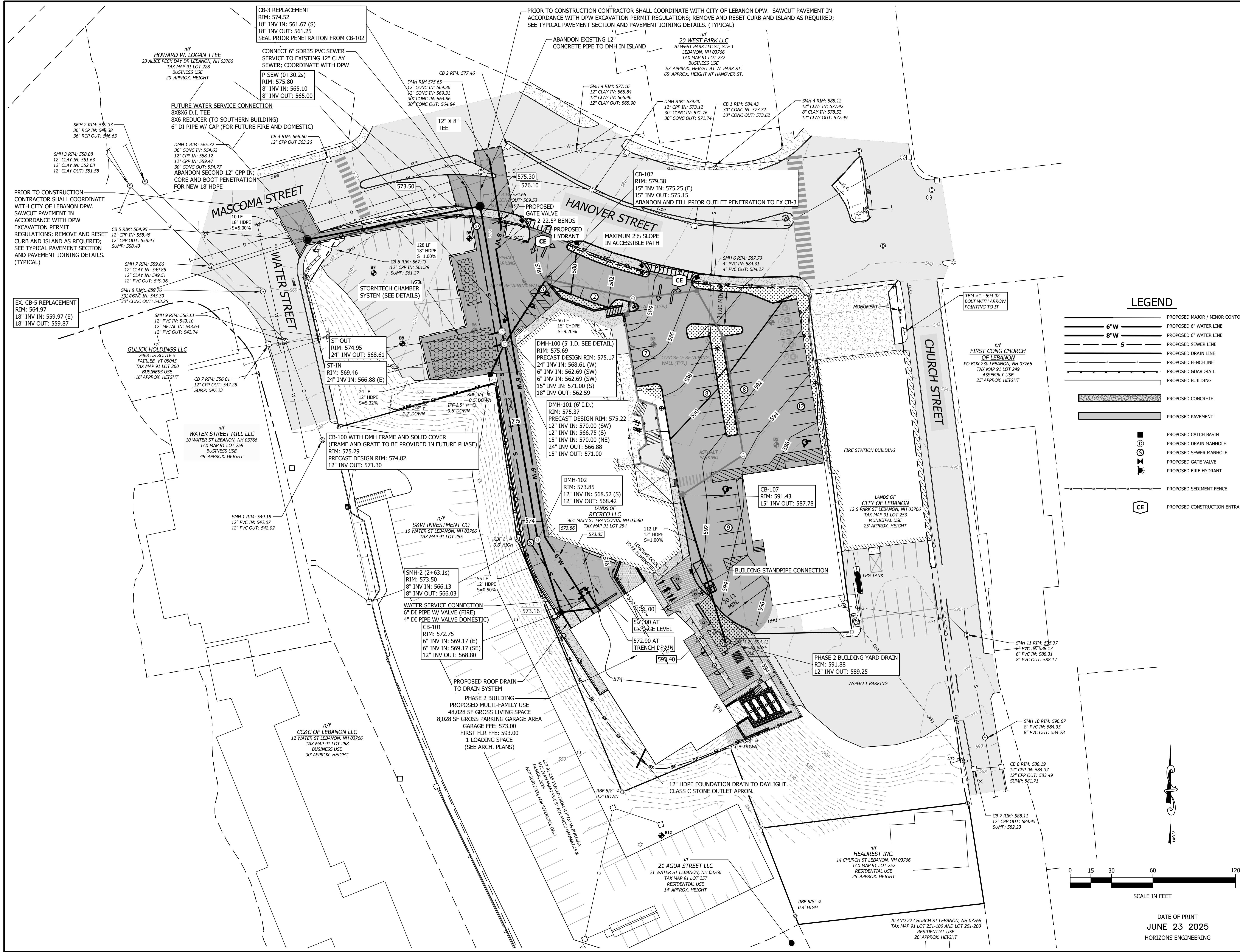
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PHASE II GRADING AND UTILITIES PLAN

Project No.: 2303

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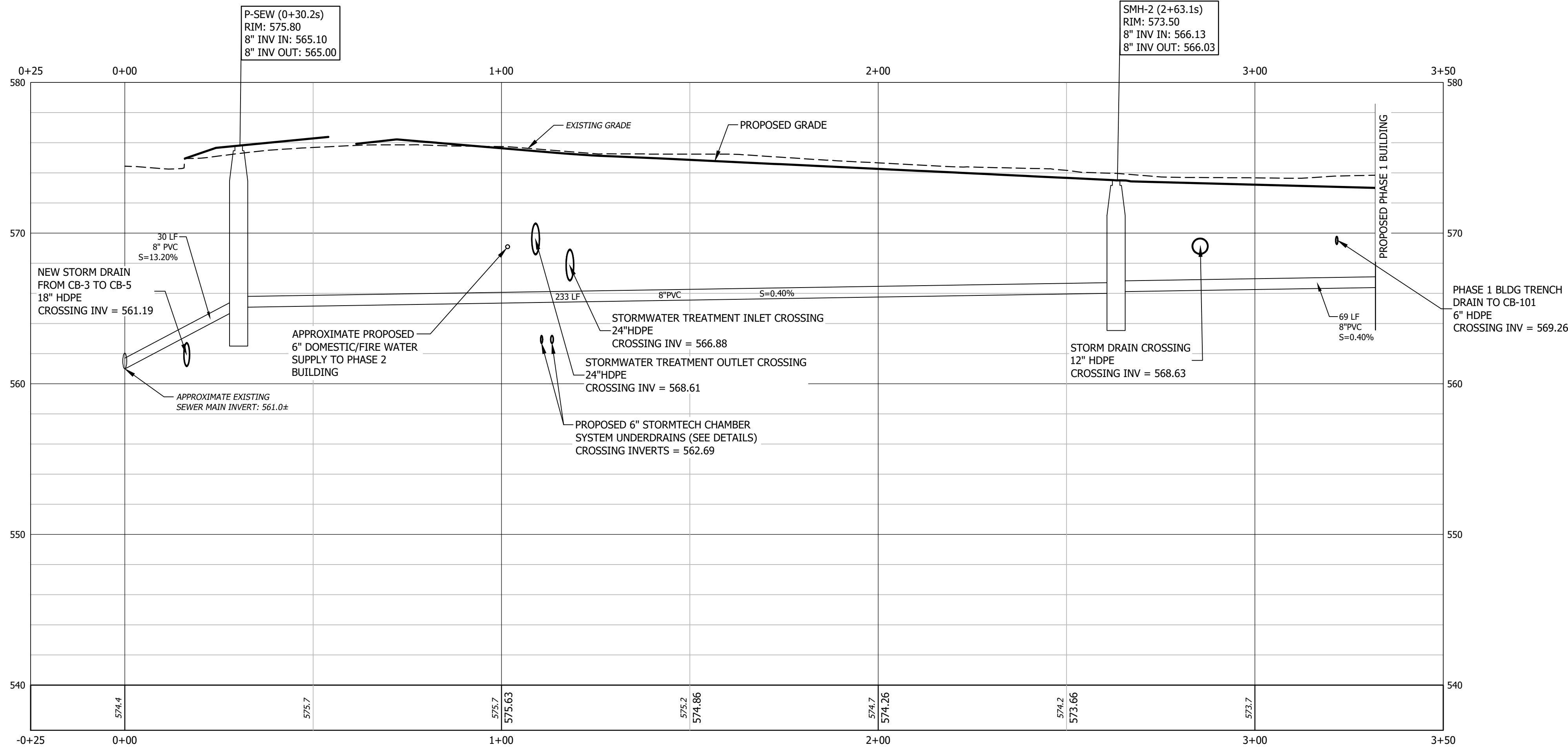
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PHASE II
SEWER PLAN
AND PROFILE

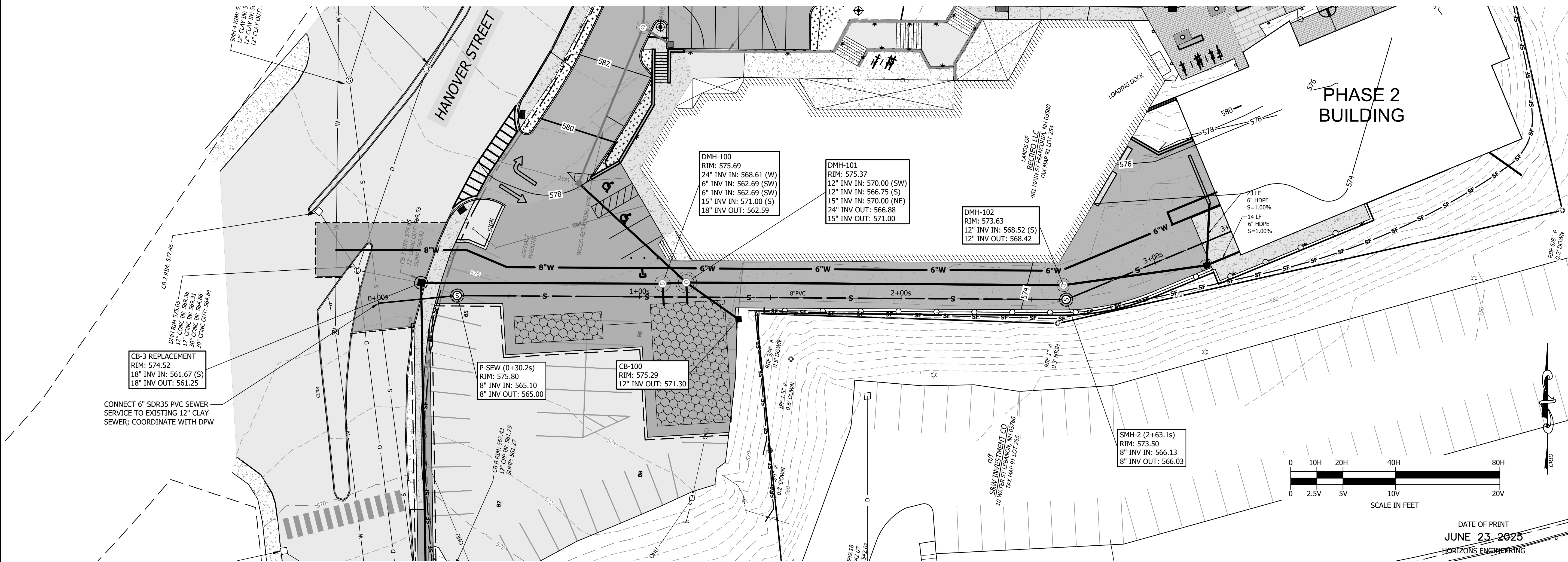
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Z:\proj_202\2021021804_S-N-2_Mascoma SDDWGSetFinal2\894_CulSheet-Phase-01.dwg, C206, 6/23/2025 11:41:37 AM, DrawnMacDermott



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ARCHITECTS + PLANNERS

PO Box 275, White River Junction, VT 05001
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Landscape Architects and Planners

131 Church Street
Burlington, VT 05401

tel: 802.862.0098
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www.segroup.com



VILLAGE MARKET REDEVELOPMENT

RECREO LLC

Issued For:

SITE PLAN REVIEW

PRELIMINARY NOT FOR CONSTRUCTION

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Issue Date:

March 14, 2022

Revisions

No.	Description	Date
1	Revision 1	04/22/22

PLANTING PLAN

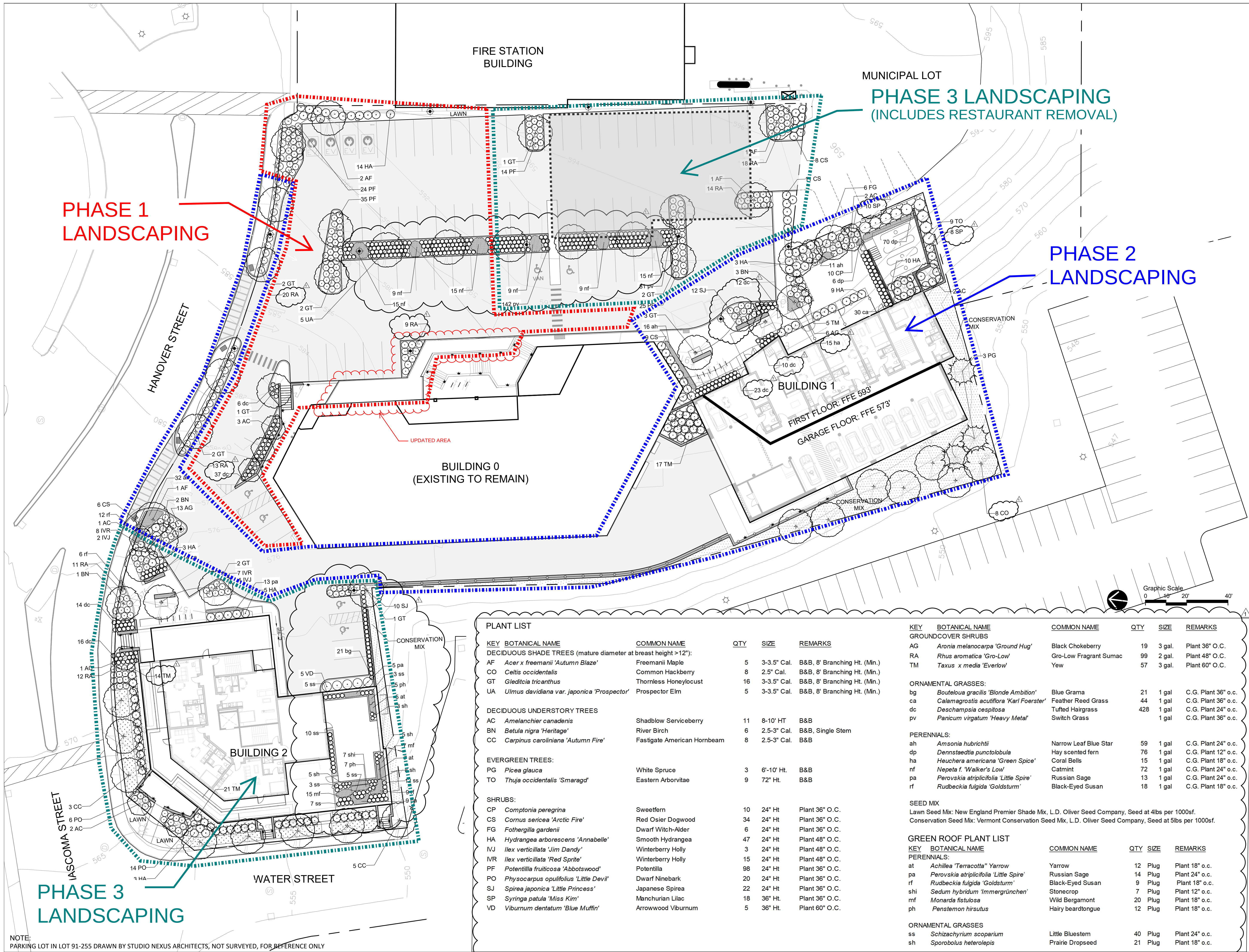
PHASING PLAN
UPDATED BY STUDIO
NEXUS ARCHITECTS,
6.23.2025

Project No.: 2119

L4.00

SHEET 33 OF 37

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NOTE: PARKING LOT IN LOT 91-255 DRAWN BY STUDIO NEXUS ARCHITECTS, NOT SURVEYED, FOR REFERENCE ONLY

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CALCULATION SUMMARY

Area	Average (Fc)	Max	Min	Avg./Min.
Parking Lot	1.13	2.60	0.30	3.77
Building 2 and Existing Lots	0.68	1.20	0.30	2.27
Building 2 Parking Lot	0.93	2.30	0.30	3.10
Building 1 Rear entry	0.43	0.70	0.20	2.15
Building 0 Rear Drive	0.96	2.40	0.30	3.20
Building 2 Entry Plaza	2.74	3.70	2.10	1.30
Building 0 Ramp	0.70	1.50	0.30	2.33
Walkway Building 0 to Building 1	0.57	0.60	0.50	1.14
Building 1 Patio Area	0.89	2.90	0.30	2.97
Building 2, Rear and Side	0.70	2.00	0.00	n/a

ISO-CONTOUR	FOOTCANDLE VALUE
—	3.00
—	1.00
—	0.50
—	0.20

PHASE 1 LIGHTING

PHASE 3 LIGHTING

FIRE STATION BUILDING

BUILDING 0 (EXISTING TO REMAIN)

BUILDING 1

BUILDING 2

SUB-BASEMENT: FFE 554'

FIRST FLOOR: FFE 576.5'

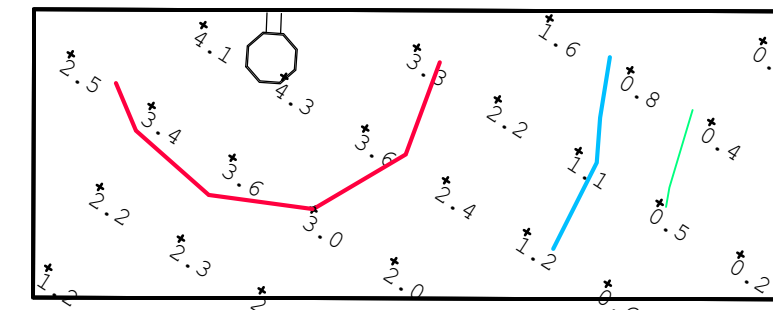
BASEMENT: FFE 565.25'

WATER STREET

COMA STREET

BALCONY LIGHTING - TYPICAL

J.



Graphic Scale 0 2' 4' 8'

PHASE 3 LIGHTING

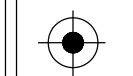
PHASE 2 LIGHTING

- Notes:
- Contractor to provide shop drawings of all light fixtures and accessories for review and approval.
 - No light fixture substitutions will be allowed without prior approval from SE Group (Landscape Architect)
 - Refer to lighting plans and lighting details for additional information.
 - Contractor to take special care to make sure light fixtures are installed in the locations identified on the lighting plans, avoiding conflicts with trees and other plant material.
 - Refer to lighting details for light horizontal offset when pole mounted lights are located next to walks and plazas.
 - Refer to lighting details for light pole bases and fixture installation requirements.
 - Refer to Electrical Engineering drawings for service, conduit, and voltage requirements - and additional light fixtures)

FIXTURE AND POLE SPECIFICATIONS

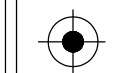


EXISTING LIGHT POLE TO REMAIN



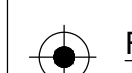
Fixture A3:
Manufacturer: NLS Lighting
Part #: HRZ-1-T3-16L-35-30K-HSS
Fixture: Horizon PT
Distribution: Type 3
CCT: 3000K
Watts: 56
Notes: POLE INFORMATION: STRAIGHT ROUND ALUMINUM 3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



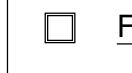
Fixture A4:
Manufacturer: NLS Lighting
Part #: HRZ-1-Tx-16L-35-30K-UNV-HSS
Fixture: Horizon PT
Distribution: Type 4
CCT: 3000K
Watts: 56
Notes: POLE INFORMATION: STRAIGHT ROUND ALUMINUM 3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



Fixture A5:
Manufacturer: NLS Lighting
Part #: HRZ-1-T5-16L-35-30K-UNV
Fixture: Horizon PT
Distribution: Type 5
CCT: 3000K
Watts: 56
Notes: POLE INFORMATION: STRAIGHT ROUND ALUMINUM 3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



Fixture C:
Manufacturer: Ligman
Fixture: Prague 1 Small Bollard
Part #: PRA-10002-T3-W30
Voltage: 120V
S/T/L: LED-3000K
Finish: Black RAL
Watts: 10.2

Refer to D/L5.01 for Bollard Light Detail



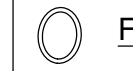
Fixture D:
Manufacturer: WAC Lighting
Fixture: LEDme Step Light
Part #: WL-LED100-C-SS
Voltage: 120V
S/T/L: LED-3000K
Finish: SS
Watts: 3.9

Refer to E/L5.01 for Recessed Wall Light Detail



Fixture E:
Manufacturer: NOVAFLEX
Fixture: NF-PRO-O-120-24V-3000K
Part #: 120V
Voltage: 120V
S/T/L: LED-3000K
Watts: N/A

Refer to F/L5.01 for Fence Light Detail



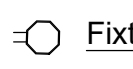
Fixture G:
Manufacturer: WAC
Fixture: Caliber Outdoor Wall Sconce
Part #: WS-W36610-BZ
Voltage: 120V
S/T/L: 3000K
Finish: BZ-Bronze
Watts: 11.09

Refer to Architectural Drawings for Detail



Fixture H:
Manufacturer: Ligman
Fixture: Leeds 1 Wedge Downlight
Part #: ULEW-30001-T1-W30
Voltage: 120V
S/T/L: LED-3000K
Finish: Black RAL
Watts: 8

Refer to Architectural Drawings for Detail



Fixture J:
Manufacturer: WAC
Fixture: Wall Cylinder
Part #: WS-W190212
Voltage: 120V
S/T/L: 3000K
Finish: Black
Watts: 11.13

Refer to Architectural Drawings for Detail



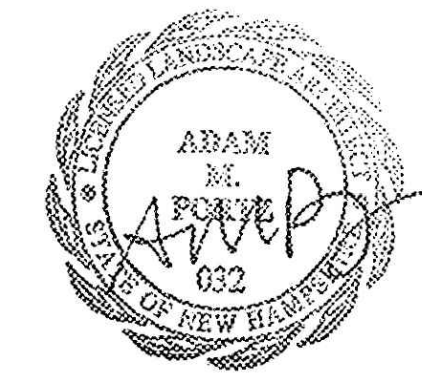
Fixture K:
Manufacturer: DMF Lighting
Fixture: Surface Mount Downlight
Part #: DRD5S-4R-10930
Voltage: 120V
S/T/L: LED-3000K
Watts: 11.8

Refer to Architectural Drawings for Detail

SE GROUP
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VILLAGE MARKET REDEVELOPMENT

RECRO LLC

Issued For:

SITE PLAN REVIEW

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Issue Date:

March 14, 2022

Revisions		
No.	Description	Date
1	Revision 1	04/22/22

LIGHTING PLAN

**PHASING PLAN
UPDATED BY STUDIO
NEXUS ARCHITECTS,
6.23.2025**

Project No.:

2119

L5.00

SHEET 36 OF 37

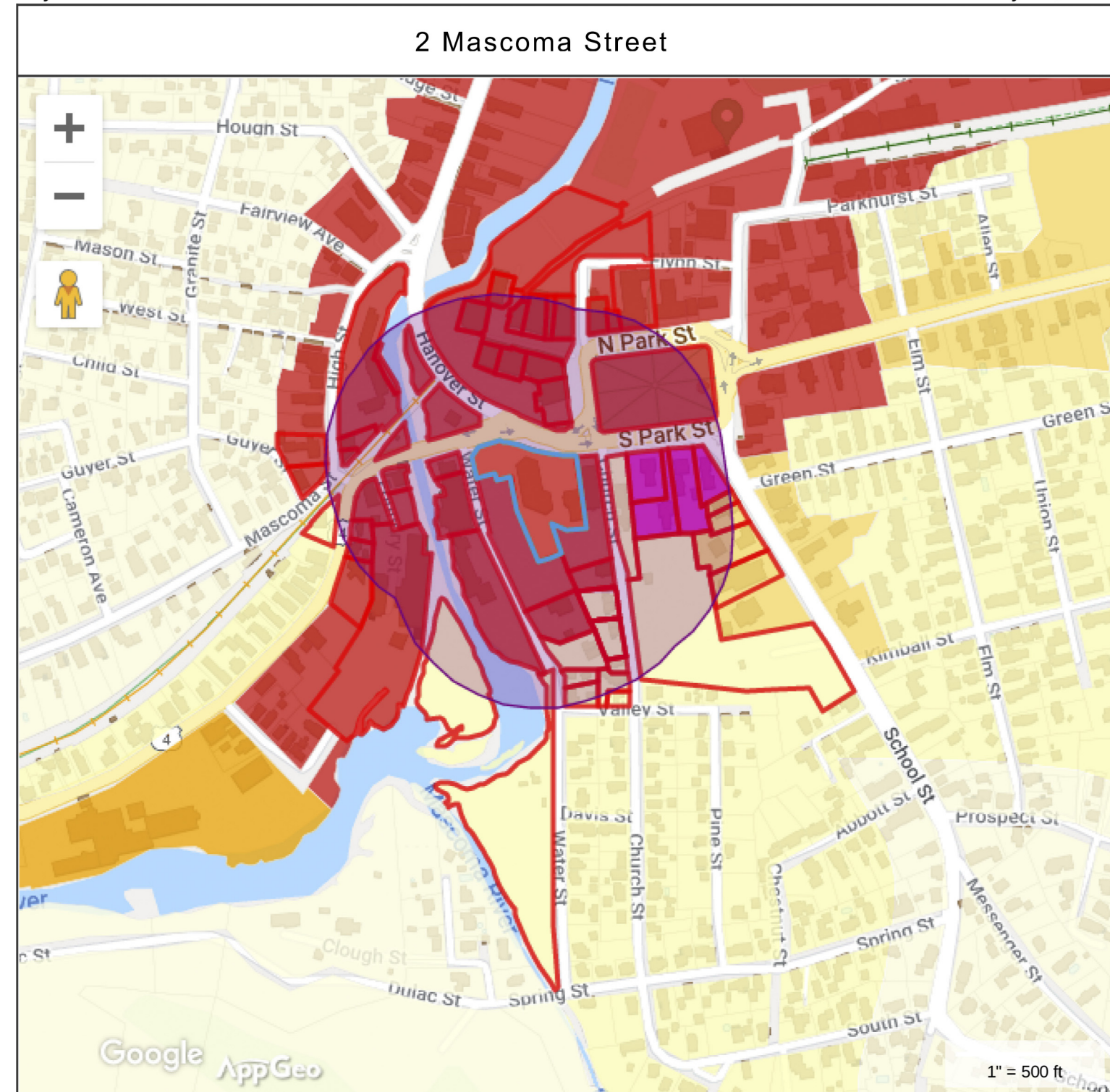
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NOTE:
PARKING LOT IN LOT 91-255 DRAWN BY STUDIO NEXUS ARCHITECTS, NOT SURVEYED, FOR REFERENCE ONLY

VILLAGE MARKET REDEVELOPMENT

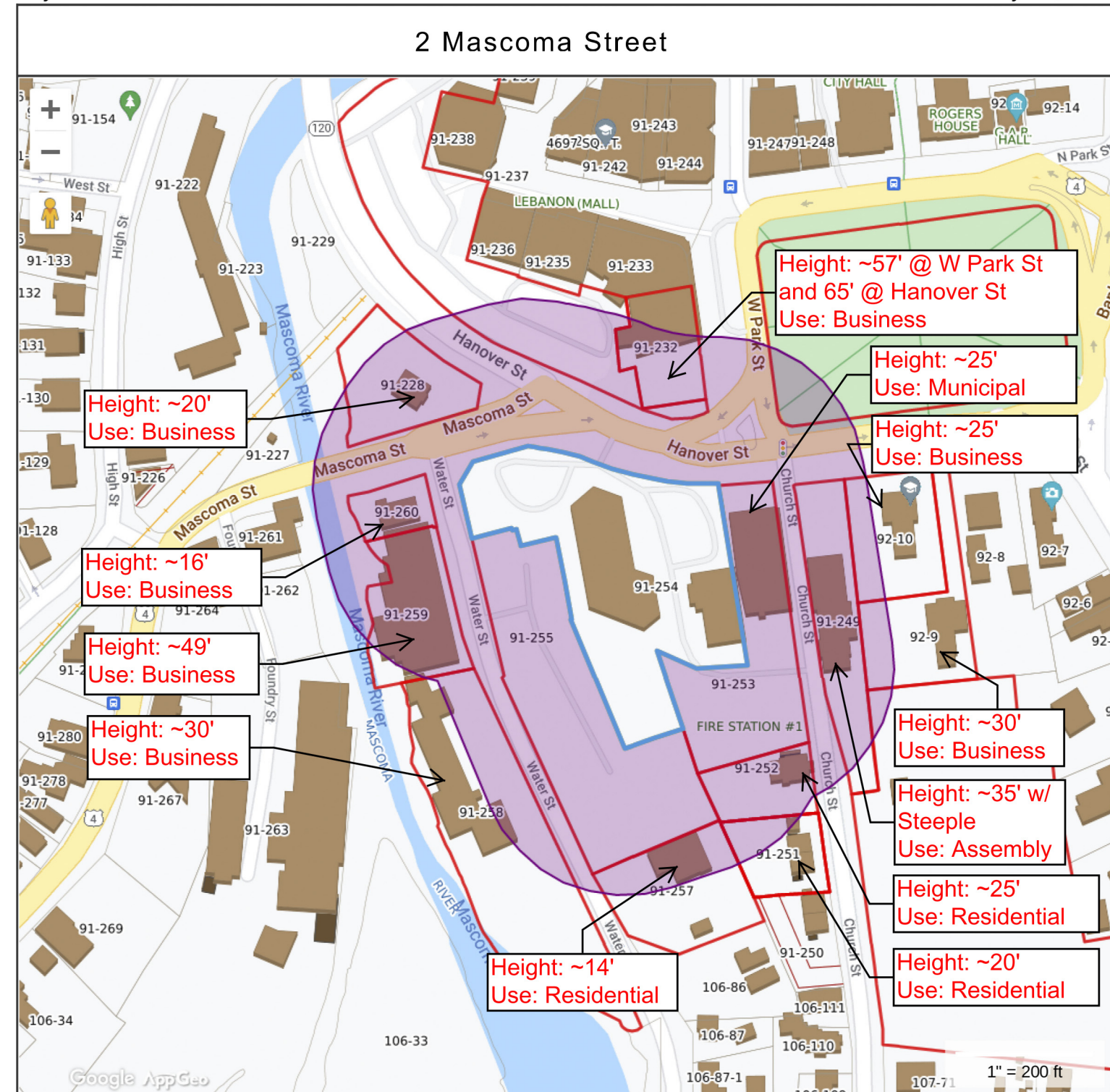
2 MASCOMA STREET LEBANON NH, 03766 GRAFTON COUNTY

City of Lebanon, NH 1" = 500' VICINITY REFERENCE MAP February 25, 2022

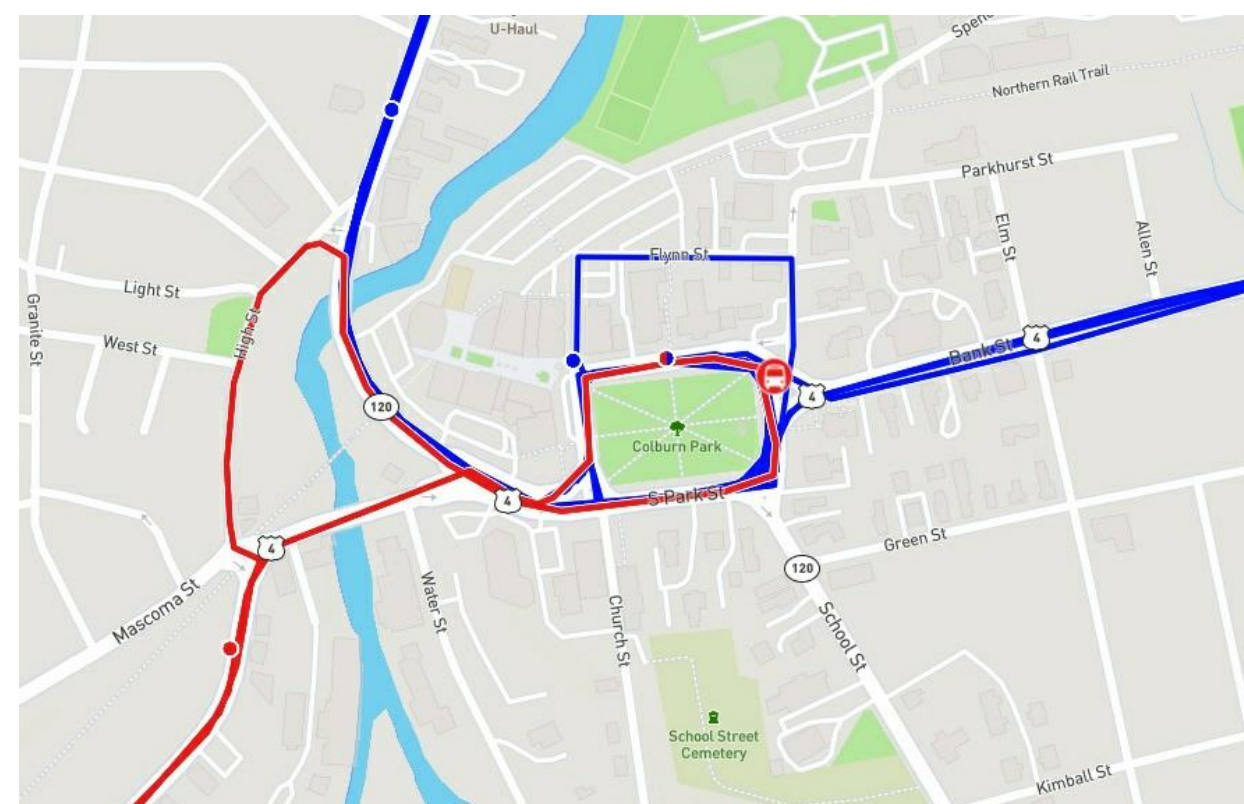


Property	MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT	Map Theme Legends
Address 2 MASCOMA ST	City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/29/2021 Data updated 1/18/2018	Zoning District - RL-3 - RURAL LAND 3 - RL-2 - RURAL LAND 2 - RL-1 - RURAL LAND 1 - R1 - RESIDENTIAL 1 - R2 - RESIDENTIAL 2 - R3 - RESIDENTIAL 3 - RO - RESIDENTIAL OFFICE - RO1 - RESIDENTIAL OFFICE 1 - GC - GENERAL COMMERCIAL - GC1 - GENERAL COMMERCIAL 1 - CB - CENTRAL BUSINESS - IND-L - INDUSTRIAL LIGHT - IND-RA - INDUSTRIAL RAIL ACCESS - IND-H - INDUSTRIAL HEAVY - MC - MEDICAL CENTER - PB - PROFESSIONAL BUSINESS - LD - LEBANON DOWNTOWN
ID 91-254		
Ownership		
Name RECRO LLC		
Address 461 MAIN ST FRANCONIA, NH 03580		

City of Lebanon, NH 1" = 200' ABUTTER REFERENCE MAP February 25, 2022



Property	MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT	Map Theme Legends
Address 2 MASCOMA ST	City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/29/2021 Data updated 1/18/2018	Zoning District - RL-3 - RURAL LAND 3 - RL-2 - RURAL LAND 2 - RL-1 - RURAL LAND 1 - R1 - RESIDENTIAL 1 - R2 - RESIDENTIAL 2 - R3 - RESIDENTIAL 3 - RO - RESIDENTIAL OFFICE - RO1 - RESIDENTIAL OFFICE 1 - GC - GENERAL COMMERCIAL - GC1 - GENERAL COMMERCIAL 1 - CB - CENTRAL BUSINESS - IND-L - INDUSTRIAL LIGHT - IND-RA - INDUSTRIAL RAIL ACCESS - IND-H - INDUSTRIAL HEAVY - MC - MEDICAL CENTER - PB - PROFESSIONAL BUSINESS - LD - LEBANON DOWNTOWN
ID 91-254		
Ownership		
Name RECRO LLC		
Address 461 MAIN ST FRANCONIA, NH 03580		



TRANSIT ROUTE MAP-ADVANCED TRANSIT RED LINE (NOT TO SCALE)

PROJECT TEAM

OWNER:

RECRO LLC
77 BANK STREET
LEBANON, NH 03766

ARCHITECT:

STUDIO NEXUS
ARCHITECTS + PLANNERS, LLC
46 SOUTH MAIN STREET, SUITE 206
PO BOX 275
WHITE RIVER JUNCTION, VT 05001

CONSTRUCTION MANAGER:

JEWETT CONSTRUCTION COMPANY
68A ROUTE 27
PO Box 405
RAYMOND, NH 03077

LANDSCAPE ARCHITECT:

SE GROUP
131 CHURCH STREET, SUITE 200
BURLINGTON, VT 05401

CIVIL ENGINEER:

HORIZONS ENGINEERING INC.
176 NEWPORT ROAD, SUITE 8
NEW LONDON, NH 03257

SURVEYOR:

DIBERNARDO ASSOCIATES, LLC
P.O. BOX 52
BELLOWS FALLS, VT 05001

GEOTECHNICAL ENGINEER:

S.W. COLE ENGINEERING, INC
10 CENTER ROAD
SOMERSWORTH, NH 03878-2926

PHASE III BUILD-OUT

TABLE OF CONTENTS

1 OF 6	G1c	COVER SHEET & PROJECT TEAM
2 OF 6	SD-2	PHASE II SCHEMATIC SITE PLAN
3 OF 6	C207	PHASE III LAYOUT PLAN
4 OF 4	C208	PHASE III GRADING & UTILITIES PLAN
5 OF 6	L4.00	PLANTING PLAN PHASES
6 OF 6	L5.00	LIGHTING PLAN PHASES

2 MASCOMA ST. - ZONING TABLE

ITEM		Required/Allowable
Street Address		
1 Zoning District/Designation		
2 Tax Map & lot number		
3 Area of Lot (Acres)		10,000 sf Minimum
4 Building Gross Floor Area (SF)		
5 Parking Summary - T.B.D. section 607 of the Zoning Ordinance		*Per planning board, per section 607.4 of the Zoning Ordinance
Number of Units per Building		
Residential - Studio units		1 space/unit
Residential -1 Bedroom units		1 space/unit
Minimum Residential Spaces		
Retail space		
Minimum Upper Level Spaces		See Dwg A2-1
Minimum Lower Level Spaces		See Dwg A2-4
Total Minimum Parking spaces		
On Site Parking Provided Phases 1, 2, 3		
Parking reduction factor - section 607.6 of the Zoning Ordinance		Reduction Factor Based on Time of Day

2 Mascoma Street, Lebanon NH, Grafton County			
Existing	Building 1	Building 2	Total
2 Mascoma St.	Same	Same	Same
LD	Same	Same	Same
91-254	Same	Same	Same
86,674 (1.98)	-	-	91,331 (2.09)
25,048	56,056	56,801	137,905
-	72	80	152
-	69	79	148
-	3	1	4
-			152
94	-		94
35	-		35
129	Less 25 Sunrise Buffet Spaces		104
96	4	99	199
USE		WEEKDAY Daytime Evening	WEEKEND Daytime Evening Nighttime
PHASE 3 (Building 2)			
Residential (79 Studios, 1 one-bedrooms)		40	60
No Sunrise Buffet (Less 75 Seats)		-12.5	-25
PHASE 1 + 2 + 3 TOTALS		137	214

6	Bike Parking Summary - Number of Short Term (ST) and Long Term (LT) bicycle storage spaces - section 6.5.1 of the Site Plan Review regulations	Non Res Short Term - 10% of parking spaces Short Term - 15% of units Long Term - 30% of units
7	Number of Loading Spaces	
8	Building Height (FT)	55' (Maximum)
9	Number of Stories	
	ParkingLevel	
	Sub Basement	
	Basement	
	First	
	Second	
	Third	
	Fourth	
	Fifth	
	Sixth	
10	Use	Restaurant/ Retail/Laundromat
11	Setbacks (Ft)	
	Front	0
	Side	0
	Rear	10
12	Lot Area (SF)	3,000 sf (Minimum)
	Total Building Coverage on Lot (SF)	(Pavement, Gravel, Roof)
	Impervious surfaces (%)	
13	Overlay District	

ST = 9 spaces	ST = 11 spaces LT = 22 spaces	ST = 12 spaces LT = 24 spaces	Total Provided ST = 32 spaces LT = 46 spaces
1	1	1	3
30	55	65	-
2	5	6	-
0	8,028	0	-
0	0	3,373	-
12,003	7,888	5,893	-
13,045	8,028	8,547	-
0	8,028	8,680	-
0	8,028	8,680	-
0	8,028	8,680	-
0	8,028	8,680	-
0	8,028	8,680	-
0	0	4,268	-
Restaurant/ Retail/Laundromat	Multi Family Housing	Multi Family Housing	Restaurant/ Retail/Laundromat / Multi Family Housing
0	0	0	0
0	0	0	0
10	10	10	10
86,674		91,331	
69,904		76,584	
80.7%		83.9%	
None		None	



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NEXUS**

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VILLAGE MARKET REDEVELOPMENT

RECRO LLC

Issued For:

SITE PLAN REVIEW

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Issue Date: July 8, 2025

Revisions		
No.	Description	Date

COVER SHEET & PROJECT TEAM

Project No.: 2119

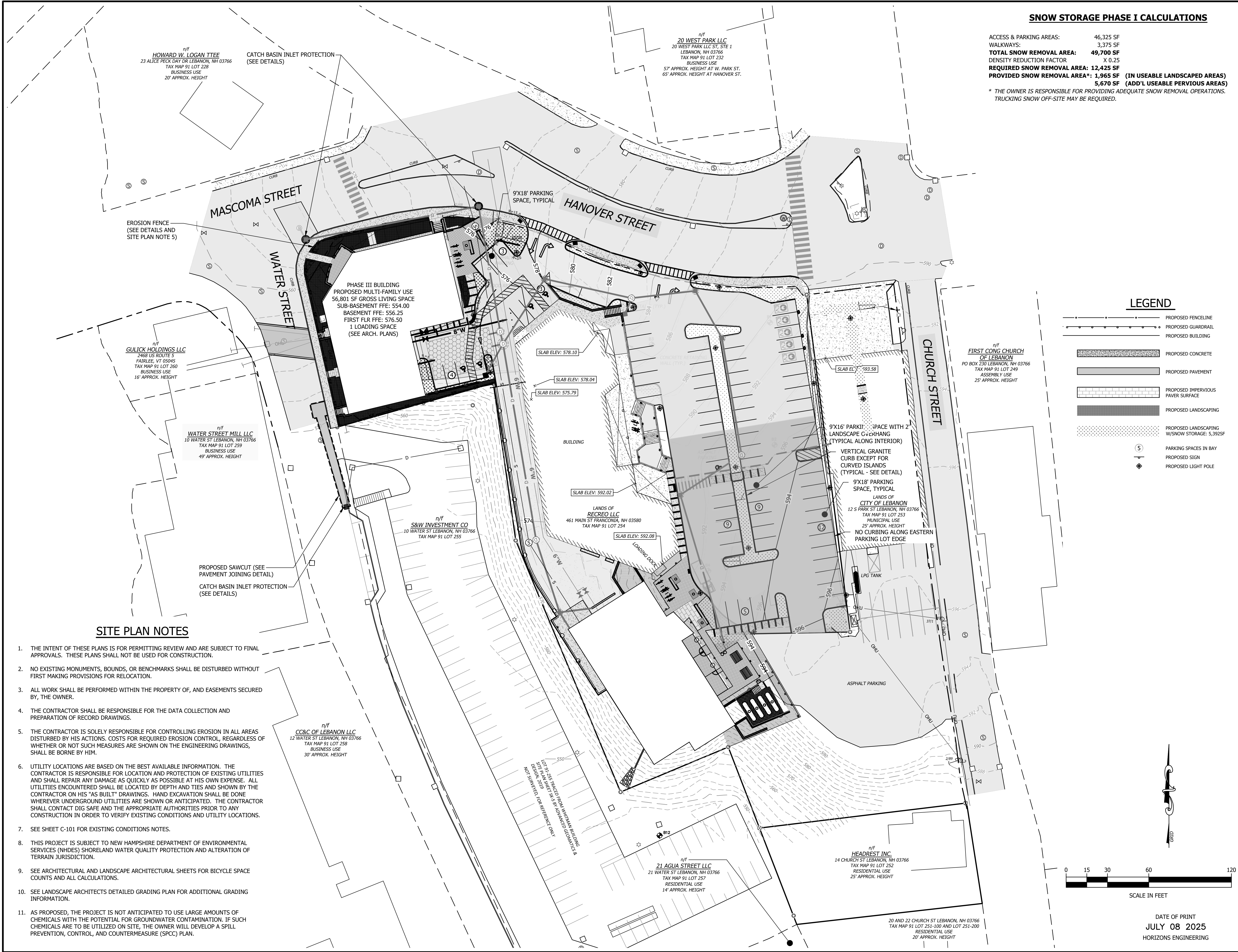
G-1c



MINIMUM PARKING REQUIRED WITH SHARED USE					
USE	WEEKDAY		WEEKEND		Nightime
	Daytime	Evening	Daytime	Evening	
PHASE 1a (Existing Building--Italian Market only)					
Retail/ Personal Service--Grd Flr	17	25.5	28.3	19.8	1.4
Retail/ Personal Service--Upper Flr	9.4	14	15.6	10.9	0.8
Restaurant (Sunrise--75 Seats)	12.5	25	25	25	2.5
Other (Laundromat)	7	7	7	7	0.7
TOTALS	46	72	76	63	5
PHASE 1b (Existing Building--with Food Court)					
Restaurant (Upper Level--160 Seats)	27	53	53	53	5.3
TOTALS	73	125	129	116	10
PHASE 2 (Building 1)					
Residential (69 Studios, 3 one-bedrooms)	36	54	72	57.6	72
TOTALS	109	179	201	174	82
PHASE 3 (Building 2)					
Residential (79 Studios, 1 one-bedrooms)	40	60	80	64	80
No Sunrise Buffet (Less 75 Seats)	-12.5	-25	-25	-25	-2.5
TOTALS	137	214	256	213	160
PARKING PROVIDED, PHASE 1a	83				
PARKING PROVIDED, PHASE 1	96				
PARKING PROVIDED, PHASE 2	100				
PARKING PROVIDED, PHASE 3	99	+100 at 0 Water St	Evenings & Weekends		

TABLE 607.6. SHARED PARKING RATIO REDUCTION FACTORS					
(A)	Weekday		Weekend		(F)
	(B)	(C)	(D)	(E)	
Land Use	Daytime (9:00 am to 4:00 pm)	Evening (6:00 pm to midnight)	Daytime (9:00 am to 4:00 pm)	Evening (6:00 pm to midnight)	Nighttime (midnight to 6:00 am)
Office /Industrial	100%	10%	10%	5%	5%
Retail/ Personal service	60%	90%	100%	70%	5%
Hotel	75%	100%	75%	100%	75%
Residential	50%	75%	100%	80%	100%
Restaurant	50%	100%	100%	100%	10%
Entertainment/Recreational	40%	100%	80%	100%	10%
All other uses	100%	100%	100%	100%	10%

Z:\proj_2021\12184-S-N-2-Mascoma-SIDWGS\Final\2184_CulSheet-Phase-02.dwg, C207, 7/8/2025 2:06:14 PM, gmacdermott



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Issue Date: JUNE 23, 2025

Revisions		
No.	Description	Date
1	REVISION 1 - ADD PHASE III	7/8/25

**PHASE III
LAYOUT PLAN**

Project No.: 2303

C-207

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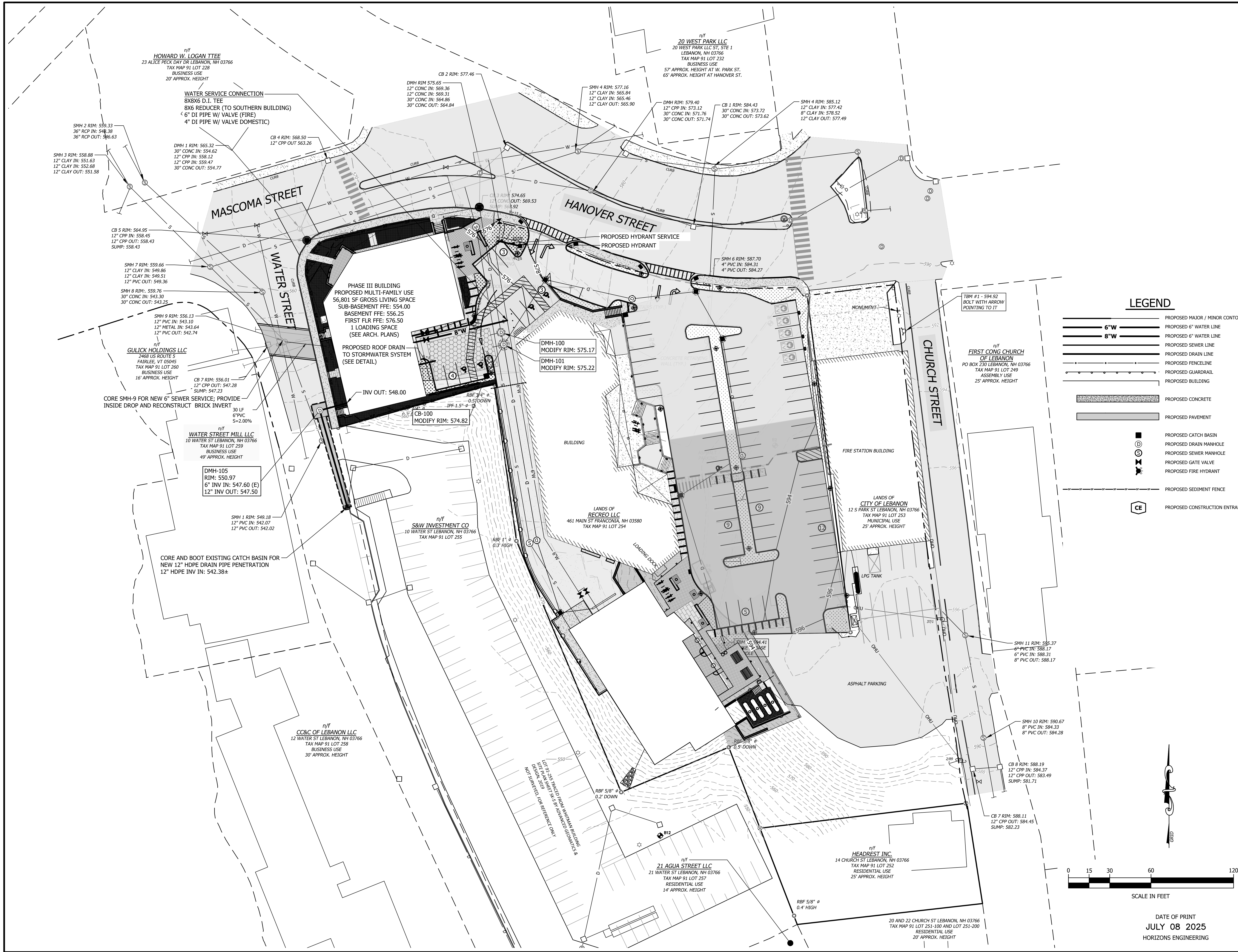
Revisions		
No.	Description	Date
1	REVISION 1 - ADD PHASE III	7/8/25

PHASE III GRADING AND UTILITIES PLAN

Project No.: 2303

C-208

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DATE OF PRINT
JULY 08 2025
HORIZONS ENGINEERING

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Walkway Building 0 to Building 1	0.57	0.60	0.50	1.14
Building 1 Patio Area	0.89	2.90	0.30	2.97
Building 2, Rear and Side	0.70	2.00	0.00	n/a

ISO-CONTOUR	FOOTCANDLE VALUE
—	3.00
—	1.00
—	0.50
—	0.20

PHASE 1 LIGHTING

PHASE 3 LIGHTING

FIRE STATION BUILDING

BUILDING 0 (EXISTING TO REMAIN)

BUILDING 2

WATER STREET

BALCONY LIGHTING - TYPICAL

J.

PHASE 3 LIGHTING

PHASE 2 LIGHTING

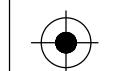
BUILDING 1

- Notes:
- Contractor to provide shop drawings of all light fixtures and accessories for review and approval.
 - No light fixture substitutions will be allowed without prior approval from SE Group (Landscape Architect)
 - Refer to lighting plans and lighting details for additional information.
 - Contractor to take special care to make sure light fixtures are installed in the locations identified on the lighting plans, avoiding conflicts with trees and other plant material.
 - Refer to lighting details for light horizontal offset when pole mounted lights are located next to walks and plazas.
 - Refer to lighting details for light pole bases and fixture installation requirements.
 - Refer to Electrical Engineering drawings for service, conduit, and voltage requirements - and additional light fixtures)

FIXTURE AND POLE SPECIFICATIONS

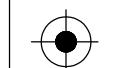


EXISTING LIGHT POLE TO REMAIN



Fixture A3:
 Manufacturer: NLS Lighting
 Part #: HRZ-1-T3-16L-35-30K-HSS
 Fixture: Horizon PT
 Distribution: Type 3
 CCT: 3000K
 Watts: 56
 Notes: POLE INFORMATION: STRAIGHT ROUND ALUMINUM 3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



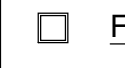
Fixture A4:
 Manufacturer: NLS Lighting
 Part #: HRZ-1-Tx-16L-35-30K-UNV-HSS
 Fixture: Horizon PT
 Distribution: Type 4
 CCT: 3000K
 Watts: 56
 Notes: POLE INFORMATION: STRAIGHT ROUND ALUMINUM 3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



Fixture A5:
 Manufacturer: NLS Lighting
 Part #: HRZ-1-T5-16L-35-30K-UNV
 Fixture: Horizon PT
 Distribution: Type 5
 CCT: 3000K
 Watts: 56
 Notes: POLE INFORMATION: STRAIGHT ROUND ALUMINUM 3" DIA. X 18'-0" MOUNT HEIGHT

Refer to A/L5.01 for Pole Light Detail



Fixture C:
 Manufacturer: Ligman
 Fixture: Prague 1 Small Bollard
 Part #: PRA-10002-T3-W30
 Voltage: 120V
 S/T/L: LED-3000K
 Finish: Black RAL
 Watts: 10.2

Refer to D/L5.01 for Bollard Light Detail



Fixture D:
 Manufacturer: WAC Lighting
 Fixture: LEDme Step Light
 Part #: WL-LED100-C-SS
 Voltage: 120V
 S/T/L: LED-3000K
 Finish: SS
 Watts: 3.9

Refer to E/L5.01 for Recessed Wall Light Detail



Fixture E:
 Manufacturer: NOVAFLEX
 Fixture: NF-PRO-O-120-24V-3000K
 Part #: 120V
 Voltage: 120V
 S/T/L: LED-3000K
 Watts: N/A

Refer to F/L5.01 for Fence Light Detail



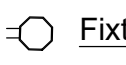
Fixture G:
 Manufacturer: WAC
 Fixture: Caliber Outdoor Wall Sconce
 Part #: WS-W36610-BZ
 Voltage: 120V
 S/T/L: 3000K
 Finish: BZ-Bronze
 Watts: 11.09

Refer to Architectural Drawings for Detail



Fixture H:
 Manufacturer: Ligman
 Fixture: Leeds 1 Wedge Downlight
 Part #: ULEW-30001-T1-W30
 Voltage: 120V
 S/T/L: LED-3000K
 Finish: Black RAL
 Watts: 8

Refer to Architectural Drawings for Detail



Fixture J:
 Manufacturer: WAC
 Fixture: Wall Cylinder
 Part #: WS-W190212
 Voltage: 120V
 S/T/L: 3000K
 Finish: Black
 Watts: 11.13

Refer to Architectural Drawings for Detail



Fixture K:
 Manufacturer: DMF Lighting
 Fixture: Surface Mount Downlight
 Part #: DRD5S-4R-10930
 Voltage: 120V
 S/T/L: LED-3000K
 Watts: 11.8

Refer to Architectural Drawings for Detail

PHOTOMETRIC CALCULATIONS AND FIXTURE SELECTION BY REFLEX LIGHTING

NOTE: PARKING LOT IN LOT 91-255 DRAWN BY STUDIO NEXUS ARCHITECTS, NOT SURVEYED, FOR REFERENCE ONLY



ARCHITECTS + PLANNERS

PO Box 275, White River Junction, VT 05001
 802 275 5110 | studionexusarch.com

SE GROUP
 Landscape Architects and Planners

131 Church Street
 Burlington, VT 05401

tel: 802.862.0098
 fax: 802.865.2440
 www.segroup.com



VILLAGE MARKET REDEVELOPMENT

RECREO LLC

Issued For:

SITE PLAN REVIEW

PRELIMINARY NOT FOR CONSTRUCTION

JIM WASSER'S ELECTRONIC OR DIGITAL SEAL OR SIGNATURE IS EFFECTIVE ONLY AS TO THAT VERSION OF THIS DOCUMENT AS ORIGINALLY PUBLISHED BY STUDIO NEXUS ARCHITECTS & PLANNERS, LLC. JIM WASSER IS NOT RESPONSIBLE FOR ANY SUBSEQUENT MODIFICATION, CORRUPTION OR UNAUTHORIZED USE OF SUCH DOCUMENT. TO VERIFY THE VALIDITY OR APPLICABILITY OF THE SEAL OR SIGNATURE, CONTACT JIM WASSER

Issue Date: March 14, 2022

Revisions		
No.	Description	Date
1	Revision 1	04/22/22

LIGHTING PLAN

PHASING PLAN
 UPDATED BY STUDIO
 NEXUS ARCHITECTS,
 6.23.2025

Project No.: 2119

L5.00

SHEET 36 OF 37

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CITY OF LEBANON PLANNING BOARD
HEARING ON XYZ DAIRY APPLICATION

XYZ DAIRY LLC PRESENTATION

June 9, 2025

Robert J. Kaler, Esq.
Holland & Knight, LLP

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: CONSIGL CONSTRUCTION

REMARKS:

THIS PERMIT IS BEING ISSUED WITH THE FOLLOWING CONDITIONS:
SEE ATTACHED CONDITIONS LIST

WORK SHALL NOT PROCEED UNTIL THE CITY INSPECTORS HAVE APPROVED THE FOLLOWING STAGES OF CONSTRUCTION:

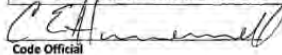
1. Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not there or the setbacks cannot be verified, the construction will not be approved or allowed to continue. Mistakes in the location of boundary lines 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.

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

LEB_0098373

LEB_0099373

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park – Lot 1 Construction Document Set

Location: 173 North Main Street, West Lebanon, New Hampshire

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park – Lot 1 Construction Document Set

Location: 173 North Main Street, West Lebanon, New Hampshire

Owner: XYZ Dairy LLC

15140.000 – 100 River Park Drive – IV, Lebanon, NH – Program of Structural Tests and Inspections (I)

Page 1

LEB_0099405

LEB_0099373

(continued on next page)

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: Rivet Park - Lot 1 Construction Document Set

Location: 173 North Main Street, West Lebanon, New Hampshire

Owner: XYZ Dairy LLC

Architect of Record: Elkus Manfred Architects

Structural Engineer of Record (SER): McNamara + Salvo

Geotechnical Engineer of Record (GER): McPhail Associates, LLC

This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.

Geotechnical Engineer of Record (GER): McPhail Associates, LLC

This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.

particular items or inspections:

15145 (R0) - 173 Rivet Park Drive - W. Lebanon, NH - Program of Construction Tests and Inspections (CI)

Page 1

LEB_0099465

LEB_0099373

(continued on next page)

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park - Lot 1 Construction Document Set

Location: 173 North Main Street, West Lebanon, New Hampshire

Owner: XYZ Dairy LLC

Architect of Record: Elkus Manfredi Architects

Structural Engineer of Record (SER): McNamara + Salvo

Geotechnical Engineer of Record (GER): McPhail Associates, LLC

This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.

Geotechnical Engineer of Record (GER): McPhail Associates, LLC

This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.

particular tests or inspections:

H540 060 - 100 River Park Drive - W. Lebanon, NH - Program of Structural Tests and Inspections (I)

Page 1

LEB_0099465

LEB_0099373

(continued on next page)

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections required for each checked category are listed on the page noted opposite the category.

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections required for each checked category are listed on the page noted opposite the category.

- ☐ Precast Concrete Components ☐ Light Gauge Metal Framing
☐ Post-Tensioning Steel
☒ Structural Steel Connections

The following items are excluded from this program of structural tests and inspections, since they are designed by other structural engineers not under the aegis of the SER and the SER was not retained to provide performance specifications for their design. These other structural engineers must be assigned by the owner, architect, or construction contractor, as applicable, to be special SERs for their respective designs and to provide a program of structural tests and inspections for their respective designs.

Curtain Walls, Fall Protection Systems

Prepared by the Structural Engineer of Record:

Name: John S. Matuzewski, P.E.

Please Print Name

Signature: [Signature]

Firm: McNamara + Salvo

Date: July 28, 2016



Registration Seal

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections required for each checked category are listed on the page noted opposite the category.

☐ Driven Deep Foundations ☒ Testing for Seismic Resistance 11
☐ Cast-In-Place Deep Foundations

The following items of construction, if checked, are specified in the structural plans or specifications on a performance basis. Their structural design will be reviewed by the SER and their construction is included in the program for tests and inspections on the attached sheets:

☐ Curtain Walls ☐ Metal Buildings
☐ Precast Concrete Components ☐ Light Gauge Metal Framing
☐ Post-Tensioning Steel
☒ Structural Steel Connections

The following items are excluded from the program of structural tests and inspections, except they are designed to meet minimum engineering standards for safety of the structure. The design was reviewed by the SER and the construction is included in the program for tests and inspections on the attached sheets. The following items are excluded from the program of structural tests and inspections, except they are designed to meet minimum engineering standards for safety of the structure. The design was reviewed by the SER and the construction is included in the program for tests and inspections on the attached sheets.

Curtain Walls	☐ Wood Construction	-
Precast Concrete Components	☒ Soils	7
Post-Tensioning Steel	☐ Driven Deep Foundations	-

Sign: _____
 Firm: McIntara & Savia
 Date: July 26, 2016 Registration Seal

Table 1704.7
Required Verification and Inspection of Soils

Verification and Inspection Task	Frequency of Inspection	Agent
1. Verify materials below shallow foundations are adequate to achieve the design bearing capacity.	Periodic	GER
2. Verify excavations are extended to proper depth and have reached proper material.	Periodic	GER
3. Perform classification and testing of compacted fill materials.	Periodic	GER

Table 1704.7
Required Verification and Inspection of Soils

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2. Verify excavations are extended to proper depth and have reached proper material.	Periodic	GER
3. Perform classification and testing of compacted fill materials.	Periodic	GER
4. Verify use of proper materials, densities and lift thicknesses during placement and compaction of compacted fill.	Continuous	GER
5. Prior to placement of compacted fill observe subgrade and verify site has been prepared properly.	Periodic	GER

APPLICATION FOR PROPOSED EXCAVATION

Applicant Name: David Clem
Company: XYZ Dairy, LLC
Mailing Address: 57 Main Street,
West Lebanon, NH 03784
Telephone: (603) 676-7800

I / We propose to disturb the surface, sidewalk, shoulders or ditches of the following street:
_____ for the purpose of

Tax Map #: 44-3 Lot #: 1

The area to be disturbed is approximately:	<u>220</u>	feet in length
	<u>165</u>	feet in width
	<u>15</u>	feet in depth



Will be completed when site contractor is hired.

CITY OF LEBANON
DEPARTMENT OF PUBLIC WORKS
193 Dartmouth College Highway
(603) 448-3112

APPLICATION FOR PROPOSED EXCAVATION

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The area to be disturbed is approximately:

<u>220</u>	feet in length
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LEB_0099503

LEB_0099373



Will be completed when site contractor is hired

CITY OF LEBANON
DEPARTMENT OF PUBLIC WORKS
193 Dartmouth College Highway
(603) 448-3112

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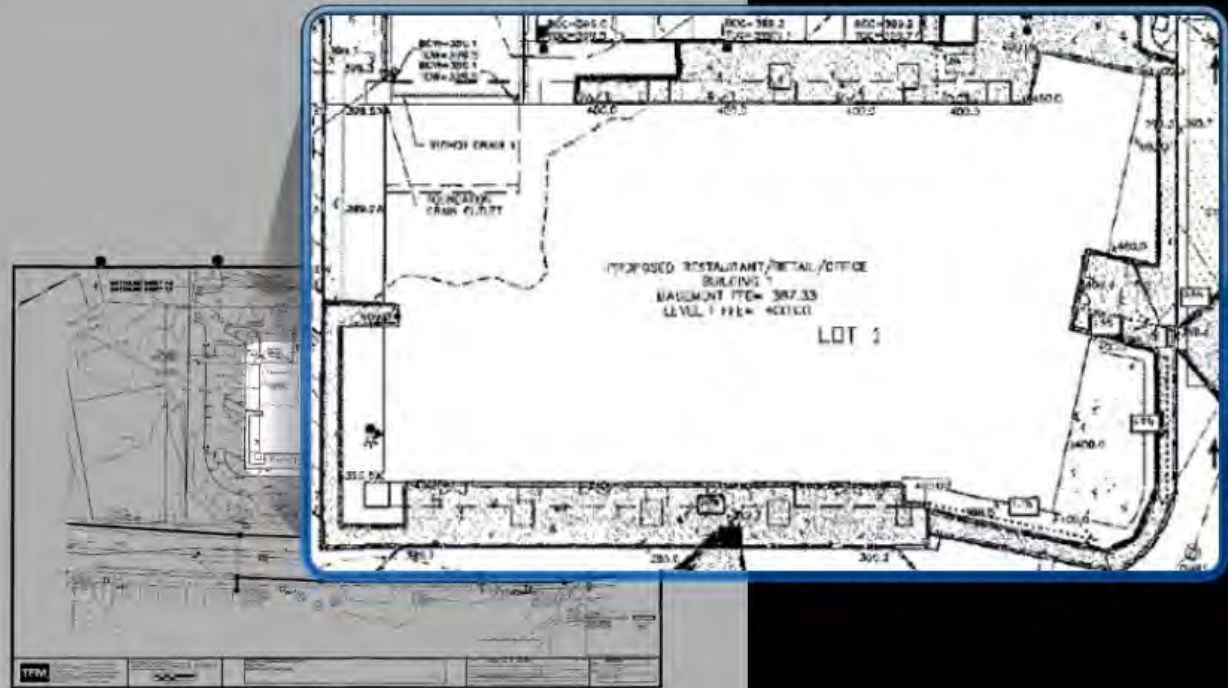
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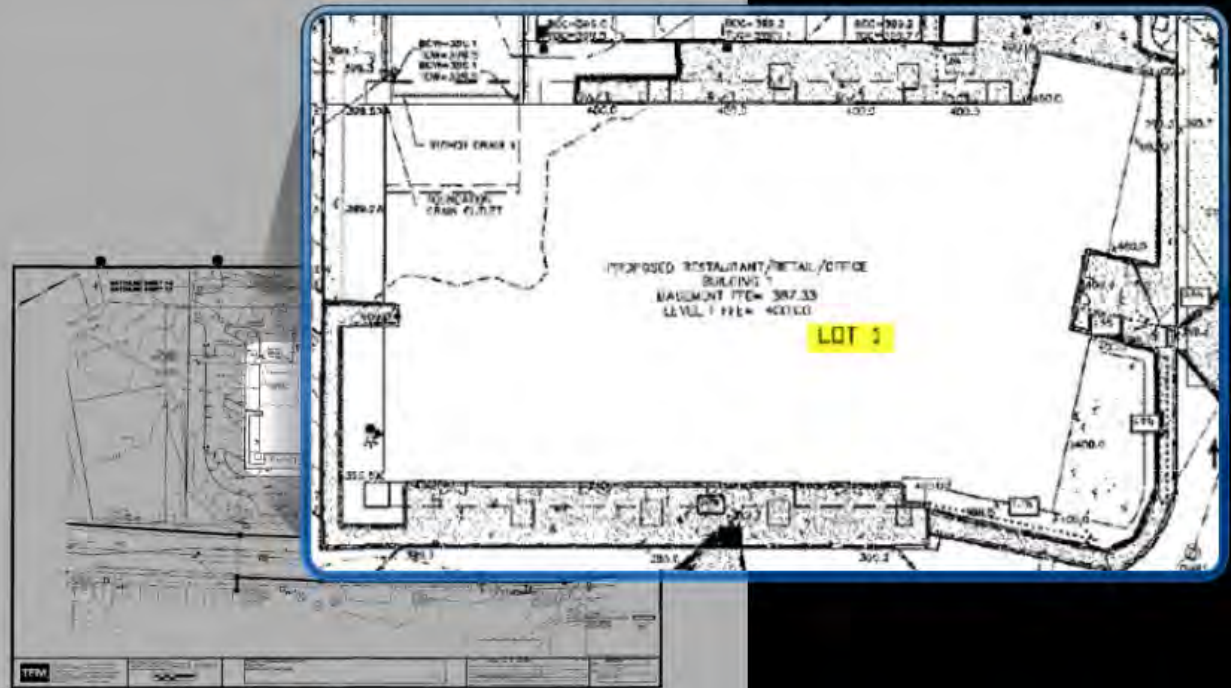
LEB_0099503

LEB_0099373



LEB_0099547

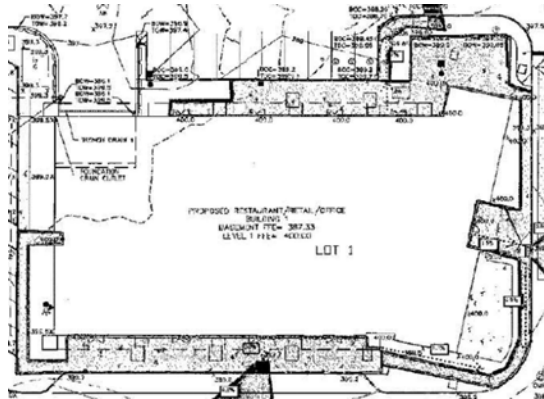
LEB_0099373



LEB_0099547

LEB_0099373

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025



2025.01.21 19:49 EMAIL

From: Brian Vincent </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED9E74B2B6C84B06B72312FA7C4A8E52-BVINCENT>
To: ben.nottexcavating@comcast.net <ben.nottexcavating@comcast.net>
CC: matt.brush@engelberth.com; Jay Cairelli <Jay.Cairelli@lebanonnh.gov>; Sarah Finley <Sarah.Finley@lebanonnh.gov>; Rod Finley <rod.finley@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject: FW: [EXTERNAL] River Park Temp drainage plan
Sent: 2025/01/21 19:48:19 (UTC +00:00)
Attachments: temp drainage big.pdf

From: Brian Vincent </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED9E74B2B6C84B06B72312FA7C4A8E52-BVINCENT>
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City of Lebanon
City of Lebanon
Department of Public Works
485 South Main Street
Lebanon, New Hampshire 03756

rod.finley@lebanonnh.gov
603.538.7117 (office)
603.448.3115 (cell)

From: ben.nottexcavating@comcast.net <ben.nottexcavating@comcast.net>
Sent: Friday, January 22, 2025 9:58 AM
To: Rod Finley <rod.finley@lebanonnh.gov>
Cc: Matthew Brush <matt.brush@engelberth.com>
Subject: [EXTERNAL] River Park Temp drainage plan

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe

Rod,

Here is the temp drainage plan for river park. the outlet end of the run has 2" stone checked in with 7'-to fill bigger voids and it does appear that the clay tile leaving the existing catch basin along it 10 to 20" clay tile. all pipe we have installed is 24" dia. I confirmed elevations this morning and this drawing reflects that.

Thanks,
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Notts Excavating

LEB_0115140

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City of Lebanon
City of Lebanon
Department of Public Works
485 Barre Road
Lebanon, New Hampshire 03756
www.cityoflebanonnh.gov
603.538.7122 mobile
603.448.3115 fax

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Re:

The plan looks good as a temporary bypass until such time that the Route 10 improvements are constructed, which I understand (by court order) will be completed by October 27, 2025. Prior to making the final connection (making the temporary bypass pipe "live"), the City will also need a temporary access easement and temporary maintenance easement (30 feet wide for the length of the temporary bypass pipe/system) for pipe access, maintenance, repair, etc. and a \$100,000 performance bond to cover potential maintenance costs.

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Attachments: temp drainage big.pdf

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The plan does look good as a temporary bypass until such time that the Route 10 improvements are constructed, which I understand (by court order) will be completed by October 27, 2025. Prior to making the final connection (making the temporary bypass pipe "live"), the City will also need a temporary access easement and temporary maintenance easement (30 feet wide for the length of the temporary bypass pipe/system) for pipe access, maintenance, repair, etc. and a \$100,000 performance bond to cover potential maintenance costs.

Thanks,
Ben Giggs
Notts Excavating

LEB_0115140

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025

May 8, 2025

Leigh Hays
Chief Building Official and Health Officer
City of Lebanon
City Hall
51 N Park Street
Lebanon, NH 03766

Re: 1 River Park

Dear Mr. Hays:

For your information, XYZ re-commenced construction at River Park earlier this year, and this fact can be corroborated by municipal personnel of the City. In December of 2024, I executed a construction management contract with Engelberth Construction

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025

Nott's then started the excavation of the basement of 1 River Park per the permit set of construction documents. Because frost had already begun in January, 2025, this material was piled on Lot 2 until the arrival of spring weather. Per the approved plans this material was to be spread on Lot 2 to the new manhole elevations previously installed and accepted by the City of Lebanon as part of the so-called "cross country connector" servicing the first three building phases.

On January 16, 2025, Nott's on-site project foreman, Ben Griggs, contacted Rod Finley to schedule a time to witness the connection of the old line to the new temporary line solely on XYZ's Lot 1 property and not in the City's Route 10 right-of-way. On January 17, 2025 Nott's received a communication from Rob Finley asking for more as-built information and elevations of what had been installed, and this was supplied by Ben Griggs to Rod. Rod also communicated to Raymond Nott that "he had no issue with the connection but must see the as-built information first."

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED



NEW HAMPSHIRE

FILED (000) 440-1
Email: leigh.hays@lebanonnh

May 15, 2025

David Clem
XYZ Dairy, LLC
PO Box 310
Etna NH, 03750
dclem@lymeproperties.com

Mr. Clem,

Thank you for your letter of May 8 providing me with an update on pre-construction site improvement work that has been performed at the 1 River Park site.

Based on the information provided in your letter, I disagree with your statement that XYZ re-commenced construction of the 1 River Park building in January 2025.

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED

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

* * *

We hold that [the] 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.

The activities you describe in your letter, such as the execution of a construction contract, rebidding of the 1 River Park building and conduct of associated site work, including the relocation of the City's stormwater line, are all examples preparatory work/site work required prior to the commencement of construction work governed by the New Hampshire State Building Code, and do not constitute "work" regulated by the Building Code.

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED

Of particular note is your statement that “Nott’s then started the excavation of the basement of 1 River Park per the permit set of construction documents.” You omit to state the particular date on which this started, and you do not state for how many days this continued. I would also be curious to learn whether this excavation was a repeat or an enlargement of the prior excavation done in December 2022.

As you already know,¹ I cannot reasonably consider this excavation to constitute “work” under the building permit, because I do not find textual support in the Building Code to conclude that excavating a foundation hole, without more, requires a building permit. (I’m sure you would agree that if you dug a foundation hole while lacking a building permit, I would not be able to cite you for performing work without a permit.)

New Hampshire Law

“No owner shall permit any excavation of earth on his premises without first obtaining permit therefore, except as follows:

- I. EXISTING EXCAVATIONS. The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed ...
- II. ABANDONED EXCAVATIONS. The permit and zoning exemptions under RSA 155-E:2
- III. STATIONARY MANUFACTURING PLANTS. (a) No permit shall be required under this chapter for excavation from an excavation site which ... was contiguous to ... stationary manufacturing and processing plants which were in operation ...
- IV. HIGHWAY EXCAVATIONS No permit shall be required under this chapter for excavation which is performed exclusively for the ... construction ... of a ... highway by a unit of government...”

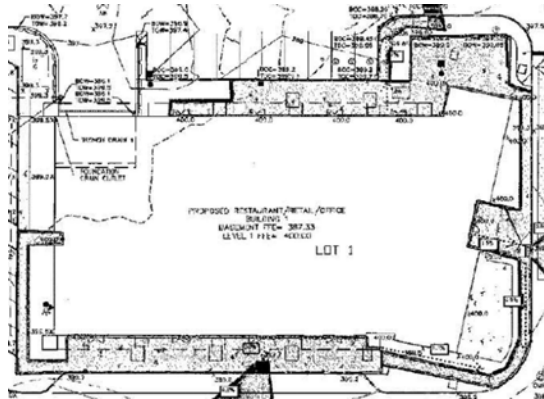
N.H. Rev. Stat. Ann. § 155-E:2 Permit Required

Title XII Public Safety and Welfare

New Hampshire Law

- “**Commencement of construction**” means any clearing of the land, **excavation** or other substantial action that would adversely affect the natural environment **of the site of the proposed facility**, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.
- ***N.H. Rev. Stat. Ann. § 162-H:2 Definitions*** (emphasis added)

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025



New Hampshire Cases

- “The contract required the contractor to perform “initial work” of cutting entrance and access roads, installing water lines, and causing the digging of test pits to assess soil bearing capacity ...
We conclude that RANE commenced construction of its facility on the grounds of Concord Hospital within the required period.
- *Appeal of Rehab. Assocs. of New England*, 131 N.H. 560, 567, 556 A.2d 1183, 1188 (1989)

2025.03.20 HAYES TASK

From: Leigh Hays </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5682068372e4da08f4abb40a87da69b-191a9f04-d0>
Subject: Permit 2016-00293 - 1 River Park
Sent: 2025/03/20 11:52:27 (UTC +00:00)
Task Start: 2025/05/25 00:00:00 (UTC +00:00)
Task Due: 2025/05/25 00:00:00 (UTC +00:00)
Percent Complete: 0

From: Leigh Hays </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5682068372e4da08f4abb40a87da69b-191a9f04-d0>
Subject: Permit 2016-00293 - 1 River Park
Sent: 2025/03/20 11:52:27 (UTC +00:00)
Task Start: 2025/05/25 00:00:00 (UTC +00:00)
Task Due: 2025/05/25 00:00:00 (UTC +00:00)
Percent Complete: 0
Owner: Leigh Hays
Task Status: NotStarted
Priority: High
Reminder Time: 2025/05/26 12:00:00 (UTC +00:00)

Has work commenced onsite related to work required by the building permit.

LEB_0128926

LEB_0128926

CORWIN EMAIL AND DRAFT TO XYZ JANUARY 27, 2023

From: Tim Corwin <Tim.Corwin@lebanonnh.gov>

Sent: Friday, January 27, 2023 6:36 PM

To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Calvin Hunnewell <Calvin.Hunnewell@lebanonnh.gov>; David Brooks <David.Brooks@lebanonnh.gov>

Subject: RE: [EXTERNAL] Commencement of 1(00) River Park Drive (Building Permit #2016-00293), conflict with City's existing municipal stormwater line

I believe the issue with the building permit is that it has or will very shortly expire unless work has commenced, and digging the pit does not constitute commencement of the work. So the next section of the draft letter should address this. I can work with Calvin to draft something.

And yes, adding a reminder about the PB conditions of approval that need to be satisfied prior to commencement of work is a good idea and could be the third section of the letter. The relevant conditions would include lining up a third party inspector and all that entails (that's usually taken care of prior to issuance of the BP). I'll see if there are any others.

CORWIN EMAIL AND DRAFT TO XYZ JANUARY 30 2023

I'm wondering whether the letter regarding the building permit should be separate from the letter regarding the stormwater line location – mainly because the determination that the building permit has now expired should be made in writing by the Building Inspector, right? I've written the initial draft (in bold below) as if it's a separate letter from the Building Inspector, but obviously that can be changed if decide a

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED



NEW HAMPSHIRE

FILED (000) 440-1
Email: leigh.hays@lebanonnh

May 15, 2025

David Clem
XYZ Dairy, LLC
PO Box 310
Etna NH, 03750
dclem@lymeproperties.com

Mr. Clem,

Thank you for your letter of May 8 providing me with an update on pre-construction site improvement work that has been performed at the 1 River Park site.

Based on the information provided in your letter, I disagree with your statement that XYZ re-commenced construction of the 1 River Park building in January 2025.

Points

- **The Building Inspector's 30 May 2025 Attempt to Terminate the XYZ Permit is a misconstruction of the Building Permit, the Building Code, and NH Law that will take time to correct – hence the need for the 2-year extension. It's also a contempt of the Court Order reinstating the Building Permit.**

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- **It's also a continuation of what Mr. Clem's letter of 23 May 2025 to the Board, and the evidence submitted with it, proves about the PB "staff" – that they are severely biased against the Project, and are willing to use the Building Inspector to help them stop it, and to violate his obligations under the Building Code in the process – hence the need for reconsideration of the PB's recent decisions against XYZ without their involvement.**
- **And there is also another major problem that requires the requested extension...**

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- **And there is also another major problem that requires the requested extension...**

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Conflicted Legal Advice from City Counsel

- **The Planning Board Has Been Acting in a Quasi-Judicial Capacity regarding the XYZ Applications Concerning River Park that the City Has Opposed.** *Appeal of City of Keene*, 141 N.H. 797, 800, 693 A.2d 412, 414 (1997) (“An act is judicial in nature if officials “are bound to notify, and hear the parties, and can only decide after weighing and considering such evidence and arguments, as the parties choose to lay before them.”

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- Although it is required to be just as impartial as a Court or Jury, N.H. Rev. Stat. Ann. § 673:14, the Board **has accepted and relied upon legal advice provided to it the City’s Legal Counsel Drummond Woodsum, which has been opposing XYZ concerning River Park** on behalf of the City both Administratively and in Court.

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

To: C. Christine Fillmore <CFillmore@dwmlaw.com>; Matthew C. Decker <MDecker@dwmlaw.com>
CC: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Subject: FW: [EXTERNAL] BCBA Appeal - Building Permit #2016-00293
Attachments: 2024-02-01 XYZ Dairy Permit Expiration Letter.pdf, 20240229 XYZ Dairy - BCBA - Appeal of Building Inspector Decision .pdf

Christine/Matt –

REDACTED

Thank you! -Tim

From: Philip Hastings <hastingsp@cwbp.com>
Sent: Wednesday, March 6, 2024 9:55 AM
To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Cc: Shaun Mulholland <Shaun.Mulholland@lebanonnh.gov>; David Brooks <David.Brooks@lebanonnh.gov>; Chet Clem <chet@lymeproperties.com>; Tim Corwin <Tim.Corwin@lebanonnh.gov>; Angela McCanna <amccanna@lymeproperties.com>; City of Lebanon-Planning <Planning@lebanonnh.gov>
Subject: RE: [EXTERNAL] BCBA Appeal - Building Permit #2016-00293

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From: Tim Corwin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN>
To: Andrew Faunce <andrew.g.faunce@gmail.com>
Subject: RE: [EXTERNAL] Quick check in 2/10 am?
Sent: 2025/02/10 18:01:41 (UTC +00:00)

Hi Andrew --

I'm going to let Matt take the lead relatively to provide advice to the Board. My intent is to simply observe and not participate to the maximum extent possible. If we did not have legal counsel, I would have to take a different posture of course, but fortunately we do.

Regarding your second question, that's my inclination as well, but let's confirm that with Matt at our meeting with him at 6.

Thanks, Tim

From: Andrew Faunce <andrew.g.faunce@gmail.com>
Sent: Monday, February 10, 2025 12:26 PM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: [EXTERNAL] Quick check in 2/10 am?

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I didn't make it in today.

I have two procedural questions, which you may be able to answer this afternoon or in our limited time with Counsel tonight.

1. For the benefit of the public, will you or Legal Counsel provide a brief introduction to the frame within which the Board will consider the XYZ request?

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From:	Shaun Mulholland </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7B2518D94254E4D8BFA2205CA9B5C09-SHAUN.MULHO>
Subject:	M.Decker/PLN review of XYZ lawsuit
Sent:	2024/10/02 13:28:25 (UTC +00:00)
Appointment Start:	2024/10/08 12:30:00 (UTC +00:00)
Appointment End:	2024/10/08 15:00:00 (UTC +00:00)

From:	David Brooks </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FB542EB07154BB4A49E55BCC0CF9179-DAVID.BROOK>
Subject:	M.Decker/PLN review of XYZ lawsuit
Sent:	2024/10/02 13:28:20 (UTC +00:00)
Appointment Start:	2024/10/08 12:30:00 (UTC +00:00)
Appointment End:	2024/10/08 15:00:00 (UTC +00:00)

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From:	Tim Corwin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN>
To:	Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject:	PB Mtg w/ C Fillmore (River Park)
Sent:	2023/07/11 09:00:01 (UTC -05:00)
Appointment Start:	2023/07/24 17:15:00 (UTC -05:00)
Appointment End:	2023/07/24 18:15:00 (UTC -05:00)
Location:	Microsoft Teams Meeting: Council Chambers

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 226 639 184 259

Passcode: oU4Kdg

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Join with a video conferencing device

lebanonnh@m.webex.com

**The Planning Board Has Not Acted Impartially and Independently
Due to Its Reliance on Legal Advice from the City's Counsel**

**The Planning Board Has Not Acted Impartially and Independently
Due to Its Reliance on Legal Advice from the City's Counsel**

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From: Nathan Reichert </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C2CB7D874720416FA384C306D86340BB-NATHAN REIC>
To: Cordell Johnston <cordell@cajohnston.com>
CC: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject: RE: [EXTERNAL] XYZ Dairy/River Park BCBA Appeal
Sent: 2024/03/21 10:59:20 (UTC -05:00)

The Board packet will likely ship out late next week.
Let's say Wednesday end of business.

I would also warn him that the Appeal is scheduled after the regular Zoning Meeting. There are 6 applications on the Zoning Board agenda. The Board usually is hesitant to work much past 10:00 PM with a 7:00 PM start time. It is highly unlikely we will be able to burn through all 6 items in 3 hours. My guess is that the Board will be tired and highly likely to continue the hearing after anything other than opening remarks.

Nate

The Planning Board Has Not...

From: Cordell Johnston <cordell@cajohnston.com>
Sent: Thursday, March 21, 2024 9:35 AM
To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject: Re: [EXTERNAL] XYZ Dairy/River Park BCBA Appeal

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Nate—

I emailed Phil Hastings yesterday and asked again whether he would agree to postpone the hearing until May. He said no. Also, he asked whether there is a deadline to provide supplemental materials to the board for the hearing. What should I tell him? Thanks.

Cordell

Cordell A. Johnston
Attorney at Law
P.O. Box 252
Henniker, NH 03242
603-748-4019

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Conflicted Legal Advice from City Counsel

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- Although it is required to be just as impartial as a Court or Jury, N.H. Rev. Stat. Ann. § 673:14, the Board has accepted and relied upon legal advice provided to It **the City’s Legal Counsel** Drummond Woodsum, **which has been opposing XYZ concerning River Park** on behalf of the City both Administratively and in Court.

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- Although it is required to be just as impartial as a Court or Jury, N.H. Rev. Stat. Ann. § 673:14, the Board has accepted and relied upon legal advice provided to It **the City’s Legal Counsel** Drummond Woodsum, **which has been opposing XYZ concerning River Park** on behalf of the City both Administratively and in Court.
- This presents insurmountable procedural and substantive due process problem under both federal and state law that have severely prejudiced XYZ, and provided the City with an unfair advantage that has tainted the Planning Board’s prior decisions against XYZ – **and the law on this is very clear.**

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

First, the fact that **the Planning Board's attorney also represented the applicant Town of West Bath on the same subject matter ... created an obvious conflict of interest.**

His duty to represent West Bath's interests regarding the subdivision project prevented him from advising the Planning Board in any manner contrary to West Bath's interests, whereas his duty to the Bath Planning Board was to give good independent advice, even that if that advice was contrary to West Bath's interests.

§ 38:18. Disqualification of attorneys, 4 Am. Law. Zoning § 38:18 (5th ed.), n. 1

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His duty to represent West Bath's interests regarding the subdivision project prevented him from advising the Planning Board in any manner contrary to West Bath's interests, whereas his duty to the Bath Planning Board was to give good independent advice, even that if that advice was contrary to West Bath's interests.

That is a classic conflict of interest—exactly the conflict the court flagged in its remand order. Second, the Board's attorney's actual role during remand was such as to raise a significant doubt as to whether the Bath Planning Board engaged in the meaningful review the court expected to occur.... **It can only be inferred that the attorney assumed and intended from the outset that the Board would act in favor of the attorney's other client on all issues.**

§ 38:18. Disqualification of attorneys, 4 Am. Law. Zoning § 38:18 (5th ed.), n. 1

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

... a court cannot permit the violation of a party's constitutional rights, such as where municipal action is “taken without according **procedural and substantive due process.**” ... **the applicant's due process rights were violated** when the Board **permitted the opponents of the application to help formulate the findings of facts,** without notice or an opportunity for the applicant to be heard. 468 A.2d at 992. ... **The court, in upholding the Superior Court's decision to vacate the Board,** held: “It cannot be determined from the record of the Planning Board ... **if the opponents unduly influenced members of the Board** in making findings of fact unfavorable to the applicant's proposal.” Id.

Johansen v. City of Bath, 2011 WL 1748535 (Me.Super. Jan. 04, 2011)(vacating PB action)

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Decisions from other jurisdictions make it clear that **a conflict of interest on the part of an attorney advising a board can render adjudicative decisions of the board vulnerable to challenge on due process grounds.**

Johansen v. City of Bath, 2011 WL 1748535 (Me.Super. Jan. 04, 2011)(vacating PB action)

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- **This Has Been an Improper Conflict of Interest, has Severely Prejudiced XYZ, and Has Provided the City With an Unfair Advantage That has Tainted the Planning Board’s Prior Decisions against XYZ– Which Will Require Additional Time to be Revisited. XYZ Was Entitled to have the PB Receive Independent Unbiased Legal Advice Not Constrained by Lawyers Obligated to Prioritize the City’s Interests at the same time**

**The Planning Board's Prior Decisions Against XYZ Are Voidable Due
to the Prejudgments and Personal Interest of a Member**

**AND there is still another equally serious problem involving a Planning
Board Member --**

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

AND there is still another equally serious problem involving a Planning Board Member --

I. No member of a . . . planning board . . . shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. N.H. Rev. Stat. Ann. § 673:14

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

From: Tim Corwin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN>
To: Andrew Faunce <andrew.g.faunce@gmail.com>
Subject: RE: [EXTERNAL] Re: RP Draft Motion
Sent: 2024/11/11 18:42:11 (UTC +00:00)

Ah, fantastic, thank you Andrew!

From: Andrew Faunce <andrew.g.faunce@gmail.com>
Sent: Friday, November 8, 2024 9:30 AM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: [EXTERNAL] Re: RP Draft Motion

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi, Tim,

I think we misconnected earlier this week. Hoping these notes are still useful for staff/counsel to create a draft motion for the Board's consideration on Tuesday. Please share as helpful toward those ends.

Thanks,
-A

Testimony Discussed During Deliberation:

Upon gaining the original 2-yr extension, the applicant demonstrated no early attention to or sense of urgency for completing the infrastructure, which was/is the deliverable for completing phase one within the new deadline. Instead, the applicant spent considerable time attempting to find alternative ways to cover these costs. The applicant testified that it was only early in 2024 when

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

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Upon gaining the original 2-yr extension, the applicant demonstrated no early attention to or sense of urgency for completing the infrastructure, which was/is the deliverable for completing phase one within the new deadline. Instead, the applicant spent considerable time attempting to find alternative ways to cover these costs. The applicant testified that it was only early in 2024 when the decision was finally made to "grit and bear it" to cover the infrastructure costs and to initiate that work. The applicant testified that the loss of the building permit early in 2024 (a consequence of the applicant engaging in no work on site for the prior 6-month period) interrupted those plans but failed to acknowledge how his inactivity was its cause. Twice in the testimony the applicant referenced the intention to align the infrastructure work and expense with progress on a tenancy agreement and/or on the actual building construction on lot 1 to shorten the gap between incurring costs and the producing revenue to defray them - seemingly to explain why no new work was advanced until this eleventh hour to complete the infrastructure. A natural consequence of not doing work on site is the loss of the building permit. The developer's business decisions are what delayed work activity necessary for completion. And these delays also contributed to the loss of the building permit - not the other way around.

The preparation for work on the southerly entrance was poorly managed. Early in the newly extended phase one construction period the applicant conveyed to NH-DOT an argument against the need for an additional updated traffic study or other forms of reporting to NH-DOT to obtain a permit for that entrance work. That was not responded to or corroborated by NH-DOT, and the developer let the matter hang without resolution. Upon the applicant's contact this year to pursue an excavation permit with NH-DOT, the need for a summary report on the traffic study was reiterated. Getting clarity on the requirements and then more quickly taking action was entirely within the applicant's control. Inexplicably, the applicant mishandled this task, resulting in the setback to his plans in the eleventh hour of discovery.

Basis for the Board's Decision: the testimony and evidence offered does not support the case that the circumstances were beyond the applicant's control.

1. The applicant didn't promptly advance the outstanding infrastructure work given (1) considerable time spent on a failed attempt to develop partnerships, a TIF, or other methods for defraying the infrastructure expense and (2) a decision to perform this remaining work (and the expense) proximate to and contingent upon promoting a building one tenant and commencing work on the actual building (sources of revenue). The applicant claimed twice in his testimony that the decision to advance the remaining work was finally made in 2024 - with several years of opportunity already squandered.
2. The applicant mismanaged communication and coordination with NH-DOT for the southerly entrance by failing to follow up on his misunderstanding of the viability of an existing traffic study or report. That communication gap spanned several years without evidence of any effort by the applicant to obtain confirmation. The "surprise" need for an up to date study or report based upon an earlier traffic study - which the applicant discovered upon seeking a permit in 2024 - was demonstrably in the applicant's control to know and to plan for had he simply pursued the matter to its conclusion several years ago when the matter was raised but not resolved. That overlooked attention would have supported timely action.
3. The applicant doesn't have a building permit because he hadn't done any work on site in the most recent 6-month period for construction ahead of the permit's revocation - and because he chose to litigate this decision rather than to reapply upon notice to quickly resume the work he claimed to have queued up.

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The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

West Lebanon Revitalization Advisory Committee

To: West Lebanon Revitalization Advisory Committee
Prepared By: Andrew Faunce and Nathan Reichert
Date: December 16, 2024 – Regular Meeting
Discussion Topic: Action Items for West Lebanon
Agenda Item: 3.A

The following is a breakdown of the WLRAC discussion from the November meeting as noted by Mr. Faunce.

Near Term Actions:

- Halt further blight to the West Lebanon Main Street downtown that is manifest in empty storefronts; or business transitions that are not focused on meeting the neighborhood needs. This is a "code red" need to preclude an even more severe downward spiral.
 - Develop "destination" experiences - notably make use of the SAU building (the Theater, gym, and abundant open space for activities under tents) as a community center for film, entertainment, and civic events.
 - Regroup on current plans to redevelop the three Main St. lots currently owned by the City. Consider short term plans to fill those spaces pending the long-term plan's execution.
 - Market WL restaurants as a convenient alternative to WRJ restaurants. ("Draft" on that success.)
 - Collaborate with Littleton, NH to see which of their successful approaches will work here.
 - Parking - identify if there is an actual or a perceptual problem with finding parking along WL Main St. Take steps to remedy, which may include creating parking or negotiating shared use agreements with property owners.
 - Develop the capacity (ideally a specific role and person with marketing skills) within the City Manager or Planning and Development office to regularly and continuously engage, promote, and explain efforts to improve WL. (Having plans and executing them is not sufficient.)
 - Engage with the EDC (and the above mentioned role) to create a vital community and partnership with WL business owners and property owners. Any improvements beyond those already in the pipeline rely entirely on their buy in and support.
 - Gather/regather the neighborhood needs to identify businesses to attract to WL Main St.
 - Urgently investigate options to encourage or enforce site condition clean up at River Park. ALSO... Investigate, taking action, as necessary, to preclude the potential for sale and alternative development of this property which its zoning allows but that does not comport with resident expectations as defined by the River Park subdivision and site plans.
 - Revisit with EDC and City staff how a TIF will support the above activities. (eg: Which of the above costs can be defrayed by it?)
-



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

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LEB_0106112



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The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

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**The Planning Board's Prior Decisions Against XYZ Are Voidable
Due to the Prejudgments and Personal Interest of a Member**

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

1. No member of a . . . planning board . . . shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has **a direct personal** or pecuniary **interest** in the outcome which differs from the interest of other citizens, **or if that member would be disqualified for any cause to act as a juror upon the trial of the same** matter in any action at law. **N.H. Rev. Stat. Ann. § 673:14**

The Planning Board's Prior Decisions Are Voidable Due to the Prejudgments and Personal Interest of its Chair

...**the planning board** in this case was required by statute to notify all interested parties and to hold public hearings before ruling on the Raymond proposal. The statute reflected the fact that the board's decision would have a disproportionately great impact on Raymond and on owners of land abutting his, but comparatively little impact on other town residents. **We conclude that action of this type must be characterized as judicial or quasi-judicial**, see *Ehrenberg v. City of Concord*, 120 N.H. 656, 659, 421 A.2d 128, 130 (1980), at least for the purpose of deciding whether the rights of the parties were adequately protected; i.e., whether due process requirements were met. Other jurisdictions have adopted a similar view.

The principal question before us on this appeal is **whether the decision of a planning board is rendered invalid by the participation of a board member** whose earlier remarks, before he became a board member, **indicated that he had prejudged the case**. The superior court ruled that the remarks in question were sufficient evidence of prejudgment to disqualify the board member, and *265 that his participation rendered the board's decision voidable under the rule of *Rollins v. Connor*, 74 N.H. 456, 69 A. 777 (1908). We affirm. ***

Winslow v. Town of Holderness Plan. Bd., 125 N.H. 262, 264–65, 480 A.2d 114, 115 (1984)

The Planning Board's Prior Decisions Are Voidable Due to the Prejudgments and Personal Interest of its Chair

We first address the matter of Mr. Mastro's disqualification. **Our State Constitution demands that all judges be "as impartial as the lot of humanity will admit."** N.H. CONST. pt. I, art. 35. This applies similarly to members of boards acting in a quasi-judicial capacity. N.H. Milk Dealers' Ass'n v. Milk Control Board, 107 N.H. 335, 338–39, 222 A.2d 194, 197–98 (1966). The defendant does not contest the master's finding, based on Mr. Mastro's remarks in favor of the Raymond proposal, that **Mr. Mastro had prejudged the facts of the case** before joining the board. **"There is no doubt that [this type of prejudgment] **117 constitute[s] a cause for disqualification" from a quasi-judicial function of a board.** N.H. Milk Dealers' Ass'n v. Milk Control Board, supra at 339, 222 A.2d at 198; Cinderella Career and Finishing Schools, Inc. v. F.T.C., 425 F.2d 583, 591 (D.C.Cir.1970); see Appeal of Lathrop, 122 N.H. 262, 265–66, 444 A.2d 505, 506–07 (1982); 3 E. Yokley, Zoning Law and Practice § 18–8, at 160 (4th ed. 1979).

We would reach the same result if we applied the test established by State law for members of zoning boards of adjustment, that is, that they meet the standards that would be required of jurors in the trial of the same matter. RSA 31:73 (repealed by Laws 1983, 447:5, I, and replaced by RSA 673:14 (Supp.1983), eff. Jan. 1, 1984.... **A juror may be disqualified if it appears that he or she is "not indifferent,"** RSA 500–A:12, II, and there was ample evidence in this case to support such a finding as to Mr. Mastro. **Accordingly, the master's ruling that Mr. Mastro was disqualified from acting on the Raymond proposal was proper.**

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of its Chair

This brings us to the principal question raised in this appeal: whether the master erred in applying to this case the rule that “judicial action by a tribunal one of whose members is disqualified to act is voidable if the disqualified member participates therein, without reference to the fact whether the result is produced by his vote.”

The Rollins court held that mere **participation by one disqualified member was sufficient to invalidate the tribunal's decision** because it was impossible to estimate the influence one member might have on his associates. ... In view of the important property rights involved, and the State constitutional mandate for judicial impartiality, **we consider this rationale sufficient to justify application of the Rollins rule to this case.**

The defendant's argument, that bias of a single board member should not void the board's decision unless his participation produced the decision, rests on this court's dictum in *Totty v. Grantham Planning Board*,. **We now believe this to be a misstatement of the law. ... we believe that the requirement of impartiality demands application of the Rollins rule to planning boards** in cases like this one, we overrule *Levesque* and reject the dictum in *Totty*, to the extent that they are inconsistent with this opinion.

Winslow v. Town of Holderness Plan. Bd., 125 N.H. 262, 265–69, 480 A.2d 114, 115–18 (1984)

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- 3. Questions?**



June 25, 2025

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

Request for Extension: #PB2025-05-EXT

Members of the Lebanon Planning Board,

By letter dated April 16, 2025, Lyme Properties, development agent for XYZ Dairy, LLC ("XYZ") requested further consideration of its December 19, 2024 request for a 2-year extension of the River Park West Lebanon Site Plan. Thereafter, in preparation for this Board's June 9, 2025 hearing on that application, XYZ submitted a detailed letter, dated May 22, 2025, which quoted from and attached dozens of recently-produced internal City of Lebanon ("City") email records proving that the "staff" of City officials on which this Board has been relying for factual information, legal opinions, and recommendations concerning the River Park Project, specifically Tim Corwin, Nathan Reichert, and Brian Vincent, are personally biased against the Project, and have been engaged for years, along with several other City officials, in an unlawful conspiracy to delay, obstruct and ultimately kill the Project.

At this Board's June 9, 2025 hearing, XYZ also presented information and evidence showing that over the past two years, this Planning Board's entire review process as to XYZ's applications pertaining to the River Park Project has been corrupted due to multiple conflicts of interest, improper ex parte communication with and reliance on conflicted legal advice from counsel for the City (which has been opposing XYZ in River Park-related litigation and administrative appeals during all that time), and disqualifying bias against XYZ on the part of its Chairman, Andrew Faunce, and other members.

At the conclusion of XYZ's presentation of that evidence on June 9, 2025, **Chairman Faunce formally recused himself from XYZ's case** on the record, stating "I'm going to listen to what has been shared with us this evening, and I'm going to take myself out. I'm recusing from this matter." Affidavit of David Clem (submitted herewith), at Exh. K, p. 10. Thereafter, this Board voted 4-1 to continue (i.e. postpone) its consideration of XYZ's application until its July 14, 2025 meeting. In preparation for that meeting, XYZ hereby submits an Affidavit of David Clem in further support of its position that the prior decisions of this Planning Board denying the XYZ's applications pertaining to the River Park project were incorrect and are null and void, including the previous denial of its current extension request.

Sincerely,

Lyme Properties 2, LLC
XYZ Dairy LLC

A handwritten signature in blue ink that reads "David Clem".

By: David Clem
Authorized Officer

STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

XYZ Dairy, LLC

v.

City of Lebanon, NH, et al.

Docket No. 215-2024-CV-00311

**AFFIDAVIT OF DAVID CLEM IN SUPPORT OF
PLAINTIFF XYZ DAIRY LLC'S EMERGENCY MOTION FOR TRO, PRELIMINARY
INJUNCTION, A FINDING OF CONTEMPT, AND A WRIT OF MANDAMUS**

I, David Clem, state the following under oath based on my own personal knowledge or information and belief:

1. I am the Manager of XYZ Dairy, LLC ("XYZ"), and the founder and managing partner of Lyme Properties Inc. ("Lyme Properties"), which is XYZ's development manager for the River Park project in West Lebanon New Hampshire (the "Project"). I have been a real estate developer for most of my professional career, and my company Lyme Properties has permitted, developed, and leased over three million square feet of space, including Genzyme Center in Cambridge, Massachusetts, and the Center for Life Science in Boston's Longwood Medical Area.

2. In terms of my background, I received my A.B. degree from Dartmouth College in 1971, thereafter did graduate work at MIT in Cambridge, MA and was elected to the Cambridge City Council in 1975, served as Chief of Staff to then Lt. Governor of Massachusetts Thomas P. O'Neill III from 1978 to 1980, retired from full-time work in 2007, and since then have continued to oversee the operations of my company Lyme Properties, concentrating on mixed-use projects with a life science component such as the project in issue in this case, River Park.

5. The first stage of the work was going to be installing the necessary construction fencing, entryways, and staging areas, and then proceeding to excavate the foundation area of the Building in accordance with the geotechnical excavation requirements of the Building Permit that I obtained for XYZ in 2019, which included the excavation specs and requirements shown below:

[illegible]

	Verification and Inspection Task	Frequency of Inspection	Agent
1.	Verify materials below shallow foundations are adequate to achieve the design bearing capacity.	Periodic	GER
2.	Verify excavations are extended to proper depth and have reached proper material.	Periodic	GER
3.	Perform classification and testing of compacted fill materials.	Periodic	GER
4.	Verify use of proper materials, densities and lift thicknesses during placement and compaction of compacted fill.	Continuous	GER
5.	Prior to placement of compacted fill observe subgrade and verify site has been prepared properly.	Periodic	GER

APPLICATION FOR PROPOSED EXCAVATION

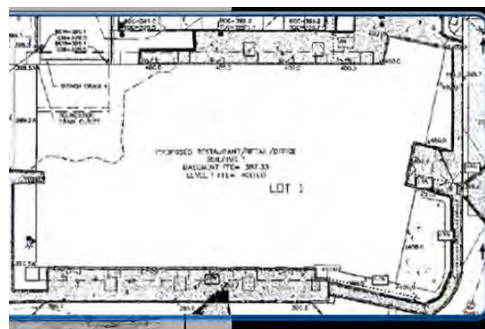
Applicant Name: David Clem

Company: XYZ Dairy, LLC

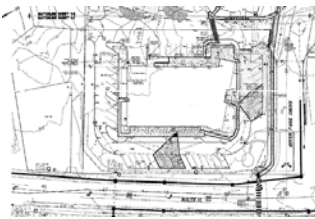
Mailing Address: 57 Main Street,
West Lebanon, NH 03784

the area to be disturbed is approximately:

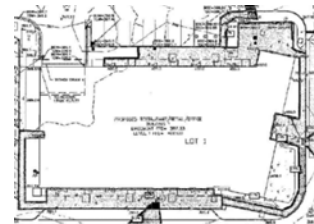
<u>220</u>	<u>feet in length</u>
<u>165</u>	<u>feet in width</u>
<u>15</u>	<u>feet in depth</u>



6. This work commenced during the week of January 6, 2025, and actual excavation of the foundation for Building 1 commenced during the week of January 13, 2025 as shown in the below photographs of portions of that work, some taken later and some taken at the time, and some of the corresponding parts of the Building Permit requirements:



APPLICATION FOR PROPOSED EXCAVATION	
Applicant Name:	David Clem
Company:	XYZ Dairy, LLC
Mailing Address:	57 Main Street, West Lebanon, NH 03784
The area to be disturbed is approximately:	
	220 feet in length
	165 feet in width
	15 feet in depth



7. While this work authorized by the Building Permit was ongoing, XYZ's contractors were making preparations to bypass, into a new temporary drainage line during construction, an old stormwater pipe that the City had installed underneath the Property years ago without an easement or permission of the Owner. That pipe, which was decaying, was located underneath the area where the new Building 1 was to be located, and had to be removed before the excavation

could be dug down to its required depth, and foundation of Building 1 poured. XYZ had already obtained an Alteration of Terrain (“AoT”) permit from New Hampshire Department of Environmental Services (“NHDES”) authorizing it to make the bypass, and to remove the old stormwater pipe, and did not require any other permit from the City, which had a received copy of the AoT permit for its files years earlier.

8. The City had been aware of the bypass work we had to do to construct Building 1 for years, was notified of it again by XYZ’s subcontractor Notts during the week of January 13, 2025, and at that time, according to newly produced City emails that I have just seen, reviewed and approved the slope of the temporary drainage line, and did not object to it in any way. My understanding then was that the bypass to the temporary line was to be performed early the next week, followed by continued excavation and pouring of concrete for Building 1. I was excited that after so many years of difficulty, we were about to make significant new progress at River Park.

9. Late in the afternoon on Tuesday of the following week, January 21, 2025, however, I was informed by Engelberth, to my shock and disappointment, that without copying or notifying XYZ (or Lyme Properties, or me), and without any advance warning, or attempt to discuss the matter, and without citing any law or regulation allowing him to do so, the City Engineer Brian Vincent had sent an email only to XYZ’s excavation subcontractor Notts, ordering that before the temporary connection to the bypass could be made the City would “require” a 30 foot wide easement for the length of the entire temporary bypass pipe system, to which the City had no right and which the subcontractor could not provide, plus “a \$100,000 performance bond,” to which the City also had no right, to cover what he called “potential maintenance,” which the subcontractor also could not provide.

10. In response, I requested and was sent a copy of the email Vincent had sent to Notts on January 21, 2025 from Engelberth, who had in turn obtained its copy from Notts Excavating.

A copy of that email is attached hereto as *Exhibit A*. The effect of this communication being sent to our subcontractor was that the subcontractor, who does a lot of work in and for the City, would not proceed to perform the bypass of the old city stormwater pipe that was essential for all our construction of Building 1 to further proceed. This, in turn, shut down all our planned construction efforts that month, and forced XYZ to suspend construction of the River Park project generally, because it precluded us from bypassing the obstructing City stormwater drain.

11. It was clear to me at the time, and it is certainly clear now having seen recently-produce City internal records about River Park, that this action by the City was intended, in direct violation of this Court's November 25, 2024 order, to unexpectedly disrupt and delay XYZ's just-resumed on-site work, and confuse and paralyze its key subcontractor, so that the City could begin to "run out the clock" on the time allowed to XYZ by this Court to get the Project moving again under a reinstated building permit and an extended site plan approval .

12. Negotiations of any kind with the City usually took months, and because the City had no easement rights in the old stormwater pipe being removed, it had no right to demand that they be created as to a temporary pipe being employed to accomplish that removal. It also had no right to demand a one hundred thousand dollar (\$100,000) bond to secure "performance" of a temporary drainage pipe. It was therefore clear to us at the time that the City sent the demand to XYZ's subcontractor not to actually obtain these things, but to shut down the work by putting pressure on the subcontractor not to proceed with the stormwater drain bypass, which it did.

13. But there is something else. I believe that the City's clear intent in making this last-minute, unexpected demand, directly to XYZ's on-site contractor without copying XYZ, was to subvert the Court's Nov. 25, 2024 Order granting XYZ a preliminary injunction, which the City officials knew was intended to allow XYZ to proceed with construction, because they were well aware that XYZ's local contractors would immediately cease work in the face of the demand,

which they did. I believe City officials also knew that by not copying or alerting XYZ of their demand, it would cause confusion and disorganization at the construction site, and deprive XYZ of the chance to quickly respond, which in fact happened.

14. Once I learned of the City's action, I protested to the City, in a letter dated January 24, 2025, attached hereto as ***Exhibit B***, telling Vincent that I considered this action to be "another example of bad faith action on the part of Lebanon municipal employees," particularly after the Court had reverse the City's previous termination of XYZ's building permit and that "your recent communication to our contractor denying the temporary connection makes the construction of one River Park impossible," and that "I doubt you acted unilaterally in denying the connection of the temporary stormwater line on XYZ property."

15. It took a full week for the City to respond, and when it did, it responded with a letter that appeared to be from the City Engineer Vincent, attached hereto as ***Exhibit C***, but that its internal records later showed was written by the same group of City officials, including the City Manager Mulholland and Deputy City Manager Brooks, that have been trying to kill the River Park Project for years. The letter admitted that Vincent "did not act unilaterally" in issuing his email order to XYZ's subcontractor, argued about what the supposed "purposes" of the demanded easements and \$100,000 bond "would be," but provided no explanation of what right the City had to demand them in the first place, or why the City tried to do so in this abrupt and malicious way, shutting down XYZ's construction until it got them.

16. The letter also completely ignored the City's intentional act in sending the Jan. 21, 2025 work stoppage email **only to XYZ's subcontractor**, who could not provide any of the items listed, but could only stop work, which it did. Obviously this was the City's intention, and it worked, and in the months that followed, the City and its officials repeatedly used the January

2025 work stoppage **that the City itself had caused** on the River Park project against XYZ in Planning Board proceedings, meetings, and other public settings.

17. This negative publicity, and work stoppage itself, and all of the City’s misconduct over the last two years as described in XYZ’s Amended Complaint, and in the memorandum filed in support of XYZ’s current motion, both of which I have read and believe are accurate accounts of the what happened, have had a terribly negative effect on the marketability of the River Park property from which it has become impossible to recover unless XYZ again has its Building Permit reinstated, and its two-year Site Plan Approval period restarted.

18. XYZ’s Building’s Permit needs to be reinstated **again** because in his attached letter to me of May 30, 2025 marked ***Exhibit D***, almost unbelievably, the City’s new building inspector, Leigh Hays (“Hays”) -- obviously directed, as the previous building inspector was in 2023 and 2024, by the same City officials who have been conspiring to shut down the Project for years, including Nathan Reichert, Timothy Corwin, David Brooks, Shaun Mulholland, and Brian Vincent -- **has again wrongfully declared XYZ’s building permit “invalid”** – in complete disregard of this Court’s Order of November 24, 2024 reinstating that Permit after the City wrongfully declared it expired last year on February 1, 2024.

19. In an effort to cover up his and the City’s bad faith in again declaring XYZ’s building permit “invalid,” Hays has used an irrational and insupportable argument that the excavation work on the foundation of Building 1 performed by XYZ this past January 2025, which was authorized by specific excavation provisions in the Building Permit, as shown on pages 2-3, paragraphs 4-5, above, somehow is not “considered” by him to be “authorized by the permit” – and that XYZ should “apply for a new one.” But it is indisputable that this work **was** authorized by XYZ’s building permit – there are whole sections of the permit file with detailed excavation

and geotechnical requirements that XYZ was following in January 2025, including the dimensions and specifications for the foundation excavation itself.

20. Both the City and its new building inspector are fully aware of this because after I confirmed in writing to them on May 8, 2025, in a letter attached hereto as *Exhibit E*, that “XYZ re-commenced construction at River Park earlier this year, and this fact can be corroborated by municipal personnel of the city,” referring to XYZ’s commencement of construction on the site in January 2025, I received a response from Hays on May 15, 2025 (the drafts of which are missing from the City files produced to XYZ so far), attached hereto as *Exhibit F*, in which he said “I disagree with your statement that XYZ recommenced construction of the 1 River Park building in January 2025,” supposedly because

“I cannot reasonably consider this excavation to constitute “work” under the building permit,” because I do not find textual support in the Building Code to conclude that excavating a foundation hole, without more, requires a building permit. (I’m sure you would agree that if you dug a foundation hole while lacking a building permit, I would not be able to cite you for performing work without a permit.)

but this was not true, **because new excavation work does require permit** under New Hampshire law, specifically N.H. Rev. Stat. Ann. §155-E:2 Permit Required (“No owner shall permit any excavation of a earth on his premises without first obtaining permit a therefore ...”), and the geotechnical specifications and inspection for the Building 1 excavation that XYZ commenced in January of this year (2025) were specifically set forth in the XYZ’s Building Permit authorizing that excavation. So Hays’ argument was clearly a fabricated one with no support in the Building Code or anywhere else, but the City’s action threatens to destroy XYZ’s efforts to market the property successfully to the life sciences commercial tenants that we have been trying to obtain lease commitments from for years.

21. I responded to Hays’ fabricated argument in a letter back to him on May 16, 2025, attached to this affidavit as *Exhibit G*, strenuously objecting to it, and pointing out that “the work

we did in this past January 2025 and before that was physical work on-site in pursuit of the project described in our building permit... and “obviously does count purposes of the 180 day work requirement.” I also said:

In your letter, you seem to want to assume the power to decide what on-site physical work in pursuit of our project “counts” for purposes of the 180-day requirement, and to use that power to declare the permit expired unless we convince you otherwise. But you do not have that power, we do not have that obligation, and you are violating the law in trying to obstruct us in this way.

Exhibit G (emphasis added)

22. Then the following week, in a belt and suspenders approach, I sent Hays another letter, dated May 22, 2025, requesting, in the alternative, an extension of the Building Permit on account of XYZ having been delayed through matters not within its control, which is attached as ***Exhibit H***. But Hays and the City denied that as well in their attached ***Exhibit D*** letter of May 30, 2025 – despite the clear evidence that XYZ was delayed by the City’s actions in January 2025.

23. As a result, all the optimism and hope that we at XYZ had for the future of River Park following entry of the Court’s November 24, 2024 preliminary injunction order has been frustrated, our ability to promote the Project to prospective tenants has been stopped, and many opportunities to secure tenants are being lost right now because of this **third** wrongful declaration by the City that XYZ’s building permit is somehow expired or invalid, when it is not. And an administrative appeal will simply not be possible in time to prevent this irreparable harm, which is growing exponentially with every passing day.

24. The last administrative appeal in this matter took many months, and even after XYZ prevailed before the City’s own Building Code Board of Appeals, the City pursued the matter further to the state level, which it is clear it would do so here as well simply to delay the Project further, and kill XYZ’s opportunities in the marketplace. Also even if XYZ were to try an administrative appeal of the City’s May 30, 2025 invalidation of its building permit, it is clear that

the City will continue to attack the Project, and try to divert prospective tenants to other projects in which it has a financial interest - which we have clear evidence it has been trying to do for months.

25. I was shocked, for example, when I recently saw written confirmation from the City's own files, attached hereto as ***Exhibit I***, of a devastating fact that I had heard about several months ago – which is that while preliminary injunction proceedings in this case were ongoing in Court last November, City Manager Mulholland intentionally contacted the broker for our principal intended tenant at that time, a medical life sciences company, and falsely and maliciously told him that his client's intended use of commercial space at River Park would not be allowed, which was not true and was contrary to what he and the City had previously stated publicly, and that XYZ had no building permit, which was also not true and was being litigated at the time, and that this tenant should instead lease space at the Lebanon Airport-Tech Park TIF District, in which the City has a financial interest. This action damaged XYZ badly, and the risk of similar actions by the City, now that it is declared XYZ's building permit expired again, is real and imminent.

26. In addition, particularly over the last year, the City has coordinated its attacks on XYZ's building permit with a parallel strategy of improperly influencing its own Planning Board to improperly deny repeated and legitimate XYZ requests for site plan approval extensions to which it is clearly entitled, not only as a matter of law but also as a matter of basic fairness, in the face of the City officials' repeated attacks on and efforts to delay and disrupt the River Park project, and force XYZ to abandon it.

27. On June 9, 2025, for example, I attended a Planning Board meeting on behalf of XYZ to request reconsideration of the Board's March 17, 2025 decision to deny a two (2) year extension of our Site Plan Approval for the River Park Project based in part on (i) recently produced internal City e-mails concerning the Project, written by City officials who have also been

advising the Planning Board on all XYZ applications over the past 2½ years, showing that those officials have been severely biased against both XYZ and the Project during all that time; (ii) evidence that the Planning Board has been receiving and improperly relying on legal advice concerning XYZ and the Project from the same lawyer and law firm representing the City and its officials against XYZ in litigation and other matters; and (iii) evidence that the Chairman of the Planning Board, Andrew Faunce, who has played a key role in all its decisions against XYZ over the last two years, is demonstrably biased against the Project and XYZ.

28. Prior to the meeting, specifically on May 23, 2025, XYZ submitted a letter to the Planning Board, informing them that the “staff” of City officials on which they had been relying upon for factual information, legal opinions, and recommendations concerning XYZ and the River Park Project, including Messrs. Corwin and Reichert, are personally biased against the Project, and, as demonstrated by their internal e-mails, have been engaged for years with several other City officials in a conspiracy to delay, obstruct, and kill the Project. A copy of that letter from XYZ to the Board is attached as ***Exhibit J***.

29. At the outset of the June 9, 2025 Planning Board meeting, before representatives of XYZ even had a chance to speak, the Chairman of the Planning Board made an opening statement in which, among other things, he declared a “voiding” of the existing extension of XYZ’s Site Plan Approval, which this Court had ordered in its November 24, 2024 preliminary injunction order (describing it as an 11-month and 2 days extension, as shown on p. 2 of the transcript of that Hearing attached as ***Exhibit K*** hereto, supposedly on account of XYZ not having provided some “requested information” to the Board that **it** supposedly added as a condition to the extension, without notice to XYZ or the public, at a March 17, 2025 Board meeting that XYZ did not attend.

30. I was not aware at that time of any information that we had not already provided to the Planning Board, and internal City documents indicate that it knew it had no right to later

“condition” its compliance with Court’s preliminary injunction order of November 25, 2024 in this way. In short, this “determination” was a deliberate attempt to subvert that Order, and try to terminate the Court-ordered extension of the XYZ’s then-existing Site Plan Approval, on the basis of a “condition” subsequently invented by Planning Board staff to justify the action.

31. Importantly, recently produced internal City email records I have reviewed show that this determination by the Planning Board – that the one year extension of XYZ’s site plan approval was “void” – was made without any prior notice to XYZ or the public, in violation of the NH public meeting laws, and was intentionally referred to, but removed from the published agenda for the June 9, 2025 meeting, by City official Tim Corwin, the direct City advisor to the Planning Board, who said he would “confirm” it with the lawyer advising the Planning Board, Matthew Decker (“MD”), and later instructed the Planning Department’s administrative assistant to “leave it off the agenda” for the June 9, 2025 Planning Board meeting, which she then told him she would do in a revealing internal City email between them, attached as ***Exhibit L***, which reads:

I left this off the agenda for now:

- *Add a separate agenda item under “other business” re: **determination that one year extension approval is void?** – TC to confirm w/MD at 4/30 bi-weekly meeting.*
 - ***Please leave off the agenda for now.***

(emphasis added). This clearly shows that the intent of Corwin and the City was that this declaration by the Planning Board that the Court-ordered extension of XYZ’s site plan approvals was “void” would be announced with no prior notice to XYZ, and no formal vote of the Planning Board – and it was. The damage to XYZ, if this un-noticed, unlawful and flagrant violation of the Court’s order is allowed to stand for even a short period of time, will be incalculable, not only in terms of damage to XYZ’s reputation and financial standing, but to the public interest -- because XYZ will not be able to do anything further to resume the River Park Project, and it will fail after many years of effort, investment and public support.

32. Following the Planning Board Chairman's opening statement and above declaration that XYZ's extension was void, XYZ made a slide presentation to the Board, a copy of which is attached hereto as ***Exhibit M***, presenting evidence and argument (i) that XYZ's building permit had been wrongfully declared expired by the City building inspector on May 30, 2025, warranting a two-year extension of XYZ's site plan approvals; (ii) that the Planning Board was supposed to be functioning in an independent, quasi-judicial capacity in reviewing XYZ's applications, but had been receiving and improperly relying on legal advice concerning XYZ and the Project from the same lawyer and law firm representing the City and its officials against XYZ in litigation and other matters, and (iii) that the Chairman of the Planning Board, Andrew Faunce, was demonstrably biased against the Project and XYZ based on evidence just produced by the City, and should consider recusing himself.

33. That presentation by XYZ took approximately 20 minutes, and at its conclusion, the Chairman of the Planning Board, Andrew Faunce, **formally recused himself from XYZ's case**, stating that "I'm going to take myself out, I'm recusing from this matter," and left the meeting room, returning only after the hearing of XYZ matters was concluded. Evidence as to the bias and conflicts of several other members of the Planning Board that XYZ has was not presented due to the time limitations of the hearing, but is available to be submitted when needed.

34. Based on the multiple conflicts of interest and biased legal advice which have corrupted the Planning Board's review process concerning XYZ for over two years, and the clear bias against XYZ demonstrated by City officials, the Planning Board's own Chairman, and other member of the Planning Board, some of whom who have had "special meetings" with City staff about XYZ that were never noticed to the public or XYZ, it is absolutely clear that XYZ cannot be afforded, in time to make any difference, a fair or impartial hearing of its outstanding renewed request for a two (2) year extension of its site plan approval by the City's existing Planning Board,

and that further efforts to pursue that extension by appealing the existing conflicted Planning Board's decisions would be too little, too late to save the Project, and would be futile.

35. It is also clear, based on all of the above facts and circumstances, that the City and its current officials (including its new building inspector Hays), will not ever stop unlawfully obstructing the River Park Project absent further direct intervention by the Court, and that unless we obtain that intervention very quickly, all of XYZ's years of effort and millions of dollars of expenditures, and all of the opportunity for the public to benefit from this extraordinary Project, will be lost. In fact, due to the misconduct of the City and its officials, XYZ has already suffered, and unless this Court intervenes will continue to suffer, enormous harm that will never be cured as prospective tenants of River Park, with whom XYZ has been negotiating, either already have or are close to abandoning any interest in locating there.

36. Several excellent prospective life sciences tenants, for example, have already abandoned their interest in locating at River Park on account of the City's attacks on XYZ's building permit and site plan approvals, and the City's persistent deliberate obstruction of XYZ's effort to make progress on the construction of Building 1 earlier this year. In a last-ditch effort to save the Project, XYZ is asking this Court to directly intervene and issue orders that will compel the City to preserve XYZ's right to pursue the Project, and effectively prohibit the City from unlawfully obstructing it further. Without that relief, XYZ will have no chance to save the Project, and will suffer catastrophic and irreparable harm. For all of these reasons, I believe the relief requested in XYZ's Emergency Motion is both absolutely necessary, warranted, and appropriate.

Signed under the penalties of perjury this 22nd day of June, 2025.



David Clem

From: Brian Vincent </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED9E74B2B6C84B06B72312FA7C4A8E52-BVINCENT>
To: 'ben.nottexcavating@comcast.net' <ben.nottexcavating@comcast.net>
CC: matt.brush@engelberth.com; Jay Cairelli <Jay.Cairelli@lebanonnh.gov>; Sarah Finley <Sarah.Finley@lebanonnh.gov>; Rod Finley <rod.finley@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject: FW: [EXTERNAL] River Park Temp drainage plan
Sent: 2025/01/21 19:49:19 (UTC +00:00)
Attachments: temp drainage big.pdf

Ben,

The plan looks good as a temporary bypass until such time that the Route 10 improvements are constructed, which I understand (by court order) will be completed by October 27, 2025. Prior to making the final connection (making the temporary bypass pipe "live"), the City will also need a temporary access easement and temporary maintenance easement (30 feet wide for the length of the temporary bypass pipe/system) for pipe access, maintenance, repair, etc. and a \$100,000 performance bond to cover potential maintenance costs.

As I'm sure you know, the permanent drainage system will be required to be constructed in accordance with latest plans approved by the Planning Board.

Brian

Brian A. Vincent, PE
City Engineer

City of Lebanon
Department of Public Works
193 Dartmouth College Highway
Lebanon, NH 03766
603-448-3112 x 6252
brian.vincent@lebanonnh.gov

From: Rod Finley <rod.finley@lebanonnh.gov>
Sent: Friday, January 17, 2025 10:29 AM
To: Brian Vincent <brian.vincent@lebanonnh.gov>
Cc: Jay Cairelli <Jay.Cairelli@lebanonnh.gov>; Sarah Finley <Sarah.Finley@lebanonnh.gov>
Subject: FW: [EXTERNAL] River Park Temp drainage plan

Rodrick J. Finley, P.E.
City Engineer
City Of Lebanon
Department of Public Works
193 Dartmouth College Highway
Lebanon, New Hampshire 03766
rod.finley@lebanonnh.gov
603.558.7123 mobile
603.448.3112 Ext 6146

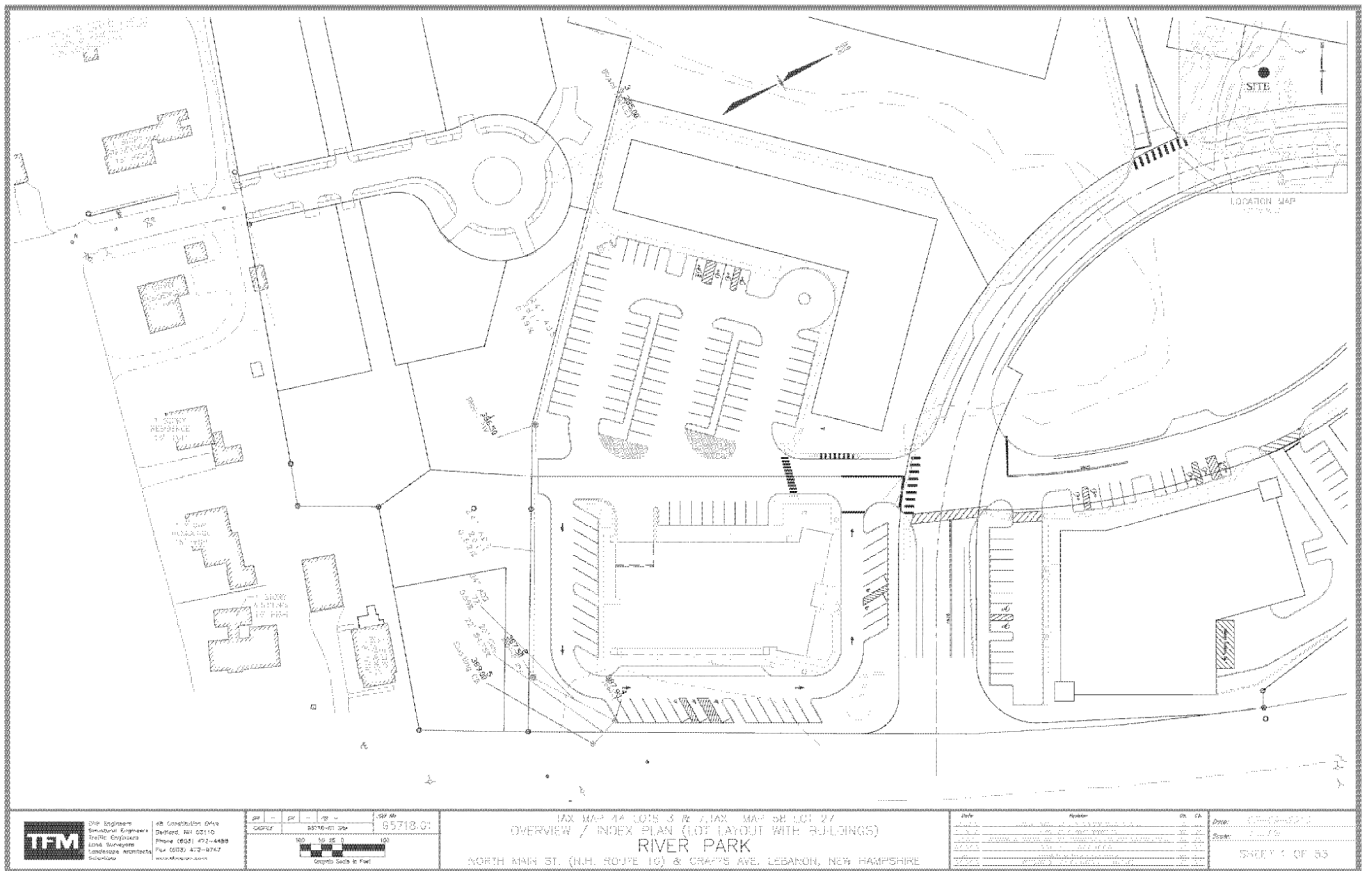
From: ben.nottexcavating@comcast.net <ben.nottexcavating@comcast.net>
Sent: Friday, January 17, 2025 9:58 AM
To: Rod Finley <rod.finley@lebanonnh.gov>
Cc: Matthew Brush <matt.brush@engelberth.com>
Subject: [EXTERNAL] River Park Temp drainage plan

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Rod,

Here is the temp drainage plan for river park. the outlet end of the run has 2' stone chinked in with 7"- to fill bigger voids and it does appear that the clay tile leaving the existing catch basin along rt 10 is 20" clay tile. all pipe we have installed is 24" ads. I confirmed elevations this morning and this drawing reflects that.

Thanks,
Ben Griggs
Notts Excavating



From:	David Clem <dclem@lymeproperties.com>
To:	Brian Vincent <brian.vincent@ebanonnh.gov>
CC:	Philip Hastings <hastingsp@cwbp.com>; Robert Miller <rmiller@sheehan.com>; Angela McCanna <angela@lymeproperties.com>
Subject:	[EXTERNAL] Temporary Bypass of City's Stormwater Line Impacting 1 River Park Construction
Sent:	2025/01/24 22:23:25 (UTC +00:00)
Attachments:	20250124 Letter to Vincent.pdf
Task Start:	2025/01/27 00:00:00 (UTC +00:00)
Task Due:	2025/01/27 00:00:00 (UTC +00:00)
Percent Complete:	0

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Please see the attached letter.



January 24, 2025

Brian Vincent
City of Lebanon
Department of Public Works
193 Dartmouth College Highway
Lebanon, NH 03766

**Re: Temporary Bypass of City's Stormwater Line
Impacting 1 River Park Construction**

Dear Mr. Vincent,

I am now in receipt of your communication to Ben Griggs of Nott's Excavating dated January 21, 2025 at 2:49 PM. Matthew Bush of Engelberth Construction was also cc'd on your email.

I consider this another example of bad faith action on the part of Lebanon municipal employees, particularly after testimony presented to Grafton County Superior Court regarding our municipal estoppel case challenging the termination of the building permit for 1 River Park and the denial of our extension request by the Lebanon Planning Board due to delays caused by the termination of the building permit and our appeal rights. The Judge ruled in our favor on both items.

Your reference to the Court order in your communication to Nott's Excavating and Engelberth is uninformed and inaccurate.

Based on past experience with the City, I doubt you acted unilaterally in denying the connection of the temporary stormwater line on XYZ property that does not disturb any existing infrastructure in the Route 10 ROW. If you did act unilaterally, the lack of good faith is even more egregious since Nott's and Engelberth were following the engineered plans prepared by TF Moran and approved by the State in our AOT permit. Moreover, Nott's supplied additional elevation information requested by Rod Finley in your office for him to confirm the connection

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



would work as designed by professional engineers. The design, location, and elevation of the initial construction was supplied to the DPW months ago.

Once again, XYZ has been forced to suspend construction of 1 River Park due to actions by Lebanon staff that are uniformed or intentional on the part of your supervisors. Under penalties of perjury before the Grafton County Superior Court, the City's building inspector who terminated the 1 River Park building permit admitted that he alone did not decide to terminate the valid building permit, but was directed by his superiors to do so. Additionally, he testified that in his entire career as the building inspector for Lebanon he had issued approximately 10,000 permits, and the only permit he ever terminated was for 1 River Park. It is my belief that your action follows the same pattern of behavior under the Mulholland administration.

Since you have not been involved in the official capacity of City Engineer from the time of the issuance of Site Plan approval for River Park by the Lebanon Planning Board or the building permit for 1 River Park, I offer the following information for your consideration.

1. The stormwater line in question does not benefit one square foot of the River Park site; rather, it benefits the City of Lebanon and the NHDOT.
2. Neither the City of Lebanon or the NHDOT has an easement for this stormwater line on XYZ property.
3. The former City Engineer of the City of Lebanon provided false and incomplete information to the Civil Engineer retained by XYZ Dairy, LLC when we were preparing the Site Plan and Sub-division applications pursuant to the City's regulations in effect at that time.
4. XYZ voluntarily agreed to accommodate the City and NHDOT's need to comply with updated regulation regarding stormwater runoff produced in their ROW by treating this runoff on our property, and our internal circulation and open space was deliberately designed to accommodate this solution.
5. The materials for this engineered solution were purchased by XYZ well in advance of the construction schedule for Route 10 infrastructure work identified in the original Lebanon Planning Board Notice of Action for River Park. The design and construction drawings



for the solution were approved by the DPW, the building department, the planning department, and the NHDOT prior to the mylars being recorded for River Park.

6. XYZ has repeatedly been required to provide new sets of construction documents to the City because of a poorly coordinated record system and turnover in personnel.
7. Given the reality of increased construction costs post Covid, which I presume your department is also painfully aware of, XYZ has retained professionals to evaluate alternatives on our site, only to discover that the existing line services The Falls and no one in the City bothered to tell our engineering team.
8. The Falls does not enjoy an easement on our site to discharge their stormwater onto our property or the Connecticut River.
9. Notwithstanding all of the above, the DPW is aware that XYZ upsized the temporary stormwater line we installed, in good faith and at our expense, for the City's benefit to provide assurance that it is superior to the existing condition.
10. The City has not performed maintenance on the stormwater line since XYZ purchased the property. When the catch basins flooded a few years ago on Main Street due to a severe microburst, XYZ found and uncovered the outlet in the ravine on our property. We were told by DPW personnel to redirect the last portion of the stormwater pipe and to add riprap in the ravine which we did at our own expense. The DPW head at the time met me on site to inspect the new outlet location and the riprap installed by our contractor. There has never been an easement or a "performance bond" for this stormwater line relocation.

I fully understand that the permanent drainage system will be required to be constructed in accordance with latest plans approved by the Planning Board. You should understand that the completion of the last component of the so called Phase 1 infrastructure is required prior to the occupancy permit of 1 River Park. Your recent communication to our contractor denying the temporary connection makes the construction of 1 River Park impossible.

In view of the City Council's recent budget hearings and the recognition that double digit property tax rate increases are unavoidable without expansion of the tax base or severe budget



cuts, I am astonished by the continued efforts of staff to delay construction. The damages I have incurred are well beyond the legal expenses I have been forced to pay to protect my property rights and building permit. Your actions are in direct contradiction to testimony of staff and the City's attorney in Superior Court. I invite you to read the transcript of the evidentiary hearings.

If I have to go to court again to demonstrate this, I will redirect funds intended for infrastructure improvements that benefit the City and NHDOT, or do nothing. The River Park site will remain fenced off, public access to the river will be permanently abandoned, and the bulk of the acreage will remain in current use in full compliance with those regulations. Neither decision is a win for Lebanon taxpayers.

Sincerely,

A handwritten signature in cursive script that reads "David Clem".

David Clem
XYZ Dairy, LLC

Cc: Lebanon City Council
Attorney Philip Hastings, Cleveland, Waters and Bass, P.A.
Attorney Robert Miller, Sheehan Phinney, P.A.
Angela McCanna, Lyme Properties



CITY OF LEBANON
DEPARTMENT OF PUBLIC WORKS
193 Dartmouth College Highway
Lebanon, NH 03766

January 31, 2025

David Clem
River Park
XYZ Dairy Developed by Lyme Properties
57 Main Street
West Lebanon, NH 03784

Re: Stormwater Line Temporary Bypass
River Park Project
West Lebanon, NH

Dear Mr. Clem,

Thank you for your letter dated January 24, 2025 in response to an email that I sent to Ben Griggs of Nott's Excavating dated January 21, 2025. Please note that I did not act unilaterally in issuing this email and the written contents thereof.

In my email, I had indicated that the as-built plan that Ben had included in an email to Rod Finley appears to be acceptable as a temporary bypass until such time that the Route 10 improvements are constructed. My understanding was that the court order extended the Lebanon Planning Board's timeline for the completion of Phase 1 infrastructure improvements, which includes the Route 10 stormwater improvements, until approximately October 27, 2025, at which time the permanent stormwater management system as approved by the Planning Board would presumably be constructed and would be ready to be put into service. I had also indicated the need for an access and maintenance easement in favor of the City of Lebanon (City), and a \$100,000 performance bond. The purpose of the access and maintenance easement would be to ensure that the City have access to the temporary drainage system and the ability to inspect, maintain and/or repair the system if necessary. The purpose of the performance bond would be to address the risk of project abandonment subsequent to original drainage pipe disconnection and related building construction work commencing to the point that would prohibit the ability to reconnect the existing discharge pipe. In addition, the performance bond would address any potential unknown material or workmanship latent defects (my understanding is that this temporary bypass pipe has not been used as an active stormwater conveyance or discharge system since construction, and the City nor its representatives did not have the benefit of observing the temporary bypass drainage system construction in accordance with Condition #4 of the Planning Board's Notice of Action, dated September 9, 2019). We would recommend the performance bond be structured for a 1-year period with the ability to extend, if necessary.

Dept of Public Works – 603-448-3112; City Engineer – 603-448-3112; Utility Operations Water – 603-448-2514
Utilities Operations Sewer – 603-298-5986; Solid Waste Management – 603-298-6486

LEB_0117324

The Department of Public Works will promptly review the above-referenced documents upon receipt and respond with any questions or comments. Once the bond and temporary easements are accepted by the City, we will authorize the proposed temporary drainage connection.

We look forward to working with you through this process and we look forward to seeing your project advance.

Sincerely,

Brian Vincent, PE
City Engineer

Cc: Jay Cairelli, Director of Public Works
David Brooks, Deputy City Manager
Shaun Mulholland, City Manager
Nathan Reichert, Director of Planning & Development



May 30, 2025

David Clem
XYZ Dairy, LLC
PO Box 310
Etna NH, 03750
dclem@lymeproperties.com

Dear Mr. Clem,

This letter responds to your May 22, 2025, letter requesting a further 180-day extension of XYZ Dairy's building permit pursuant to IBC Section 105.5, which is part of the NH State Building Code. Section 105.5 states:

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.

As you know, Building Permit 2016-00293 was issued on December 31, 2019, and XYZ was granted multiple extensions before my predecessor, Calvin Hunnewell, declared the permit expired as of February 1, 2024 due to more than 180 days of inactivity at the construction site. The permit was reinstated by a preliminary injunction order of the NH Superior Court with a clerk's notice date of November 26, 2024. I calculate that the 180th day thereafter was May 25, 2025.

In my May 15, 2025, letter to you, I explained that I could not consider the excavation of soil from the future foundation of 1 River Park to constitute a commencement of work on the site authorized by the permit. Therefore, per Section 105.5, work has now been suspended for more than 180 days and the permit has become invalid.

I am unable to find "justifiable cause" to grant an extension of the May 25 deadline based on the information provided in your May 22 letter. I disagree with your characterization of City Engineer Vincent's requests of January 2025 (for an easement and bond to ensure maintenance of a temporary stormwater bypass) as a "City-ordered work stoppage". Additionally, the claims in XYZ's amended complaint are not scheduled to be tried until June of 2026, and I am unable to rely on bare allegations as a basis for justifiable cause for an extension.

Please be reminded again that you are free to re-apply for a building permit if and when XYZ has resolved the stormwater pipe issue and is ready to start construction of the building. (Efforts

related to the stormwater pipe and site infrastructure fall outside of the scope of the building code and do not fall under the work on the site authorized by the building permit.) I do not expect this would be a prolonged process as previous reviews of your building plans have already been recently conducted and the only additional reviews necessary will be of the updates to comply with the 2021 IBC, the current building code adopted by the State of NH, and any updates to the uses in the building. Also, please recall that the Planning & Development Office has been offering since early 2024 to apply your previously paid permit fee of \$90,492.00 towards a new permit fee. This offer still stands.

Respectfully,

A handwritten signature in black ink, appearing to read "Leigh Hays", written in a cursive style.

Leigh Hays
Chief Building Official & Health Officer
City of Lebanon New Hampshire

C: Property File, Map 44 Lot 21

May 8, 2025

Leigh Hays
Chief Building Official and Health Officer
City of Lebanon
City Hall
51 N Park Street
Lebanon, NH 03766

Re: 1 River Park

Dear Mr. Hays:

For your information, XYZ re-commenced construction at River Park earlier this year, and this fact can be corroborated by municipal personnel of the City. In December of 2024, I executed a construction management contract with Engelberth Construction and authorized them to rebid the 1 River Park building and associated site work, including the temporary relocation of the City's stormwater line and the improvements in Route 10 associated with the southern entrance into River Park servicing the first three building phases.

In December, 2024, I met with Engelberth project managers, Chris Yandow and Matthew Brush, on multiple occasions regarding 1 River Park. XYZ also authorized the 1 River Park Design Team to upgrade the permit set of drawings to reflect any changes in the building codes, which was done.

Engelberth then released Nott's Excavating to relocate the City's stormwater line to the temporary line to the same, on-site ravine. This line was engineered by TFMoran and received an AOT permit, which the City was copied on. Nott's had previously installed this temporary line to a manhole adjacent to 167 N Main. I then authorized Nott's to order the additional materials necessary to complete the temporary connection and they were delivered in early January, 2025.

In January 2025, Engelberth and Nott's installed and secured the construction fencing to protect Lot 1 and Lot 2. They relocated and expanded the entry gate to the site to accommodate equipment deliveries and future steel deliveries and storage. Silt fencing was installed to protect the basement excavation for 1 River Park according to best practices. Additional rip rap stone was delivered and installed by Nott's in the ravine to exceed the existing drainage condition. Engelberth installed scrim protection on the security fencing on the three sides visible from public streets.

Nott's then started the excavation of the basement of 1 River Park per the permit set of construction documents. Because frost had already begun in January, 2025, this material was piled on Lot 2 until the arrival of spring weather. Per the approved plans this material was to be spread on Lot 2 to the new manhole elevations previously installed and accepted by the City of Lebanon as part of the so-called "cross country connector" servicing the first three building phases.

On January 16, 2025, Nott's on-site project foreman, Ben Griggs, contacted Rod Finley to schedule a time to witness the connection of the old line to the new temporary line solely on XYZ's Lot 1 property and not in the City's Route 10 right-of-way. On January 17, 2025 Nott's received a communication from Rob Finley asking for more as-built information and elevations of what had been installed, and this was supplied by Ben Griggs to Rod. Rod also communicated to Raymond Nott that "he had no issue with the connection but must see the as-built information first."

On January 21, 2025, Brian Vincent, City Engineer, sent an email to Ben Griggs of Nott's informing him that the City would not allow making the final connection without posting a performance bond and a legal easement, which have never been identified to us as requirements for the connection to occur. Matt Brush of Engelberth was copied on this communication but not XYZ Dairy or Lyme Properties. As a result, for the third time relocation efforts for the City's stormwater line was not allowed by municipal personnel and construction was halted.

Nonetheless, XYZ Dairy continued working on the 1 River Park site by covering the excavation of the connecting pipe from the previously installed manhole to your existing line on our property. Additionally, the piles of excavated materials, which had thawed, was spread on Lot 2 as the Lebanon approved plans called for. This work was done in April of 2025 and concluded on May 5, 2025.



XYZ Dairy cannot resume construction of 1 River Park that it commence in January 2025 until the City allows us to connect to the existing stormwater line on our property, and it will take some time to re-mobilize.

Sincerely,

A handwritten signature in blue ink that reads "David Clem". The signature is fluid and cursive.

David Clem
Manager
XYZ Dairy, LLC

Enclosures

Cc: 1 River Park File
David Brooks
Nathan Reichert













May 15, 2025

David Clem
XYZ Dairy, LLC
PO Box 310
Etna NH, 03750
dclem@lymeproperties.com

Mr. Clem,

Thank you for your letter of May 8 providing me with an update on pre-construction site improvement work that has been performed at the 1 River Park site.

Based on the information provided in your letter, I disagree with your statement that XYZ recommenced construction of the 1 River Park building in January 2025.

As we learned from our mutual experience before the State of New Hampshire Building Code Review Board (BCRB) last year, the BCRB's July 31, 2024 decision (which XYZ did not appeal) provided some clear guidelines to define "work" authorized by a building permit:

From its use throughout the section [105 of the IBC], 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.

* * *

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.

* * *

We hold that [the] 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.

The activities you describe in your letter, such as the execution of a construction contract, rebidding of the 1 River Park building and conduct of associated site work, including the relocation of the City's stormwater line, are all examples preparatory work/site work required prior to the commencement of construction work governed by the New Hampshire State Building Code, and do not constitute "work" regulated by the Building Code.

Of particular note is your statement that “Nott’s then started the excavation of the basement of 1 River Park per the permit set of construction documents.” You omit to state the particular date on which this started, and you do not state for how many days this continued. I would also be curious to learn whether this excavation was a repeat or an enlargement of the prior excavation done in December 2022.

As you already know,¹ I cannot reasonably consider this excavation to constitute “work” under the building permit, because I do not find textual support in the Building Code to conclude that excavating a foundation hole, without more, requires a building permit. (I’m sure you would agree that if you dug a foundation hole while lacking a building permit, I would not be able to cite you for performing work without a permit.)

In addition to the BCRB decision, the 2009 IBC, Section 105.1, which applies to XYZ’s building permit, further defines the type of work that requires a building permit:

105.1 Required.

Any owner or 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 this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.

I cannot in good faith conclude that digging a hole fits within this description.

Building Code Section 105.5 dictates that “every permit shall become invalid” (emphasis added) if work on the site authorized by the permit has been suspended for 180 days. Because the building permit was reinstated by a court order with a clerk’s notice date of November 26, 2025, I calculate that the permit will expire at the end of the day on May 25, 2025, if construction work authorized by the permit does not commence on or before this date.

Please do not hesitate to inform me of any further efforts at the site occurring between May 9 and May 25, if you contend that any further efforts may constitute “work”. I can then provide you with a determination after May 25 as to whether the permit has expired.

I would also like to take this opportunity to remind you that, in my view, the expiration of your building permit need not be considered a death knell for your construction project. You are free to re-apply for a permit if and when you are ready to start construction of the building. I do not

¹ You will surely recall that the City attempted to flag this issue for XYZ in the City’s Motion for Clarification and Reconsideration filed with the Superior Court in the Municipal Estoppel case on December 6, 2024. In that Motion, the City took the position that, “work on the site ‘authorized by the permit’ does not include work to excavate or relocate the existing stormwater pipe, or other work on Phase I site plan work/infrastructure work. Instead, the first physical work ‘authorized by the permit’, i.e. physical construction of the building, per XYZ’s building plans approved in 2019, would be pouring concrete for a foundation. Merely digging a foundation hole would not constitute commencement of ‘work’.” Although the Court declined to rule on the hypothetical of what does or does not constitute ‘work’, it is regrettable that XYZ has not been able to perform work authorized by the permit and avoid the very situation that I foresaw and hoped to avoid.



expect this would be a prolonged process as previous reviews have already been conducted and the only reviews will be of the updates to comply with the 2021 IBC, the current building code adopted by the state, and any updates to the uses in the building. Also, please recall that the Planning & Development Office has been offering since early 2024 to apply your previously paid permit fee of \$90,492.00 towards a new permit fee. This offer still stands.

Respectfully,

A handwritten signature in black ink, appearing to read "Leigh Hays".

Leigh Hays
Chief Building Official & Health Officer
City of Lebanon New Hampshire

C: Property File, Map 44 Lot 21

May 16, 2025

Leigh Hays
Chief Building Official and Health Officer
City of Lebanon
City Hall
51 N Park Street
Lebanon, NH 03766

Re: 1 River Park (the “Project”)

Dear Mr. Hays:

We have received your letter of May 15, 2025, and strenuously object to it for the following reasons.

The New Hampshire Building Code Review Board (BCRB) decision to which you refer from last July held that **off-site** activities in connection with a permitted construction project could not be considered “work” for purposes of determining compliance with the Code’s 180-day requirement for “work” to commence after a building permit is issued.

That decision does not entitle you, in an attempt to declare our permit expired, to dismiss the **on-site** physical work we have done, including actual excavation for the foundation of the first building on the project for which we have the building permit, as somehow not being “work” under the Code that you will “count” for purposes of the 180-day requirement.

The work we did in this past January 2025 and before that was physical work on-site in pursuit of the project described in our building permit, a “[n]ew mixed-use commercial building within Lot #1 of the River Park Subdivision,” so that excavation and other work we did obviously does count for purposes of the 180-day work requirement.

Nevertheless, you try to argue in your letter that our on-site work does not “count” because you say we supposedly could have done it for another purpose without a permit, but that is not the point, we cannot do such work for **this** purpose – to put up a building for our project – without a building permit, and we have one that we are working under. Your argument also ignores the fact that the City Engineer Vincent himself ordered our contractors to stop our on-site work this past January – which he could not have done if, as you now argue, no permit for the work they were doing was required.

In your letter, you seem to want to assume the power to decide what on-site physical work in pursuit of our project “counts” for purposes of the 180-day requirement, and to use that power to declare the permit expired unless we convince you otherwise. But you do not have that power, we do not have that obligation, and you are violating the law in trying to obstruct us in this way.



We are not abandoning this project, and your and the City's persistent efforts to squeeze us in this way are not right, as I explained in my Jan. 24, 2025 letter to your colleague Mr. Vincent after he ordered our contractors to stop work last January. Please stop making up improper arguments like the ones in your letter of May 15, 2025, and refrain from threatening to declare our building permit expired when you have no legitimate grounds for doing so, as it is causing XYZ severe harm.

Sincerely,

David Clem
Manager
XYZ Dairy, LLC

Cc: 1 River Park File
David Brooks
Nathan Reichert

May 22, 2025

Leigh Hays
Chief Building Official and Health Officer
City of Lebanon
City Hall
51 N Park Street
Lebanon, NH 03766

Re: 1 River Park (the "Project")

Dear Mr. Hays:

In case there is any question as to whether XYZ started work on the Project in January of this year, only to be stopped by the City, all of which occurred as explained to you in my letter of earlier this month, dated May 8, 2025, XYZ is hereby requesting a further 180-day extension of its building permit for 1 River Park in West Lebanon, N.H. on account of delays imposed on XYZ by circumstances beyond its control.

The circumstances beyond XYZ's control that warrant this requested further extension of its building permit are described in detail in my attached letter of January 24, 2025 to City Engineer Brian Vincent concerning the City-ordered work stoppage earlier that month, and my attached letters to the City of Lebanon Planning Board, one dated February 10, 2025 and the other dated March 13, 2025, concerning the other recent obstructions and delays imposed on XYZ's construction efforts. Additional circumstances beyond XYZ's control warranting this requested further extension of its building permit are described in detail in its Amended Complaint in the pending civil action that XYZ has brought against the City in the New Hampshire Superior court entitled *XYZ Dairy v. City of Lebanon*, Docket No. 215-2024-CV-00393 (Grafton, NH Superior Court).

In response to your May 15, 2025 letter to me asking that I inform you of "any further efforts on site between May 9 and May 25" (sic), please be advised that excavation holes to connect to the existing stormwater line were filled to eliminate a safety hazard, new fencing and delivery gates to the 1 River Park lot were added and secured after Nott's Excavating damaged the entry fence, excavated material from the basement excavation was spread and compacted on Lot 2 according to our Site Plan Approval, silt fencing was added to the Cross Country Connector location according to best practices, and all below grade water, sewer and stormwater piping, connections, manholes, and fire hydrants were moved to a secure area and covered to protect from sunlight



exposure.

If you would like to meet me on site to inspect, please advise and I will gladly do so.

Sincerely,

A handwritten signature in blue ink that reads "David Clem". The signature is fluid and cursive, with the first name "David" and last name "Clem" clearly legible.

David Clem
XYZ Dairy, LLC

Enclosures



January 24, 2025

Brian Vincent
City of Lebanon
Department of Public Works
193 Dartmouth College Highway
Lebanon, NH 03766

**Re: Temporary Bypass of City's Stormwater Line
Impacting 1 River Park Construction**

Dear Mr. Vincent,

I am now in receipt of your communication to Ben Griggs of Nott's Excavating dated January 21, 2025 at 2:49 PM. Matthew Bush of Engelberth Construction was also cc'd on your email.

I consider this another example of bad faith action on the part of Lebanon municipal employees, particularly after testimony presented to Grafton County Superior Court regarding our municipal estoppel case challenging the termination of the building permit for 1 River Park and the denial of our extension request by the Lebanon Planning Board due to delays caused by the termination of the building permit and our appeal rights. The Judge ruled in our favor on both items.

Your reference to the Court order in your communication to Nott's Excavating and Engelberth is uninformed and inaccurate.

Based on past experience with the City, I doubt you acted unilaterally in denying the connection of the temporary stormwater line on XYZ property that does not disturb any existing infrastructure in the Route 10 ROW. If you did act unilaterally, the lack of good faith is even more egregious since Nott's and Engelberth were following the engineered plans prepared by TF Moran and approved by the State in our AOT permit. Moreover, Nott's supplied additional elevation information requested by Rod Finley in your office for him to confirm the connection

would work as designed by professional engineers. The design, location, and elevation of the initial construction was supplied to the DPW months ago.

Once again, XYZ has been forced to suspend construction of 1 River Park due to actions by Lebanon staff that are uniformed or intentional on the part of your supervisors. Under penalties of perjury before the Grafton County Superior Court, the City's building inspector who terminated the 1 River Park building permit admitted that he alone did not decide to terminate the valid building permit, but was directed by his superiors to do so. Additionally, he testified that in his entire career as the building inspector for Lebanon he had issued approximately 10,000 permits, and the only permit he ever terminated was for 1 River Park. It is my belief that your action follows the same pattern of behavior under the Mulholland administration.

Since you have not been involved in the official capacity of City Engineer from the time of the issuance of Site Plan approval for River Park by the Lebanon Planning Board or the building permit for 1 River Park, I offer the following information for your consideration.

1. The stormwater line in question does not benefit one square foot of the River Park site; rather, it benefits the City of Lebanon and the NHDOT.
2. Neither the City of Lebanon or the NHDOT has an easement for this stormwater line on XYZ property.
3. The former City Engineer of the City of Lebanon provided false and incomplete information to the Civil Engineer retained by XYZ Dairy, LLC when we were preparing the Site Plan and Sub-division applications pursuant to the City's regulations in effect at that time.
4. XYZ voluntarily agreed to accommodate the City and NHDOT's need to comply with updated regulation regarding stormwater runoff produced in their ROW by treating this runoff on our property, and our internal circulation and open space was deliberately designed to accommodate this solution.
5. The materials for this engineered solution were purchased by XYZ well in advance of the construction schedule for Route 10 infrastructure work identified in the original Lebanon Planning Board Notice of Action for River Park. The design and construction drawings

for the solution were approved by the DPW, the building department, the planning department, and the NHDOT prior to the mylars being recorded for River Park.

6. XYZ has repeatedly been required to provide new sets of construction documents to the City because of a poorly coordinated record system and turnover in personnel.
7. Given the reality of increased construction costs post Covid, which I presume your department is also painfully aware of, XYZ has retained professionals to evaluate alternatives on our site, only to discover that the existing line services The Falls and no one in the City bothered to tell our engineering team.
8. The Falls does not enjoy an easement on our site to discharge their stormwater onto our property or the Connecticut River.
9. Notwithstanding all of the above, the DPW is aware that XYZ upsized the temporary stormwater line we installed, in good faith and at our expense, for the City's benefit to provide assurance that it is superior to the existing condition.
10. The City has not performed maintenance on the stormwater line since XYZ purchased the property. When the catch basins flooded a few years ago on Main Street due to a severe microburst, XYZ found and uncovered the outlet in the ravine on our property. We were told by DPW personnel to redirect the last portion of the stormwater pipe and to add riprap in the ravine which we did at our own expense. The DPW head at the time met me on site to inspect the new outlet location and the riprap installed by our contractor. There has never been an easement or a "performance bond" for this stormwater line relocation.

I fully understand that the permanent drainage system will be required to be constructed in accordance with latest plans approved by the Planning Board. You should understand that the completion of the last component of the so called Phase 1 infrastructure is required prior to the occupancy permit of 1 River Park. Your recent communication to our contractor denying the temporary connection makes the construction of 1 River Park impossible.

In view of the City Council's recent budget hearings and the recognition that double digit property tax rate increases are unavoidable without expansion of the tax base or severe budget



cuts, I am astonished by the continued efforts of staff to delay construction. The damages I have incurred are well beyond the legal expenses I have been forced to pay to protect my property rights and building permit. Your actions are in direct contradiction to testimony of staff and the City's attorney in Superior Court. I invite you to read the transcript of the evidentiary hearings.

If I have to go to court again to demonstrate this, I will redirect funds intended for infrastructure improvements that benefit the City and NHDOT, or do nothing. The River Park site will remain fenced off, public access to the river will be permanently abandoned, and the bulk of the acreage will remain in current use in full compliance with those regulations. Neither decision is a win for Lebanon taxpayers.

Sincerely,

A handwritten signature in blue ink that reads "David Clem". The signature is fluid and cursive.

David Clem
XYZ Dairy, LLC

Cc: Lebanon City Council
Attorney Philip Hastings, Cleveland, Waters and Bass, P.A.
Attorney Robert Miller, Sheehan Phinney, P.A.
Angela McCanna, Lyme Properties

February 10, 2025

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

Re: River Park West Lebanon – December 19th Request for Extension

Dear Board Members:

On December 19, 2024, Lyme Properties, operating as the development agent for XYZ Dairy, LLC, submitted a request for 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). The December 19th extension request identified that, since the Lebanon Planning Board's rejection of XYZ's previous request for extension (as submitted on July 8, 2024), the Grafton County Superior Court issued an Omnibus Order granting a Preliminary Injunction to XYZ (1) reinstating the building permit at issue in both the state court action and within the prior request for extension; and (2) extending the Planning Board's Phase 1 site plan approval deadlines by 11 months and two days from notice of the Order.

I now submit this correspondence in advance of today's "limited public hearing," scheduled "to determine whether there has been a material change of circumstances affecting the merits of [XYZ's] application since the time of [its] prior [July 8th] application."¹

Under New Hampshire law, the requirement of material change pursuant to the "subsequent application doctrine" is "**not to be technically and narrowly imposed**, but yet enforced to the extent that property interests may be settled and stable, and property owners protected from harassment."² Moreover, **a decision of a superior court can create a material change warranting a change in an administrative body's decision.**³

¹ XYZ received notice of the nature of this hearing by way of the City's counsel's February 7, 2025 Memorandum. To the extent that the Planning Board desires or requires supplementation of this letter, XYZ is amenable to providing a further submission. To the extent that this evening's hearing expands beyond the outlined "limited" scope, XYZ requests an opportunity to further supplement this letter as it relates to the merits of its request.

² *Bois v. Manchester*, 113 N.H. 339, 342 (1973)(emphasis supplied).

³ See *Radcliff v. Zoning Bd. Of Appeals*, D.N. CV 121852 S, 1993 Conn. Super. LEXIS 1536, at *18 (June 9, 1993) (relating to the revocation and reinstatement of a building permit)(emphasis supplied); *Middlesex Theatre, Inc. v. Commissioner of State Police*, 128 Conn. 20, 22-23, 20 (1941) ("Where a change of conditions has occurred since the decision of the administrator or where other considerations have arisen materially affecting the merits of the matter and no vested rights have intervened, it is reasonable and appropriate to the functioning of efficient administrative machinery that the subject matter be re-examined in the light of the altered circumstances.").

That is precisely the case here. Critically, in submitting its second request for a 2-year extension, XYZ identified several material changes of circumstance since its prior application, including but not limited to:

- after *three days* of evidentiary hearings, the Court explicitly disagreed with the City’s argument that XYZ should have continued investing in Site Plan work while the building permit matter was unresolved (an argument the Planning Board seemingly adopted on or about its November 12, 2024 decision);
- the building permit has been reinstated; and
- the Phase 1 deadlines have been extended.

In support of its December 19th second extension request, XYZ attached the Court’s Omnibus Order, its Superior Court Complaint (including its twenty-two exhibits), and its Memorandum in Support of its Petition for Temporary Restraining Order and Motion for Preliminary Injunction—none of which were previously before the Lebanon Planning Board when considering XYZ’s July 8th first request for extension. These documents encompass—by the City’s counsel’s own admission contained in his February 7, 2025 Memorandum—“a different but overlapping set of facts.”

In its Omnibus Order, the Court determined that, after three days of evidentiary hearings, XYZ established a “likelihood of success on the merits” that the City of Lebanon made an actionable misrepresentation of a material fact that XYZ relied upon to its detriment. In other words, after hearing the evidence, the Court concluded that XYZ reasonably relied upon the City’s representations related to the building permit, that XYZ was harmed as a result, and that the facts established by XYZ warranted the reinstatement of the building permit and the extension of the Phase 1 deadlines. Importantly, the Court also stated as follows:

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.

The same argument underscored by the Court holds true for the attendant delays in all of the other phases of development. The City could not have reasonably expected XYZ to meet the deadlines for those other development phases without a valid building permit on Phase 1, since the Phase 1 building was critical to the overall economics of the project and to the construction of the primary entrance of the development. The clear “changes in circumstances” provided by the direction in the Court’s Order warrant the Board’s full consideration of the merits of XYZ’s second request for extension.

To the extent that the Planning Board is not otherwise persuaded that a material change necessitates consideration of XYZ’s December 19th extension request, XYZ further asserts that consideration is warranted as this Board’s consideration of XYZ’s July 8th request was neither fair

or impartial.⁴ In brief, the Planning Board was notified of XYZ's pending action related to the building permit and site plan deadlines pending in Grafton County Superior Court prior to issuing its formal decision on XYZ's first extension request. Nevertheless, the Planning Board, relying upon the recommendations of municipal staff, rejected XYZ's first extension request prior to the issuance of any decision by the Court. More specifically, five members of the Planning Board *met in advance of the public hearing without a motion to convene in executive session* in a public meeting. These same five members then voted to deny the extension request without reading the motion in the public hearing or making the motion available to the applicant in advance. While I appreciate the fact that the Planning Board relies on municipal staff to support the Board, I believe the Planning Board is an independent, quasi-public body and should affirm its authority by acting independently of staff opinion, fairly, and impartially—in line with the Court's Order—in this instance.

Turning to the merits of this request, the Planning Board is tasked with determining whether the delays on the other phases of the River Park project were the result of circumstances beyond XYZ's control. It is clear, based on the specific language of the Court's Order, that the Court's findings not only necessitate consideration of XYZ's December 19th second extension request, but granting XYZ's request for two-year extensions in full. The City's misrepresentations as to the building permit irrefutably predated the other events the Planning Board considered in relation to XYZ's prior extension request. Accordingly, (1) because of the City's misrepresentations as to the building permit and the delays resulting therefrom; and (2) because XYZ reasonably did not invest in other aspects of the project while the permit was in a City-imposed limbo, there plainly exist circumstances beyond XYZ's control necessitating a 2-year extension of XYZ's site plan deadlines on the remaining phases of the River Park project.

It is my hope that the Lebanon Planning Board will exercise reason and fairness, as the Court has done, in considering the merits of and granting XYZ's request for extension. Doing so would also constitute a significant gesture of good faith in rebuilding the trust required to bring this beneficial project to fruition for the City of Lebanon.

Sincerely,



David Clem
XYZ Dairy, LLC, Manager
Lyme Properties 2, LLC, Agent

Cc:

Angela McCanna, Lyme Properties
Attorney Philip Hastings, Cleveland, Waters and Bass, P.A.
Attorney Robert Miller, Sheehan Phinney, P.A.

⁴ See *Album v. Anderson*, 25 A.D.2d 481 (N.Y. 4th Dept. 1966).



March 13, 2025

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

Re: River Park West Lebanon, Request for Extension

Dear Board Members:

As I noted at the last hearing, I will not be able to attend the third scheduled hearing on XYZ Dairy's request for a 2-year extension (PB2025-05-EXT) on Monday, March 17, 2025. I respectfully ask that the Board make a final decision, as it is impossible for XYZ to make business decisions and/or advance this project while kept in this limbo.

Despite this matter now requiring a third public hearing— in addition to the four hearings held on the previous request (PB2024-34-EXT) from July to November, 2024— the question before you is quite simple: does the Planning Board support River Park or not?

Granting a two-year extension request allows the River Park project a chance to proceed, acknowledges XYZ's property rights and investments to-date in the project, and accommodates for the obstructions XYZ has faced from the City of Lebanon Administration.

Denying the requested extension— or seeking to rationalize a shorter extension— would align the Board with the disproven opinions and overturned actions of the Lebanon Planning Staff, create further obstructions for the project, and further diminish any chances of progress at River Park.

XYZ Dairy does not believe the opinions expressed in the latest Staff Memo and previous communications are relevant to your decision and misstates some of the facts and history of this project. XYZ has continued to provide this board with all necessary information.

Whether the Staff and Board believe that XYZ has provided too much information, or too little information, has varied from hearing to hearing. We can't solve that Goldilocks dilemma, other than to reiterate that XYZ has been transparent and provided all relevant information to the Board, Staff, and public throughout the 18 years that we have pursued Mixed Use, Smart Growth, and Public Access to the Connecticut River in West Lebanon.

XYZ Dairy will continue to protect our property rights and approvals as necessary and fulfill all conditions in our Notice of Action as long as municipal action does not continue to put roadblocks in the way of implementation.

This application is before the Planning Board and has been duly advertised and noticed to all abutters pursuant to regulations of the City of Lebanon.

Additional information is provided herein.

Sincerely,



David Clem
Manager, XYZ Dairy, LLC

The logic and business realities of the requested two-year extension

River Park was approved as a Phased Development in the original decision by the Lebanon Planning Board. There were seven (7) phases with two years between phases to file a building permit application for the next phase. The logic of the two year time period, as discussed in numerous public hearings during the entitlement process, was twofold: first, to allow the previous phase to be absorbed/rented by the marketplace; second, to allow one year for the architects/engineers to prepare construction drawings for the subsequent phase sufficient for the Lebanon Building Inspector to grant a building permit.

This was clearly outlined in the Notice of Action, prepared by the Lebanon Planning Staff and voted on by the Planning Board duly constituted at the time of the Site Plan and Subdivision Applications. It is my presumption that the Notice of Action and the Motions for Site Plan and Subdivision Approval were reviewed by municipal counsel at the time.

There have been amendments to the original Notice of Action regarding River Park, including one to amend the phasing to allow the multi-family residential to be the second phase of River Park. No amendments have changed the two-year time period between phases.

Appeal of Staff Actions, leading to N.H. Superior Court Decision

As this Planning Board is aware, the City of Lebanon Building Inspector on February 1, 2024, just prior to retiring, sent XYZ Dairy, LLC a letter terminating our building permit for 1 River Park, the first building phase of the development. A decision the former Building Inspector would later testify involved numerous members of the Lebanon Planning Department and City Manager's office and was an unprecedented action during his decades in the Lebanon Planning Department.

The Staff's decision was appealed to the Lebanon Building Code Board of Appeals and was overturned 4-1.

The City subsequently appealed their decision to the State Building Code Board of Appeals and they reversed the decision on narrow grounds. This Planning Board has been provided the information regarding all of the administrative appeals. However, in that State Building Code Board of Appeals decision, the Assistant N.H. Attorney General who wrote the decision suggested that XYZ may have a municipal estoppel claim against the City of Lebanon; namely, that we had relied on information previously provided by City officials regarding the building permit,

commencement of construction, and the long standing precedent in Lebanon that "off site work" including the modification of design drawings and bidding by construction managers constituted work.

Based on the language of this decision, XYZ did file a municipal estoppel claim in Grafton County Superior Court. The Court ruled that the City had improperly terminated our building permit and the permit was restored. The Court also ruled that our Site Plan expiration date be extended by eleven months and two days for the first phase, due to the building permit appeals process, the only matter before the Court at the time. This Grafton County Court decision overturned the previous action of this Planning Board not to grant an extension of the time allowed to complete the so-called Phase 1 Infrastructure improvements.

11 Months vs. 2 Years: either way, 3 months have already gone by

On November 12, 2024, the Planning Board voted to deny River Park's first request for extension while the N.H. Superior Court had the municipal estoppel case under consideration. The timing of the Board's decision was up to the Board, Staff, and Legal Counsel.

On November 25, 2024 the N.H. Superior Court judge provided an 11 month extension for Phase 1 as part of the Omnibus Order granting a Preliminary Injunction and Temporary Restraining Order

The Court was not asked to address the Phasing Schedule for the entire project, which is why XYZ resubmitted the application to extend each phase of River Park to this Planning Board by two years.

The Judge's decision specifically countered the logic the City of Lebanon Planning Staff, Legal Counsel, and Planning Board in it's November 12, 2024 Notice of Action:

"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." *N.H. Superior Court Omnibus Order, 11/25/2024, pg. 24.*

Having now had our position on these matters confirmed by the Court, and the City's request for reconsideration rejected by the Judge on December 24, 2024, XYZ must once again seek to re-start the multifaceted processes necessary to re-commence the project yet again.

On January 13, 2025, the Planning Board determined that the Judge's decision was sufficient "new, material information" to take up the second requested extension.

Additional roadblocks since Superior Court decision

Subsequent to the Judge's November 25, 2024 decision granting the 11 month extension related to Phase 1, XYZ has been faced with the following additional challenges from the Lebanon Administration and Planning Processes:

1. The Lebanon Planning Director questioned the life science research use at River Park, in issuing an opinion on December 6, 2024 that risked putting other, existing life science companies in Lebanon at risk of non-conformity.
 - a. As a result, the Lebanon City Council brought forth a Zoning Amendment to address these issues.
2. The Lebanon DPW has proposed a new, additional \$100,000 requirement prior to the temporary relocation of the City's no-easement pipe. This falls outside of the Conditions of the Site Plan Approvals, and is outside of the City's regulatory authority as it is the State of NH DES that regulates stormwater, and the October 30, 2020 memo from the NH DES that addresses the relevant State requirements.
3. In the 112 days (3.5 months) since that ruling, the Lebanon Planning Board has convened three public hearings (January 10, 2025, February 24, 2025, March 17, 2025) on this matter without resolution or decision. That 3/11ths of the extension granted by the Superior Court has been spent navigating Lebanon's procedural process speaks to the pace of municipal delay that makes it impossible for the project to proceed.
 - a. Had the extension been granted in 2024 as requested, XYZ could have re-mobilized for the start of the 2025 construction season in two weeks, April 1, 2025.
 - b. Instead, as this process drags out and additional challenges are posed, XYZ cannot enter into contractual relationships with necessary project partners.

Staff's Faulty and Disproven Determinations; information previously provided

Of note, in defense of our property rights and in pursuit of this project, for the past 18 years, XYZ has had to repeatedly and successfully disprove the Staff's faulty assumptions and failure to support a project the citizens of Lebanon voted overwhelmingly in favor of. Most recently, in the November 12, 2024 Notice of Action **PB2024-40-AAD**, this Board overturned the Staff's faulty determination that XYZ had failed to complete Conditions necessary for construction of Phase 1 to commence. XYZ had, in fact, complete the four material conditions.

The remaining two conditions, as XYZ acknowledged throughout, were pending and dependent upon the Staff completing its review of the Security Agreement (third party inspection, Condition #4) to allow the Construction Manager to proceed with all on-site conditions (e.g. silt fencing, Condition #5).

In its February 24, 2025 Staff Memo the Lebanon Planning Staff raise the same issues that XYZ already addressed in its August 12, 2024 presentation and September 5, 2024 email. This material was provided to the Staff and Board, *again*, via email on February 25, 2025.

Staff's failure to support the project

The Lebanon Planning Department– ostensibly charged with facilitating economic development in Lebanon– has proposed no alternative solution, does not seek to solve the issues they have created, and in their latest Staff Memorandum now request to forgo their job responsibilities as it relates to the River Park project.

6. Conditions of Approval. Should the Board grant the requested extension, staff recommends that the Board require that all future determinations relative to the applicant's compliance with the Board's conditions of approval be made directly by the Planning Board (in lieu of staff making such determinations). Staff believes this arrangement would be beneficial to all parties. *Staff Memorandum, PB2025-05-EXT, February 24, 2025 PB Mtg.*

The Planning Board's suggestion at the last hearing that XYZ was "only delayed 11 months" misses the point, ignores the burdensome reality faced by a private property owner seeking to pursue an approved project against unnecessary and disproven obstructionist actions, and only substantiates our concern that further costly delays will follow since only XYZ feels any repercussions from the Staff's actions and delays.

From:	Rohrer, Robert <bob.rohrer@colliers.com>
To:	Shaun Mulholland <Shaun.Mulholland@lebanonnh.gov>
Subject:	[EXTERNAL] River Park
Sent:	2024/11/06 20:57:00 (UTC +00:00)
Attachments:	NH Business Review.docx

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Shaun,

Thank you for taking the time to discuss my client's requirement for bio-med space in the Lebanon area.

I was particularly interested and surprised when you told me that our client's planned use was not an allowed (permitted) use at River Park. That is counter to what we have understood from the beginning and what we understood the Town's position to be (please see attached article). We have spent the last eight months working with our client to carefully define their needs and to begin lease negotiations with two Landlord/developer owners. We truly hope that we can continue to move forward at River Park as it is one of (maybe the only) site in the area that has the potential to meet our client's timing needs and financial requirements.

I did reach out to Carl Gross regarding the Lebanon Airport Business Park. He agreed to get me some additional information once he returns to the office next week. That said, the Park is a tough fit for my client. The City is offering to lease the land to entities that would then construct a building to presumably meet their needs or their tenant's needs. Our client is a pharmaceutical company and is not interested in building and holding real estate. That means a third-party owner/developer would have to be found that has the financial wherewithal and the expertise to build bio-med space. That combination is hard to find, and is why we didn't initially pursue the Park.

Interestingly, the owner of River Park has the required expertise and, we thought, the right permits to be able to develop space that fits our client's requirements. We are still hopeful that the Town and the owners of the Park can sort out their differences and we can continue to pursue locating our client in your Town.

Thanks for your time.

Thanks,

Bob

Robert L. Rohrer, Jr.
Managing Director | New Hampshire
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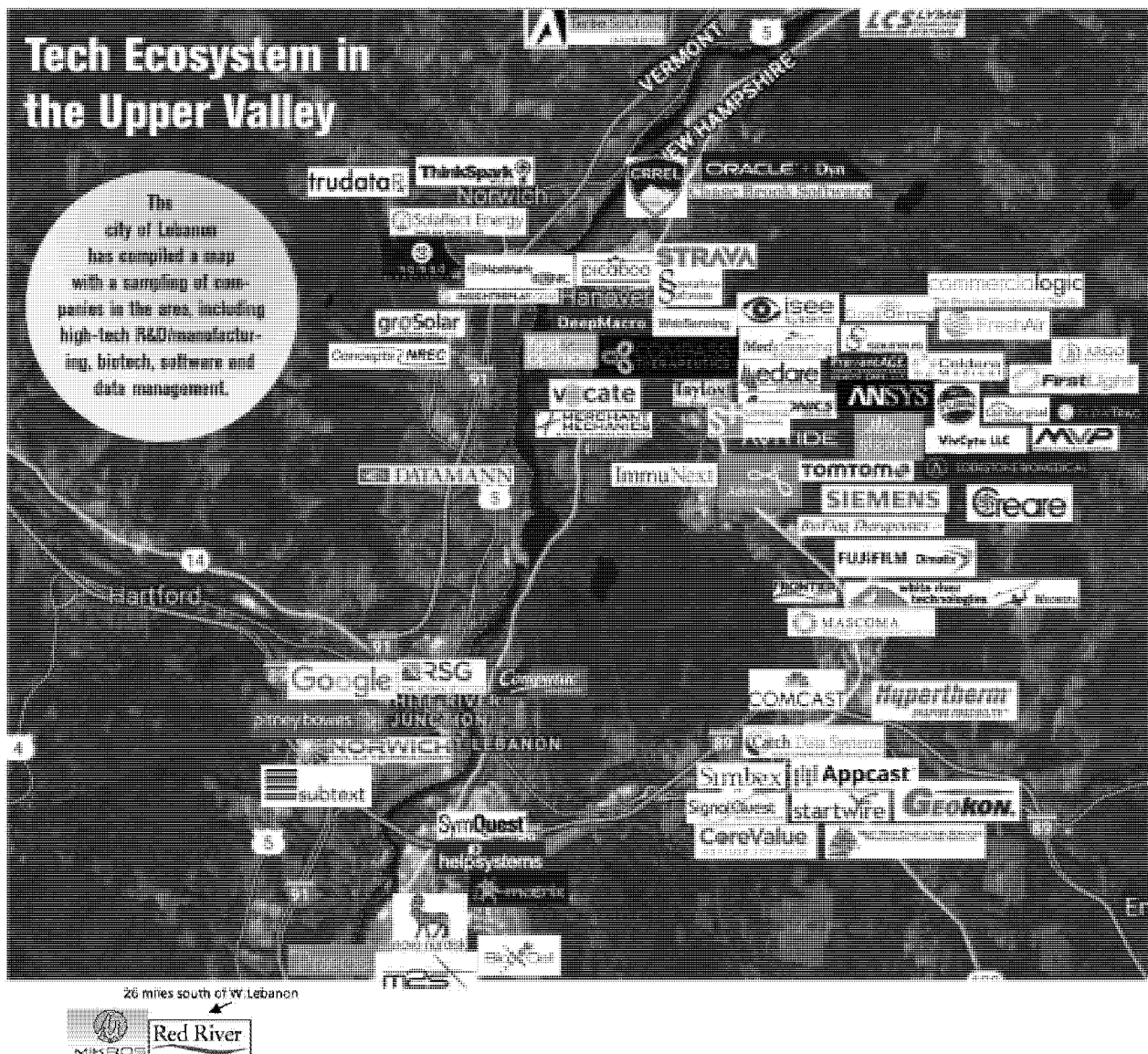
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A hub for tech entrepreneurship

Companies grow and thrive in the Upper Valley

March 28, 2019
Liisa Rajala





The city of Lebanon has compiled a map with a sampling of companies in the area.

With 120 software, biotechnology and medical technology companies in the Upper Valley, a variety of stakeholders are energized to expand the region's connection to the global industry of biomedical innovation.

"The economy of the Boston metropolitan area directly impacts us here," said Lebanon City Manager Shaun Mulholland. "Boston is the hub of medical research. We have Dartmouth-Hitchcock Medical Center and the Thayer School of Engineering at Dartmouth — we have the brain trust up here to move more of these businesses into the area. Mr. Clem's park is the ideal spot for those."

David Clem, a developer who previously built lab space at the Massachusetts Institute of Technology, is moving forward on a property that has been in the works for several years. River Park, an 850,000-square-foot mixed-use space, would provide life science lab and office space as well as retail, housing and potentially a hotel. Last fall, Clem installed a sewer line and the city of Lebanon took the opportunity to upgrade its 60-year-old water main.

In addition, “we’re spending \$1 million in 2019 to make upgrades to allow for another 200,000 gallons of sewer capacity, and we’re going to follow up next year for additional capacity for the city,” said Mulholland.

He also noted the city’s goal of encouraging mixed-used development downtown and zoning approval for building heights to allow for an additional floor of construction, and the planning board has also approved an additional industrial park, adjacent to an existing park on municipal land by the airport.

The infrastructure investments have been sparked by growing demand for commercial space in the area.

“The Dartmouth Regional Technology Center is full. They don’t have enough space,” said Mulholland, referring to the nonprofit incubator that is run in partnership with Grafton County Economic Development Corp. Centerra Business Park is also completely filled, he said.

“We have businesses that want to move out of the DRTC and they need a place to do that,” said Mulholland.

Self-sustaining ecosystem

One such business is FreshAir Sensor, which sells devices that detect tobacco or marijuana smoke in real time and send immediate notifications to hotel and apartment managers.

The company was launched in 2013 by a 33-year Dartmouth chemistry professor, who now serves as the company’s chief technology officer, and a graduate of the Tuck School of Business at Dartmouth. Initially, the company rented 100 square feet of space at the DRTC. It now takes up 5,000 square feet.

“We’re seeing a super-positive response from hoteliers that have tested it and we have over 6,000 devices sold and installed in the market now across about 150 properties in the United States,” said CEO Trip Davis. “I would say FreshAir Sensor would be ecstatic to develop a building with David Clem and River Park in the years to come. That would be a natural graduation.”



Trip Davis, CEO of FreshAir Sensor, says the company plans to stay in Lebanon, where there is a “sense of community.”

Davis, a technology entrepreneur who attended Dartmouth as an undergrad, had been working informally with FreshAir and was recruited back to the area by Dartmouth professor and bioengineering entrepreneur Tillman Gerngross.

Gerngross was instrumental in helping rewrite Dartmouth’s tech transfer policy that awards professors the license to commercialize their technology developed in Dartmouth’s labs, as was Nila Bhakuni, director of the Technology Transfer Office at Dartmouth.

“We have significantly increased the startup activity at Dartmouth. We have completed one license and one option already this fiscal year and we currently have four startup licenses in process [with] another three that are coming up in due diligence,” said Bhakuni. “When I started three years ago, we noted that Dartmouth had an average of one to two startups per year for the last 10 years.”

The expansion of the Dartmouth Coach bus line and Cape Air’s direct flights to Boston make it easy for Upper Valley companies to make global connections.

“There are a number of biotech companies in the Lebanon area and one of the running jokes with those entrepreneurs is how often they get asked the question, ‘When are you

moving to Cambridge?’ And they say ‘Well we’re not. We want to stay in Lebanon,’” said Davis, citing firms like Gerngross’ protein engineering firm Adimab and drug purification company Avitide, which remain in the DRTC.

“People like Tillman and other entrepreneurs feel that sense of community,” said Davis. “DRTC in itself is a community where we have 18 ventures, and they range from one person in a 75-square-foot office to 55 people in a 35,000-square-foot lab space.”

‘A lot of possibilities’

“We, over a period, have built a powerful technology that the rest of the pharmaceutical world of technology wants access to,” said Gerngross of Adimab, whose previous startup GlycoFi was sold to Merck for \$400 million in 2006. “There are partners in China, in Japan and all over Europe. Most pharmaceutical companies come to us and we send them the output and we’ve done it in such a way that we’re profitable.”

“By and large, I think companies look to where the expertise is, and in the engineering world, it’s not always necessarily immediately right next to the client,” said Rick Greenwald, CEO and co-founder of Simbex, an engineering consulting firm that works on medical devices and consumer health products. “We work virtually with [clients] and we work closely with their engineering teams on-site and here — it’s just an extra ride up the highway.”

Simbex was founded by entrepreneurs with no affiliation to Dartmouth College — a sign of a flourishing tech ecosystem that attracts employees in its own right.

Greg Lange moved to the area 15 years ago for a quality control position with M2S, a 3D medical imaging technology company, rising in the ranks to CEO. He now serves as chief business development officer for Simbex.

“The challenge of bringing somebody from the Boston area up here is overcoming the ‘Is this the only job in the Upper Valley?’” said Lange.



Simbex CEO and Co-founder Rick Greenwald, Senior Program Administrator Cassie Brugger and Chief Business Development Officer Greg Lange sit in their Lebanon office. Early-on, Simbex partnered with Riddell to create a youth football helmet with sensors to detect hard hits and improve player safety. It currently is working with a client on high-end hospital bed that would reduce pressure ulcers using novel technology. (Photo by Liisa Rajala)

In the region, he said, “there are a lot of possibilities, but it’s hard to know. You know on 128 in Boston if you’re a software engineer there are lots of big companies you could go from X to Y to Z. That’s pretty common. Up here it’s not so in your face.”

Jake Reder, the CEO of Celdara Medical — a company in the DRTC that partners with investors and their institutions to guide early-stage innovations into high-potential medical companies — came to the area as trailing spouse, another common method that expands the employment base.

“I’m sure it’s easier to get 1,000 resumes for a position in Cambridge, but to actually keep someone here, it’s much, much easier,” said Reder. “If you look at the CVs in Boston, they’re 18 to 36 months on the job — whereas up here you’ve got more stability, which is great for the employers and great for the employees.”

Moving to commercialization

Dartmouth College and Dartmouth-Hitchcock Medical Center bring “a very well-educated, diverse workforce” to the Upper Valley and create a community of “really interesting people to interact with,” said Greenwald of Simbex. “You go to a youth soccer game and you’re surrounded by medical doctors, nurses, engineers, technology professionals ... It’s the density of people in this area that are highly educated and want to do things that are interesting.”

A community of dedicated professionals also produces a network of entrepreneurial resources.

Last year, Celdara Medical and the University of Vermont were awarded a three-year, \$3.5 million National Institutes of Health grant to identify commercialization gaps for biomedical researchers and set up an entrepreneurial ecosystem. Sub-awardees include the University of New Hampshire, Dartmouth College, Maine Medical Center, Mount Desert Island Biological Laboratory, University of Rhode Island, University of Delaware and Simbex.

“In biotech and medical more generally, you require an educational foundation that just takes time,” said Reder. “Most of these things are coming out of professors’ research labs who have spent decades getting trained and then decades pushing the envelope in their own specific subjects.”

For students and faculty at Dartmouth, one avenue is the Dartmouth National Science Foundation I-Corps program, which is co-managed by Caroline Cannon.

Researchers receive \$3,000 and hands-on assistance from the Magnuson Center for Entrepreneurship. They are also directed to conduct 100 interviews with potential customers over 10 weeks to find a target customer outside of academia.

“Many, many, many of our teams have moved on to commercialization and starting companies,” said Cannon.

Simbex also manages the Center for Translation of Rehabilitation Engineering Advances and Technology and the New England Pediatric Device Consortium.



Celdara Medical's Special Projects Manager Julie Coleman and CEO Jake Reder are managing a \$3.5 million grant to identify commercialization gaps for biomedical researchers and setup an entrepreneurial ecosystem.

Funded by the National Institutes of Health, among others, the programs assist researchers and entrepreneurs with the prototyping and early business development for ideas that could benefit smaller subsets of the population.

“In these days of tight capital, government funding provides an incredible non-dilutive source of revenue for small businesses to get to the next stage that’s often followed by matches in angel, venture or foundation funds — critically important,” said Greenwald.

“The opportunities coming out of Dartmouth and their focus on technology and innovation and entrepreneurship have grown in the last five to 10 years exponentially,” he said. “We provide services through our federally funded commercialization centers, and the Dartmouth professors and clinicians coming over for that help; they’re great and they’re eager to learn.”

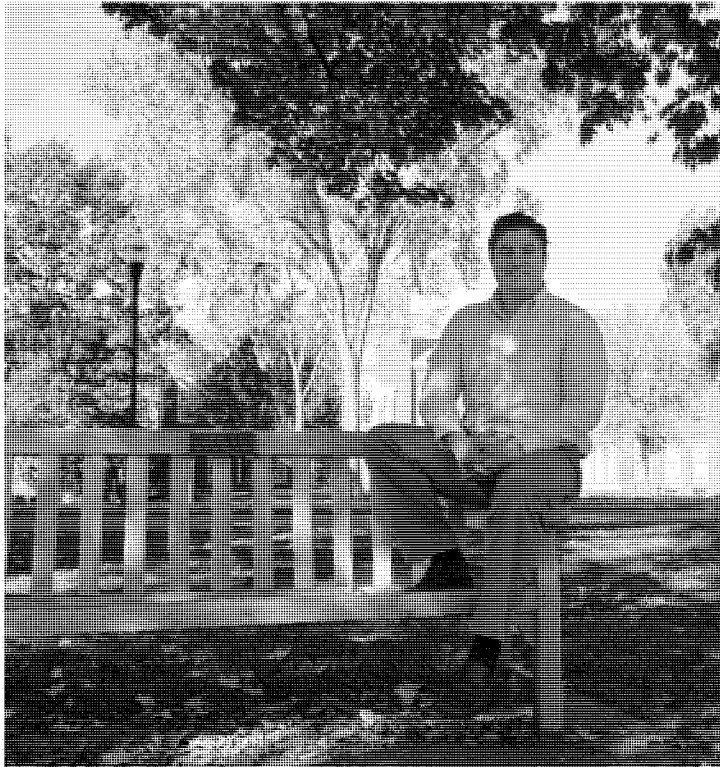
Dartmouth’s impact

The \$3.5 million grant received by Celdara is aimed at setting up a regional technology transfer accelerator hub in the Northeast, which will collaborate with 10 research institutions in the Northeast and the other three hubs in Central, Southeast and Western regions.

“Currently there are a lot of resources that exist, but there’s no one centralized place to go and find them for biomedical entrepreneurs,” said Julie Coleman, special projects manager at Celdara.

The committee working on the project will nominate individuals and programs to partner with, and has already assembled a committee of VCs and pharmaceutical companies for investment and mentorship opportunities.

One of the individuals Coleman is partnering with is Jamie Coughlin, director of the Magnuson Center for Entrepreneurship.



Jamie Coughlin, director of the Magnuson Center for Entrepreneurship at Dartmouth.

On its own, the Magnuson Center has raised \$44 million to encourage entrepreneurship, whether it be students, faculty or the community at large through programming and grants.

"All of these ideas and companies require a significant amount of capital, and Dartmouth has an unbelievably good venture capital network," said Gerngross. "A very large fraction of venture capitalists went to Dartmouth disproportionate to the Ivies. You certainly have access to the right people to critique and fund your ideas more so than at other universities."

While students may not be most likely to keep their companies in New Hampshire, "our faculty and staff are often times grounded here and the pursuits of their ventures oftentimes stay here," said Coughlin.

"Without Dartmouth, there would be no activity," summarized Gerngross. "Academic standards are the nucleus by which new ideas and insight into basic science leads to these opportunities that some people are able to translate into other drugs or platforms. Why are things happening at Dartmouth? The answer is because there is Dartmouth and it's able to attract people and attract the talent."

Liisa Rajala can be reached at lrajala@nhbr.com.

CATEGORIES: TECHNOLOGY



May 23, 2025

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

Request for Extension: #PB2025-05-EXT

Members of the Lebanon Planning Board,

Lyme Properties, development agent for XYZ Dairy, LLC ("XYZ"), in its letter to this Board dated April 16, 2025, has requested further consideration of its Dec. 19, 2024 request for a two (2) year extension of the River Park West Lebanon Site Plan. This letter and its enclosures, **which include dozens of internal emails recently produced by the City in response to Court orders**, are submitted in support of that request and in preparation for the Board's June 9, 2025 Hearing on it. For the reasons set forth below, XYZ's requested two (2) year extension should be granted at this time.

Introduction

Internal emails recently produced by the City in *XYZ Dairy v. City of Lebanon*, et al., Docket No. 215-2024-CV-00393 (Grafton, NH Superior Court), and attached as exhibits to XYZ's Amended Complaint ("AC") in that action, reveal that the "staff" of City officials on which this Planning Board has been relying for factual information, legal opinions, and recommendations concerning the River Park Project (the "Project"), including Tim Corwin ("Corwin"), Nathan Reichert ("Reichert"), and Brian Vincent ("Vincent"), are personally biased against the Project, and have been engaged for years, along with several other City officials, in a conspiracy to delay, obstruct, and derail the Project, using carefully constructed "cover stories" at every turn to conceal their efforts.

It is the improper and illegal actions of these "staff" members, and not any fault of XYZ, that has delayed and obstructed the progress of XYZ's work on the Project since 2022, and that is why XYZ is asking this Board, as part of its responsibility to ensure the integrity of the City's land use regulation process, to reconsider and grant XYZ's request for a two (2) year extension of all phase deadlines, responsibly viewing that request in light of the following previously concealed but now undeniable facts concerning the extreme bias of its own staff, as proven by their own internal emails, which are quoted directly in this submission.

Part I (2022-23)

1. XYZ began on-site excavation for the foundation of River Park's Building 1 more than two years ago, on Nov. 29, 2022, well within the then-existing 180-day deadline for commencement of work under its building permit, which at that time was Jan. 13, 2023 (having been previously extended several times twice due to COVID). As this Board is aware, XYZ was forced to stop that work when it unearthed the City's unpermitted stormwater drainage pipe running through the center of the area where the foundation for Building 1 was to be located under the Site Plan approved by this Board.

2. On Dec. 9, 2022, XYZ emailed a letter to City Engineer Brian Vincent, building inspector Calvin Hunnewell ("Hunnewell"), and Deputy City Manager David Brooks ("Brooks"), informing them that the City stormwater pipe obstruction had stopped its work. XYZ had no concerns about its building permit expiring then, or for months thereafter, because it had actually started the work on-site in November 2022, was continuing extensive Project work off-site, and was waiting for the City to respond with information on how it wanted its stormwater pipe temporarily relocated.

3. Brooks acknowledged receipt of XYZ's obstruction notice on Dec. 12, 2022, three (3) days after XYZ sent it, copying Vincent and Hunnewell, and saying he would follow up with Vincent on the pipe removal issue. XYZ then met with Vincent and another City engineer on-site on Dec. 15, 2022 and showed them the pipe obstruction that had stopped the work. There was discussion about how to remove it, and Vincent informed XYZ



that the City would respond with more information and a plan for removal of the pipe shortly. **But the City never did so until more than seven (7) weeks later on Feb 2, 2023.** As the internal City emails discussed below now prove, this delayed response was part of a deliberate effort by this Board's staff, Corwin, Reichert, and Vincent, and other City officials, to obstruct the entire River Park Project.

4. No one from the City suggested to XYZ at the Dec. 15, 2022 on-site meeting regarding the obstructing drainage pipe, nor at any other time in December 2022, nor at any time in the entire month of January 2023, that there was any deadline for removing the pipe and restarting work at the site, or that XYZ's building permit was at any risk of being declared "expired," or even possibly expired, if the work was not recommenced by Jan. 13, 2023. But the recently produced internal email exchanges between Corwin, Reichert, Vincent, Brooks and Hunnewell prove that **they were planning to try to declare XYZ's permit "expired" all along** – even though, in his entire 36-year career, the Lebanon building inspector **has never revoked a building permit, or declared that it was expired**, as he later admitted under oath in Court in the above-referenced case.

5. Unbeknownst to XYZ, the same week that it had its Dec. 15, 2022 on-site meeting with City engineers about the City's obstructing stormwater pipe, Reichert, Corwin, and Hunnewell were discussing how that obstruction could create an opening for them to declare the "possible expiration" of XYZ's building permit, even though they knew XYZ had started construction following completion of the necessary Cross Country Connector work the previous month, and was fully prepared to proceed further once the obstruction was cleared.

6. As Reichert described it in an email he sent to the others on Dec. 22, 2022:

Calvin and Tim.

We need to circle back on the project at 1 River Park Drive.

Calvin one of the questions that arose during our discussions last week was a simple one, However, this [the stormwater drainage problem] does have a major impact on the possible expiration of the Building permit for the project. As you know the Building Permit for the project is due to expire in February [sic January]. It is likely that the builder will be attempting to craft an argument that the project has begun construction because they dug a hole and hit a City owned pipe. The simple question is: **Has the project started? What do you see as the necessary criteria that must be met to constitute the start of construction?** If construction has begun, then how long will the project have to remain fallow **before the permit expires**. Please let me know your thoughts on the matter..

Nate

Nathan Reichert, Planning and Development

Exh. A hereto, at LEB_0052131 (emphasis added). At that time, no issue of possible expiration of XYZ's building permit had been mentioned to XYZ, so XYZ was not "attempting to craft" any argument on that issue, and it was not Reichert's legal role or responsibility under the Building Code, nor was it Corwin's, to be inventing and promoting building permit expiration arguments against XYZ. **But they were.**

7. Reichert's and Corwin's internal discussions about having the City's building inspector declare the XYZ's building permit "expired" **continued in January of 2023**, and intensified after the 180-day deadline for commencing work under the building permit expired on January 13, 2023. Although XYZ was still unaware of it in January 2023, Corwin and Reichert were drafting various "permit expiration" letters at that time for the building inspector to send to XYZ – even though, as stated above, in his entire 36-year career, the building inspector had never done so.

8. Corwin himself prepared the "initial draft" of the letter, **specifically declaring in it that XYZ's building permit had expired.** He included in that draft in the following extraordinary email he sent on Jan. 30, 2023 to Reichert, Brooks, and Hunnewell, stating:



"I'm wondering whether the letter [to XYZ] regarding the building permit should be separate from the letter regarding the stormwater line location mainly because **the determination that the building permit has now expired should be made in writing by the Building Inspector, right? I've written the initial draft ... as if it's a separate letter from the Building Inspector**, but obviously that can be changed if we decide a single letter is appropriate. . . .

Dear Mr. Clem:

I am writing to follow up from my letter to you dated May 27, 2022, regarding the status of Building Permit#2016-00293 issued for 1 River Park Drive (formerly 100 River Park Drive). As noted in my May 27th letter, this office found that the COVID-19 pandemic represented adequate justification to grant your request for 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, with the subject line, "[c]ommencement of 1(00) River Park Drive (Building Permit # 2016-00293) is in conflict with City's existing municipal stormwater line[.]" The purpose of the instant letter is to address the status of the Building Permit, whereas I understand Deputy City Manager Brooks will address your concerns regarding the stormwater line under separate cover.

As outlined in my letter from May 27, 2022, the Building Permit was originally issued on December 31, 2019, but, failing to commence work within 180 days of issuance as required by Section 105.5 of the International Building Code (IBC), the permit has been reinstated and extended multiple times. Section 105.5 of the IBC 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[.]" Your December 9th letter to Mr. Brooks indicates that the purpose of your letter, "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," noting that, "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022." **Please be advised that it is the determination of this office that, because excavation work does not require a building permit under the IBC; the activity described in your letter of December 9, 2022; does not and cannot constitute the commencement of work authorized by the Building Permit.** *[n.b. At this point in the draft Corwin admits that he could not find any authority for this claim in the IBC Building Code] ("should/can we provide a fuller explanation of why the excavation work [done by XYZ] doesn't constitute commencement of the work authorized under the building permit? I took a quick look at the printed copy of the IBC and couldn't find anything helpful...)* Consequently, **the Building Permit expired on November 22, 2022** [sic Jan. 13, 2023].

Given the delay in the responding to your letter of December 9, 2022, we can extend the deadline to submit a written request for an extension of the Building Permit to February 2023. However, as noted in the May 27th letter, **please be advised that this office may not be able to justify granting an additional extension.** Also as noted in the May 27th letter, as part of any written extension request the applicant will need to submit revised and updated plans and specifications for the development to demonstrate compliance with the 2018 edition of the IBC.

Sincerely, Calvin Hunnewell, Building Inspector.

Amended Complaint ("AC"), Exh. 28 (emphasis added).

9. At that time, Corwin, Reichert, and Brooks all had actual knowledge that their scheme to declare XYZ's building permit expired after the fact was **wrong** and **unfair to XYZ**, and that **XYZ could have addressed the issue prior to the expiration of the 180-day period on Jan. 13, 2023 if it had known there was an issue.**



The fact that the “staff” knew this is proven by the incriminating email that Brooks sent privately to Corwin, Reichert and Hunnewell that same day, January 30, 2023, stating:

“... [w]e should be prepared for the potential response [from XYZ] along the lines of **‘if you’d told me this back in December, I’d have gotten more work done to prevent the building permit from expiring.’**”

AC, Exh. 25 (emphasis added), referring to the fact that XYZ would never have voluntarily let their building permit expire if it had known this argument was going to be made, as it already had millions of dollars invested in the Project.

10. Corwin and Reichert also knew that their “interpretation” that XYZ’s prior excavation for the foundation of Building 1 somehow “did not constitute commencement of work “for purposes of the 180-day requirement **had no support whatever in the Building Code**, even though they were trying in vain to find some, as Corwin admitted in his above initial draft where, in his italicized note, he said “*should/can we provide a fuller explanation of why the excavation work [done by XYZ] doesn’t constitute commencement of the work authorized under the building permit? I took a quick look **at the printed copy of the IBC and couldn’t find anything helpful...***” AC, Exh. 25 (emphasis added).

11. Corwin, Reichert and Brooks also knew that their “interpretation,” which they intended to have the building inspector falsely present to XYZ as his own, was guaranteed to be contested legally, and in the “court of public opinion” as Brooks specifically told Reichert and Corwin in his below email of Feb. 1, 2023, saying:

“I would definitely provide as many code citations and as much support as possible to justify the interpretation that is being made. In addition, you might want to run that justification past legal counsel, because **you can almost guarantee that it will be contested, either legally or in the court of public opinion.**”

AC, Exh. 26 (emphasis added)(emphasis added). Neither Corwin, Reichert and Brooks could ever find any support in the Building Code for their anti-XYZ interpretation, however, **because there was none**. They were just making up their “interpretation” as they went along to obstruct and delay the Project, and condemn XYZ to lengthy administrative “appeals” that they knew would suspend the Project.

12. Several hours after receiving Brooks’ above email saying that an outright termination of XYZ’s building permit would be contested legally, Corwin met with Hunnewell to discuss the matter, and the two “nailed it,” as Corwin described it, by coming up with a different “approach” to obstruct XYZ’s efforts to proceed with the Project, which was to put the continuing validity of XYZ’s building permit in doubt by claiming that the building inspector somehow “did not have enough information” to determine whether XYZ’s building permit had expired, and demanding “a list of things” XYZ would need to give him, or he would declare it expired.

13. Corwin admitted this secret plan in a Feb. 1, 2023 email he sent to Reichert, Brooks and Hunnewell that afternoon – 3 hours after he received Brooks’ email about how their interpretation would be contested:

Calvin and I met for a while to discuss - **we finally nailed it** (Calvin did actually) **-the best way to approach this is to reply that we don’t have enough information to make a determination that the work has commenced; and put it back on them [XYZ] to give us more** than “we dug a hole in a spot where the plans show a pipe is located”.

We came up with a list of things that they’ll need to provide (for example, evidence that the GC, site/excavation and concrete contractors were lined up and ready to go ...).



Stay tuned for an updated draft letter... !

AC, Exh. 26 (emphasis added). Brooks promptly replied to that email "Good work," id., and four hours later, Corwin sent another email to Hunnewell, Reichert and Brooks containing the "updated draft" to which he had referred in his above email, adopting the "nailed it" approach they had decided on.

14. Among other things, Corwin's "updated" draft, set forth in his Feb. 3, 2023 email (reproduced below), **falsely claimed** that the only information the City had received about XYZ's excavation work up to that point was the statement in XYZ's Dec. 9, 2022 letter that "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022." AC, Exh. 26 (emphasis added). **But in fact, Corwin knew at the time that two City engineers had visited the Project Site in person six (6) weeks earlier on Dec. 15, 2022**, had seen the work that XYZ had started, and had **already reported** to the City on the work that XYZ had done. Corwin was deliberately saying otherwise in his draft simply to justify its demands for more "information."

15. Corwin's "updated" draft, set forth in his Feb. 3, 2023 email below, AC, Exh. 26, also emphasized the prospect of "an adverse decision" on the XYZ building permit expiration issue, and included demands for "steps to be completed prior to the resumption of construction activities" **which were not legally required or did not have to be completed until much later in the construction process**, effectively trying to put the cart before the horse, and prevent the re-commencing of construction on the Project entirely.

16. Corwin included his "updated draft" in an email to Hunnewell, Reichert and Brooks that day, stating:

"... **here's take 2** [of the letter]. Can you take a look, especially the language highlighted in yellow? It will definitely need some massaging.

DRAFT E-MAIL TO CHET CLEM FROM CALVIN:

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, we approved an extension of the Building Permit until January 13, 2023.

On December 9, 2022, we 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." As you know, Section 105.5 of the IBC provides that, "[e]very permit issued shall become invalid unless the work on the site authorized by such permit has commenced within 180 days after its issuance[.]" **Please be advised that we need additional information in order to make a determination as to whether work has commenced** for purposes of demonstrating compliance with Section 105.5.

At this time, **the only information that has been provided is that "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022."** In order to **make a determination we ask that you 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, it would be helpful to have the following:

- Date that building footprint was staked and name of surveyor.
- Evidence that the necessary contractors - including but not limited to general contractor, excavation contractor, site contractor, and concrete contractor--were in your hire as November 29, 2022 and were prepared to perform the work.
- Evidence that a design team was in your hire as November 29, 2022.



- Your construction schedule demonstrating when the work was to have been performed including but not limited to the pouring of the foundation concrete.
- Additional information as to the nature and extent of the work performed, e.g.:
 - o For how long did work proceed?
 - o How many pieces of equipment were on site?
 - o Who performed the work?
 - o How many workers were on site?
 - o How much was dug?

We ask that you please respond at your earliest convenience so that we can make a determination and, if adverse to your position, establish a date by which the determination can be appealed.

If we are 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.** These include:

- Confirming that the statement of special inspections is still valid.
- Providing a cost estimate of remaining Phase 1 Infrastructure improve merits 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, please don't hesitate to ask.
Sincerely, Calvin Hunnewell, Building Inspector"

AC, Exh. 26 (emphasis added). Reichert, who was also involved in drafting this letter, responded a few days later on Feb. 6, 2023 by suggesting that the phrase **"it would be helpful to have the following"** be **"stiffen[ed]"** because he said **"any amount of flexibility that we give them will promote argument ... don't give them a choice."** Id. (emphasis added). Corwin responded to Reichert on Feb. 8, 2023 by stating he agreed "with your line of thinking," and that although he was busy with "Planning Board memos," he would "try to tighten up the draft email to Chet [XYZ] as soon as possible." Id.

17. The next day, Feb. 9, 2023, Corwin expanded his "updated draft" saying

"Here is the latest draft based on Nate [Reichert] and Calvin's comments. If we're all ok with this, it should probably be sent out by Monday at the latest."

AC, Ex. 28. In it, Corwin removed the **"it would be helpful to have the following"** language that Reichert had suggested be **"stiffened,"** and substituted **a mandatory directive** for XYZ to **"provide the following,"** followed by a much longer list than his previous draft had contained of still more business, financial, cost, and engineering items that XYZ was not legally required to be submitted at that time, and that the building inspector **had no right to demand from XYZ.** Again, that list was followed, as shown in the excerpt quoted below, by the extortionate demand that if all the items were not provided, **the building inspector would retroactively revoke XYZ's building permit** effective one month earlier when the 180-period had expired:

"Here is the latest draft based on Nate and Calvin's comments ...

DRAFT E-MAIL TO CHET CLEM FROM CALVIN

* * *

... In order to make a determination [as to whether XYZ's building permit was "expired"] ... **provide the following:**



- Date that building footprint was staked and name of surveyor.
- Evidence that the necessary contractors - including but not limited to general contractor, excavation contractor, site contractor, and concrete contractor--were in your hire as November 29, 2022 and were prepared to perform the work.
- Evidence that a design team was in your hire as November 29, 2022.
- Your construction schedule demonstrating when the work was to have been performed including but not limited to the pouring of the foundation concrete.
- Additional information as to the nature and extent of the work performed, e.g.:
- Confirmation that the statement of special inspections is approved by registered design professional and the inspection agency has verification of notice to proceed.
- Confirmation that the registered design professionals are ready to proceed.
- Copies of contract agreements with description of the project; payment information, the scope of work, and construction schedule.
- Construction schedule including the projects intended completion date, 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.
- Detailed cost estimates.
- Verification of notice to proceed

Without the requested information and verification that you have actively prosecuted the permit **I can not justify the continuance of the permit and [sic will] revoke the permit as of January 13, 2023.**

(emphasis added). The intended effect of this draft was to derail the Project by creating a situation in which XYZ was under permanent threat of having the City building inspector, whose letters Corwin and Reichert were drafting and who they controlled, retroactively declare XYZ's building permit "expired" – which, again, the building inspector **had never done to anyone before in his entire 36-year career.**

18. Over the next several days, this Board's "staff" exchanged and "group edited" multiple additional drafts of the letter they wanted the building inspector to send XYZ, each including the threat that "[w]ithout the requested information and verification," the building inspector would "**revoke the permit as of January 13, 2023**" – which he had no right to do under the Building Code, and Corwin, Reichert, and Brooks had no legal right to be suggesting he do in these drafts. See AC, Exh. 28.

19. Corwin and Reichert's internal email communications clearly show that they knew and intended this letter to stun and demoralize XYZ, and severely disrupt the Project – as evidenced by Corwin's email of Feb. 13, 2023 saying to Reichert, as he forwarding his final draft of the letter just before the it was sent to XYZ:

"Nate - Do you want to take a look at this before it goes out? Keep in mind it has the potential to start WWW III [World War 3] !"

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, we 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." As you know, Section 105.5 of the IBC provides that, "[e]very permit



issued shall become invalid unless the work on the site authorized by such permit has commenced within 180 days after its issuance[.]" **Please be advised that we need additional information in order to make a determination as to whether work has commenced for purposes of demonstrating compliance with Section 105.5.**

At this time, the only information that has been provided is that "[i]nitial excavation within the building footprint began on Tuesday, November 29, 2022." In order to make a determination **we ask that you 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 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 projects intended completion date, 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.

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

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.

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, please don't hesitate to ask.

Sincerely, Calvin Hunnewell, Building Inspector

AC, Exh. 28. Both Corwin and Reichert knew that sending this incredibly disruptive demand notice to XYZ weeks **after** the 180-day period on which they were relying had already ended (on January 13, 2023) was patently unfair to XYZ, as evidenced by Corwin's follow-up email to Reichert and the building inspector two



days later on February 14, 2023 at 9:09 pm, saying he had prepared the “final” draft of the building inspector’s letter to XYZ, and that

“We should really get this out tomorrow ... It’s now over 2 months since we received Chef’s [XYZ’s] letter [advising that construction had been stopped by the pipe obstruction]”

(emphasis added). Corwin, a lawyer, knew that it was clear violation of XYZ’s rights to have waited over 2 months to issue this declaration, and then to make the threats he made in his draft “building inspector” letter to retroactively declare XYZ’s building permit expired – he did it anyway because he was and is biased against the Project, and committed to seeing it fail. So the letter was issued in the above form to XYZ on February 15, 2023, see AC, Exh. 7, **with the fact that Corwin and Reichert had drafted it never revealed, until now.**

20. **XYZ requests that this Board ask itself**, why was its “staff” manufacturing arguments and drafting letters of this kind for the building inspector to send to XYZ in 2023 threatening expiration of its building permit, and prematurely imposing conditions BEFORE construction could recommence that obviously did not have to be satisfied legally until well AFTER construction commenced, as XYZ’s lawyer later pointed out in filings in support of XYZ’s administrative appeal of this “letter.”

21. It was neither Corwin’s nor Reichert’s legal role to be inventing and promoting building permit expiration arguments against XYZ to the building inspector, let alone drafting new and unlawful requirements to impose on XYZ as a “condition” of the building inspector not declaring their building permit expired, and still more premature and unlawful conditions on the resumption of construction. Nor was there any precedent for it, as the building inspector later testified in Court. So why were they doing it? The obvious answer, as these emails clearly show, is that both men were engaged in an illicit effort to derail the Project because they were and are biased against it, despite the majority public support for it in Lebanon.

22. In the months that followed the issuance of the above “permit expiration” letter to XYZ, as Corwin, Reichert, and Brooks had intended, construction on the Project site came to a standstill, XYZ became bogged down in appealing from the unlawful demands in the Feb. 15, 2023 letter which, although signed only by Hunnewell, had been originated and drafted by this Board’s own staff, Corwin and Reichert. The River Park Project then stalled because they, and Brooks and several other involved City officials, would not let it proceed – instead pressing endless “information” demands, and multiple referrals of XYZ to other City departments, that had nothing to do with the building permit, and were intended to kill the Project.

23. As a result, the City’s intentionally-delayed reply to XYZ’s original Dec. 9, 2022 Letter on the stormwater drain obstruction issue, which Brooks finally sent to XYZ eight weeks later on Feb. 2, 2023, was too little, too late – having been deliberately held up for eight (8) weeks by Brooks, who finally began writing it on Jan. 26, 2023 while he was, at the same time, coordinating with Corwin and Reichert on their effort to prepare a letter for the building inspector Hunnewell to sign – so their involvement in creating it would not be known – that Corwin knew would, as he put it, “start World War III” by declaring XYZ’s building permit expired unless their illegal demands were met, and prohibiting construction from recommencing as his emails to those men quoted in paragraphs 9 and 11 above show.

24. At that time Brooks knew perfectly well that XYZ would not be able to address the stormwater drainage issue if the validity of its building permit was in doubt, and he knew it would be placed in doubt shortly after he sent his Feb. 2, 2023 reply to XYZ on the stormwater drainage issue, which it was two (2) weeks later when the Corwin letter – signed by Hunnewell – was sent to XYZ on Feb. 15, 2023. Brooks fully intended this result, noting in a January 26, 2023 email that he sent to Corwin, Reichert and others a few days before his then-draft reply to XYZ on the stormwater drainage issue was sent out, that it could be:



"coupled with the Planning Department's response as to whether the initial excavation work constitutes "starting the building" for purposes of effecting the building permit,"

AC, Exh. 24, which he knew from reviewing Corwin's drafts of Hunnewell's letter to XYZ on that issue would say either that the building permit was "expired," or that it was subject to being retroactively declared "expired" if XYZ did not comply with its unauthorized, illegal, and premature demands, which it could not do, thereby freezing the Project, and could not recommence construction until it complied with still other unauthorized, ultra vires, and premature demands that Corwin and Reichert had simply invented to prematurely impose on XYZ in order to delay its recommencement of construction.

25. To conceal their actions, Corwin, Reichert, Brooks, Hunnewell, and Vincent have repeatedly and falsely blamed XYZ for delays on the Project, and pressed this Board to deny XYZ's extension requests, sometimes in indirect and *ex parte* communications to which XYZ has not been party. Their internal emails show, however, that the information, advice and recommendations that they provide to this Board are not reliable because they have a clear bias against the River Park Project, deliberately tried to sabotage it beginning in early 2023, and want it to fail. There is also still more evidence of this in the internal emails of the Board's "Staff" concerning their attempts to delay the Project commencement **again** in the Fall of 2023, and their effort to attack XYZ's building permit **again** in early 2024, as discussed below.

Part II – 2023-24

26. After attempts to satisfy the City building inspector's demands, and an inconclusive appeal to the BCBA, on August 3, 2023, XYZ attempted to continue construction on the Site by requesting approval from the Defendants to remove the City stormwater drainage pipe whose obstructive presence on the Site had stopped on-site construction the previous year (on Nov. 29, 2022), so it could proceed with construction of the first Project building in that location. See AC, Exh. 13.

27. Specifically, XYZ asked the building inspector in writing on August 3, 2023 "we seek your approval of the temporary relocation of the municipal/NH DOT stormwater line that impacts our property without the benefit of an easement," noting that the NH state agency with jurisdiction over the matter had issued a license for the removal of the pipe, an alternative temporary drainage system had been designed and approved, the proposed excavation contractor was "an approved contractor within the City of Lebanon," and that

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. . . . **Time is of the essence for this decision. I look forward to your favorable response.**

Sincerely,

Chet Clem

Lyme Properties, on behalf of XY2 Dairy, LLC

AC, Exh. 12 (emphasis added).



28. City officials had already reviewed XYZ's plan for removal of this stormwater drainage pipe more than six (6) months earlier after XYZ discovered the pipe on the site on Nov. 29, 2022. They knew all about the issues pertaining to it, and had informed XYZ at that time that "[t]he City has no issues with the use of the alternative drainage pipe alignment on a temporary basis ... as long as the alternative alignment and design is approved by [the state agency]," and other routine information provided, AC, Exh. 32, which it was.

29. Nevertheless, the immediate internal response of Reichert, Brooks and Corwin to this XYZ request was to look for an excuse to delay in responding to it, and thereby further delay the Project, in a way that would not be appealable by XYZ. On the day XYZ's request was received, Reichert emailed the other City officials to discuss this strategy, stating:

Who should send the information about what is needed and jurisdiction? If it comes from Building (Calvin) or Zoning (Nate), **it may be appealable which is a can of worms we do not want to open. I'm game to play in any direction.** If you want me to respond I will. It might be best to have it come from Nick or David.....

AC, Exh. 33 (emphasis added).

30. Reichert then proposed how the City's Department of Public Works ("DPW") should be asked to impose "requirements" from which XYZ would not be able to appeal, and asked if they had or could "create" a "list of requirements" that they could "share with" the DPW for it to impose on XYZ:

We may wish to have DPW re-send the requirements of what they need to do to get the final City sign off and acceptance of the improvement. **I will also argue that the DPW approval, conditions or disapproval is NOT appealable to the Zoning Board** as it is not within the Jurisdiction of the Planning, Zoning or Building Official.

... **Do we have an articulated list of the requirements** that needs to be met that we can share with them [DPW] **or do we need to create one?**

AC, Exh. 34 (emphasis added).

31. XYZ's engineering firm, T. F. Moran Engineers, had already submitted drawing and certifications as to the removal of this decaying pipe in 2022 to the New Hampshire state agency with jurisdiction over the matter, the NH Dept of Environmental Services, however, and the requisite Alteration of Terrain Permit for the work to be done – which the City had in its files – had already been issued in 2022, see AC, Ex. 34, so there were no grounds for the City to impose the "articulated requirements" that Reichert wanted to impose.

32. Nevertheless, Reichert, Corwin and Brooks officials chose to delay the Project again. Although Brooks **had responded 6 months earlier to XYZ's prior request to remove the stormwater pipe after the building inspector had been asked to approve it then**, he now said that:

... 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 are also copied on your e-mail 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 2nd 2023 e-mail, which is referenced in your letter, outlined 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.

AC, Exh. 35. The intent of this “not the correct venue” argument was to continue the strategy that had begun in 2022-23 of unlawfully delaying, obstructing and hindering any effort to XYZ to re-commence construction on the Project – in this case by bouncing XYZ to another department whose restrictions it could not appeal from – in other words, pure delaying tactics.

33. XYZ promptly responded to defendant Brooks’ email on August 4, 2023, pointing out (i) that the City had been copied on all communications with the New Hampshire Department of Environmental Services, which had already granted XYZ the right to perform the relocation of the stormwater pipe as part of an Alteration of Terrain (“AOT”) permit back in 2020, (ii) that XYZ’s engineer TF Moran had already addressed the design issues that Brooks was raising at that time, and (iii) that “the city’s pipe is preventing work on one river park from continuing” and that XYZ ... look[ed] forward to receiving the city’s proposed solution for moving its pipe out of the way so our work can continue.” See AC, Exh. 36.

34. Upon receiving that response from XYZ, Brooks admitted internally that one could assume that “temporary storm drainage measures can be approved ‘under the building permit,’” as XYZ thought, but continuing his delaying tactics, he directed Reichert, Corwin, Vincent, Hunnewell and others to nevertheless consult with “DPW/Engineering,” Exh. 37, fully intending that, as Reichert had suggested to him, that they would then “share” with DPW “an articulated list of...requirements” that they would “create, see Exh. 34, which he knew at the time would be the perfect opportunity to impose further delay on XYZ.

35. Accordingly, on Aug. 8, 2023, Corwin contacted a DPW engineer, Rod Finley, and explained to him the plan to have DPW impose new conditions and requirement on XYZ, and stating

Rod – I just realized we have a meeting with DPW this morning at 9:30. Let’s discuss River Park then. It would be good for Nate [defendant Reichert] to be part of that discussion anyway (and David [defendant Brooks], if he’s able to attend)

Finley, who knew that the plan was to delay XYZ, and impose unauthorized “requirements” on it, responded to Corwin via email with the statement that he would have to meet later in the day, because:

I have Active Shooter Training from 9-11:30 (which may be timely training for Riverpark management).

AC, Exh. 38 (emphasis added).

36. Thereafter, at a delayed meeting on the Project site on August 16, 2023, XYZ met with City engineers and again explained the plan for removing the temporary stormwater drainage pipe in detail, and the history of XYZ’s effort to remove the pipe. Those engineers did not object, XYZ provided them with more information later that day, see AC, Exh. 39, and the City already had the design of the proposed stormwater relocation, and a drawing of it from TF Moran, as part of the Alteration of Terrain (“AOT”) Permit that the New Hampshire Department of Environmental Services, which had jurisdiction over the matter, had already issued to XYZ, and which XYZ had previously sent to the City Official Defendants Vincent and Brooks, and the City Engineer Rod Finley, back on June 22, 2022. AC, Exh. 40.

37. The City clearly did not need, and was not legally entitled to, any more than the above. **But Reichert, Corwin and Brooks still refused to grant approval for XYZ to relocate the City’s pipe, and continued to constantly ask for “more information” purely to delay the Project** – with the result that XYZ was effectively prevented from recommencing construction activities on the site in 2023. Nevertheless, in the Fall of 2023, XYZ proceeded with all the Project development and engineering efforts it could in preparation for restarting construction on-site as soon as the Defendants would allow them to do so – including rebidding the Project, lining



up subcontractors, working with two civil engineers, VF Moran and VHB, and spending over \$500,000 on project development costs, project materials, etc., and entering into contracts for another \$300,000 worth of additional preparatory work necessary to recommence the Project the following Spring.

38. On January 5, 2024, XYZ notified City officials, including Hunnewell, Brooks, Reichert, Corwin, Vincent and others that it was engaged in the above activities, and was actively pursuing construction of 1 River Park, noting that the City's own Building Code Board of Appeal ("BCBA") had affirmed on July 11, 2023 that its building permit was valid and "active," and explaining

"... 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 11th 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."

AC, Exh. 16.

39. At that time, Corwin, Reichert and Brooks knew that the building inspector Hunnewell **had specifically told XYZ earlier in the year, in a letter he delivered to XYZ on March 23, 2023**, that this kind of off-site "preparation work" "with [its] construction partners" **constituted "commencement of work" by XYZ under its Building Permit**. See AC, Exh. 9. They also knew that XYZ had been following this directive in pursuing off-site Project development activities throughout 2023, as communicated to the staff on August 3, 2023.

40. Nevertheless, they responded to XYZ's above Jan. 5, 2024 letter by immediately conspiring to attack XYZ again with another bogus notification that its Building Permit had supposedly "expired" – all to further their long-time unlawful objective to obstruct, delay and "kill" the Project. Specifically, two days after they received the above-quoted Jan. 5, 2024 letter from XYZ, Hunnewell emailed Reichert telling him

"If we're going to act on this, we should probably try and do so quickly."

AC, Exh. 45. The Defendants then had a meeting on the subject at City Hall, after which Reichert reported to Brooks that **"We will be working on a response to Chet's [XYZ's] letter over the next days."** AC, Exh. 46 (emphasis added).

41. On January 12, 2024, Brooks responded deceptively to the XYZ email, telling XYZ's representative Chet Clem simply:

"Thanks for your letter. We will get back with you next week. If you have any questions please feel free to contact me,"

AC, Exh. 46. In fact, however, Brooks, Corwin, Reichert, and other city officials had already decided to try to declare the Building Permit expired, and had already begun drafting proposed notice letters to XYZ challenging whether it had met the 180 day requirement. The first draft of that letter, prepared on January 12, 2024 to be sent to XYZ, was a suggestive information request, stating only that:

Thank you for your letter dated January 5th 2024. As a reminder, the issuance of the permit was and is a license to proceed with the work.

The permit becomes invalid under 2 distinct situations, both based on a 180 days. The first of which the city has granted several extensions, due to COVID-19, that is the



work on the site authorized by the permit was not commenced within 180 days of the permit issuance. **The second situation is when the authorized work on the site has stopped for 180 days.**

We request you as the applicant provide documentation demonstrating code compliance to the second situation noted that work has not been suspended or abandoned for a period of 180 days 2015 IBC and commentary section 105.5...

AC, Exh. 49 (emphasis added). That draft was then revised by Corwin, however, on the same day, **to go much further**, and to present an argument that the work at River Park appeared to have stopped, and to overtly threaten to declare the Building Permit expired unless XYZ presented documentation that the work had not been suspended. Corwin's revised draft read as follows:

Dear Mr. Clem:

Thank you for your letter dated January 5th 2024. As a reminder, the issuance of the permit was and is a license to proceed with the work. 2015 IBC and commentary section 105. The Permit becomes invalid if the authorized work on the site has stopped for a period of 180 days.

Per my letter to you dated March 24th 2023, I acknowledged that work pursuant to building permit number 2016-00293 had commenced as of November 29, 2022. In your letter dated December 9, 2022, you wrote that, "work has now ceased," although you did not provide a specific date as to when that occurred. Assuming the work ceased on the date of your letter, then work would have needed to re-commence by no later than May 9, 2023. If your appeal to the Building Code Board of Appeals [sic] stayed the 180 [sic day] period – which is not the city's position – then the 180 day period would have begun as of the date that the ZBA dismissed your appeal on July 11, 2023, and work would have needed to recommence no later than January 11, 2024.

Based on a drive-by inspection of the property, **it does not appear that any work has proceeded** in some time. We request that you, as the applicant, provide documentation demonstrating that work recommenced sometime following December 9, 2022, and was not suspended or abandoned for any period longer than 180 days. 2015 IBC and commentary section 105.5

If documentation demonstrating that work has not been suspended or abandoned for any period of 180 days following December 9th 2022, **is not or cannot be provided by February 15th 2024, I will issue a determination that the permit is invalid** and will identify what is needed in order to have the permit reinstated.

Sincerely,
Calvin Hunnewell
City of Lebanon

AC, Exh. 49 (emphasis added). In circulating this draft for further comments on Jan. 12, 2024, Corwin said to Hunnewell: "I made some edits your letter and saved it as a version 2 (attached and also saved in the River Park file). Please let me know what you think." AC, Exh. 50.

42. **Corwin and Reichert continued the ghost-writing this draft of their proposed letter for the building inspector to send to XYZ the following week**, and on January 16, 2024, Corwin forwarded a further revised draft to Reichert and Hunnewell, stating in an e-mail to Reichert at that time:



"Nate -- Regarding the attached letter from Chet Clem -- here is Calvin's draft reply, which I'm thinking he can just send via e-mail."

AC, Exh. 51 (emphasis added). That further "draft reply" from Corwin **removed the discussion in the previous draft** admitting that XYZ's 2023 appeal to the City's BCBA had stayed the 180 period for commencing work under XYZ's building permit, such that it would not have commenced until July 11, 2023, in which case according to the previous draft, "work would have needed to recommence no later than January 11, 2024." **Instead, this new draft affirmatively argued only that the work had "ceased" much earlier, on Dec. 9, 2022, making the end of the 180-day period run only from that date**, and demanded proof that "work on the site recommenced" during that earlier period:

Dear Mr. Clem:

Thank you for your letter dated January 5, 2024. As a reminder, the issuance of the permit was and is a license to proceed with the proposed work. The permit applicant is responsible for code compliance. (IBC Section 105.4) Once issued, the permit become invalid if the authorized work on the site has stopped for a period of 180 days. (2009 IBC Section 105.1).

Per my letter to you dated March 24, 2023, I acknowledged that work pursuant to building permit #2016-00293 had commenced as of November 29th 2022. In your letter dated December 9th 2022, you wrote, work has now ceased, although you did not provide a specific date as to when that occurred.

I request that you, as the applicant, provide documentation demonstrating the authorized work on the site recommenced sometime following December 9th 2022, and was not suspended or abandoned any period longer than 180 days. 2015 IBC Section 105.5. **If such documentation is not provided by February 15th 2024, I will issue a determination that the permit is invalid** and will provide appropriate steps to have the permit reinstated.

Sincerely,
Calvin Hunnewell, Building Inspector

Exh. 51 (emphasis added).

43. Corwin and Reichert knew at this time that for XYZ to get a new Permit reinstated would have required it to pay another \$90,000 permit fee, and satisfy a whole series of other requirements again, pushing their Project back to square one, and inflicting enormous harm on XYZ. And this was exactly their intent -- despite the fact that they knew XYZ was desperately trying to move the Project forward, and had repeatedly tried to re-commence construction, only to be stopped from doing so by the Defendants themselves.

44. The Defendants also had actual knowledge at the time that this course of conduct on their part was malicious, illegal, and wrong. This was clearly evidenced by Corwin's admission made, at the end of his above-referenced Jan. 16, 2024 email forwarding his above "draft reply" to the Hunnewell and Reichert, when he said to them:

what do you think? Also, should we run by legal counsel? **This response could very well be the foundational document in what becomes a much larger lawsuit ...**

AC, Exh. 51 (emphasis added), acknowledging that XYZ would have grounds to sue the City over this latest bad faith, "without warning" attempt to declare the Permit expired.

45. During this period, Corwin and Reicher knew full well that XYZ had not been allowed to resume construction on the site, and that it could not do so because it could not proceed due to the City's stormwater



pipe still not having been cleared by the City to be removed. They also knew that XYZ would appeal their attempt to invalidate the Permit, as evidenced in part by the fact that on January 18, 2024, defendant Corwin wrote to the --stating:

We're getting ready to deem the building permit expired and the Clems [XYZ] are going to argue that they couldn't proceed because of the city's stormwater pipe. We don't believe that argument has any merit at all, but **it's most likely to be litigated -- and it will certainly be a major issue before the building code of appeals.** So we need to understand where things left off."

AC, Exh. 40 (emphasis added).

46. In recognition of this fact identified **Corwin himself** dramatically altered and expanded the draft letter, and generated a new draft on January 23, 2024, **which omitted entirely giving XYZ the chance to respond** with documentation proving that the Permit had not expired. Instead, Corwin's new 3-page draft letter **first** abruptly declared, at the outset, that the Building Permit **had already "expired"** and was **"invalid,"**

"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 2009 international Building Code ("IBC"), provides as follows:

105.5 Exploration. 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."**

AC, Exh. 52 (emphasis added), and **then** Corwin added the following **extremely lengthy discussion** (reduced in type size below due to its length) purporting to set forth a "history" of the River Park Project, and including one subheading entitled "*Suspension or Abandonment of Work,*" which in all important respects was false, misleading, and deliberately slanted by Corwin to support his argument that his declaration that XYZ's building permit had "expired" was somehow justified (which it was not, as the NH Court later held in ordering the permit reinstated):

[Continuation of Corwin Draft]

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 , 2016. The building permit was issued on December 31, 2019. as Building Permit #2016-00293. In response to a written request dated December 9, 2021, from Lyme Properties, a 180-day extension of Building Permit #2016-00293 was approved by memo from the Building Inspector dated January 18, 2022.

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, this office found that the COVID-1 9 pandemic represented adequate justification to grant your request and, therefore, I approved an extension of the Building Permit until January 13, 2023. In an e-mail from the Planning & Development Director sent on May 27. 2022, you were advised



that "past and imminent changes to the State Building Code as well as other local regulations, may impact the City's ability to grant further extensions beyond this one."

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." 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, in a letter dated February 15, 2023, I asked you to provide additional information needed to determine that work had commenced for purposes of demonstrating compliance with Section 105.5 of the 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, I made a determination 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, I also noted that certain additional steps would need to be completed in order to maintain activation of the building permit without jeopardizing the 180-day allowance from November 29, 2022.

On April 10, 2023, you e-mailed a response to my 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 that no decision had been made in the March 24, 2023 letter.

Following the dismissal of your appeal, you wrote to me 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".

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:

- 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 7/11/23 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 provide a specific date as to when work was suspended. Assuming the work ceased on the date of your letter (i.e. on December 9, 2022), then work would have needed to re-commence by no later than May 9, 2023. If you believe your appeal to the Building Code Board of Appeals stayed the 180 period, then the 180 day period would have begun as of the date that the ZBA dismissed your appeal on July 11, 2023, and work would have needed to recommence no later than January 11, 2024. However, as noted above, you have



indicated on multiple occasions that work has been suspended since at least December 9, 2022. Based on prior drive-by inspections of the property, it appears that work has indeed been suspended since well before July 11, 2023, i.e. for a period of greater than 180 days.

I also note that there has been no effort to address the items identified in my letter of March 7, 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 security agreement
- Providing a construction schedule to the City Engineer for purposes of retaining a thirdparty 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.

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 my 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.

If you have any questions, I can be reached at (603) 448-1524 or by e-mail at Calvin.Hunnewell@lebanonnh.gov.

Sincerely,
Calvin Hunnewell, Building Inspector
Attachments

Id. (AC, Exh. 52).

47. In circulating this last lengthy draft of this 2024 “building permit expiration” letter, Corwin, as he had done with his 2023 draft “building permit expiration” letter to XYZ, told the Reichert, Hunnewell, and Brooks that he had prepared it for Hunnewell to sign, and that they should review and give him comments on it:

“All - I’ve prepared the attached draft letter to Lyme Properties [XYZ’s development agent]. Please feel free to edit or let me know what edits you’d like me to make. Once we have a draft ready, we can loop in Christine Fillmore [the City’s lawyer], and ask her to review.” If we should get together to discuss, please let me know and I’ll schedule a time to do so. Tim [Corwin]

AC, Exh. 52 (emphasis added). Brooks responded on January 24, 2024 stating as to the draft:

“[o]verall, this is very good. I have offered some suggestions in the attachment regarding the cover letter.”

AC, Exh. 54 (emphasis added), and his “suggestions” included **that the Building Permit itself be marked “EXPIRED”** before being sent with the letter:

Comment [TIC] I do not have a copy of the building permit yet (**nor have we marked the building permit “expired” as I’m suggesting.**)”

Id. (emphasis added).



Exh. 55. And thereafter, Brooks' immediate superior, **the City Manager Shawn Mulholland**, who was fully aware of and directed what Brooks, Corwin, Reichert, Hunnewell and Vincent were unlawfully doing to XYZ, **deliberately contacted the commercial real estate broker representing XYZ's major intended commercial tenant in late 2024**, and falsely told that broker that XYZ had no Building Permit, when in fact it did, and the matter was still being adjudicated in Court, which ruled a few weeks later that XYZ did have a valid Building Permit, and made other false, misleading and damaging statements to the broker suggesting that XYZ's Intended Tenant, instead of completing the process of leasing space at the building in River Park that XYZ had a permit to build, should relocate to the City's Airpark TIF District, where Mulholland said the City would be the developer of that site and wanted to work with Intended Tenant, or should consider another site "over behind the Hilton Hotel" **being developed by a different developer other than XYZ.** AC, ¶¶ 226-237.

52. When Corwin, Reichert, Brooks, Vincent, Hunnewell, and Mulholland took the actions described above in 2023-24, and arranged for XYZ's building permit to be declared "expired" and invalid in February of 2024, with no prior notice to XYZ, they all knew that Hunnewell had previously represented to XYZ, in a letter he wrote to XYZ on March 24, 2024, that off-site engineering and Project development work done by XYZ on the River Park Project **"constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293."** AC, Exh. 9 (emphasis added).

53. They also knew that XYZ had relied on that representation by Hunnewell, and had been thereby assured in late 2023 and early 2024 that its extensive off-site engineering and Project development work, especially when combined with its actions in starting construction only to be stopped by the City drainage pipe issue, more than satisfied the 180-day commencement of work requirement of XYZ's building permit – as the New Hampshire Superior Court later found those XZ actions did in *XYZ Dairy v. City of Lebanon*, Docket No. 215-2024-CV-00393 (Grafton, NH Superior Court)

54. Nevertheless, in a shocking departure from their public duties and obligations, the "staff" of this Board, Corwin, Reichert and Vincent, in concert with other City officials like Brooks, Mulholland and Hunnewell, deliberately planned, drafted documents for, and conspired, to wrongfully declare XYZ's building permit expired twice, once in 2022-23, as described in ¶¶ 1-25 above, and again in 2023-24, as described in ¶¶ 26-52 above – and to publicize that they had done so, even though the building inspector, as he later admitted in Court, had never done so before in his entire 36-year career. They did so because they are severely biased against the Project, and are committed to obstructing and delaying XYZ's efforts to resume construction. This is a serious flaw in the processes of this Planning Board's consideration of the River Park Project, and it appears that the efforts of these Planning Board staff members to kill the Project are continuing.

Part II – 2025

55. Specifically, earlier this month, Leigh Hays, the successor City building inspector who now reports to Corwin and Reichert, delivered yet **another** letter to XYZ incorrectly claiming, a third time, that XYZ did not commence construction within the meaning of the building permit's 180-day requirement when it excavated the entire foundation area of the site for Building No. 1 last year, and did further on-site physical work on the Project in January of this year.

56. This "claim" is based on a groundless and misleading argument in Hays' letter that is very similar to the groundless arguments that his superiors Corwin and Reichert drafted and put into the final building "permit expiration" letters they wrote for Hunnewell to send to XYZ in 2023 and 2024. XYZ has responded to Hayes' letter denying its claim that XYZ's building permit is expired, and explaining why, but in case he adheres to that mistaken claim, XYZ has also requested a further 180-day extension of the building permit.

Conclusion

Under all of the above circumstances, and on the basis of all of the above-cited evidence, XYZ respectfully submits that, as stated at the outset of this submission, the "staff" of City officials on which this Board has been



relying for factual information, legal opinions, and recommendations concerning the River Park Project, specifically Corwin, Reichert, and Vincent, are personally biased against the Project, and have been engaged for years, along with several other City officials, in a joint effort to delay, obstruct, and derail the Project, using carefully constructed but legally insupportable “cover stories” at every turn to conceal their efforts. It is this conspiracy, and not any fault of XYZ, that has delayed and obstructed the progress of XYZ’s work on the Project since 2022.

For this reason, XYZ is asking this Board, as part of its responsibility to ensure that the land use regulation process in Lebanon is fair and impartial, to reconsider and grant XYZ’s request for a two (2) year extension of all phase deadlines – responsibly viewing that request in light of the previously concealed facts concerning the pre-existing extreme bias of the Planning Board’s staff against the Project, as proven by their own internal emails recently produced by Court Order, available on the public record as exhibits to XYZ’s Amended Complaint in *XYZ Dairy v. City of Lebanon, supra.*, and submitted herewith.

We remain available to discuss these issues with this Board at its earliest convenience, and in any event at the hearing on June 9th 2025. Thank you.

Sincerely,

Lyme Properties 2, LLC
XYZ Dairy LLC

A handwritten signature in blue ink that reads "David Clem". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Clem".

By: David Clem
Authorized Officer

City of Lebanon, Planning Board Meeting - June 09, 2025

SPEAKERS

Speaker 5, Speaker 8, Speaker 7, Speaker 4, Board Member Speaker 10, Speaker 6, Speaker 13, Speaker 2, Andrew Faunce (PB Chair), Kathy Romano (PB Member), Speaker 1, Speaker 11, Speaker 3, Speaker 12, Speaker 9

Andrew Faunce (PB Chair) 00:00

Amended on September 9, 2019 [PB2018-34-SPA]

Andrew Faunce (PB Chair) 00:09

PB2025-25-EXT which was postponed from May 12, 2025

Kathy Romano (PB Member) 00:15

and I'm recusing myself.

Andrew Faunce (PB Chair) 00:17

Kathy Romano is recusing from this particular hearing item.

Andrew Faunce (PB Chair) 00:26

Good evening, um just for a level set, and before we get started, I just want to introduce what our what our process is for this evening, because the request for extension follows a March 17, 2025 ruling on the same matter, the Applicant has the burden to present at an initial, limited public hearing some new material fact or change in circumstance the majority of the board determines by vote to be sufficient to open a new hearing on the same request. That's where we're that's where we're heading to tonight.

Andrew Faunce (PB Chair) 01:03

I'd also like to offer just the briefest of history. On March 17, 2025 the Lebanon Planning Board granted a 1-year extension of all deadlines that applied to the River Park project. The Superior Court's decision to grant 11 months and two days of injunctive relief was both the necessary new material fact cited by the Board to justify its rehearing of that 2024 extension request and the basis of its decision to approve a 1-year extension of all phases, restoring the originally agreed upon amounts of time for all phases of the project.

Andrew Faunce (PB Chair) 01:35

A majority of the board perceived no case had been made by the applicant to support a 2-year extension.

Andrew Faunce (PB Chair) 01:40

The condition of approval in the September 9, 2019 Notice of Action, which is a foundational agreement of record for the project, is that an updated phasing schedule shall be provided with any extension request. And while XYZ did not provide an updated phasing schedule in its most recent extension request, the board expedited its March 17, 2025 decision by making the subsequent submission of that schedule within 30 days a condition of approval. In doing so, the board relaxed a requirement of that 2019 governing agreement to the applicant's benefit.

Andrew Faunce (PB Chair) 02:12

While notified of the board's decision in the customary fashion, XYZ did not provide the requested information, effectively voiding that one year extension that the board had approved, and additionally, XYZ did not file an appeal within the allowable 30 day period, which voided the opportunity to contest the Board's decision on its merit.

Andrew Faunce (PB Chair) 02:30

So consequently, for tonight, the first decision to be made by vote of the board is whether the applicant has offered a new material fact or change in circumstances to warrant a rehearing of the previously settled matter.

Andrew Faunce (PB Chair) 02:55

We are first determining whether we are holding a hearing, by virtue of holding a limited public hearing to determine what new material fact or change in circumstance,

Board Member ? 03:05

and that is between us?

Andrew Faunce (PB Chair) 03:05

that is through an interaction with the applicant to learn more or ask questions in order to learn more about materials that the applicant has provided for our consideration.

Andrew Faunce (PB Chair) 03:19

To that end, and perhaps we should break for introductions, because we kind of kind of skipped over that part. Appears that we have Mr. David Clem representing Lyme Properties and XYZ, and it looks like your attorney is with you this evening.

David Clem 03:33

Yes. This is Robert Kaler. This is David Clem speaking.. I'm sorry, thank you. My name is David Clem. I'm the manager of XYZ dairy, and speaking on behalf of XYZ dairy tonight, is Attorney Robert Kaler.

Andrew Faunce (PB Chair) 03:59

Thank you. I go back

Richard Ford Burley 04:06

to I have a procedural question. Is further consideration a thing,

Andrew Faunce (PB Chair)04:15

my introduction speaks to that distinction.

Speaker 3 04:17

Okay, so the answer is no,

Andrew Faunce (PB Chair)

correct.

Richard Ford Burley

So this is a new application to look for it for a two year extension, and whether we hear it hinges on whether something new,

Andrew Faunce (PB Chair)

right, correct

Richard Ford Burley

has changed, okay,

Andrew Faunce (PB Chair)correct,

Andrew Faunce (PB Chair) 04:39

which is a beautiful segue into the first question that I have, if we are ready to begin,

Robert Kaler 04:46

I just, I just need one

Robert Kaler 04:50

second.

Andrew Faunce (PB Chair) I don't want to I don't get ahead of myself

Robert Kaler 04:52

want to get presentation slides to show.

Andrew Faunce (PB Chair)05:08

I will note, as just an attempt at a brief bit of levity, that it would appear that the applicant has well used his 30 days betwixt the last opportunity to be in front of the board, and tonight, that was rather a significant package of information that you provided, and it certainly captivated my attention for many of those days between meetings. But moving to the question that I have for your new extension request, are you presenting as a new material fact that you've added tortious interference and civil conspiracy to the legal filing for the court's consideration in 2026 and in preparation for tonight's hearing that you've

presented a series of city staff emails in your interpretation of their intent as evidence to support those claims. Do we have an understanding of what it is that you're offering us?

Robert Kaler 06:13

Well, what's already been offered is the letter that Mr. Clem submitted. I propose to add some new information that justifies reviewing

Other speaker 06:20

press the button so the green light comes on your mic. Oh, sorry, thank you.

Robert Kaler 06:27

I propose to present some new information that justifies reconsideration of it and not proposing to go back through the letter or amendments things. This is new information, and I want to start just discussing recent events since the submission that raised new issues

Andrew Faunce (PB Chair) 06:48

Before we before we go there, if I may, I do have a couple of other framing questions to ask.

Robert Kaler 06:54

Could I could I make this presentation on the issue that you first raised?

Andrew Faunce (PB Chair)

Okay

Robert Kaler This new information begins with the adjustment to the building permit. And the reason it's new information relevant to the request for extension is that XYZ needs the new extension to address something that's happened with the building permit. There are three things. This is the first one. The building permit as the panel, as board knows, in 2019 contained a statement of structural special inspections, as they often do pursuant to the building code. This is from the 179-page building permit file of the city that's been produced to us. Building Permits contain all kinds of information that's incorporated into the approvals. It contained a statement of special inspections and identified the geotechnical engineer of record as McPhail Associates. This was a condition of the issuance to have a geotechnical person, because they have to look at various categories of aspects of the site, one of which was soils. And they had in the building permit, as required, the normal table from the International Building Code to verify excavations are extended to proper depth and have reached proper material. The proposed excavation had actually an application for the area 220 feet by 165 by 15, which is the footprint of the new building. And Mr. Clem recalls that he would have wanted to apply for excavation separately, but he was told no. Put it in with the building permit. So it's part of the building permit, and it identifies the area to be disturbed. It identified, by way of a drawing, the outline of the building that was to be excavated. And construction work began on that in January. And as you can see, this is the drawing from the building permit that regulates excavation. And of course, excavation requires a permit separately. In this case, it was in with the building permit. And these are photographs of the commencement of construction in January and the outline of the foundation excavation. 40 years ago, I worked on an MBTA case in Porter square. The man was killed in an open cut excavation. He

was buried just up to his waist. Excavation is part of construction, and it's a very dangerous part of construction, and it's a serious part. It was begun by XYZ in January, and the photographs prove it, the equipment's there and the outline matches what the building permit had. So the excavation was stopped in January by a email to the contractors saying, we need \$100,000 performance bond and temporary easement. XYZ's position is that's illegal. They can't do that, and it was never mentioned before. But all of this new information has just come to our attention in the last couple of weeks. And what also happened is that in early May, Mr. Clem wrote to the building inspector and said we recommenced construction at River Park earlier this year, in January. He explained that he started excavation on the basement, pursuant to specific references in the building permit authorizing that excavation. I've got skyscrapers settling in San Francisco because the excavations weren't done properly. It is part of construction of a building. The substrate supports it. The response was, this was only a couple of weeks ago. From the building inspector I disagree from the building inspector, I disagree with your statement that you commenced construction. And the argument was that the state appeals board had found that you need physical acts. Well, that's true. You need physical acts on the site. But then he claimed the activities in your letter are examples of preparatory work. They don't constitute work regulated by the building code. That's wrong. He went on to say your statement that not started excavation. He asked some questions about it never came down to the site. And said, I can't reasonably consider this excavation to constitute starting work on the building permit. And I'm sure you would agree that if you dug a foundation Hall while lacking a permit, I wouldn't be able to cite you for working without a permit. He's wrong. New Hampshire law says you can't have an excavation without a permit. And this isn't digging a hole. This is not a game. This was an excavation with heavy equipment. There's references going back commencement of construction in New Hampshire law includes excavation under the New Hampshire statutes. This is what has been XYZ dealing with in the last few weeks. We're going to deal with this. It'll be set aside, either the court will set aside it on a contempt motion, or it'll be set aside administratively in an appeal. I'm trying to find a way out of this. I'm going to say at the end. But in any event, the issue here is that the building inspector at one point, thought it was just I got a check to see whether it's required by the building permit. The argument that you only need a digging a hole is not enough. Comes from a couple of years ago as Mr. Corwin and Mr. Reichert having an exchange about the building permit will expire and so on. But digging a hole isn't enough. Well, excavation with heavy equipment is not digging a hole. It's what you saw in the photographs and back in 2023 it was either mister Corwin or Mister Reichert noted in his draft that of a letter that can we provide a fuller explanation of why excavation work doesn't constitute work under the building code? I took a quick look at the copy of the IBC, and couldn't find any, because there isn't any. I worked in construction cases for 40 years. Excavation is part of the work. But the difficulty is that the attempt to terminate this permit in this way, and they're not going to apply for a new one. That has all kinds of implications. It isn't going to happen, but we are going to correct this, but it's going to take time, hence the need for the extension, and as a practical matter, it's also a continuation of what Mr. Clem claimed in his letter, but it's I'm trying to find a way out of this, and it starts here with an extension. Whether you folks realize it or not, I'm trying to help you.

There's another major problem that requires the extension, and that is that the planning board has been acting as it's, as it should and must, in a quasi judicial capacity on these XYZ applications and but it's not acting impartially or independently due to its reliance on conflicted legal advice. It's required to be just as impartial as a court or jury, but the board has accepted and relied on legal advice provided by

Drummond Woodson, that's Mr. Decker and Christine Jones, which has been opposing XYZ in court. It would be as if any one of you sued me had your own lawyer, and my lawyer was also the lawyer for the judge. It's a conflict, and it's been talked about for years in zoning manuals. This is just evidence from the city's recent production that Christine Fillmore is communicating and representing the city in connection with matters that related to an appeal that Mr. Decker is providing advice to the board. He's counsel in the lawsuit between XYZ and the city that relates precisely to the same matters in front of this board. This isn't just a conflict, it's an obvious one. I'm not saying that you can't never talk to city staff. There's lots of cases where there's nothing that's opposed. And I've been representing the MWRA, the Mass Turnpike Authority, the convention center. You know, there are informalities, but there comes a point where you start skating. On thinner ice. It's like on a pond going too far. There comes a point where that has to stop. And it stopped a long time ago. In this case, it should not have been the city attorney providing advice to the planning board, and it was going on all the time. He they Christine walked out at the November 12 hearing with the board. And what happened? What have the courts said about this? They've said very clearly that this kind of thing is not permitted. It just presents insurmountable due process problems. Imagine how any of you would feel if your attorney - This is from the disqualification of attorney zoning manual. I mean, there's nothing new in this world, except the history we don't know. This has happened before. It was encountered recently in a case involving West Bath, the court noted that the fact the planning board's attorney also represented the town of West Bath created an obvious conflict of interest. And at the same time, in ...

Robert Kaler 16:04

I pause on the screen, share. It's a classic conflict, because the assumption is, it can only be inferred that the attorney assumed and intended from the outset that the board would act in favor of the attorney's other client. In this case, the city, and it has, you can't do that court, a court generally defers. But this is a court in Maine, John Johansson v City of Bath saying a court can't permit a violation of a party's constitutional rights. Procedural and substantive due process rights were violated when the board permitted opponents of the application to help formulate the findings of fact. We've seen that too. Counsel writing findings of fact for the panel, decisions from other jurisdictions I talked about in Maine. You know, I heard the argument. Well, gee, that's not New Hampshire law. New Hampshire, like Massachusetts, like every other state, looks to the law of other jurisdictions on issues like this. And here it's, it's a, it's a conflict of interest that has prejudiced XYZ, and I see it looking back two years.

And there's still another equally serious problem, you know, involving the board member, Mr. Faunce. The statute is clear. It says no member of the Planning Board shall participate or sit on a hearing if they have a direct interest, or if that person would be disqualified for any cause to act as a juror. I do a lot of jury I've done a lot of jury trial work, and I know about disqualification of jurors. We had an exchange Mr. Faunce I mean, it's I'm left with this. This is an exchange back in November that Mr. Corwin had with you Mr. Faunce about drafting notes for a draft motion for consideration, and that was a motion to deny the extension. And what's down at the bottom here is testimony discussed during deliberations. That's testimony from the lawsuit in which Decker was representing the city, and we took a look at the expanded version of it, and this is the testimony that you included in your email. And one planning board member can't do that and not wind up having to recuse himself or herself. I mean, for example, in this part of the testimony you were citing, you mentioned basis for the Board's decision. Testimony and evidence offered does not support the case that the circumstances that's the conclusion that this panel

reached. Every decision that this panel has reached in the last year and a half is tainted. It's questionable. Whether it applies in other cases, I don't know. Whether those applicants had adversity. I mean, you had legal counsel being the same, but in this case, we have a situation also, where among the documents that have just been produced, I was produced 3000 documents this weekend. Many of them would jump, which means I read 3000 documents. And among them were this one. I mean Mr. Faunce and Mr. Reichert are on a West Lebanon Revitalization Committee. Fine. They met in December, except that one of the items that was noted in the notes, and I think it says, Mr. Faunce, these are, these were your memories, was that we've got to urgently investigate options to encourage or enforce site condition cleanup at River Park. Okay, fine, but then also investigate taking action as necessary to preclude the potential for sale, which it's an alternative development, which its zoning allows? Well, this is a private property owner who's appearing in front of the planning board. It's XYZ. They own the property. They have the right to sell it, and a member of the board, in fact, the chairman of the board is participating in a group meeting where the idea is to take action to preclude the potential for sale, even though the zoning allows it. I mean, the procedure in these instances is that the board or panel takes a non binding vote themselves as to whether someone recuses themselves. I'm just getting this information. Try to understand the position that I'm in. It's my obligation to advocate as effectively as possible for the client that I have and to use the information that I have available to me to as quickly as I can. And I haven't had a lot of chance to look about, think about this, but this makes it look to me as if at least one member, Mr. Faunce, would have to recuse himself from a proper vote, and that as a practical matter, probably from other matters involving River Park.

There have been cases on this issue. I mean, this is the New Hampshire provision. But this case law on it in New Hampshire, *Winslow v Town of Holderness*, the planning board in this case was required by statute to notify all interested parties, and that's what you're doing. And I mean, there's no question this is a quasi-judicial proceeding, but this issue was the principal question that the New Hampshire Supreme Court dealt with. Was whether the decision of a planning board is made invalid by the participation of a board member whose earlier remarks indicate he prejudged the case. In other words, does Mr. Faunce vote have to have, have, have changed the result of the vote?

Richard Ford Burley 21:05

That does say before he became a board member, though this was while he was a board member, that that one does.

Robert Kaler 21:09

Yes, but it doesn't exclude members. We're not sophists after all, it doesn't exclude when it comes up after you're a board member. And in this case, they said, look, we've got to address the disqualification. You're supposed to be like a judge, as to a juror, has to be disqualified. And the answer that they came with is no, the entire decision is out because we we're not convinced that the one person who you're recusing didn't have an impact on the rest of you. And given the exchange that we saw in the emails that Mr. Faunce had with Mr. Corwin about it, I'm not saying people necessarily fully understood what they were doing. I don't know whether they did or didn't, but it's wrong. I mean, it's it's really wrong. And 'the conclusions are more or less the following: Mr. Clem's letter. It is what it is, and I'm not going to say any more about it. There's no need for me to say any more about it. It happened, but the past is prologue here, the building inspectors attempted to terminate the permit. That's bad. If I go back in front

of the I mean, he ordered the permit to be reinstated. It would only take one minute of explanation for me to tell him that somebody saying that this isn't the commencement of construction is contemptuous. They're just trying to end around your order. Or I could do an administrative appeal and get it set aside. Too many people have died in excavations and construction like that, not to have people realize it's the start of construction, especially when the process for excavation was laid out in the building permit in 19 and people have had the building file. I've got emails saying that the building file was sent to Hayes. I don't know how he signed that letter, but whoever had him do it, or if he did it himself, I haven't seen the drafts, but I'll get them eventually. But he's he's wrong, and the premise seems to be, well, because you could have done a trench without without a permit. That means that's crazy. Number one, you need a permit for excavation, as I've said, and then the planning board's reliance on conflicted information and improper ex parte communications with city officials have just tainted the prior decisions. I don't know to what extent it affects other cases. These are substantive due process issues, procedural due process issues. I mean, I was 20 years general counsel for a law firm of 100 lawyers in three cities. I had ethics and conflicts issues every day. This one wasn't even close once, once they were once. Mr. Decker and Miss Fillmore were involved. Their firm was involved in the litigation with XYZ. There's no way they should have been advising you, not at all, but they did, and that's tainted everything that's happened.

So we need reconsider. We need time for reconsideration of the decisions. You mean. You can't tell me that this information doesn't we can't tell ourselves that this information doesn't require a total reset and and for all of these reasons, XYZ's request, you know, should be granted, and I'd like to have it granted. Now I'm going to suggest get independent counsel. This Planning Board is entitled to and needs independent counsel even before you make decisions on what I say, although I argue against myself. But, you know, I'll invite questions. And I'll just conclude by saying you can assume that I know a great deal more about this overall situation, the city of Lebanon, than it may appear. I'm trying to help you. You just don't know it. Grant the extension. It's not going to hurt anybody. It gives us breathing room. I can't salvage a situation if I don't have time. That's why I came in up here off a plane. You know, it just I'm exhausted. You're not catching me at my best. But think about it. Grant the extension for two years. Don't listen to the city staff. Don't act on the draft motion that you have in front of you, I'm sure, from Mr. Decker's office to say, Well, gee, you really haven't done enough to procedurally even satisfy the burden you show to get us to even reconsider this. And don't even look at the other motion. Don't destroy them. File them away, because if I have to try this case, their evidence, I know they're there. I've seen enough of them. So that's our presentation that plus plus the letter that's behind it, if I go into court on appealing planning board decisions, they'll be set aside in a heartbeat, and every single one of them over the last year will be voided.

Richard Ford Burley 25:59
voided like that?

Robert Kaler 26:02

It doesn't take much to see this conflict, and my client has suffered, really suffered as a result of it. If you'd had independent counsel, if somebody had been providing independent counsel, it would have been different. I mean, I understand how these things go south. I served on boards. All of us have, but this situation is out of control. Okay, trying to get it back. So all we're asking is that you grant, I understand Mr. Burley, I understand

Richard Ford Burley

what I'm gonna make a but

Robert Kaler

I'm gonna I'm gonna finish. I'm gonna finish. Okay,

Richard Ford Burley

we're asking that I'm

Speaker 3 26:36

I'm gonna move that we extend the extend. We're seven minutes away from the meeting ending.

Robert Kaler

Oh, that's what

Robert Kaler 26:43

you're doing. Okay, sorry,

Richard Ford Burley

I can move that.

Robert Kaler

Mr Reichert and I aren't, aren't perfect. We each come up and But whatever the reason,

Different speaker

Second

Richard Ford Burley

yeah, if you have

Robert Kaler 26:53

questions, if

Robert Kaler 26:55you have questions, favor,

Different Speaker (female)

excuse me. I'm sorry

Different Speaker (female) 26:56

I did not get what that was

Richard Ford Burley 27:01

to extend the meeting to 1015

Different Speaker

1015?

Richard Ford Burley

Yes, thank you.

Different Speaker

Second, Eric,

Richard Ford Burley

thank you all in favor.

Robert Kaler 27:17

So I'll conclude just by saying there's ample, overwhelming evidence in the record, sufficient to satisfy the procedural hurdle, which isn't exactly how it's been represented, but I know what it is, and it's more than sufficient. And there's more than sufficient evidence to warrant looking at this again without I would say, Mr. Faunce, he's got to decide for himself, and you have to decide. Just grant the extension, please. They need it, and it'll give us time that we need. If we don't, if they don't get the extension, then things kind of spiral. I can't, I can't operate in a vacuum and in that tight a time frame. I mean, I can try the case. I mean, that's what I do for a living, but that's not what my ethical obligation is. And I also have an obligation not to do anyone more collateral, you know, any unnecessary collateral harm beyond what's that, that's my personal view, beyond what's necessary to advocate for my own client's position. So I'm trying to strike that balance. If you have any questions, I'll try to answer them. It's a lot to absorb. You may not. But I can also submit a copy of the slides. I can submit memoranda or cases, but please get your own legal counsel on this matter. And it doesn't have to mean that you never use Mr. Decker on all other matters. That's not my business. This one is my business. You need independent counsel. Thank you.

Andrew Faunce (PB Chair)29:01

I'm going to listen to what has been shared with us this evening, and I'm going to take myself out. I'm recusing from this matter.

Richard Ford Burley 29:09

I am not comfortable making any decision on this matter tonight, and I'm so I'm going to move that we continue this to another night.

Robert Kaler I'd only ask that as expeditiously,

Richard Ford Burley

I'm not

Robert Kaler

be acted on

Richard Ford Burley

I'm not after what you've said. I'm not interested in pretty much discussing any of this until we talk to independent counsel.

Robert Kaler 29:33

Well, you may not be, for the sake of the other members. All that we're asking for is that it not go into limbo and you can still make a determination with the advice of counsel on the existing motion, especially if Mr. Faunce recuses himself, and that could grant us the relief that we need to we need something, because if it stays as it is for too long, you know you need a reasonable period of time. thank you.

Richard Ford Burley 30:05

Well, I think my motion still stands that we continue this to another night. What night would be good? I think, is a matter of discussion for the members of the board.

Other speaker 30:18

I'm unwilling to second it or vote for

Richard Ford Burley 30:22

it. So okay

Different speaker (female)

who seconded

Richard Ford Burley

No one

Richard Ford Burley 30:24

has seconded.

Robert Kaler

Do

Robert Kaler 30:31

you want me to stop sharing? Are we the last case?

Different speaker

No. If something

Richard Ford Burley 30:41

else with no second, the motion dies. I'm open to entertaining other motions Well,

Eric Stacy 30:44

or should we formally make a motion? I thought we were thinking about a date. Sorry. I think, I think I agree with you that it makes sense in light of what we've seen, that it seems reasonable that we seek independent legal counsel. I also think that it seems reasonable that we move on this relatively quickly.

31:07

Is there any question, oh, that they're going to get a rehearing?

Richard Ford Burley 31:12

Yes, there is. But once we need to speak to the legal counsel about Sure, I mean,

Eric Stacy 31:20

I make I'm Yes. I mean it. I mean the whole issue here is the subsequent application doctrine, right?

Richard Ford Burley

Yes,

Eric Stacy

yes.

Eric Stacy

So I if that's not meeting substantial change by the subsequent application doctrine, I don't know what is

Richard Ford Burley

I would

Richard Ford Burley 31:35

like to talk to a lawyer about it.

Robert Kaler 31:39

I will say I don't think it's necessary to talk to a lawyer about everything.

Richard Ford Burley 31:43

Well, I know you would. I'm not. You've made that very clear well, but whenever

Eric Stacy 31:47

supposed to check our emotions at the door. And I mean, so All right, let me try to rephrase the that the applicant has made an assertion with email evidence that the previous vote by the four to three vote by the planning board might have gone the other way had the member who just chose to recuse himself, Chair Faunce, been, you know, recused himself when he should have. So that's a fairly substantive matter about whether or not they get another bite at the apple. It doesn't seem, I mean, it is.

Richard Ford Burley 32:42

I would like to know from another independent legal counsel whether or not he should have accused himself or not, because I've got one side of the story. Well,

Eric Stacy 32:50

he feels like he should have recused himself. It's his choice. He's sitting.

Richard Ford Burley 32:54

Are you sure he's not just feeling very intimidated right now?

Eric Stacy

No,

Eric Stacy 32:59

presentation. No. This is No, no, I you Well, if he is feeling, it's not, doesn't matter. It's not about feelings. I'm presuming that he made his decision based on, based on, you know, his respect for the board. I mean, you know, his intention has always been, as long as I've known him, is to maintain the integrity of the board. And the last thing in the world he would want to have happen, and I'm, I've been, is to undermine the integrity of the board, and his staying up here would undermine it when he's been accused by the council, you know, I mean there, I mean, it's just the appearance.

Richard Ford Burley 33:39

I will not, I won't speak to the chairs motives, if he hasn't done so well.

Karen Zook 33:44

And, and I would say, I mean, that was a lot of digestion, small text, but in terms of, like, the content of it, you know, it's hard to know, just some, some some text is bigger than others, but I, the chair being on a board isn't to me, new information. The you know, we know. I just, I would want, I would second. I think I need more time to digest the content of the of all.

Matthew Decker 34:32

Limited recommendation to the Board? Number one, And I will just preface this with saying that I don't agree that I conflicted out of the situation that's to be expected, that requires further analysis, that requires further legal advice, whether that's for me or for independent counsel, that is for something to be figured out at another time, none of the three items that were raised tonight preview to anyone. So there was no reason why they had to be ambushed on the board tonight and couldn't have been submitted earlier. I suggest to the board that the reason for that is to intimidate the board into taking unconsidered action. Therefore my recommendation is that the board continue this matter to another hearing. Mr. Faunce not recuse himself until he's had more opportunity to consider the situation, whether that's with me, somebody else at my firm, or different counsel. The board is not prepared to address any of this ambush information tonight, none of which actually addresses the subsequent application doctrine, which is the thing that you were

Robert Kaler 35:52

okay. We just, I have to respond. We just received these documents in the last week.

Richard Ford Burley 35:57

And we just received your presentation tonight.

Robert Kaler

I just reviewed

Robert Kaler 36:01

them all over the weekend. There's been no ambush, and Mr. Decker knows it,

Richard Ford Burley 36:05

but also he only just received this information. I think that's not that.

Robert Kaler 36:09

That's not my point. My point is that there's been no ambush, and what happens here? And it's happened again and again.

Richard Ford Burley

Your objections been noted

Robert Kaler

XYZ has raised a legitimate point. You and I've seen the emails. They've been attacked for raising legitimate points. They've been characterized an ambush. No ambush. I just got the documents, the ambush, if there was any, was of XYZ and as to the conduct. Thank you, sir.

Richard Ford Burley 36:36

No Matt, please stop, everyone. Stop, you stop too

Robert Kaler 36:40

The conflict issue.

Richard Ford Burley 36:42

You stop too.

Robert Kaler

I beg your pardon?

Richard Ford Burley

Please stop talking.

Robert Kaler

Why?

Richard Ford Burley

Because I would like to discuss with the other members of the board what we are going to do in the 12 remaining minutes we have, okay, it's quite late. We've received a lot of new information, and I don't need the two of you going back and forth over it. Now, I would like to have the other members of the board discuss what we are going to do going forward in the limited time we have.

Eric Stacy 37:10

Yeah, we should make a decision. Yeah, we need to look not a matter of whose fault it is that the information God

Eric Stacy 37:16

has irrelevant. We're feeling ambushed. We're feeling ambushed, but I prepared a public statement that I was going to read into the record before. I didn't even know they were going to be speaking tonight, because in normally, in a rehearing, their public discussions, but I was not expecting them to be able to put present anything. So I thought we were just going to have a discussion amongst ourselves and then vote on whether or not it was a rehearing. Okay? So obviously that was a misunderstanding on my part, but prior to them saying a word, okay, this is what I was going to read into the record, and I'll try to get through it quickly. Tonight's decision isn't about whether we support or oppose the River Park project. It's about whether the new material submitted since March is substantially different enough to justify a rehearing, and I think it's important we keep that procedural focus at the center of our conversation. For my review, I believe the applicant has introduced enough new material to at least meet the threshold for reconsideration. This includes substantial documentation that wasn't before us in the March meeting, including new correspondence legal framing around the court injunction and a revised proposal that includes the conditional terms not previously discussed. The city also continued corresponding with the applicant and requesting documents after the permit was in the city's view, expired that makes the factual record more complex than it appeared when we voted previously. I understand some of the concerns about reopening the matter. There's a caution about how this could affect the city's posture and ongoing litigation, and I take that concern seriously. But granting a rehearing doesn't predetermine our final decision, it simply reflects that there is now additional context that arguably deserves to be considered in a formal hearing process. Taking that step could actually strengthen the city's legal position by showing that we've exhausted our administrative process in good faith. I also think we need to be mindful of our broader responsibility to protect not only the legal integrity of the city, but also its time and resources. If litigation continues, it will demand time, staff, bandwidth, and legal expense that we frankly don't have in surplus. If there's a reasonable path to resolution through reconsideration, we shouldn't avoid it out of frustration, frustration or fatigue. What I'm saying is that without any information tonight that we don't have to get emotional about, there was probably enough reason to grant the rehearing anyway, I

Richard Ford Burley 39:54

I don't agree.

Eric Stacy Okay,

Richard Ford Burley

you're you're absolutely. Entitled to that opinion.

Eric Stacy

Okay? I mean, this is actually

Eric Stacy 40:03

sort of unfortunate from my point of view.

Robert Kaler 40:07

I would ask for a vote on that issue, that procedural issue, because that, well,

Richard Ford Burley 40:11

the motion that I have made is that the item be continued, and I'm going to say based on the schedule that we have ahead of us, since we have no new items, but we also do have items that tonight we are clearly not going to get to as well. Unfortunately, that the remainder of the the docket for tonight be continued to our next regular meeting in July. That is my motion.

Robert Kaler

July is too long.

Richard Ford Burley

I didn't ask your opinion, sir. Well,

Robert Kaler 40:40

I'm, I'm gonna ask for a vote on

Richard Ford Burley

you don't get to ask for a vote, sir, the procedural

Robert Kaler

Yes, I do.

Richard Ford Burley

No, you don't

Robert Kaler

You're misapplying your own rules.

Richard Ford Burley

Do you want me to tell you to leave the room? Sir,

Robert Kaler

I'm just asking for a vote on that issue.

Richard Ford Burley 40:54

I would second your motion.

Richard Ford Burley 40:56

Okay? All in favor of continuing XYZ dairy, LLC and Lyme Properties too. This is Item E in tonight's agenda to the July meeting. Sorry, all in favor, that's four Yes. All opposed, that's one against. So the motion passes. We will see you again in July, sirs.

Robert Kaler 41:20

I'll be submitting the written material that I showed

Richard Ford Burley

Thank you

Robert Kaler 41:25

, and

Robert Kaler 41:27

anything else that's requested, so that it's part of the record,

Richard Ford Burley

understood,

Robert Kaler

and I don't want the misunderstanding by Mr. Burley or anybody else that we may submit additional material as well as I get to go through the records, as I did for the entire weekend. There's going to be more

Richard Ford Burley

okay,

Robert Kaler

and the first procedural vote we'll ask for in July is to get past this procedural business,

Richard Ford Burley 41:57

and once we have spoken with independent counsel, I will be more comfortable.

Robert Kaler

Thank you

Richard Ford Burley

knowing.

Robert Kaler 42:02

I just don't, I don't want you to misunderstand.

Richard Ford Burley 42:07

We have two items left on the docket.

Robert Kaler

Thank you.

Richard Ford Burley

So we have two items left on the docket in six minutes.

Different Speaker (female)

Can I just be clear on the dissension, the dissension the dissension was,

Richard Ford Burley

the dissension was, Eric.

Different Speaker (female)

Okay, thank you.

Richard Ford Burley

We have two items left on the docket. I do believe we can invite Chair Faunce back up if he is here, if he is not, yes.

Richard Ford Burley 42:40

Okay. Where have we left him, I believe we only we have F and G left and we don't have time to do them. Mr. Faunce has returned, Paula, so have I.

Speaker 1 43:15

Thank you. Thank you. I regret that it looks as if we are going to be running out of time they're here.

To:	Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject:	Pln Brd Draft Agenda
Sent:	2025/05/01 19:07:31 (UTC +00:00)
Attachments:	05-12-2025_Pln Agenda.pdf

I know the fonts are messed up, I fixed them all and again they didn't stick. I have to reach out to Civic Plus for help sometime, this is becoming a constant problem that I can't remedy. It's driving me nuts.

Anyway. I did not write postponed from next to the minutes, but I can if you want (the 3/17 and 3/24 ones).

I left this item off for now:

- *Add a separate agenda item under "other business" re: determination that one-year extension approval is void? - TC to confirm w/ MD at 4/30 bi-weekly meeting*
 - *Please leave off the agenda for now*

Crystal Taplin

City of Lebanon
Planning & Development Department
Administrative Assistant

Please Note City Hall is Open Monday – Thursday from 7 AM – 5 PM
We are closed on Fridays

CITY OF LEBANON PLANNING BOARD
HEARING ON XYZ DAIRY APPLICATION

XYZ DAIRY LLC PRESENTATION

June 9, 2025

Robert J. Kaler, Esq.
Holland & Knight, LLP

CITY OF LEBANON
Building PermitLebanon, NH 03766
603-448-1524
www.lebanonNH.govPermit Number
2016-00293Date of Issue
12/31/2019Owner: XYZ DAIRY LLC
Applicant: XYZ DAIRY LLCLocation of Work: 173 N MAIN ST/WEST LEBANON
(No. and Street) (Unit or Building)

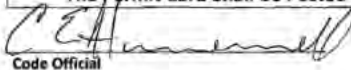
Description of Work: New mixed use commercial building within LOT #1 of the River Park subdivision

ZONING DATA: District: R3 - R3 Map/Lot: 44-3
CONTRACTOR: CONSIGLI CONSTRUCTION**REMARKS:**THIS PERMIT IS BEING ISSUED WITH THE FOLLOWING CONDITIONS:
SEE ATTACHED CONDITIONS LIST**WORK SHALL NOT PROCEED UNTIL THE CITY INSPECTORS HAVE APPROVED THE FOLLOWING STAGES OF CONSTRUCTION:**

1. Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not there or 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.**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

LEB_0099373

LEB_0099373

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park – Lot 1 Construction Document Set

Location: 173 North Main Street, West Lebanon, New Hampshire

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park – Lot 1 Construction Document Set

Location: 173 North Main Street, West Lebanon, New Hampshire

Owner: XYZ Dairy LLC

RMS (10) - 173 River Park Drive - IV, Lebanon, NH - Program of Structural Tests and Inspections (1)

Page 1

LEB_0000465

LEB_0099373

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park - Lot 1 Construction Document SetLocation: 173 North Main Street, West Lebanon, New HampshireOwner: XYZ Dairy LLCArchitect of Record: Elkus Manfredi ArchitectsStructural Engineer of Record (SER): McNamara + SalviaGeotechnical Engineer of Record (GER): McPhail Associates, LLC

This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.

Geotechnical Engineer of Record (GER): McPhail Associates, LLC**This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.**

partial view of inspection

1545 (09) - 173 River Park Drive - W. Lebanon, NH - Program of Structural Tests and Inspections (I)

Statement of Structural Special Inspections

For compliance with the International Building Code 2009

Project: River Park – Lot 1 Construction Document SetLocation: 173 North Main Street, West Lebanon, New HampshireOwner: XYZ Dairy LLCArchitect of Record: Elkus Manfredi ArchitectsStructural Engineer of Record (SER): McNamara + SalviaGeotechnical Engineer of Record (GER): McPhail Associates, LLC

This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.

Geotechnical Engineer of Record (GER): McPhail Associates, LLC**This statement of special inspections is submitted as a condition for issuance of the building permit in accordance with Section 1705.1 of the 2009 Edition of the International Building Code.**

particular tests or inspections.

15145.000 – 100 River Park Drive – W. Lebanon, NH – Program of Structural Tests and Inspections (2)

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections required for each checked category are listed on the page noted opposite the category.

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections required for each checked category are listed on the page noted opposite the category.

- ☐ Precast Concrete Components
☐ Post-Tensioning Steel
☐ Structural Steel Connections

☐ Light Gauge Metal Framing

The following items are excluded from this program of structural tests and inspections, since they are designed by other structural engineers not under the aegis of the SER and the SER was not retained to provide performance specifications for their design. These other structural engineers must be assigned by the owner, architect, or construction contractor, as applicable, to be special SERs for their respective designs and to provide a program of structural tests and inspections for their respective designs.

Curtain Walls, Fall Protection Systems

Prepared by the Structural Engineer of Record:

Name: John G. Matuzewski, P.E.

Please type or print

Signature: _____

Firm: McNemara + Salvia

Date: July 26, 2016



Registration Seal

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections

The following categories of structural tests and inspections, if checked, are included in the program for structural tests and inspections for this project. The specific tests and inspections required for each checked category are listed on the page noted opposite the category.

☐ Driven Deep Foundations ☒ Testing for Seismic Resistance
☐ Cast-In-Place Deep Foundations

The following items of construction, if checked, are specified in the structural plans or specifications on a performance basis. Their structural design will be reviewed by the SER and their construction is included in the program for tests and inspections on the attached sheets:

☐ Curtain Walls ☐ Metal Buildings
☐ Precast Concrete Components ☐ Light Gauge Metal Framing
☐ Post-Tensioning Steel
☒ Structural Steel Connections

The following items are included in this program of structural tests and inspections, unless they are designed by other structural engineers and tested by the SER. The SER was not required to conduct the following tests and inspections. The SER was not required to conduct the following tests and inspections. The SER was not required to conduct the following tests and inspections. The SER was not required to conduct the following tests and inspections.

Cut

Prep

Nam

Sign

Firm

Date



Wood Construction

-



Soils

7



Driven Deep Foundations

-



McNamara & Salvia

July 26, 2016

Registration Seal

Table 1704.7
Required Verification and Inspection of Soils

Verification and Inspection Task	Frequency of Inspection	Agent
1. Verify materials below shallow foundations are adequate to achieve the design bearing capacity.	Periodic	GER
2. Verify excavations are extended to proper depth and have reached proper material.	Periodic	GER
3. Perform classification and testing of compacted fill materials.	Periodic	GER

Table 1704.7
Required Verification and Inspection of Soils

Verification and Inspection Task	Frequency of Inspection	Agent
1. Verify materials below shallow foundations are adequate to achieve the design bearing capacity.	Periodic	GER
2. Verify excavations are extended to proper depth and have reached proper material.	Periodic	GER
3. Perform classification and testing of compacted fill materials.	Periodic	GER
4. Verify use of proper materials, densities and lift thicknesses during placement and compaction of compacted fill.	Continuous	GER
5. Prior to placement of compacted fill observe subgrade and verify site has been prepared properly.	Periodic	GER

APPLICATION FOR PROPOSED EXCAVATION

Applicant Name: **David Clem**
Company: **XYZ Dairy, LLC**
Mailing Address: **57 Main Street,**
West Lebanon, NH 03784
Telephone: **(603) 676-7800**

I / We propose to disturb the surface, sidewalk, shoulders or ditches of the following street:
_____ for the purpose of

Tax Map #: **44-3** Lot #: **1**

The area to be disturbed is approximately:	220	feet in length
	165	feet in width
	15	feet in depth



Will be completed when site contractor is hired.

CITY OF LEBANON
DEPARTMENT OF PUBLIC WORKS
193 Dartmouth College Highway
(603) 448-3112

APPLICATION FOR PROPOSED EXCAVATION

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Applicant Name: David Clem
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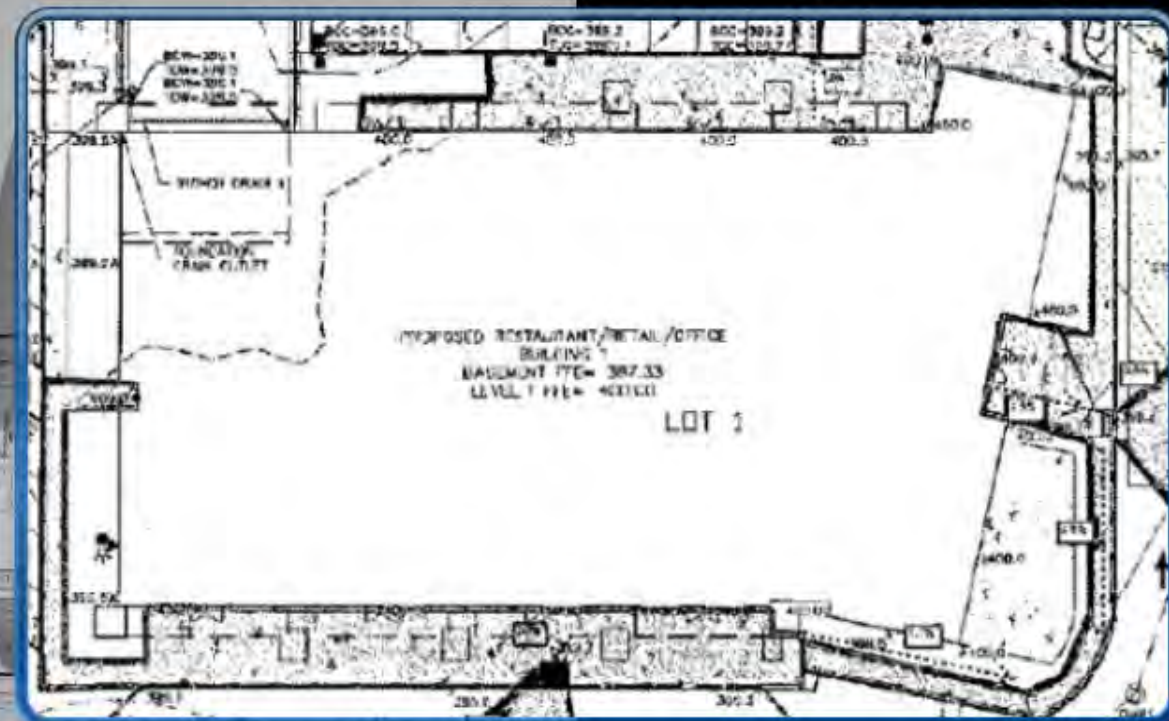
CITY OF LEBANON
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APPLICATION FOR PROPOSED EXCAVATION

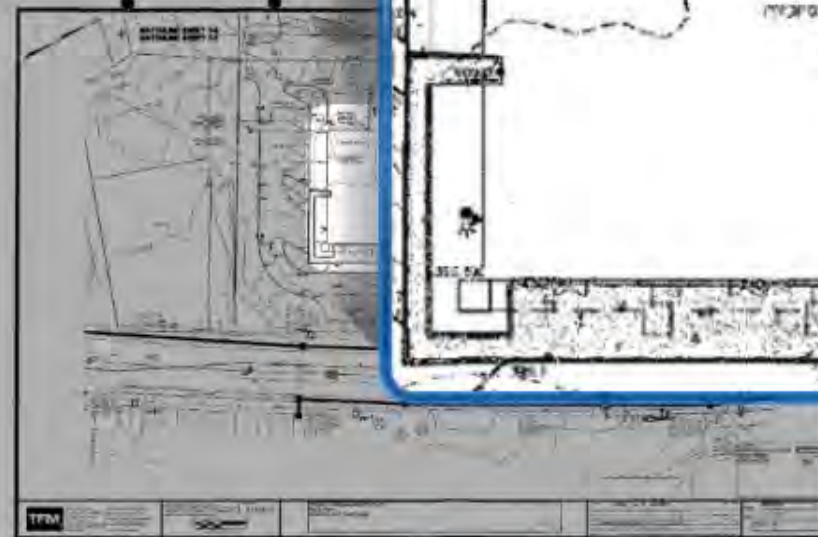
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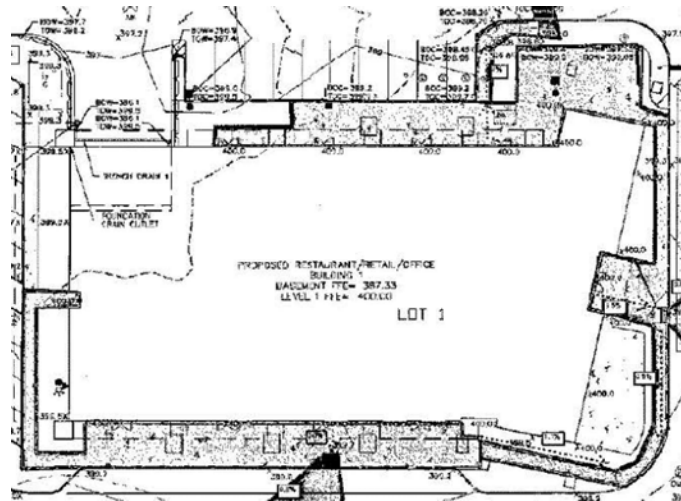
LEB 0099373



LEB_0099547

LEB_0099373

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025



From: Brian Vincent </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED9E74B2B6C84B06B72312FA7C4A8E52-BVINCENT>
 To: ben.nottexcavating@comcast.net <ben.nottexcavating@comcast.net>
 CC: matt.brush@engelberth.com; Jay Cairelli <Jay.Cairelli@lebanonnh.gov>; Sarah Finley <Sarah.Finley@lebanonnh.gov>; Rod Finley <rod.finley@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
 Subject: FW: [EXTERNAL] River Park Temp drainage plan
 Sent: 2025/01/21 19:49:19 (UTC +00:00)
 Attachments: temp drainage big.pdf

From: Brian Vincent </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED9E74B2B6C84B06B72312FA7C4A8E52-BVINCENT>
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City of Lebanon
 City of Lebanon
 Department of Public Works
 193 Portsmouth College Highway
 Lebanon, New Hampshire 03756

City of Lebanon
 603.558.7113 ext. 100
 603.448.3117 Fax 6146

From: ben.nottexcavating@comcast.net
 Sent: Friday, January 27, 2025 9:58 AM
 To: Rod Finley <rod.finley@lebanonnh.gov>
 Cc: Matthew BRUSH <mbrush@lebanonnh.gov>
 Subject: [EXTERNAL] River Park Temp drainage plan

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe

Rod,

Here is the temp drainage plan for river park. the outlet end of the run has 2" slope chinked in with 7 1/2" to fill bigger voids and it does appear that the clay tile leaving the existing catch basin along rd 10 is 20" clay tile. all pipe we have installed is 24" dia. I confirmed elevations this morning and this drawing reflects that.

Thanks,
 Ben Grube
 Notts Excavating

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City of Lebanon
 City of Lebanon
 Department of Public Works
 193 Bartons College Highway
 Lebanon, New Hampshire 03756

Cell: 603.558.7133 mobile
 603.446.3137 fax/46

From: ben.nottexcavating@comcast.net
 Sent: Friday, January 24, 2025 9:58 AM
 To: Rod Finley <rod.finley@lebanonnh.gov>
 Cc: Matthew BRUSH <mbrush@lebanonnh.gov>
 Subject: [EXTERNAL] River Park Temp drainage plan

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The plan looks good as a temporary bypass until such time that the Route 10 improvements are constructed, which I understand (by court order) will be completed by October 27, 2025. Prior to making the final connection (making the temporary bypass pipe "live"), the City will also need a temporary access easement and temporary maintenance easement (30 feet wide for the length of the temporary bypass pipe/system) for pipe access, maintenance, repair, etc. and a \$100,000 performance bond to cover potential maintenance costs.

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I have reviewed the temp drainage plan for River Park. The plan shows a 24" clay tile bypass pipe with a 24" clay tile manhole at the upstream end. I have confirmed that the clay tile leaving the existing catch basin along rd 10 is 20" clay tile. All pipe was newly installed in 2024. I confirmed elevations this morning and this drawing reflects that.

Thanks,
 Ben Griggs
 Nott Excavating

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025

May 8, 2025

Leigh Hays
Chief Building Official and Health Officer
City of Lebanon
City Hall
51 N Park Street
Lebanon, NH 03766

Re: 1 River Park

Dear Mr. Hays:

For your information, XYZ re-commenced construction at River Park earlier this year, and this fact can be corroborated by municipal personnel of the City. In December of 2024, I executed a construction management contract with Engelberth Construction

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025

Nott's then started the excavation of the basement of 1 River Park per the permit set of construction documents. Because frost had already begun in January, 2025, this material was piled on Lot 2 until the arrival of spring weather. Per the approved plans this material was to be spread on Lot 2 to the new manhole elevations previously installed and accepted by the City of Lebanon as part of the so-called "cross country connector" servicing the first three building phases.

On January 16, 2025, Nott's on-site project foreman, Ben Griggs, contacted Rod Finley to schedule a time to witness the connection of the old line to the new temporary line solely on XYZ's Lot 1 property and not in the City's Route 10 right-of-way. On January 17, 2025 Nott's received a communication from Rob Finley asking for more as-built information and elevations of what had been installed, and this was supplied by Ben Griggs to Rod. Rod also communicated to Raymond Nott that "he had no issue with the connection but must see the as-built information first."

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED



NEW HAMPSHIRE

TEL: (603) 448-1111

Email: leigh.hays@lebanonnh.gov

May 15, 2025

David Clem
XYZ Dairy, LLC
PO Box 310
Etna NH, 03750
dclem@lymeproperties.com

Mr. Clem,

Thank you for your letter of May 8 providing me with an update on pre-construction site improvement work that has been performed at the 1 River Park site.

Based on the information provided in your letter, I disagree with your statement that XYZ recommenced construction of the 1 River Park building in January 2025.

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED

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

* * *

We hold that [the] 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.

The activities you describe in your letter, such as the execution of a construction contract, rebidding of the 1 River Park building and conduct of associated site work, including the relocation of the City's stormwater line, are all examples preparatory work/site work required prior to the commencement of construction work governed by the New Hampshire State Building Code, and do not constitute "work" regulated by the Building Code.

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED

Of particular note is your statement that “Nott’s then started the excavation of the basement of 1 River Park per the permit set of construction documents.” You omit to state the particular date on which this started, and you do not state for how many days this continued. I would also be curious to learn whether this excavation was a repeat or an enlargement of the prior excavation done in December 2022.

As you already know,¹ I cannot reasonably consider this excavation to constitute “work” under the building permit, because I do not find textual support in the Building Code to conclude that excavating a foundation hole, without more, requires a building permit. (I’m sure you would agree that if you dug a foundation hole while lacking a building permit, I would not be able to cite you for performing work without a permit.)

New Hampshire Law

“No owner shall permit any excavation of earth on his premises without first obtaining permit therefore, except as follows:

- I. EXISTING EXCAVATIONS. The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed ...
- II. ABANDONED EXCAVATIONS. The permit and zoning exemptions under RSA 155-E:2
- III. STATIONARY MANUFACTURING PLANTS. (a) No permit shall be required under this chapter for excavation from an excavation site which ... was contiguous to ... stationary manufacturing and processing plants which were in operation ...
- IV. HIGHWAY EXCAVATIONS No permit shall be required under this chapter for excavation which is performed exclusively for the ... construction ... of a ... highway by a unit of government...”

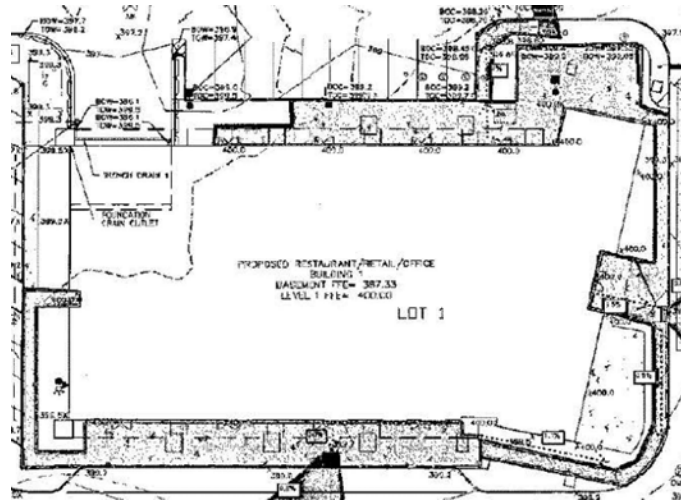
N.H. Rev. Stat. Ann. § 155-E:2 Permit Required

Title XII Public Safety and Welfare

New Hampshire Law

- “**Commencement of construction**” means any clearing of the land, **excavation** or other substantial action that would adversely affect the natural environment **of the site of the proposed facility**, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.
- ***N.H. Rev. Stat. Ann. § 162-H:2 Definitions*** (emphasis added)

XYZ COMMENCES CONSTRUCTION WORK IN JANUARY 2025



New Hampshire Cases

- “The contract required the contractor to perform “initial work” of cutting entrance and access roads, installing water lines, and causing the digging of test pits to assess soil bearing capacity ...
We conclude that RANE commenced construction of its facility on the grounds of Concord Hospital within the required period.
- *Appeal of Rehab. Assocs. of New England*, 131 N.H. 560, 567, 556 A.2d 1183, 1188 (1989)

From: Leigh Hays </o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=d5682068372e4da08f4abb40a87da69b-191a9f04-d0>
Subject: Permit 2016-00293 - 1 River Park
Sent: 2025/03/20 11:52:27 (UTC +00:00)
Task Start: 2025/05/25 00:00:00 (UTC +00:00)
Task Due: 2025/05/25 00:00:00 (UTC +00:00)
Percent Complete: 0

From: Leigh Hays </o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=d5682068372e4da08f4abb40a87da69b-191a9f04-d0>
Subject: Permit 2016-00293 - 1 River Park
Sent: 2025/03/20 11:52:27 (UTC +00:00)
Task Start: 2025/05/25 00:00:00 (UTC +00:00)
Task Due: 2025/05/25 00:00:00 (UTC +00:00)
Percent Complete: 0
Owner: Leigh Hays
Task Status: NotStarted
Priority: High
Reminder Time: 2025/05/26 12:00:00 (UTC +00:00)

Has work commenced onsite related to work required by the building permit.

CORWIN EMAIL AND DRAFT TO XYZ JANUARY 27, 2023

From: Tim Corwin <Tim.Corwin@lebanonnh.gov>

Sent: Friday, January 27, 2023 6:36 PM

To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Calvin Hunnewell <Calvin.Hunnewell@lebanonnh.gov>; David Brooks <David.Brooks@lebanonnh.gov>

Subject: RE: [EXTERNAL] Commencement of 1(00) River Park Drive (Building Permit #2016-00293), conflict with City's existing municipal stormwater line

I believe the issue with the building permit is that it has or will very shortly expire unless work has commenced, and digging the pit does not constitute commencement of the work. So the next section of the draft letter should address this. I can work with Calvin to draft something.

And yes, adding a reminder about the PB conditions of approval that need to be satisfied prior to commencement of work is a good idea and could be the third section of the letter. The relevant conditions would include lining up a third party inspector and all that entails (that's usually taken care of prior to issuance of the BP). I'll see if there are any others.

CORWIN EMAIL AND DRAFT TO XYZ JANUARY 30 2023

I'm wondering whether the letter regarding the building permit should be separate from the letter regarding the stormwater line location – mainly because the determination that the building permit has now expired should be made in writing by the Building Inspector, right? I've written the initial draft (in bold below) as if it's a separate letter from the Building Inspector, but obviously that can be changed if decide a

2022." Please be advised that it is the determination of this office that, because excavation work does not require a building permit under the IBC, the activity described in your letter of December 9, 2022, does not and cannot constitute the commencement of work authorized by the Building Permit. *(should/can we provide a fuller explanation of why the excavation work doesn't constitute commencement of the work authorized under the building permit? I took a quick look at the printed copy of the IBC and couldn't find anything helpful...)* Consequently, **the Building Permit expired on November 22, 2022, and a new building permit is required.**

CITY'S POST-COURT ORDER ATTEMPT TO DECLARE BUILDING PERMIT EXPIRED



NEW HAMPSHIRE

TEL: (603) 448-1111

Email: leigh.hays@lebanonnh.gov

May 15, 2025

David Clem
XYZ Dairy, LLC
PO Box 310
Etna NH, 03750
dclem@lymeproperties.com

Mr. Clem,

Thank you for your letter of May 8 providing me with an update on pre-construction site improvement work that has been performed at the 1 River Park site.

Based on the information provided in your letter, I disagree with your statement that XYZ recommenced construction of the 1 River Park building in January 2025.

Points

- **The Building Inspector's 30 May 2025 Attempt to Terminate the XYZ Permit is a misconstruction of the Building Permit, the Building Code, and NH Law that will take time to correct – hence the need for the 2-year extension. It's also a contempt of the Court Order reinstating the Building Permit.**

Points

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- **It's also a continuation of what Mr. Clem's letter of 23 May 2025 to the Board, and the evidence submitted with it, proves about the PB "staff" – that they are severely biased against the Project, and are willing to use the Building Inspector to help them stop it, and to violate his obligations under the Building Code in the process – hence the need for reconsideration of the PB's recent decisions against XYZ without their involvement.**
- **And there is also another major problem that requires the requested extension...**

Points

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The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Conflicted Legal Advice from City Counsel

- **The Planning Board Has Been Acting in a Quasi-Judicial Capacity regarding the XYZ Applications Concerning River Park that the City Has Opposed.** *Appeal of City of Keene*, 141 N.H. 797, 800, 693 A.2d 412, 414 (1997) (“An act is judicial in nature if officials “are bound to notify, and hear the parties, and can only decide after weighing and considering such evidence and arguments, as the parties choose to lay before them.”

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- Although it is required to be just as impartial as a Court or Jury, N.H. Rev. Stat. Ann. § 673:14, **the Board has accepted and relied upon legal advice provided to it the City’s Legal Counsel Drummond Woodsum, which has been opposing XYZ concerning River Park** on behalf of the City both Administratively and in Court.

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

To: C. Christine Fillmore <CFillmore@dwmlaw.com>; Matthew C. Decker <MDecker@dwmlaw.com>
CC: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Subject: FW: [EXTERNAL] BCBA Appeal - Building Permit #2016-00293
Attachments: 2024-02-01 XYZ Dairy Permit Expiration Letter.pdf, 20240229 XYZ Dairy - BCBA - Appeal of Building Inspector Decision .pdf

Christine/Matt --

REDACTED

Thank you! -Tim

From: Philip Hastings <hastingsp@cwbp.com>
Sent: Wednesday, March 6, 2024 9:55 AM
To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Cc: Shaun Mulholland <Shaun.Mulholland@lebanonnh.gov>; David Brooks <David.Brooks@lebanonnh.gov>; Chet Clem <chet@lymeproperties.com>; Tim Corwin <Tim.Corwin@lebanonnh.gov>; Angela McCanna <amccanna@lymeproperties.com>; City of Lebanon-Planning <Planning@lebanonnh.gov>
Subject: RE: [EXTERNAL] BCBA Appeal - Building Permit #2016-00293

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From: Tim Corwin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN>
To: Andrew Faunce <andrew.g.faunce@gmail.com>
Subject: RE: [EXTERNAL] Quick check in 2/10 am?
Sent: 2025/02/10 18:01:41 (UTC +00:00)

Hi Andrew —

I'm going to let Matt take the lead relatively to provide advice to the Board. My intent is to simply observe and not participate to the maximum extent possible. If we did not have legal counsel, I would have to take a different posture of course, but fortunately we do.

Regarding your second question, that's my inclination as well, but let's confirm that with Matt at our meeting with him at 6.

Thanks, Tim

From: Andrew Faunce <andrew.g.faunce@gmail.com>
Sent: Monday, February 10, 2025 12:26 PM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: [EXTERNAL] Quick check in 2/10 am?

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I didn't make it in today.

I have two procedural questions, which you may be able to answer this afternoon or in our limited time with Counsel tonight.

1. For the benefit of the public, will you or Legal Counsel provide a brief introduction to the frame within which the Board will consider the XYZ request?

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From: Shaun Mulholland </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7B2518D94254E4D8BFA2205CA9B5C09-SHAUN.MULHO>
Subject: M.Decker/PLN review of XYZ lawsuit
Sent: 2024/10/02 13:28:25 (UTC +00:00)
Appointment Start: 2024/10/08 12:30:00 (UTC +00:00)
Appointment End: 2024/10/08 15:00:00 (UTC +00:00)

From: David Brooks </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FB542EB07154BB4A49E55BCC0CF9179-DAVID.BROOK>
Subject: M.Decker/PLN review of XYZ lawsuit
Sent: 2024/10/02 13:28:20 (UTC +00:00)
Appointment Start: 2024/10/08 12:30:00 (UTC +00:00)
Appointment End: 2024/10/08 15:00:00 (UTC +00:00)

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City’s Counsel

From:	Tim Corwin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN>
To:	Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject:	PB Mtg w/ C Fillmore (River Park)
Sent:	2023/07/11 09:00:01 (UTC -05:00)
Appointment Start:	2023/07/24 17:15:00 (UTC -05:00)
Appointment End:	2023/07/24 18:15:00 (UTC -05:00)
Location:	Microsoft Teams Meeting: Council Chambers

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 226 639 184 259

Passcode: oU4Kdg

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

lebanonnh@m.webex.com

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From: Matthew C. Decker <MDecker@dwmlaw.com>

Sent: Wednesday, March 20, 2024 3:30 PM

To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Cordell Johnston <cordell@cajohnston.com>

Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>

Subject: [EXTERNAL] XYZ Dairy/River Park BCBA Appeal

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Nathan and Tim,

Cordell Johnston has agreed to represent the Lebanon ZBA/BCBA with respect to the River Park appeal of revocation of building permit. Cordell is cc'd on this e-mail and his phone number is 603-748-4019.

Cordell is out of the country from March 29-April 17. He and I discussed that he could be available during the day on March 28 for a Zoom conference with the ZBA chair and vice chair to discuss preparations for the April 1 hearing, and after he is back in April, he can assist with the remainder of appeal, such as deliberations and crafting of a written decision.

I am going to send Cordell the key documents that we have in my firm's file relevant to this appeal. I will also forward an e-mail from XYZ's attorney, Phil Hastings, that is more appropriately addressed by the BCBA's attorney. I suggest as a next step that Nathan and Cordell speak to nail down a plan for the March 28 prep meeting.

Thanks very much,
Matt

Matthew C. Decker

Attorney

O: 603.792.7421

MDecker@dwmlaw.com

1 Court Street, Suite 320, Lebanon, NH 03766

800.727.1941 F: 603.448.5949 dwmlaw.com

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

From: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>

Sent: Wednesday, March 20, 2024 3:51 PM

To: Matthew C. Decker <MDecker@dwmlaw.com>; Cordell Johnston <cordell@cajohnston.com>

Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>

Subject: RE: [EXTERNAL] XYZ Dairy/River Park BCBA Appeal

Cordell

I want to transfer to you the base docs that we have developed for background on the XYZ Dairy appeal.

I'll call you with further information.

See attachments. More will follow.

Nate

From: Matthew C. Decker <MDecker@dwmlaw.com>

Sent: Wednesday, March 20, 2024 3:30 PM

To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Cordell Johnston <cordell@cajohnston.com>

Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>

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Thanks very much,

Matt

Matthew C. Decker

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From: Nathan Reichert </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C20B7D87472D416FA384C306D86340BB-NATHAN REIC>
To: Cordell Johnston <cordell@cajohnston.com>
CC: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject: RE: [EXTERNAL] XYZ Dairy/River Park BCBA Appeal
Sent: 2024/03/21 10:59:20 (UTC -05:00)

The Board packet will likely ship out late next week.
Lets say Wednesday end of business.

I would also warn him that the Appeal is scheduled after the regular Zoning Meeting. There are 6 applications on the Zoning Board agenda. The Board usually is hesitant to work much past 10:00 PM with a 7:00 PM start time. It is highly unlikely we will be able to burn through all 6 items in 3 hours. My guess is that the Board will be tired and highly likely to continue the hearing after anything other than opening remarks.

Nate

The Planning Board Has Not...

From: Cordell Johnston <cordell@cajohnston.com>
Sent: Thursday, March 21, 2024 9:35 AM
To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Tiffany Adams <Tiffany.Adams@lebanonnh.gov>
Subject: Re: [EXTERNAL] XYZ Dairy/River Park BCBA Appeal

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Nate—

I emailed Phil Hastings yesterday and asked again whether he would agree to postpone the hearing until May. He said no. Also, he asked whether there is a deadline to provide supplemental materials to the board for the hearing. What should I tell him? Thanks.

Cordell

Cordell A. Johnston
Attorney at Law
P.O. Box 252
Henniker, NH 03242
603-748-4019

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Conflicted Legal Advice from City Counsel

- The Planning Board Has Been Acting in a Quasi-Judicial Capacity regarding the XYZ Applications Concerning River Park that the City Has Opposed. *Appeal of City of Keene*, 141 N.H. 797, 800, 693 A.2d 412, 414 (1997) (“An act is judicial in nature if officials “are bound to notify, and hear the parties, and can only decide after weighing and considering such evidence and arguments, as the parties choose to lay before them.”

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- This presents insurmountable procedural and substantive due process problem under both federal and state law that have severely prejudiced XYZ, and provided the City with an unfair advantage that has tainted the Planning Board’s prior decisions against XYZ – **and the law on this is very clear.**

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

First, the fact that the Planning Board's attorney also represented the applicant Town of West Bath on the same subject matter ... created an obvious conflict of interest.

His duty to represent West Bath's interests regarding the subdivision project prevented him from advising the Planning Board in any manner contrary to West Bath's interests, whereas his duty to the Bath Planning Board was to give good independent advice, even that if that advice was contrary to West Bath's interests.

§ 38:18. Disqualification of attorneys, 4 Am. Law. Zoning § 38:18 (5th ed.), n. 1

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That is a classic conflict of interest—exactly the conflict the court flagged in its remand order. Second, the Board's attorney's actual role during remand was such as to raise a significant doubt as to whether the Bath Planning Board engaged in the meaningful review the court expected to occur.... **It can only be inferred that the attorney assumed and intended from the outset that the Board would act in favor of the attorney's other client on all issues.**

§ 38:18. Disqualification of attorneys, 4 Am. Law. Zoning § 38:18 (5th ed.), n. 1

The Planning Board Has Not Acted Impartially and Independently Due to Its Reliance on Legal Advice from the City's Counsel

... a court cannot permit the violation of a party's constitutional rights, such as where municipal action is “taken without according **procedural and substantive due process.**” ... **the applicant's due process rights were violated** when the Board **permitted the opponents of the application to help formulate the findings of facts**, without notice or an opportunity for the applicant to be heard. 468 A.2d at 992. ... **The court, in upholding the Superior Court's decision to vacate the Board**, held: “It cannot be determined from the record of the Planning Board ... **if the opponents unduly influenced members of the Board** in making findings of fact unfavorable to the applicant's proposal.” Id.

Johansen v. City of Bath, 2011 WL 1748535 (Me.Super. Jan. 04, 2011)(vacating PB action)

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Decisions from other jurisdictions make it clear that **a conflict of interest on the part of an attorney advising a board can render adjudicative decisions of the board vulnerable to challenge on due process grounds.**

Johansen v. City of Bath, 2011 WL 1748535 (Me.Super. Jan. 04, 2011)(vacating PB action)

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- **This Has Been an Improper Conflict of Interest, has Severely Prejudiced XYZ, and Has Provided the City With an Unfair Advantage That has Tainted the Planning Board’s Prior Decisions against XYZ– Which Will Require Additional Time to be Revisited. XYZ Was Entitled to have the PB Receive Independent Unbiased Legal Advice Not Constrained by Lawyers Obligated to Prioritize the City’s Interests at the same time**

**The Planning Board's Prior Decisions Against XYZ Are Voidable Due
to the Prejudgments and Personal Interest of a Member**

**AND there is still another equally serious problem involving a Planning
Board Member --**

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

AND there is still another equally serious problem involving a Planning Board Member --

I. No member of a . . . planning board . . . shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. N.H. Rev. Stat. Ann. § 673:14

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

From: Tim Corwin </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN>
To: Andrew Faunce <andrew.g.faunce@gmail.com>
Subject: RE: [EXTERNAL] Re: RP Draft Motion
Sent: 2024/11/11 18:42:11 (UTC +00:00)

Ah, fantastic, thank you Andrew!

From: Andrew Faunce <andrew.g.faunce@gmail.com>
Sent: Friday, November 8, 2024 9:30 AM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: [EXTERNAL] Re: RP Draft Motion

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi, Tim,

I think we misconnected earlier this week. Hoping these notes are still useful for staff/counsel to create a draft motion for the Board's consideration on Tuesday. Please share as helpful toward those ends.

Thanks,

-A

Testimony Discussed During Deliberation:

Upon gaining the original 2-yr extension, the applicant demonstrated no early attention to or sense of urgency for completing the infrastructure, which was/is the deliverable for completing phase one within the new deadline. Instead, the applicant spent considerable time attempting to find alternative ways to cover these costs. The applicant testified that it was only early in 2024 when

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Testimony Discussed During Deliberation:

Upon gaining the original 2-yr extension, the applicant demonstrated no early attention to or sense of urgency for completing the infrastructure, which was/is the deliverable for completing phase one within the new deadline. Instead, the applicant spent considerable time attempting to find alternative ways to cover these costs. The applicant testified that it was only early in 2024 when the decision was finally made to "grit and bear it" to cover the infrastructure costs and to initiate that work. The applicant testified that the loss of the building permit early in 2024 (a consequence of the applicant engaging in no work on site for the prior 6-month period) interrupted those plans but failed to acknowledge how his inactivity was its cause. Twice in the testimony the applicant referenced the intention to align the infrastructure work and expense with progress on a tenancy agreement and/or on the actual building construction on lot 1 to shorten the gap between incurring costs and the producing revenue to defray them - seemingly to explain why no new work was advanced until this eleventh hour to complete the infrastructure. A natural consequence of not doing work on site is the loss of the building permit. The developer's business decisions are what delayed work activity necessary for completion. And these delays also contributed to the loss of the building permit - not the other way around.

The preparation for work on the southerly entrance was poorly managed. Early in the newly extended phase one construction period the applicant conveyed to NH-DOT an argument against the need for an additional updated traffic study or other forms of reporting to NH-DOT to obtain a permit for that entrance work. That was not responded to or corroborated by NH-DOT, and the developer let the matter hang without resolution. Upon the applicant's contact this year to pursue an excavation permit with NH-DOT, the need for a summary report on the traffic study was reiterated. Getting clarity on the requirements and then more quickly taking action was entirely within the applicant's control. Inexplicably, the applicant mishandled this task, resulting in the setback to his plans in the eleventh hour of discovery.

Basis for the Board's Decision: the testimony and evidence offered does not support the case that the circumstances were beyond the applicant's control.

1. The applicant didn't promptly advance the outstanding infrastructure work given (1) considerable time spent on a failed attempt to develop partnerships, a TIF, or other methods for defraying the infrastructure expense and (2) a decision to perform this remaining work (and the expense) proximate to and contingent upon promoting a building one tenant and commencing work on the actual building (sources of revenue). The applicant claimed twice in his testimony that the decision to advance the remaining work was finally made in 2024 - with several years of opportunity already squandered.
2. The applicant mismanaged communication and coordination with NH-DOT for the southerly entrance by failing to follow up on his misunderstanding of the viability of an existing traffic study or report. That communication gap spanned several years without evidence of any effort by the applicant to obtain confirmation. The "surprise" need for an up to date study or report based upon an earlier traffic study - which the applicant discovered upon seeking a permit in 2024 - was demonstrably in the applicant's control to know and to plan for had he simply pursued the matter to its conclusion several years ago when the matter was raised but not resolved. That overlooked attention would have supported timely action.
3. The applicant doesn't have a building permit because he hadn't done any work on site in the most recent 6-month period for construction ahead of the permit's revocation - and because he chose to litigate this decision rather than to reapply upon notice to quickly resume the work he claimed to have queued up.

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

infrastructure work and expense with progress on a tenancy agreement and/or on the actual building construction on lot 1 to shorten the gap between the producing revenue to defray them - seemingly to explain why no new work was advanced until this eleventh hour to complete the infrastructure consequence of not doing work on site is the loss of the building permit. The developer's business decisions are what delayed work activity necessitates completion. And these delays also contributed to the loss of the building permit - not the other way around.

The preparation for work on the southerly entrance was poorly managed. Early in the newly extended phase one construction period the applicant DOT an argument against the need for an additional updated traffic study or other forms of reporting to NH-DOT to obtain a permit for that entrance not responded to or corroborated by NH-DOT, and the developer let the matter hang without resolution. Upon the applicant's contact this year to excavation permit with NH-DOT, the need for a summary report on the traffic study was reiterated. Getting clarity on the requirements and then moving action was entirely within the applicant's control. Inexplicably, the applicant mishandled this task, resulting in the setback to his plans in the eleventh hour discovery.

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The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

West Lebanon Revitalization Advisory Committee

To: West Lebanon Revitalization Advisory Committee
Prepared By: Andrew Faunce and Nathan Reichert
Date: December 16, 2024 – Regular Meeting
Discussion Topic: Action Items for West Lebanon
Agenda Item: 3.A

The following is a breakdown of the WLRAC discussion from the November meeting as noted by Mr. Faunce.

Near Term Actions:

- Halt further blight to the West Lebanon Main Street downtown that is manifest in empty storefronts; or business transitions that are not focused on meeting the neighborhood needs. This is a "code red" need to preclude an even more severe downward spiral.
- Develop "destination" experiences - notably make use of the SAU building (the Theater, gym, and abundant open space for activities under tents) as a community center for film, entertainment, and civic events.
- Regroup on current plans to redevelop the three Main St. lots currently owned by the City. Consider short term plans to fill those spaces pending the long-term plan's execution.
- Market WL restaurants as a convenient alternative to WRJ restaurants. ("Draft" on that success.)
- Collaborate with Littleton, NH to see which of their successful approaches will work here.
- Parking - identify if there is an actual or a perceptual problem with finding parking along WL Main St. Take steps to remedy, which may include creating parking or negotiating shared use agreements with property owners.
- Develop the capacity (ideally a specific role and person with marketing skills) within the City Manager or Planning and Development office to regularly and continuously engage, promote, and explain efforts to improve WL. (Having plans and executing them is not sufficient.)
- Engage with the EDC (and the above mentioned role) to create a vital community and partnership with WL business owners and property owners. Any improvements beyond those already in the pipeline rely entirely on their buy in and support.
- Gather/regather the neighborhood needs to identify businesses to attract to WL Main St.
- **Urgently investigate options to encourage or enforce site condition clean up at River Park. ALSO... Investigate, taking action, as necessary, to preclude the potential for sale and alternative development of this property which its zoning allows but that does not comport with resident expectations as defined by the River Park subdivision and site plans.**
- Revisit with EDC and City staff how a TIF will support the above activities. (eg: Which of the above costs can be defrayed by it?)



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

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- explain efforts to improve WL. (Having plans and executing them is not sufficient.)
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 - Gather/regather the neighborhood needs to identify businesses to attract to WL Main St.
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The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

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The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

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The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of a Member

I. No member of a . . . planning board . . . shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has **a direct personal** or pecuniary **interest** in the outcome which differs from the interest of other citizens, **or if that member would be disqualified for any cause to act as a juror** upon the trial of the same matter in any action at law. **N.H. Rev. Stat. Ann. § 673:14**

The Planning Board's Prior Decisions Are Voidable Due to the Prejudgments and Personal Interest of its Chair

...**the planning board** in this case was required by statute to notify all interested parties and to hold public hearings before ruling on the Raymond proposal. The statute reflected the fact that the board's decision would have a disproportionately great impact on Raymond and on owners of land abutting his, but comparatively little impact on other town residents. **We conclude that action of this type must be characterized as judicial or quasi-judicial**, see *Ehrenberg v. City of Concord*, 120 N.H. 656, 659, 421 A.2d 128, 130 (1980), at least for the purpose of deciding whether the rights of the parties were adequately protected; i.e., whether due process requirements were met. Other jurisdictions have adopted a similar view.

The principal question before us on this appeal is **whether the decision of a planning board is rendered invalid by the participation of a board member** whose earlier remarks, before he became a board member, **indicated that he had prejudged the case**. The superior court ruled that the remarks in question were sufficient evidence of prejudgment to disqualify the board member, and *265 that his participation rendered the board's decision voidable under the rule of *Rollins v. Connor*, 74 N.H. 456, 69 A. 777 (1908). We affirm. ***

Winslow v. Town of Holderness Plan. Bd., 125 N.H. 262, 264–65, 480 A.2d 114, 115 (1984)

The Planning Board's Prior Decisions Are Voidable Due to the Prejudgments and Personal Interest of its Chair

We first address the matter of Mr. Mastro's disqualification. **Our State Constitution demands that all judges be “as impartial as the lot of humanity will admit.”** N.H. CONST. pt. I, art. 35. This applies similarly to members of boards acting in a quasi-judicial capacity. N.H. Milk Dealers' Ass'n v. Milk Control Board, 107 N.H. 335, 338–39, 222 A.2d 194, 197–98 (1966). The defendant does not contest the master's finding, based on Mr. Mastro's remarks in favor of the Raymond proposal, that **Mr. Mastro had prejudged the facts of the case** before joining the board. **“There is no doubt that [this type of prejudgment] **117 constitute[s] a cause for disqualification” from a quasi-judicial function of a board.** N.H. Milk Dealers' Ass'n v. Milk Control Board, supra at 339, 222 A.2d at 198; Cinderella Career and Finishing Schools, Inc. v. F.T.C., 425 F.2d 583, 591 (D.C.Cir.1970); see Appeal of Lathrop, 122 N.H. 262, 265–66, 444 A.2d 505, 506–07 (1982); 3 E. Yokley, Zoning Law and Practice § 18–8, at 160 (4th ed. 1979).

We would reach the same result if we applied the test established by State law for members of zoning boards of adjustment, that is, that they meet the standards that would be required of jurors in the trial of the same matter. RSA 31:73 (repealed by Laws 1983, 447:5, I, and replaced by RSA 673:14 (Supp.1983), eff. Jan. 1, 1984.... **A juror may be disqualified if it appears that he or she is “not indifferent,”** RSA 500–A:12, II, and there was ample evidence in this case to support such a finding as to Mr. Mastro. **Accordingly, the master's ruling that Mr. Mastro was disqualified from acting on the Raymond proposal was proper.**

The Planning Board's Prior Decisions Against XYZ Are Voidable Due to the Prejudgments and Personal Interest of its Chair

This brings us to the principal question raised in this appeal: whether the master erred in applying to this case the rule that “judicial action by a tribunal one of whose members is disqualified to act is voidable if the disqualified member participates therein, without reference to the fact whether the result is produced by his vote.”

The Rollins court held that mere **participation by one disqualified member was sufficient to invalidate the tribunal's decision** because it was impossible to estimate the influence one member might have on his associates. ... In view of the important property rights involved, and the State constitutional mandate for judicial impartiality, **we consider this rationale sufficient to justify application of the Rollins rule to this case.**

The defendant's argument, that bias of a single board member should not void the board's decision unless his participation produced the decision, rests on this court's dictum in *Totty v. Grantham Planning Board*,. **We now believe this to be a misstatement of the law. ... we believe that the requirement of impartiality demands application of the Rollins rule to planning boards** in cases like this one, we overrule *Levesque* and reject the dictum in *Totty*, to the extent that they are inconsistent with this opinion.

Winslow v. Town of Holderness Plan. Bd., 125 N.H. 262, 265–69, 480 A.2d 114, 115–18 (1984)

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- 3. Questions?**



June 30, 2025

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

Request for Extension: #PB2025-05-EXT

Members of the Lebanon Planning Board,

In its letter dated April 16, 2025, Lyme Properties, development agent for XYZ Dairy, LLC ("XYZ"), requested further consideration of its December 19, 2024 request for a 2-year extension of the River Park West Lebanon Site Plan. In support of that request, XYZ first submitted a 20-page letter, dated May 23, 2025 (the "**May 23 XYZ Letter**"), which attached and quoted dozens of recently-produced internal City of Lebanon ("City") email records proving that the "staff" of City officials on which this Board has been relying for information concerning the River Park Project for years are severely biased against, and have been trying to delay, obstruct and kill, the Project.

At this Board's June 9, 2025 hearing on XYZ's request, and in a follow-up letter to this Board dated June 25, 2025 (the "**June 25 XYZ Letter**"), XYZ presented additional evidence showing that the Board's entire review process as to XYZ's applications pertaining to the River Park Project has been corrupted by multiple conflicts of interest, improper ex parte communication by the Board with, and reliance by it on, conflicted advice from legal counsel for the City, and disqualifying bias against XYZ on the part of the Board's Chairman, Andrew Faunce, who has now recused himself from XYZ's case, but was involved in all the Board's prior denials of XYZ requests.

Now, in preparation for the continued hearing on this matter on July 14, 2025, XYZ hereby submits the below-described additional evidence on the above issues, and several others, gleaned from further review of the same recently produced internal email files of the City, which now total over 50,000 records, and which XYZ is reviewing as fast as it can. These additional records provide further grounds upon which the previous denials of XYZ's requested extension should be reconsidered, and the extension granted. Among other things, they show that

(a) the biased "staff" of City officials on which this Board has been relying for information concerning the River Park Project has intimidated individual members of the Board who supported XYZ's requests, and has repeatedly misinformed the Board itself as to facts pertaining to those requests, as it is doing now;

(b) the Vice-Chairman of this Board, Richard Ford Burley, has been actively engaged, in the last several months, in secret "special meetings" concerning XYZ's application for an extension with the now-recused Board Chairman Faunce and the conflicted legal counsel for the City, both of whom oppose it, requiring his immediate recusal from XYZ matters; and

(c) another member of the Board, Kathie Romano, who announced in 2024 that she was recusing herself from XYZ/River Park matters because she is an abutter and has previously



opposed the Project, has nevertheless improperly continued to communicate secretly with other Board members to advocate her opposition, and has improperly participated in the drafting of proposed decisions and notices of action against XYZ, thereby further tainting this Board's review process as to XYZ's requests.

A. Disinformation, Bias and Intimidation of Board Members by City "Staff"

1. In addition to taking action in 2022-23 to ensure that XYZ would not receive timely permission from the City to remove the City's obstructing stormwater drainage pipe on its property, so that they could then manufacture an argument that XYZ's building permit had "expired," see May 23 Letter at ¶¶ 3-24, and then using that same argument to stymie XYZ's efforts to obtain permission to remove the pipe in August of 2023, *id.* at 26-37, the "staff" of this Board was obstructing XYZ's efforts to obtain needed approvals from this Board by wrongfully abusing and intimidating Planning Board members who raised arguments favorable to XYZ.

2. In August of 2023, for example, when City "staff" members Tim Corwin ("Corwin") and Nathan Reichert ("Reichert") advised this Board that it should impose onerous "security" requirements on XYZ's housing development plan for River Park, an experienced Planning Board member, Bruce Garland ("Garland"), who was the Board's former Chairman, pointed out in writing to his fellow Board Member that these requirements were unnecessary. In response, Corwin attacked him in writing, in an obvious effort to silence him. Specifically, when Mr. Garland expressed his view to the then-current planning Board Chairman Matthew Hall, in the following email on August 16, 2023, stating that:

I believe there is no reason to impose security requirements [on XYZ]

for the following reasons:

Building #1 uses parking on lots 2 and 3. Without a road to service that parking, the project would be denied a Certificate of Occupancy. It would be like putting up a six story building, but not adding a roof. The first section of infrastructure is simply part of the #1 building.

Similarly, building #2 uses parking on lots 4 and 5. The second section of the infrastructure (at least the River Park Drive side) is part of that building.

Thereafter, the City could deny a building permit should the remaining infrastructure not be built to service the new building.

The City remains in control until all the infrastructure is in place.

See AC Exh. 41 (copy attached hereto), Corwin brutally and arrogantly chastised him, stating:

Why did you send this to me? Unless you have a question or there's something you'd like to discuss, **there is no need for you to share your conclusions with me** outside of a Planning Board meeting. **It is a waste of my time and yours.**



id. (emphasis added), incredibly ignoring the fact that he, Corwin, was only a City staffer who was supposed to help the Board, and Garland was a sitting member of the Planning Board itself, and its former Chairman, who supported XYZ's position on the issue. But that was not all.

4. Corwin then improperly stated his intention to not include Mr. Garland's above-referenced viewpoint in the so-called Planning Board "Staff Memo" to be sent to the Board on that issues, telling the then-current Chairman, Matthew Hall, that **"I've decided against preparing another staff memo for River Park and Bruce's [Garland's] e-mail is exactly why."** See AC Exh. 42 (copy attached hereto). In the process, Corwin dismissed Mr. Garland's assessment with the sideways comment that *"[i]f Bruce's logic is adopted, it should be adopted for all developments and the security requirements should be eliminated entirely from Subdivision Regulations,"* id., which was an erroneous "straw man" argument because the River Park Project did not need the same level of "security" as some projects did in order for the City to retain control, as former Chairman Garland was pointing out. This example illustrates the improper influence that the biased and arrogant City staff has unlawfully exercised, and continues to unlawfully exercise, over all Planning Board matters pertaining to XYZ.

6. The Planning Board "staff" have also obstructed and interfered with XYZ's efforts to obtain other needed approvals from this Board by making repeated false and misleading statements and representations to the members of the Board about XYZ, its development manager Lyme Properties, and the River Park Project itself – such as **falsely claiming**, in opposing XYZ's request for a finding that the Project was "vested," **that the Crafts Avenue extension work that XYZ had already done was not part of Phase 1 of the River Park Project**, when Corwin knew, as he later admitted internally to Brooks on July 18, 2023, and Brooks confirmed, see AC Exh. 43 (copy attached hereto) – **that XYZ was correct in that the Crafts Avenue extension work was part of Phase 1 of the Project**, and had already cost XYZ millions of dollars to complete. Id. This Board cannot lawfully ignore these kinds of misrepresentations by its "staff" that are now being exposed. And there is still more evidence that this Planning Board's processes with respect to XYZ were improper.

B. The Vice-Chairman of this Board, Richard Ford Burley, Has Been Actively Engaged in Improper and Secret "Special Meetings" With the Now-Recused Planning Board Chairman Faunce in a Joint Effort to Ensure the Denial of XYZ's Requested Extension

6. Internal email records of the City have also revealed that the Vice-Chairman of this Planning Board, Richard Ford Burley, who has consistently opposed XYZ's extension request for the River Park Project, and made the original motion to deny it, **has secretly participated over the last several months in so-called "very special meetings"** concerning XYZ's pending applications to this Planning Board. These meetings, which included the now-recused Board Chairman Andrew Faunce, **did not include the other members** of the Planning Board, and **were never publicly noticed under New Hampshire's Right to Know law, RSA 91-A.**

7. These meetings were for the purpose of plotting how to persuade the rest of the Board to deny XYZ's requests, which was not lawful or permissible, especially since a key participant in these "very special meetings," Chairman Faunce, had a personal bias against XYZ which, when later revealed, caused him to recuse himself.



8. On January 28, 2025, for example, Chairman Faunce emailed Burley, Corwin and Reichert inviting them to have a “**timely regroup**” on a prior meeting they had had **about XYZ** with the conflicted legal counsel for the planning board. In doing so, he emphasized that it was a “**pressing topic**” and that he did not want to delay it to a later date because that would “offer little time between then and our 2/10 regular meeting [the Planning board’s publicly scheduled Feb. 10, 2025 meeting] **at which the XYZ item will be on the agenda.**” See Exh. 75 (attached).

8. Reichert responded to Faunce’s invitation by stating

“I am generally available on Friday or Monday. Pick a time. Tim has indicated he can participate in **very special meetings such as this.** Perhaps we meet in person for those who can make it in my office and put the remainders on the teams. Let me know your times. nate.

Exh. 75 (attached). Burley responded to that request for a meeting among this group, which Faunce referred to as a “PB **steering** meeting” (emphasis added), by agreeing to attend and asking if it could be virtual.

9. He then attended this secret “very special meeting” against XYZ, Exh. 76 (attached), and although the specifics of what was discussed at that meeting were never properly recorded, published, or witnessed, they resulted in the Planning Board later denying XYZ’s requested 2-year extension, and improperly conditioning the one-year extension it granted so that these same officials could then argue, as Faunce later did at the Board’s June 9, 2025 hearing, that even the one-year entire extension was “void,” despite the Court Order that had granted it.

10. Vice Chair Burley’s participation in these unrecorded meetings with the now recused Chairman Faunce and others, discussing XYZ matters privately and ex parte, was totally improper, and evidences precisely the kind of bias and lack of impartiality that New Hampshire law has held that a planning board member **cannot have and still participate** in the relevant Planning Board matters in issue – in this case this Board’s consideration of the XYZ matters now before it pertaining to River Park. XYZ’s counsel cited the relevant statute and case law at the June 9, 2025 Planning Board hearing, including N.H. Rev. Stat. Ann. §673:14, and *Winslow v. Town of Holderness Plan. Bd.*, 125 N.H. 262, 264–65 (1984). Given these legal standards, Vice Chair Burley must properly recuse himself from any further involvement in XYZ matters before this Board, and XYZ request that he do so immediately.

C. Another Member of the Board With Clearly Conflicting Interests, Kathie Romano, Failed to Timely Recuse Herself From Participating in XYZ Matters, and Further Tainted and Biased the Board’s Consideration of Them

11. In addition, another member of this Planning Board, Kathie Romano, who was advised in August of 2024 that she should recuse herself from XYZ/River Park matters (because she had a personal interest in opposing them and would have standing to appeal decisions concerning them), did not do so in a timely manner, continuing to participate in the Board’s consideration of XYZ matters for months thereafter, and biasing and tainting the entire process as a result. For



example, she first responded to the suggestion on August 9, 2024 that she recuse herself from XYZ matters by NOT recusing herself, and instead advocating that XYZ's extension requests should be denied, arguing:

... It concerns me that this initial approval was 13 years ago and that there have been numerous convoluted revisions since then in which no current board members were involved.

I have several questions... Since XYZ hasn't been required to post security and since they are likely only paying current use taxes on the land, their carrying costs have been minimal. Is the board aware of this? ...

Can the board denied this request for extension, or if they choose not to deny can they impose the bond requirement? ...

I seem to recall that the most recent extension granted (after 10 years of not commenting construction) gave them at 19 additional years to complete the development... Total of 29 years from initial approval. Here we are three years later with a request for another year making a total of 23 years varied the board should be made aware of this already extended timeframe. Kathy Romano.

EXH. 77 (attached). Thereafter, she continued to communicate her opposition to the XYZ proposals in communications to the staff of the Board, making inquiries and comments about them. See EXH. 78, 79, 80. This also has tainted the prior decisions of this Board pertaining to XYZ and River Park, and warrants reconsideration and granting of them.

Conclusion

All of the above additional evidence, only recently obtained in the internal email files just produced by the city of Lebanon, also demonstrate that the prior decisions of this Planning Board denying the XYZ's applications pertaining to the River Park project were incorrect, and are null and void, including the previous denial of its current 2-year extension request, which it should be reconsidered and granted.

Sincerely,

Lyme Properties 2, LLC
XYZ Dairy LLC

A handwritten signature in blue ink that reads "David Clem".

By: David Clem

EXHIBIT 41

From: /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD3C289255C9424C9C5FD006E6058756-TIM.CORWIN
To: Bruce Garland <brucesgarland@gmail.com>
Subject: RE: [EXTERNAL] River Park
Sent: 2023/08/16 11:21:19 (UTC -05:00)

Why did you send this to me? Unless you have a question or there's something you'd like to discuss, there is no need for you to share your conclusions with me outside of a Planning Board meeting. It is a waste of my time and yours.

From: Bruce Garland <brucesgarland@gmail.com>
Sent: Wednesday, August 16, 2023 11:01 AM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Cc: Matt Hall <matthew.ronal.hall@gmail.com>
Subject: [EXTERNAL] River Park

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim,

I believe there is no reason to impose security requirements for the following reasons:

Building #1 uses parking on lots 2 and 3. Without a road to service that parking, the project would be denied a Certificate of Occupancy. It would be like putting up a six story building, but not adding a roof. The first section of infrastructure is simply part of the #1 building.

Similarly, building #2 uses parking on lots 4 and 5. The second section of the infrastructure (at least the River Park Drive side) is part of that building.

Thereafter, the City could deny a building permit should the remaining infrastructure not be built to service the new building.

The City remains in control until all the infrastructure is in place.

Bruce Garland
32 Dorset Lane
Lebanon, NH 03766
Cell: 917-716-0317

EXHIBIT 42

From: Matthew Hall <matthew.ronal.hall@gmail.com>
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: FW: [EXTERNAL] River Park
Sent: 2023/08/16 20:11:51 (UTC -05:00)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Ah. Well that would CERTAINLY create a precedent!

On Wed, Aug 16, 2023 at 8:09 PM Tim Corwin <Tim.Corwin@lebanonnh.gov> wrote:
Definitely not. His rationale would apply to any development.

If Bruce's logic is adopted, it should be adopted for all developments and the security requirements should be eliminated entirely from Subdivision Regulations.

From: Matthew Hall <matthew.ronal.hall@gmail.com>
Sent: Wednesday, August 16, 2023 7:56 PM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: FW: [EXTERNAL] River Park

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Do you think Bruce's argument carries any weight? I don't really understand it . . .

On Wed, Aug 16, 2023 at 7:26 PM Tim Corwin <Tim.Corwin@lebanonnh.gov> wrote:

Matt – I've decided against preparing another staff memo for River Park and Bruce's e-mail is exactly why. The Board members are all very bright and have already discussed this matter extensively with me and with legal counsel. There's nothing I can say at this point to illuminate anything else or to change anyone's mind.

From: Bruce Garland <brucegarland@gmail.com>
Sent: Wednesday, August 16, 2023 11:01 AM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Cc: Matt Hall <matthew.ronal.hall@gmail.com>
Subject: [EXTERNAL] River Park

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim,

I believe there is no reason to impose security requirements for the following reasons:

Building #1 uses parking on lots 2 and 3. Without a road to service that parking, the project would be denied a Certificate of Occupancy. It would be like putting up a six story building, but not adding a roof. The first section of infrastructure is simply part of the #1 building.

Similarly, building #2 uses parking on lots 4 and 5. The second section of the infrastructure (at least the River Park Drive side) is part of that building.

Thereafter, the City could deny a building permit should the remaining infrastructure not be built to service the new building.

The City remains in control until all the infrastructure is in place.

Bruce Garland
32 Dorset Lane
Lebanon, NH 03766
Cell: 917-716-0317

EXHIBIT 43

From:	David Brooks </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FB542EB07154BB4A49E55BCC0CF9179-DAVID.BROOK>
To:	Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject:	RE: River Park Site Plan Approval - Phase 1
Sent:	2023/07/18 13:44:46 (UTC -05:00)
Percent Complete:	0

Yes, I suppose so. The "installation of water and sewer lines necessary for this portion of the site" would have also included the upsized sewer main all the way down Crafts Avenue. I don't think it made any sense for them to extend the water and sewer lines from the end of Crafts Avenue unless they were also building Crafts Avenue Extension at the same time.

David

David R. Brooks
Deputy City Manager
City of Lebanon, NH
(603)-448-4220 (Office)
(603) 442-6134 (Direct)
David.Brooks@LebanonNH.gov

From: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Sent: Tuesday, July 18, 2023 1:20 PM
To: David Brooks <David.Brooks@lebanonnh.gov>
Subject: River Park Site Plan Approval - Phase 1

David – looking at the original 2011 River Park site plan approval, it appears that the Craft Avenue extensions WAS included as part of Phase 1????

Phase 1: A 48,750-square-foot building (Building #6) for office and retail use located on Lot 1 of the subdivision with additional temporary parking located on Lot 2. Phase 1 also includes construction of a portion of the development roadway sufficient to access the proposed building, the southerly development entrance intersection, the extension of Crafts Avenue, and the installation of water and sewer lines necessary for this portion of the site.

EXHIBIT 75

From: Nathan Reichert </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C2CB7D874720416FA384C306D86340BB-NATHAN REIC>
To: Andrew Faunce <andrew.g.faunce@gmail.com>; Tim Corwin <Tim.Corwin@lebanonnh.gov>; Richard Ford Burley <richard.ford.burley@gmail.com>
Subject: RE: [EXTERNAL] PB steering meeting change
Sent: 2025/01/29 15:17:11 (UTC +00:00)

I am generally available on Friday or Monday.

Pick a time.

Tim has indicated he can participate in very special meetings such as this. Perhaps we meet in person for those who can make it in my office and put the remainders on the teams.

Let me know your times.

nate

From: Andrew Faunce <andrew.g.faunce@gmail.com>

Sent: Tuesday, January 28, 2025 9:33 PM

To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Tim Corwin <Tim.Corwin@lebanonnh.gov>; Richard Ford Burley <richard.ford.burley@gmail.com>

Subject: [EXTERNAL] PB steering meeting change

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi all,

As Tim is out this Thursday and the pressing topic is a timely regroup on the recent meeting with Legal Counsel, I am hoping we can reschedule this week's meeting to Friday, 1/31, or Monday, 2/3. If it makes it easier we can meet via video.

I don't want to push this out into our usual Thursday time next week as that will offer little time between then and our 2/10 regular meeting at which the XYZ item will be on the agenda.

If that's agreeable, please share what's possible for you this Friday and Monday.

Thank you,

-Andrew

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EXHIBIT 76

From: Andrew Faunce <andrew.g.faunce@gmail.com>
To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
CC: Richard Ford Burley <richardfordburley@gmail.com>; Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: [EXTERNAL] PB steering meeting change
Sent: 2025/01/29 23:34:53 (UTC +00:00)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Thanks for closing the loose ends. And thanks for the call at the end of your very long day, Nate.

We'll all connect by Teams Friday 9am.

-A

On Wed, Jan 29, 2025 at 6:24 PM Nathan Reichert <Nathan.Reichert@lebanonnh.gov> wrote:

We can do both in person and via teams.

I'll set up the teams. If anyone wants to join in person in my office, it will be fine.

Nate

From: Ash Ford Burley <richard.ford.burley@gmail.com>
Sent: Wednesday, January 29, 2025 6:23 PM
To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Cc: Andrew Faunce <andrew.g.faunce@gmail.com>; Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: [EXTERNAL] PB steering meeting change

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Can that be virtual by any chance?

On Wed, Jan 29, 2025, 6:15 PM Nathan Reichert <Nathan.Reichert@lebanonnh.gov> wrote:

How about Friday at 9:00...

Nate

From: Ash Ford Burley <richard.ford.burley@gmail.com>
Sent: Wednesday, January 29, 2025 5:33 PM
To: Andrew Faunce <andrew.g.faunce@gmail.com>
Cc: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: [EXTERNAL] PB steering meeting change

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Sorry are we meeting tomorrow or Friday?

On Wed, Jan 29, 2025, 10:43 AM Andrew Faunce <andrew.g.faunce@gmail.com> wrote:

Thanks, Nate.

I'm good with the original day/time and will propose 9:00am on Friday if Friday is better for others. In either instance if we're looping Tim in remotely, let's make it a full Teams experience, please.

Thanks!

-A

On Wed, Jan 29, 2025 at 10:17 AM Nathan Reichert <Nathan.Reichert@lebanonnh.gov> wrote:

I am generally available on Friday or Monday.

Pick a time.

Tim has indicated he can participate in very special meetings such as this. Perhaps we meet in person for those who can make it in my office and put the remainders on the teams.

Let me know your times.

nate

From: Andrew Faunce <andrew.g.faunce@gmail.com>

Sent: Tuesday, January 28, 2025 9:33 PM

To: Nathan Reichert <Nathan.Reichert@lebanonnh.gov>; Tim Corwin <Tim.Corwin@lebanonnh.gov>; Richard Ford Burley <richard.ford.burley@gmail.com>

Subject: [EXTERNAL] PB steering meeting change

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi all,

As Tim is out this Thursday and the pressing topic is a timely regroup on the recent meeting with Legal Counsel, I am hoping we can reschedule this week's meeting to Friday, 1/31, or Monday, 2/3. If it makes it easier we can meet via video.

I don't want to push this out into our usual Thursday time next week as that will offer little time between then and our 2/10 regular meeting at which the XYZ item will be on the agenda.

If that's agreeable, please share what's possible for you this Friday and Monday.

Thank you,

-Andrew

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EXHIBIT 77

From: Kathie Romano <kathieromano@gmail.com>
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: Re: [EXTERNAL] Recusal from River Park?
Sent: 2024/08/09 19:04:38 (UTC +00:00)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Thank you. It concerns me that this initial approval was THIRTEEN years ago and that there have been numerous convoluted revisions since then in which NO CURRENT Board members were involved.

I have several questions:

- The phrase "Prior to the signing and recording of the mylar....Is "the mylar" the same as "the River Park Subdivision plat"? If not, when was "the mylar" signed & recorded?
- That phrase is curiously missing from paragraph 11 on p.7 of staff comments. Should Lot 6 tge open space lit now be open to the public? If not when? Access appears to be fenced off.
- Since XYZ hasn't been required to post security & since they are likely only paying "current use" taxes on the land, their carrying costs have been minimal. Is the Board aware of this?
- Can the Board deny this request for extension, or if they choose not to deny can they impose the bond requirement?
- I seem to recall that the most recent extension granted (after 10 yrs of not commencing construction) gave them @ 19 additional years to complete the development...a total of 29 yrs from initial approval. Here we are 3 yrs later with a request for another year making it a total of 23 yrs. The Board should be made aware of this already extended timeframe.

Kathie Romano

On Fri, Aug 9, 2024, 2:04 PM Tim Corwin <Tim.Corwin@lebanonnh.gov> wrote:

Kathie –

Based on an e-mail that David had sent to you and Laurel in 2019, think the short answer is that we would still strongly advise you to recuse. The issue is that as a unit owner, you would most likely have standing to appeal, and no one with standing should sit on the Board to hear the application.

I also found a letter from David Clem (attached) wherein he states that Nicole Cormen had recused herself based on the fact that her parents lived in the Falls. Assuming that's accurate, it's something else to keep in mind. -Tim

David's e-mail:

"I described the current situation in a posting to Plan-Link looking for input from other planners and land use attorneys around the state. As it turned out, the City's own attorneys were among those who responded.

I received a variety of responses as to whether you, as officers in your Homeowners Association and with a fractional interest in the open space parcels, technically meet the definition of "abutter" as set forth in RSA 672:3. Some responses suggested you would meet the definition for one reason or another and others said you clearly did not meet it. However, there was nearly unanimous advice that if you might be considered an abutter, the conservative approach would be to recuse yourselves, because of appearances and perceptions, because of the potential for a court ruling invalidating the Board's decision, and because having the City have to defend a conflict of interest case is really just a waste of time and municipal (tax payer) resources.

It was noted in many responses that the issue of whether to recuse yourselves goes beyond the strict definition of 'abutter'. As noted in RSA 673:14, the standard for disqualification of a member is similar to the juror standard or whether you would have standing to appeal the decision. On the issue of standing, it was held in Johnson v Town of Wolfeboro, 157 NH 94 (2008) that despite the way that the definition of 'abutter' treats condos and other collective ownership, nevertheless INDIVIDUAL unit owners retained standing to appeal, even where the relevant association had decided not to do so. Therefore, in the City's attorney's view, the language in the 'abutter' definition is not directly relevant to either standing or conflicts and it is wise to assume that anyone who would have standing to appeal a case should not be sitting as a Board member hearing that very case."

From: Kathie Romano <kathieromano@gmail.com>
Sent: Friday, August 9, 2024 9:51 AM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: [EXTERNAL] Recusal from River Park?

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

In the past I have recused myself from voting on the River Park applications because Dave Clem objected to both Laurel Stavis and me because we were board members at The Falls HOA across the street (Main Street...Rt10). I resigned from the Board last summer so although I still reside in that community my lot does not back up to Rt 10 and I am no longer a Board member. Do I still need to recuse myself?

Thanks,

Kathie Romano 484-888-1371 cell/text

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EXHIBIT 78

From:	Kathie Romano <kathieromano@gmail.com>
To:	Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject:	[EXTERNAL] Fwd: River Park
Sent:	2024/09/20 00:54:24 (UTC +00:00)
Percent Complete:	0

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim,

I found this old email from Bruce regarding the negative impact from repetitive extensions when allocations for water & sewer usage become tied up (in this case for over 30 years). I haven't heard that being brought up with regard to the current 6th or 7th? extension request.

Kathie Romano

----- Forwarded message -----

From: **Bruce Garland** <brucegarland@gmail.com>

Date: Tue, Sep 10, 2019, 7:14 PM

Subject: River Park

To: Kathie Romano <kathieromano@gmail.com>

Hi Kathie,

I don't have your phone number, so apologies for the email instead of a call.

Today I asked David for a summary of the River Park project:

It was approved in late 2011. Klem got three extensions, some involving modifications. In December last year he submitted plans to change the phases of the project, though review did not start until this year.

As to Klem's investment, all the infrastructure work required for the project on Craft Ave was done over a year ago.

Lastly, you may recall that at the beginning of this year the Board approved changes to our extension policy. The intent was to minimize the number of extensions so as not to hold up allocations of water, sewage, traffic and other considerations which other applicants might claim.

Hope this helps.

32 Dorset Lane
Lebanon, NH 03766-2004
917-716-0317

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EXHIBIT 79

From:	Brian Vincent </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED9E74B2B6C84B06B72312FA7C4A8E52-BVINCENT>
To:	Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject:	FW: [EXTERNAL] River Park "as built" request
Sent:	2024/10/14 11:38:40 (UTC +00:00)
Percent Complete:	0

Tim,

I'm not sure I should be answering a planning board member question outside of the PB meeting itself?

Thanks,

Brian

Brian A. Vincent, PE
City Engineer

City of Lebanon
Department of Public Works
193 Dartmouth College Highway
Lebanon, NH 03766
603-448-3112 x 6252
brian.vincent@lebanonnh.gov

From: Kathie Romano <kathieromano@gmail.com>
Sent: Sunday, October 13, 2024 10:13 PM
To: Brian Vincent <brian.vincent@lebanonnh.gov>
Subject: [EXTERNAL] River Park "as built" request

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Brian,

A quick question: At last month's Planning Board meeting you mentioned that you had not received an "as built" diagram of a sewer or water line that had been moved in tge River Park development. Was that the stormsewer line that previously ran diagonally thru lot 1 or was it another sewer or water line?

Thanks for the clarification.

Kathie Romano 484-888-1371

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EXHIBIT 80

From:	Kathie Romano <kathieromano@gmail.com>
To:	Nathan Reichert <Nathan.Reichert@lebanonnh.gov>
Subject:	[EXTERNAL] Upcoming Planning issues
Sent:	2025/03/06 17:07:46 (UTC +00:00)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Nate,

At the end of the last Planning Board Meeting you mentioned not only the decision the Board needs to make on 3/17 regarding a requested extension for XYZ Dairy's River Park development but also a second request about removing. I have 2 questions:

Knowing that site has multiple zones, what exactly is being requested, and

Would granting that request affect the schedule of construction affecting the building of Phase 1?

Thank you,

Kathie Romano

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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** Conceptual Review

PROPERTY OWNER (APPLICANT):

NAME: Cole Partners, LLC c/o Eric Cole

MAILING ADDRESS:

E-MAIL ADDRESS:

CO-APPLICANT, AGENT, OR LESSEE:

NAME: ReVision Energy c/o Megan Ulin

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 194

LOT#: 1

PLOT #:

ZONE: RL1

STREET ADDRESS OF PROJECT: Meriden Rd (parcel address 90 Great Brook Rd)

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

SCOPE OF PROJECT:

Installation of a 2.5MW DC ground mounted solar array

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: solar PV array

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 July 14, 2025, unless I person Signed by: iting, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER:

Eric Cole

DATE: 6/24/2025

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 Signed by:

PROPERTY OWNER:

Eric Cole

DATE: 6/24/2025

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	
2025-07-24	194-1	PB2025-36-CON	

Request for Conceptual Hearing – Community Solar Array – Meriden Road

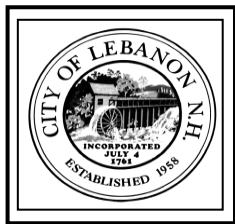
Project Description

ReVision Energy is an employee-owned solar company and B-Corp. We've had the privilege of working with many Upper Valley residents, businesses and communities, including the City of Lebanon, on renewable energy projects that reduce our customers' electric bills and carbon footprint. We are currently developing a 2.5MW DC community solar array under an option to lease agreement with a local landowner who is interested in leasing a portion of their land for solar energy generation. The project site is an existing corn field located along Meriden Rd (Rt. 120), Tax Map 194, Lot 1, and the project comprises about 9 acres of the 255-acre lot. The proposed solar array would generate an estimated 3,163,087 kilowatt-hours of clean, renewable electricity annually that would benefit enrolled participants located in Liberty Utilities territory through New Hampshire's group net metering program.

The proposed project is a fixed-tilt ground mounted solar array. The panel heights are less than 13' tall and are oriented south with a tilt of 35 degrees. The mounting system is composed of ground screw foundations, which are inserted into the earth with minimal disturbance, and an aluminum racking system which is affixed to the ground screw foundations and to which the panels are mounted. The increase in impervious area will include a concrete equipment pad for the transformers and switchgear, a gravel equipment pad for the inverter racks, and a new gravel access drive of which a portion is temporary impact only during construction. A 7' wildlife fence will surround the project to provide site security.

The project and associated stormwater improvements are sited outside of wetlands and wetland buffers. A small amount of tree clearing is proposed to accommodate the array. Post construction the site will be revegetated and landscaping improvements that are consistent with the character of the site location are anticipated to mitigate the visual impact to abutting properties, which will be reflected on our landscape plan. This may include native meadow plantings, shrubs or evergreens with a focus of screening around the access drive improvements where existing vegetation does not provide screening. We do expect to submit a waiver request from strict compliance with the landscaping standards as the solar project is a passive use, that is largely set back more than 100-plus feet from the property line, and that will not generate an increase in noise, fumes, or traffic like typical retail and commercial use.

The project is consistent with the objectives of Lebanon's master plan to support a robust and stable local energy economy. When installed properly, solar arrays are expected to last 40+ years and provide low-cost energy with minimal ongoing operational and maintenance support. The equipment generates virtually no noise while generating electricity, and solar panels are coated with an anti-reflective surface, and are designed to absorb light, so any glare is minimal and reflected upward. Given the minimally intrusive characteristics of solar photovoltaic arrays and the larger environmental benefits solar provides, we hope this project will be a welcome addition to Lebanon's landscape.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon Planning Board

FROM: Planning and Development Department Staff

RE: 2025-2026 Proposed Zoning Amendments

DATE: July 7, 2025

City staff discussed how to make the 2025-2026 Zoning Amendment cycle more productive, concise, and organized. One suggestion was to have the Lebanon Planning Board review the list of proposed zoning Amendments and determine priorities for the 2025-2026 cycle.

Many of the possible amendments on the list are staff derived from legal changes or from problems or questions that have arisen while working with the zoning ordinance. Some of the amendments are sponsored from other Boards and Commissions and are noted as so on the attachment. You will notice that many of these amendments are small and can be grouped as one item under “technical amendments”. The larger ones that include policy changes or map changes will need to move forward as their own item.

City staff is requesting that the Planning Board review the attached list of possible Amendments and discuss what priorities should be. Ideally, the Planning Board should provide a list of the top zoning amendments that would like to see move forward. Small “Technical Amendments” can be grouped as one. The master list provided has two sections. Amendments 1-8 are ready to be move forward. Amendments 9-15 though are important, they might not be ready to be moved forward due to lack of public engagement and input, a Board or Commission needs dedicated time to work on the item, or staff needs to do more research. Even if these items are not moved forward in the 2025-2026 cycle, they will all be moved to the next cycle’s list. Staff request that the Planning Board review the list of Amendments 9-15 and if there is any item, they feel is important to act upon now, let it be known so staff can move forward with what the Planning Board feels is necessary for Lebanon.

Attachments:

1. Sorted Master list of Potential Zoning Amendments for the 2025-2026 Cycle
2. 2025-2026 Zoning Amendment Schedule

PROPOSED 2026 ZONING AMENDMENTS

1. Section 408: Historic District – Heritage Commission Sponsored

The Heritage Commission is desiring more guidance in their regulations when it comes to making decisions on cases. They wish to harmonize the local ordinance to match with the national guidelines. This will give more black and white rules when deciding rather than being opinion based. They are looking to update Sections 408.4 “Certificate of Approval Required” and 408.6 “Criteria for Review”.

2. Window Signs – Staff

Section 608.4.A.1.

Creating: g. Window Signs Each business having windows shall not cover more than fifty (50) percent of the glass area of each window with signage/advertising. Animated illumination or effects, electronic, blinking, flashing, and/or scrolling window signs shall be prohibited.

Section 608.4.A.2

d. Window Signs

Section 608.4.A.7.

7. Window Signs: Window signs in the commercial and industrial districts, or commercial uses in a residential district shall be subject to the following regulations:

- a. Animated illumination or effects, electronic, blinking, flashing, and/or scrolling window signs shall be prohibited.

Add to Definitions:

Window sign: Any sign that is affixed to the interior or exterior of the window or windowpanes or within five (5) feet of the interior of the window or windowpanes and is visible from the exterior of the structure.

3. EV Regulations – LEAC/Sherry B. Sponsored

- a. Draft Amendment attached to rear of this document. The goal of this amendment is to increase the number of Low-power Level 2 chargers (LPL2). LEAC’s EV Subcommittee state This should save money for developers, drivers, and our community as a whole while reducing stress on the electrical grid and lowering greenhouse gas emissions compared with the current Zoning regulations. More detailed explanation in Sherry’s email from April 30, 2025.
- b. Move out of Zoning Ordinance (except for one- and two-family regulations), concurrently with adoption of EV regs in the Site Plan Review Regs?

4. Pattern Zones Overlay-Staff

3– 4 unit buildings are exempt from the pattern zones plan book. A plan set from a licenses design professional must be submitted as part of the Special Exception application and design must be approved by the ZBA as part of the Special Exception approval. The design of the structure must match the character of the existing residential buildings in the neighborhood.

5. Northern Lebanon Rezoning – pushed out from Spring 2025

Map Amendments:

1. Centerra/Altaria
 - a. Rezone the Centerra Business Park and Altaria Properties to reflect what is shown in the Centerra Business Park deed restrictions.
2. Etna Road
 - a. Rezone elements of the east side of Etna Road from IND-L to GC-1.
3. LaBombard/Signal Hill/Hatch Property
 - a. Rezone from IND-L to GC-1
4. Heater Road
 - a. Rezone from IND-L to GC-1
5. Environmental Overlay
 - a. Create an Overlay District and corresponding policy changes to make an Environmental protection area in a known wildlife corridor with steep slopes and high value wetlands.

6. STATUTORY AMENDMENTS -Staff

- a. **Mandates manufactured housing in "most" residential zoning districts**** Rewrite of Manufactured Home Subdivision Statutes. [Chapter 23](#) (HB 1361 (2024))**

- b. **TBD DEPENDING ON WHAT'S SIGNED INTO LAW OVER THE SUMMER 2025**

7. MISC & Technical Amendments - Staff

- a. Section 1000:
clarify that with respect to petitioned amendments:
 - i. the petitioner shall bear the responsibility of presenting the amendment throughout the process (i.e. to council and to the other land use boards),
 - ii. that the petitioner shall pay 675:7 notice fees and another other applicable fees (i.e. add fee for petitioned zoning amendments to Chapter 68?)
- b. Lot width definition
expand from 20 ft. to 22 ft. to match requirements of driveway regulations
- c. Break apart the "Care and Treatment of Animals" use into separate uses such as "boarding/kennels" and "small/large animal veterinary office" etc.
 - i. can patients stay overnight for treatment without being a kennel?

8. Food Trucks

- a. Revisions to the draft created by the Food Truck Task Force

9. USES:

- a. Create use category for mini-storage/self-storage (i.e. separate from warehouse)
 - create definition and add to use tables
 - keeping of "pods" included in this definition?
 - Minor Sub. Amendment

- b. Definition of light industry - includes computer software development - also allow this in the CB or LD or GC? Amend to definition of office to broaden beyond professional office? Or add a new use category for general business office use?
-Minor Sub. Amendment
- c. Amend car wash uses to Class 1 and 2 lots only? (i.e. need definition to require municipal sewer)
- Minor Sub. amendment
- d. Add commercial kitchen as a use
-create definition and add to use tables – no customer facing portion of the site
-minor sub
- e. Recreate Food Service Uses:
 - a. “Take-out refreshments”? (only permitted as an incidental use to “restaurant”) (see also sandwich shop)
-redo restaurants/drive thru/food service definitions to simplify
-minor sub amendment

10. MISC & Technical Amendments

- a. Off-street parking space definition
 - i. clarify what is meant by “marked”
 - ii. move both the “marked” requirement and the maneuverability requirement into 607.
- b. Allow shared driveway for up to 4 lots?
- c. Address dwelling unit density by PB provisions in CB, LD, etc.
-Add “MSPC” to 306.5, 307.5, 311B.7, and 607.4
- d. Clarify that R-O-1 District subject to commercial district sign regulations.
- e. Eliminate minimum parking requirements? (1 space per unit?)
- f. Section 901.1 – does not currently require a zoning permit for a change of use to an *existing* building
 - i. ID expiration period for a zoning permit?

11. COTTAGE REGS: (staff)

- need to harmonize ZO, SPR and SUB regs based on Barrows St experience
- Talks with Keene about their cottage regulations; Tim McNamara and Barrow St Team
- Major Sub

12. Short-term Rentals

- Allow a midrange to cover travel nurses and visiting professors, but not weekenders? (30-60 days?)
- Best Practices/PR? – ie C.O. for apartment (not zoning issues)
- Does PB want to tackle this issue now?

-Major Sub

13. Section 155-E – Excavation Regulations

- Currently have 0 oversight – include in site plan regs or zoning regs?
- Dover – PB update of excavation and reclamation plans yearly
-Major sub

14. Section 211

- a. need to amend 211.2 which allows 6 box trailers (including shipping containers) to be placed permanently.
 - i. Allow permanently? Or just temporarily?
 - ii. Major Sub – is it time to undertake this effort?
- b. Amend 211.4 to require minor site plan review for temporary structures for up to two years

15. Groundwater protection ordinance

Related to Septic Ordinance and Cyanobacteria Water Quality Overlays
-Major Sub Amendment

Amendment	Date	Who	Staff Responsibility	Done
2025-26 Amendments	7/7/2025	Planning Staff	Get packet to Crystal for PB meeting	
2025-26 Amendments	7/14/2025	Planning Staff/Planning Board	Finish discussing possible amendments list	
2025-26 Amendments	7/22/2025	Planning Staff	Public Information Session at DHMC (auditorium e)	
2025-26 Amendments	7/21/2025	Planning Staff	Get packet to Crystal for PB meeting	
2025-26 Amendments	7/28/2025	Planning Staff/Planning Board	Draft Amendment Presentation to Planning Board	
2025-26 Amendments	8/18/2025	Planning Staff	Get packet to Crystal for PB meeting	
2025-26 Amendments	8/25/2025	Planning Board	PB Final Consideration Meeting	
2025-26 Amendments	9/2/2025	Planning Staff	Get packet to Crystal for PB meeting	
2025-26 Amendments	9/8/2025	Planning Board	Extra: PB Final Consideration Meeting, if needed	
2025-26 Amendments	End of Aug - Beginning of Sept	Planning Staff	Staff Complete Writing Draft Ordinances	
2025-26 Amendments	9/22/2025	Planning Staff	Packet due to David for City Council Meeting	
2025-26 Amendments	10/1/2025	City Council	Order to Land Use Boards	
2025-26 Amendments	10/9/2025	Planning Staff	Send to Legal for Review	
2025-26 Amendments	10/27/2025	Legal	Legal Review Letters Due	
2025-26 Amendments	10/27/2025	Planning Staff	Get ZBA Packet to Tiffany	
2025-26 Amendments	11/3/2025	ZBA	ZBA Review of Amednments	
2025-26 Amendments	11/6/2025	Planning Staff	Get ConCom Packet to Crystal	
2025-26 Amendments	11/13/2025	Conservation Commission	ConCom Review of Amendments	
2025-26 Amendments	11/17/2025	Planning Staff	Get PB Packet to Crystal	
2025-26 Amendments	11/24/2025	Planning Board	PB Review of Amendments	
2025-26 Amendments	12/18/2025	Planning Staff	Due: Public Notices and RSA written and reviewed	
2025-26 Amendments	12/29/2025	Planning Staff	Get Packet to David for Countil Meeting	
2025-26 Amendments	1/7/2026	City Council	Council call for Public Hearing	
2025-26 Amendments	1/8/2026	Planning Staff	RSA Letters go out	
2025-26 Amendments	1/12/2026	Planning Staff	Get Packet to David for Countil Meeting	
2025-26 Amendments	1/21/2026	City Council	Council Public Hearing	
Planning Board Meeting				
City Council Meeting				
ZBA Meeting				
ConCom Meeting				

DRAFT

**LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
TUESDAY, MAY 27, 2025 6:30PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Eric Stacy, Kellen Appleton, Karen Zook (City Council Rep), Kathie Romano (alt)

MEMBERS ABSENT: Patrick Kennelly, Jeremy Rutter

STAFF PRESENT: Tim Corwin (Deputy Planning Director), Nathan Reichert (Director of Planning & Development), Brian Vincent (City Engineer)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:34pm. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures. Chair Faunce appointed Ms. Romano as a regular voting member for this meeting.

2. PUBLIC HEARING ITEMS

- A. Families Flourish North East (applicant), Mary Hitchcock Memorial Hospital (property owner), 424 Mount Support Road (Tax Map 24, Lot 6), zoned R-1: Applicant requests Site Plan Review for a proposed +/-19,661 sq. ft., 3-story treatment and recovery center/group residence with 12 residential rooms, together with associated site improvements including access, parking, utilities, landscaping, and lighting. PB2025-17-SPR - Continued from May 12, 2025**

Mr. Nik Fiore (Engineering Ventures), Ms. Mara Robinson (Mara Landscape Design), Mr. Tim Criswell (Studio Nexus), Mr. Thomas Sullivan and Ms. Courtney Tanner (Families Flourish NE), and Mr. Dave Duncan (DHMC Facilities Management) were present on behalf of the applicant.

Mr. Fiore gave an overview of the project, which involves the new construction of a treatment/recovery center/group residence for mothers recovering from addiction. He noted the applicant is making several waivers requests and said he would



reference them as appropriate during his presentation.

He said the site contains a lot of wetland area and he said the project team worked hard to design the building to fit within the property so as to minimize the wetland impacts. He said the Conservation Commission had reviewed the application and gave its input as well.

He said they located parking on the north end less than 15 feet from the property line and on the south end a little more than 15 feet from the property line. He noted that the setback line is 20 feet from the property line, but the City's multi-use pathway intersects the property which results in the area between the pathway and the parking area to be less than 15 feet. He said they want to leave a landscaping strip between the parking and the pathway, which further restricts the area.

Mr. Fiore discussed the stormwater management plan for the project. He said stormwater would be channeled through a proprietary filter system into a catch basin at the corner of the lot and then into the existing municipal line in the street and to the sewer. He said the discharge rate would not exceed the existing conditions.

He said the location of the front entrance of the building is perpendicular to the front of the property. Chair Faunce asked if signage will indicate where the main entrance is and Mr. Fiore said they could add a sign. Mr. Criswell said the entry porch will have a roof over the entry and a small gable has been added, which is not in the drawings in the meeting agenda materials.

Mr. Fiore said the light from the light pole in the front of the property would spill over the property line. He said if they try to move the light pole back (closer to the building), it will throw the other lighting on site off balance. He said adding shields to that light may create a sharp cutoff of light as vehicles utilize the multi-use pathway that intersects the site.

Waivers Being Requested by Applicant	Reasons for Waiver Requests
Waiver request for the requirement of the 10-foot landscaping buffer about the building.	He said the site is tight from the start because of the wetlands areas, and he said the requirement of the 10-foot buffer would push the project area further into the wetlands.
Waiver request for the requirement prohibiting parking in the front yard of the building.	He said parking is located at the front of the building because of the limitations of space and because they want to use the backyard area as a place for the residents for outdoor activities.
Waiver request for the requirement for permitted landscaping.	He said the applicant is asking that the existing vegetation on the site be allowed to remain and act as the landscaping.

Waiver request for the requirement for screening around the transformer.	He said the transformer will be located on an island in the parking lot, which he said was the only place they could locate it without disturbing more wetlands. He they will install bollards around the transformer.
Waiver request for the requirement for 40-foot spacing between trees along the front yard	He said here's utility pole at the front of the property with a guide wire and they can't locate trees closer to that existing feature. He said they are spreading out a couple of trees a bit further than 40 feet apart in that area.
Waiver request for the requirement for vegetation/shade tree in the landscaping islands at the end of the rows of parking	He said the transformer is located in the only landscaping island they have room for in the parking lot. He said there is no room for vegetation/trees, as stated previously.
Waiver request for the requirement that the main entrance of the building face the front of the property.	He said, because the buildable site is so tight, the front entrance is located to the right of a front vestibule that faces the front of the property.
Waiver request for the requirement to have trees that are 12 inches or more in diameter located away from the property line.	He said the applicant is asking that the existing vegetation on the site be allowed to remain and act as the landscaping.
Waiver request for the requirement to provide test pits for stormwater.	He said they are asking to be allowed to provide them later in the application process, as a condition of approval, as opposed to providing them now.
Waiver request for the requirement for lighting at the front of the property.	He said the location of a light pole in the front of the property throws light a little bit over the front property line. He said if they relocate the light pole further back it will throw off the balance for the rest of the lighting.

1
2 Mr. Fiore explained the snow removal plan for the site. He said the wetlands will be protected
3 from snow collection areas. He said they could add signs to alert plow drivers not to put snow in
4 the wetland areas. Ms. Romano noted it is curious that this site is not included in the Route 120
5 Corridor Study as a wetlands area.

6
7 The group discussed the proposed stormwater management plan at length. Mr. Vincent explained
8 how the volume of stormwater is estimated and how stormwater management systems are
9 designed (Flood Control Methodology) to release flow in a controlled manner so the lower-lying
10 areas of downtown Lebanon are not flooded. Mr. Vincent noted that this site has a lot of
11 wetlands that act like “sinks” for extra water and is an added layer of water control.

12
13 Dr. Ford Burley asked if the building could be designed to be smaller to fit better on the site and
14 not require all the waivers that the applicant is currently requesting. Mr. Fiore said the
15 Conservation Commission also asked this question. He said all of the services that are needed to
16 accommodate the 12-bed facility were deemed critical and, therefore, the size of the building

1 could not be shrunk any further. Ms. Tanner said the team worked very hard to keep the design
2 as tight as possible but still provide all the facilities and services that are needed for 12 residents,
3 their children (perhaps), and 24-hour staff.

4
5 The group discussed the purpose of Section 51.E.16, related to vegetation requirements, at
6 length. They discussed how this site has a lot of existing vegetation that can meet many of the
7 screening and perimeter landscaping requirements as it is without further wetlands impacts.
8 Chair Faunce noted that the applicant has not demonstrated how it will manage the existing
9 vegetation, which will continue to grow larger and thicker. The group discussed adding a
10 condition of approval that the applicant will not bring equipment into the wetlands areas in order
11 to manage screening of the existing vegetation between this property and abutting properties.

12
13 Chair Faunce opened the public comment portion of the public hearing.

14
15 Ms. Emily Britton (Ward 2) said she wanted to voice her support for this development. She said
16 she has worked in obstetrics as an RN for 15 years. She said this type of facility, which would
17 only be the third of its kind in NH, would mean a great deal not only to the patients but to the
18 healthcare providers who really struggle with how to help patients when they leave the hospital
19 because they need a lot of support to work through their disorders.

20
21 Chair Faunce closed the public comment portion of the meeting.

22
23 Mr. Sullivan said Mr. Andrew Winter (Executive Director of Twin Pines) is an abutter toward
24 the south side of the project site. He said Mr. Winter has been an advocate of the project and he
25 said he is sure Mr. Winter will help work through landscaping issues that may affect the abutting
26 properties. He thanked the City boards and committees for their help and input with the design
27 process.

28
29 Chair Faunce closed the public hearing.

30
31 The group discussed two proposed conditions of approval that were not included in the original
32 documentation for this application. Mr. Corwin said one was related to the lighting issue that was
33 discussed with the applicant earlier in the meeting. He said the other was a condition of approval
34 proposed by the Fire Department. He read the following draft language:

35
36 *"The applicant shall provide a wildland fire hazard assessment as required by the current*
37 *version of the NFPA that is in force and in effect and shall provide such assessment to the*
38 *Lebanon Fire Department for review."*

39
40 ***A MOTION was made by Richard Ford Burley that, for the application of Families Flourish***
41 ***North East and Mary Hitchcock Memorial Hospital PB2025-17-SPR, the Lebanon Planning***
42 ***Board approves the partial waivers from the following sections of the Site Plan Review***
43 ***Regulation:***

44 ***Section 6.2.D***

45 ***Section 6.2 B***

46 ***Section 6.5.E.7***

47 ***Section 6.2.B.8***

48 ***Section 6.2.B.10***

49 ***Section 6.2.E.2***

1 *Section 6.5.C.2*

2 *Section 5.1.E.16*

3 *Section 6.6.C.1.2.k*

4 *Section 6.7.B.2*

5 *as outlined in the application for waivers for this particular application.*

7 *The MOTION was seconded by Kellen Appleton.*

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

12 *A MOTION was made by Richard Ford that the Lebanon Planning Board approves the*
13 *application of Families Flourish North East (applicant) and Mary Hitchcock Memorial*
14 *Hospital (property owner), regarding 424 Mount Support Road (Tax Map 24, Lot 6), zoned R-*
15 *1, PB2025-17-SPR, for Site Plan approval to construct a +/-19,661 sq. ft., 3-story treatment*
16 *and recovery center/group residence with 12 residential rooms, together with associated site*
17 *improvements as shown on a plan set titled “Families Flourish Northeast,” dated March 10,*
18 *2025, last revised April 29, 2025, prepared by Engineering Ventures, PC, EV Project # 22063*
19 *(23 sheets), including any and all submissions and testimony provided for and during the*
20 *public hearing.*

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

28 *This approval is subject to the following conditions:*

29 *General Conditions*

- 30 *1. It shall be the applicant’s responsibility to be familiar with and aware of these conditions*
31 *of approval, and it shall be the applicant’s responsibility to satisfy these conditions of*
32 *approval and to satisfy them within the relevant timeframes outlined below.*
- 33 *2. The development is subject to the Site Plan Review Regulations adopted May 13, 1991,*
34 *last revised January 23, 2023, and the Zoning Ordinance adopted January 16, 2013, last*
35 *amended March 6, 2025, which are the regulations in effect at the time the application*
36 *was submitted.*
- 37 *3. A building permit must be applied for and issued within two (2) years of the date of this*
38 *approval (4.10.A), subject to an extension if applied for by the applicant and if approved*
39 *by the Planning Board per Section 4.10.B.*
- 40 *4. “Active and substantial development,” as defined in Section 8.4.A.1 of the Site Plan*
41 *Review Regulations, shall be achieved within two (2) years of the date of this approval*
42 *(8.4.A.2), subject to an extension if applied for by the applicant and if approved by the*
43 *Planning Board per Section 8.4.A.3. If active and substantial development is not achieved*
44 *within two (2) years of the date of the Planning Board’s approval, the development shall*
45 *be subject to any changes in the City’s land use regulations.*
- 46 *5. “Substantial completion,” as defined in Section 8.4.B.1 of the Site Plan Review*
47 *Regulations, shall be achieved within five (5) years of the date of this approval. If*
48 *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.
6. 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.
 7. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.
 8. 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.
 9. 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).
 10. 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 and Section 6.10.B.5 of the Site Plan Review Regulations.
 11. Traffic impacts from the project will be addressed through the project's inclusion in the Mount Support Road Special Assessment District, which inclusion shall commence upon the Planning Board's conditional approval.

Conditions to be Satisfied Prior to Application for a Building Permit and Prior to the Start of Any Construction Activities

12. Within 45 days of the Planning Board's approval, the applicant shall provide the soil data required by Section 6.6.C.1.2.k of the Site Plan Review Regulations and shall update the drainage report and plan set as needed to the satisfaction of the City Engineer.
 13. 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) Address the low point on the back walkway area on the south of the building where it appears to trap stormwater.
 - b) Correct the labeling of the drainage structure D4 elevations.
 - c) Correct discrepancy in size of office space as shown on the cover sheet (2,812 sq. ft.) and as shown on the floor plan (Sheet DS.10, dated April 28, 2025) (2,780 sq. ft.).
 - d) Add a note to the cover sheet indicating that the plan is approved pursuant to the City of Lebanon Site Plan Review Regulations last revised January 23, 2023, and the City of Lebanon Zoning Ordinance last revised March 6, 2025.
 - e) Update the Existing Conditions Plan (Sheet 7 / C1.1) to remove the "EV edit" to Note 5 and to identify the City's easement per Section 5.1.E.2 and 5.1.E.5.
 - f) On Sheet 8 / C2.1:
 - i. Identify the wheel stop construction material and provide a construction detail.
 - ii. Show required sight distances at curb cut. (5.1.E.10)
 - iii. Add a plan note regarding snow removal.
 - g) Provide a sewer utility profile drawing at a scale of 1"=4 feet (vertical). (5.1.E.21)
 - 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 with one (1) full size copy of the revised plan set, and a digital copy of the revised plan set saved in a PDF-A format for archival purposes.

14. *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.*
15. *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. (Note: the water and sewer approval process is administered by the Department of Public Works. Water Use Permit and Sewer Use Permit application forms are available on the City of Lebanon website).*
16. *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).*
17. *The applicant shall apply for an Excavation Permit, a Driveway Permit, and, if determined by the Department of Public Works to be required in accordance with City Code Chapter 124, a Stormwater Permit.*
18. *The applicant shall provide a wildland fire hazard assessment as required by the current version of the NFPA that is in force and in effect, and shall provide such assessment to the Lebanon Fire Department for review.*

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

19. *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.*
20. *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, and temporary sedimentation and erosion control, 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.*
21. *Pursuant to Section 213 of the Zoning Ordinance and the Impact Fee Schedule adopted on May 20, 2024, the development shall be subject to City of Lebanon impact fees in the amount of \$28,311.84.*
22. *All water and sewer fees shall be paid as set forth in City Code Chapter 68.*
23. *The applicant shall obtain an Excavation Permit, a Driveway Permit, and, if determined by the Department of Public Works to be required in accordance with City Code Chapter 124, a Stormwater Permit.*
24. *Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required Federal or State approvals, including but not limited to:*
 - a) *NHDES Sewer Connection Permit*
 - b) *NHDES Wetlands Permit*
 - c) *SWPPP coverage under the Construction General Permit (if applicable)*

Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy

- 1 **25. Unless otherwise agreed to by the Department of Public Works, the applicant shall be**
2 **responsible for maintaining all improvements constructed by the applicant within the**
3 **public right-of-way, including but not limited to utility infrastructure. Maintenance**
4 **responsibilities and ownership shall be memorialized in writing in a form acceptable to**
5 **the Department of Public Works and the City's legal counsel.**
- 6 **26. If the water curb stop is located outside of the Mount Support Road right-of-way, the**
7 **applicant shall dedicate any completed on-site water mains and hydrants, excluding**
8 **service connections beyond the curb shut-off valves, to the City for ownership and**
9 **maintenance, subject to appropriate easements. Said conveyance and easements shall be**
10 **approved by the City Attorney and the Department of Public Works and recorded in the**
11 **Grafton County Registry of Deeds prior to the issuance of a final Certificate of**
12 **Occupancy for the project and prior to the acceptance of the utility improvements.**
- 13 **27. The impact fee calculated pursuant to Condition of Approval #19 shall be paid.**
- 14 **28. Third-party engineer or design engineer inspection reports and as-built drawings**
15 **provided by the applicants (PDF format and CAD .dwg format, using the NH State Plane**
16 **Coordinate System), including tie sheets, shall be reviewed and approved by the City**
17 **Engineer.**
- 18 **29. All improvements depicted on the plan shall be completed and shall be constructed as**
19 **depicted on the approved plan, including any modifications to the plan as may be**
20 **approved by the Planning Board in accordance with the Site Plan Review Regulations.**

21
22 ***The MOTION was seconded by Eric Stacy.***

23
24 ****The MOTION was approved (6-0).***

25
26
27 **At 7:52pm, Chair Faunce called for a recess.**

28 **At 7:59pm, the meeting resumed.**
29
30

31 **3. STUDY ITEMS**

32 **A. Review & Comment on Proposed Zoning Amendments**

- 33 **• Route 120 Environmental Overlay District**

34
35 **Mr. Reichert gave an overview of the proposed zoning amendments as noted in the meeting**
36 **agenda. He said the amendment language and map related to the Route 120 Environmental**

Overlay District continue to be discussed with the public and will not be finalized before the City Council's June 5, 2025 meeting as had been planned. He said it will likely be discussed at a July or August meeting and may even be delayed until the fall.

He said the draft text for the amendment and a draft map are included in the agenda packet for this meeting. He said the focus of the text is to protect certain elements within the developing "Northern Lebanon" neighborhood:

- Wildlife crossing
- Wetlands
- Steep slopes

He asked the Board members to review them and give their input. He said the map in particular is probably not complete.

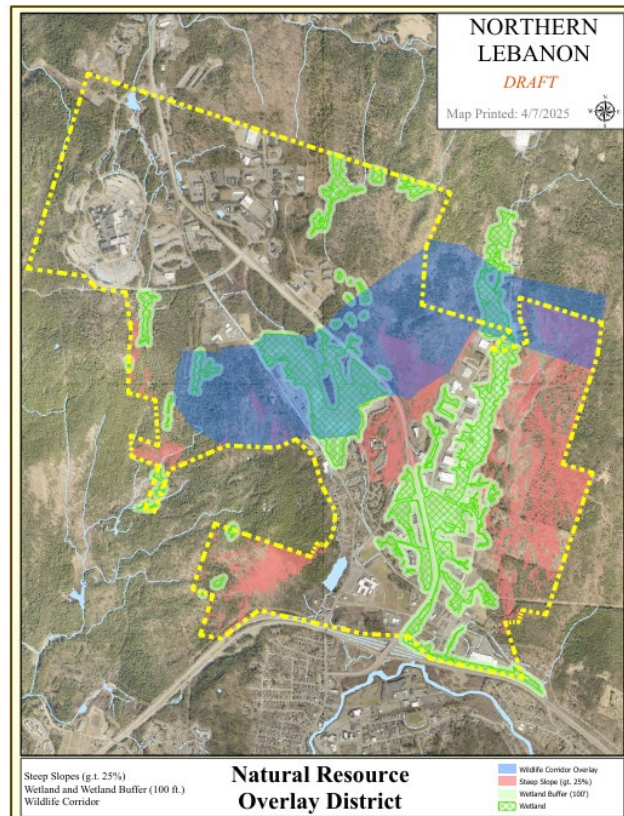
The group discussed the following elements of the draft map:

- Adding signage to inform residents of the sensitivity of the high value wetlands in the northernmost part of the area
- Wildlife corridor
- Allowing IND-L areas to develop responsibly
- Impacts of wetlands buffers on developable land in the area
- Steep slopes
- Single-family housing
- Desire of the residents to create a neighborhood atmosphere

Ms. Romano asked if the areas of wetlands that are regulated could be added to this map. She said it would be helpful to know which wetlands need to be regulated and which do not.

Dr. Ford Burley noted that, per the Conservation Commission, industrial areas are less disruptive to wetlands than residential areas. Mr. Reichert said the businesses in the area would like to be allowed to grow their businesses in an environmentally conscious way

Mr. Reichert discussed the limits to the amount of impervious surfaces for businesses within buffer areas. He said businesses within the buffer area can have no more than 20% impervious surface, which includes parking and buildings' impervious materials. He said if a development is new, it must keep impervious surfaces to 20% or less (an existing development would be net zeroed). He said, or, owners could remove some pavement from their plans and put in some pervious pavement in its place, which allows owners additional impervious materials that they can use in their building (and still not exceed the 20% limit).



Mr. Reichert said, regarding the protection of steep slopes, that the definition of steep slope needs to be clarified. He said the grade and length of the slope that is considered “steep” should be clearly identified. The group discussed several areas on the draft map that may be considered steep or highly steep slopes.

Ms. Romano noted that the map does not identify any support for the fostering of community in the form of residential housing. The group discussed how that could possibly be identified on an environmental protection overlay. She said she wants both goals – fostering of the neighborhood within the environmental concerns – to be depicted on the map, if possible. Mr. Stacy noted that they are looking at the protections to the overlay district on the map and the areas surrounding the overlay district are not addressed.

Mr. Reichert asked the Board members to send their comments to Staff via email. He said the map will be further developed and a more final version will be brought back to the Planning Board.

• Hotels in General Commercial One (GC-1)

Mr. Reichert said there are hotels already existing in what is proposed to be the GC-1 zone. He said the City does not want to create non-conformity in this new zone, and, therefore, would like hotels to be a permitted use and not non-conforming in that zone. He said GC-1 zone would only constrained to Northern Lebanon and not in other areas of the City.

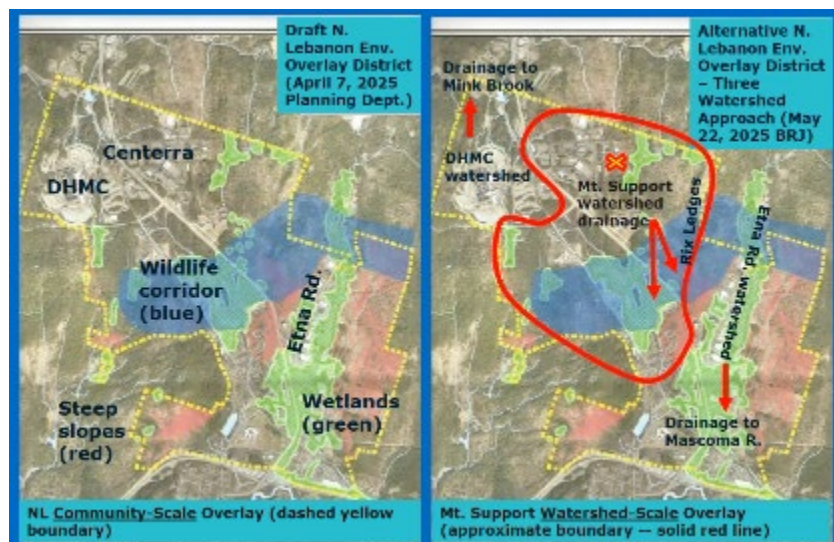
Chair Faunce said the group discussed previously that hotels are relatively good economically to construct and, therefore, may be more attractive to developers to build than residential housing. He said the residents are desiring for Northern Lebanon to have a neighborhood feel, and the addition of hotels as a permitted use may be counter to the development of residential housing in the area for that reason. He said hotels do not create density for neighborhoods – it creates housing for people who are visiting. Mr. Reichert said mixed-use is a goal of the larger plan for the neighborhood concept – restaurants, businesses, etc. Chair Faunce said hotels are the only element that does not support the live/work/play experience that a neighborhood represents.

Watershed Map Draft

Mr. Reichert said that Mr. Bruce James, Vice Chair of the Conservation Commission, had developed an alternate map draft for the environmental overlay district. He said this new map draft was not included in the agenda packet for this meeting.

Mr. James said his map version comprises three watershed areas:

- Mt. Support watershed
- Etna Rd watershed
- DHMC watershed



1 He said the red arrows pointing down (to the south) in the Mt. Support watershed area on the
2 map depict the drainage/flow of groundwater. He said drainage for the Etna Rd watershed area
3 on the map flows to the Mascoma River, and, for the DHMC watershed area, to Mink Brook.

4
5 Mr. James said he feels the way to gain the greatest protection of the natural resources associated
6 with the Northern Lebanon Community development is to make the overlay focus on protection
7 of the Mount Support watershed and exclude the Aetna Rd. and DHMC watersheds from the
8 focus. He said those watersheds are governed by other state and City regulations. He said this
9 idea represents the opinion of the Conservation Commission.

10
11 The group discussed how steep slopes might be protected if Mr. James' suggestion were
12 implemented. Dr. Ford Burley said there are no protections for steep slopes (outside of land
13 zoned RL-3) unless contained in the area identified by the yellow dotted line is the line on the
14 map. Mr. James suggested that steep slope protection should be handled separately from the
15 overlay district. He said the wildlife corridor activity also needs to be more clearly defined.

16
17 Chair Faunce said there was not enough time to receive public comment at this meeting. Mr.
18 Reichert said he has heard previously from many of the people who are present. He asked the
19 present members of the public to send their comments in writing to the Planning Board Chair
20 care of Mr. Reichert.

21 22 **B. 2026 Zoning Amendment Preview**

23 Mr. Reichert said some policy initiatives were not passed by the public this year that the
24 Planning Department may want to undertake as zoning amendments next fall. He said they
25 would like to get the Planning Board's input on the following:

- 26
- 27 • Clarifying the characteristics of a **Historic District** – He said the Heritage Commission is
28 working to develop the criteria (using national guidelines) for what is required for Heritage
29 Commission approval regarding historic preservation within historic districts in Lebanon.
 - 30 • Further development of **Electric Vehicle (EV)** regulations – He suggested that EV
31 regulations be considered for discussion by the Regulation Development Subcommittee. He
32 said the Lebanon Environmental Advisory Committee would work with the subcommittee to
33 clarify Site Plan Regulations regarding EV requirements.
 - 34 • **Cottage Development** – He said the City of Keene has several cottage development plans
35 and Lebanon could review their policies as a model for its own cottage regulations.
 - 36 • **ADUs (Accessory Dwelling Units)** – Mr. Reichert said some changes have been suggested
37 that should be considered.
 - 38 • Review **Environmental** policies – He said policies related to steep slopes, vernal pools,
39 groundwater protection, and more should be reviewed/updated.
 - 40 • Policy related to the use of **Connex Boxes** – Mr. Reichert the fact that major businesses are
41 using these as warehouses in their parking lots on a permanent, untaxable basis is a policy
42 question that needs to be addressed.
- 43

44 Mr. Reichert asked the Board members to send their input to the Planning Staff. He said they
45 will bring draft language to the Planning Board meeting in July for another round of review. He
46 said they plan to finalize the language at the Planning Board's August meeting and bring the
47 final proposed amendments to City Council in September.

C. Review of 2026-2031 Capital Improvement Plan (CIP) Preliminary Project List

Mr. Reichert asked the Board members to review the list of proposed CIP projects (included in the agenda packet materials for this meeting) and identify the project principals they would like to present more information about their projects at a future Planning Board meeting.

Mr. Dan Nash (Ward 1) said he has tried in other years to give input on CIP projects in December and has always been “too late” in the process. Mr. Reichert asked him to send his input now to the Board via the Planning Department.

Ms. Zook noted that input from the Planning Board is very helpful to the City Council when they are considering CIP projects. Chair Faunce asked the Board members to consider ranking the projects on the list based on highest to lowest priority.

A MOTION was made by Richard Ford Burley to extend the meeting to 9:45pm. The MOTION was seconded by Andrew Faunce.

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

4. COMMITTEE REPORTS – not reviewed**5. OTHER BUSINESS – not discussed****A. Planning Board process improvement/implementation of Rules of Procedure****B. Planning Board Training****6. APPROVAL MINUTES**

March 17, 2025, March 24, 2025, April 14, 2025, April 28, 2025, May 12, 2025

A MOTION was made by Richard Ford Burley to approve the minutes of March 17, 2025, March 24, 2025, April 14, 2025, April 28, 2025, and May 12, 2025 as presented. The MOTION was seconded by Andrew Faunce.

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

7. ADJOURNMENT

A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:29pm. The MOTION was seconded by Andrew Faunce.

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

The meeting adjourned at 9:29pm.

Respectfully submitted,
Paula Roux
Recording Secretary

DRAFT

**LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
TUESDAY, JUNE 09, 2025 6:30PM**

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

MEMBERS ABSENT: Jeremy Rutter

STAFF PRESENT: Tim Corwin (Deputy Planning Director), Nathan Reichert (Director of Planning & Development), Brian Vincent (City Engineer)

OTHERS PRESENT: Matthew Decker, Esq. (Legal Counsel for the City)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:34pm. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures. Chair Faunce appointed Ms. Romano as a regular voting member for this meeting.

2. NOTICE OF PUBLIC HEARING

None

3. PUBLIC HEARING ITEMS

A. Wayne & Fiona Barr and Ruth H. Guernsey, TTEE, 24 Green Street West (Tax Map 59, Lot 48), 22 Green Street West (Tax Map 59, Lot 49) & 0 Green Street West (Tax Map 59, Lot 64), zoned R-3: Request for approval of a Boundary Line Adjustment. PB2025-30-BLA

Mr. Corwin said the application is complete enough for the Board to accept jurisdiction and commence review.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board finds the application of Wayne & Fiona Barr, trustees, and Ruth H. Guernsey, trustee for the proposed Boundary Line Adjustment PB2025-30-BLA is complete enough to accept jurisdiction and commence review. The MOTION was seconded by Kellen Appleton.

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

Mr. Wayne Barr and Ms. Fiona Barr were present on behalf of the applicant and gave an overview of the application. Mr. Barr said the boundary line adjustment would give them the proper amount of setback required to build an Accessory Dwelling Unit (ADU). He said the

Guernsey trustees are in agreement with the proposed adjustment.

Chair Faunce opened the public comment portion of the meeting. No one from the public spoke.
Chair Faunce closed the public comment portion of the meeting.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the application of Wayne & Fiona Barr, Trustees, and Ruth H. Guernsey, Trustee for a proposed Boundary Line Adjustment between 24 Green Street West (Tax Map 59, Lot 48), 22 Green Street West (Tax Map 59, Lot 49) & 0 Green Street West (Tax Map 59, Lot 64), zoned R-3, as shown on a plat titled "Lot Line Adjustment Plan prepared for Wayne and Fiona Barr Revocable Trust and Revocable Trust of Ruth H. Guernsey," prepared by Vive Libre Geomatics, dated May 8, 2025, Drawing: 25008-bo, including any and all supplemental submissions and testimony provided during the public hearing, subject to the following conditions:

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.***

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

- 1. The applicants shall provide a revised plat depicting the following changes to the satisfaction of the Planning and Development Department:***
 - a. Add the statement required by Section 7.11 of the Subdivision Regulations.***
 - b. Add a label to the locus and original boundaries inset maps.***
 - c. Add a note that Tax Map 59, Lot 64 is vacant.***
 - d. Provide the date and description of the plat revisions. (8.2.A.1)***
- 2. The applicants shall provide a digital record drawing of the final revised plat (Cad .dwg format, using the NH State Plane Coordinate system).***
- 3. 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.***
- 4. 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)***
- 5. 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.

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

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board authorizes the Chair to sign the plat of Wayne & Fiona Barr, Trustees, and Ruth H. Guernsey, Trustee, PB2025-30-BLA, as revised pursuant the Planning Board's conditions of approval.

1
2 ***The MOTION was seconded by Kathie Romano.***

3
4 ****The MOTION was approved (6-0).***

5
6 **B. The Falls at Rivers Edge Homeowners Association, Inc., Apple Blossom Drive,**
7 **Fountain Way & Stillwater Drive (Tax Map 44, Lot 19, Plots 100-5300), zoned R-3:**
8 **Request to amend the Conditional Use Permit for the Falls at River's Edge**
9 **development, originally approved on November 22, 1999, to remove condition of**
10 **approval #12 requiring that all dwellings shall be sprinklered. PB2025-28-CUPA**
11

12 Ms. Romano recused herself because she said she is a member of the The Falls at Rivers Edge
13 community. Mr. Corwin said the application is complete enough for the Board to accept
14 jurisdiction and commence review.
15

16 ***A MOTION was made by Richard Ford Burley that the application of The Falls at Rivers***
17 ***Edge Homeowners Association, Inc PB2025-28-CUPA is complete enough to accept***
18 ***jurisdiction and commence review. The MOTION was seconded by Andrew Faunce.***
19

20 ****The MOTION was approved (5-0).***
21

22 Mr. Corwin gave an overview of the application. He said when the project was first approved in
23 1999, all homes were required by the Planning Board to be sprinklered, and the plans for each
24 unit of The Falls development include sprinklers. He said that requirement is no longer
25 enforceable by the Planning Board. He said members of the Association have several reasons for
26 wanting to remove the sprinklers in the units.
27

28 Ms. Laurel Stavis and Mr. Tom Benzel (The Falls at Rivers Edge Homeowners Association) and
29 Attorney Barry Schuster were present on behalf of the applicant.
30

31 Ms. Stavis said she had a leak in the sprinkler system which leaked antifreeze into her home
32 through a crack in the ceiling. She said the leak was due to the failure of a small plastic joint. She
33 said antifreeze is dangerous to those living in the home, especially pets. Mr. Benzel said the
34 plastic parts have degraded over time. He said other residents know that the issue is being
35 brought to the Planning Board, and he said, if the request to remove the systems is approved at
36 this meeting, it will be up to each individual owner whether they want to keep the sprinkler
37 system or not.
38

39 The group discussed how the other residents would be notified and that the Fire Department had
40 been consulted to ensure the units would be safe without the sprinkler systems if they were
41 removed.
42

43 ***A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves***
44 ***the application The Falls at Rivers Edge Homeowners Association, Inc., regarding Apple***
45 ***Blossom Drive, Fountain Way & Stillwater Drive (Tax Map 44, Lot 19, Plots 100-5300), zoned***
46 ***R-3, PB2025-28-CUPA, for an amendment the Conditional Use Permit for the Falls at River's***
47 ***Edge development, originally approved on November 22, 1999, to remove condition of***
48 ***approval #12 requiring that all dwellings shall be sprinklered, including any and all***
49 ***submissions and testimony provided for and during the public hearing.***

1 ***In support of its decision, the Board finds that since the Conditional Use Permit for the Falls***
2 ***at River's Edge development was approved, changes in state law now render condition of***
3 ***approval #12 unenforceable. This approval is subject to the following conditions:***

4
5 ***General Conditions***

6 ***1. Condition of Approval #12 as set forth in the Notice of Action dated November 22, 1999,***
7 ***approving a Conditional Use Permit for a 57-lot cluster subdivision known as the Falls at***
8 ***River's Edge is hereby removed. All other conditions of approval therein shall remain in full***
9 ***force and effect.***

10 ***2. A copy of this Notice of Action shall be signed by the Planning Board Chair and shall be***
11 ***recorded in the Grafton County Registry of Deeds in accordance with the Planning &***
12 ***Development Department's recording procedures.***

13
14 ***The MOTION was seconded by Kellen Appleton.***

15
16 ****The MOTION was approved (5-0).***

17
18 **C. Brady Sullivan Prospect Hill, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned**
19 **R-3: Request to amend the approved plans for Phase 2 of Prospect Hill development**
20 **to (a) adjust the grading plan for Phase 2B, (b) per Section 7.13.F of the Subdivision**
21 **Regulations, amend the approved phasing plan to accelerate the timeline for the**
22 **completion of Phases 2C and 2E and to extend the time to achieve active and**
23 **substantial development of Phase 2B which is required to be completed by**
24 **November 15, 2025, pursuant to the phasing plan approved on December 13, 2021**
25 **(PB2021-37-FMAJA), and (c) approve a proposed off-site hauling plan for the**
26 **removal of excess material excavated from the site during the course of**
27 **construction. PB2025-23-FMAJA - Postponed from May 12, 2025**

28
29 [At 6:55pm, Mr. Stacy joined the meeting. Ms. Romano rejoined the meeting. Ms. Appleton
30 recused themselves from the discussion because they are a tenant abutter.]

31
32 Mr. Corwin said the application is complete enough for the Board to accept jurisdiction and
33 commence review.

34
35 ***A MOTION was made by Richard Ford Burley that the application of Brady Sullivan Prospect***
36 ***Hill PB2025-23-FMAJA is complete enough to accept jurisdiction and commence review. The***
37 ***MOTION was seconded by Kathie Romano.***

38
39 ****The MOTION was approved (6-0).***

40
41 Chair Faunce noted that he, Mr. Stacy, and Ms. Romano attended a site walk for this project on
42 Tuesday, May 27 at 5pm. He said a quorum of the Board was not achieved and no decisions
43 were discussed or made during the visit.

44
45 Mr. Jon Rokeh, PE, (Rokeh Consulting LLC), and Attorney Marc Pinard (Brady Sullivan
46 General Counsel) were present on behalf of the applicant. Mr. Rokeh said the applicant is
47 requesting amendments to several conditions of approval in order to speed up the completion of
48 the project.

He said Phase 2A is complete and the gravity sewer and all utilities available to do Phase 2E and Phase 2C and Phase 2 E basically immediately. He said they could build all those multi-family homes now. He said that work was originally planned for later in Phase 2B, which they would be just starting now.

He said they are requesting a waiver from Section 14.4.C which requires that applicants can only apply for 50% of the building permits for a given phase until the infrastructure is complete. He said if they had the building permits for the entire phase all at once, they would be able to put all the foundations and be able to complete everything much more efficiently.

He said another waiver they are requesting is regarding the slope at the rear of the buildings. He said the current plans were approved with a 3:1 slope, but he said they would like to use the material that is produced during construction on the site. He said if they are able to use the material, they will have a 2:1 slope ratio. The group discussed the slope of the yards behind the homes at length. Mr. Rokeh said if they are able to reuse the material produced during construction on the site, it will reduce the number of trips that the trucks need to make to haul the material away from the site.

Mr. Rokeh outlined the haul route, which identified Twin State Gravel and, possibly, the Densmore Brickyard project site, as deposit sites for the material. Ms. Romano noted the low overpass on Glen Road may present a problem for trucks. The group discussed complaints from residents on Elm Street West regarding truck traffic. Ms. Romano noted that the proposed haul route has not been published before this meeting and residents did not

know it was going to be discussed at this meeting. She said they may have comments about it and may not have known to come to this meeting to discuss it. Mr. Rokeh said if the waivers they are requesting are approved, hauling won't begin for about eight months, so there will be time to notify residents about the route.

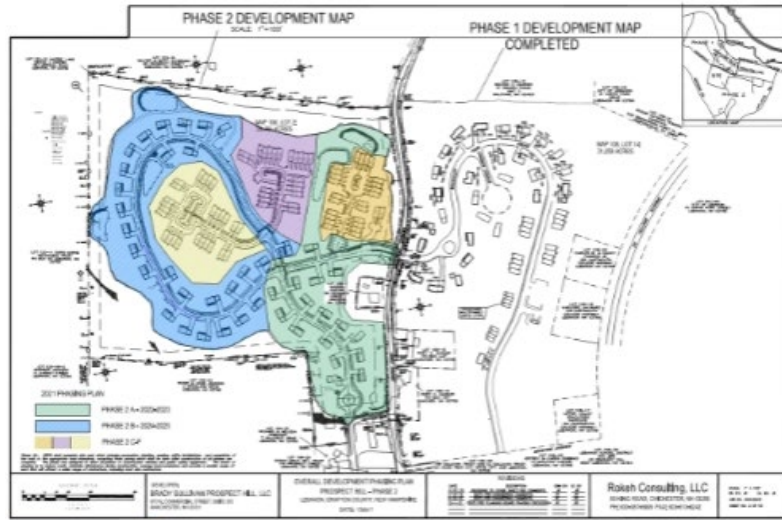


Figure 1: **Phase 2A** (constructed): Green; **Phase 2C**: Yellow; **Phase 2E**: Light Purple; **Phase 2B**: Blue; **Phase 2F**: Outer edge of blue area

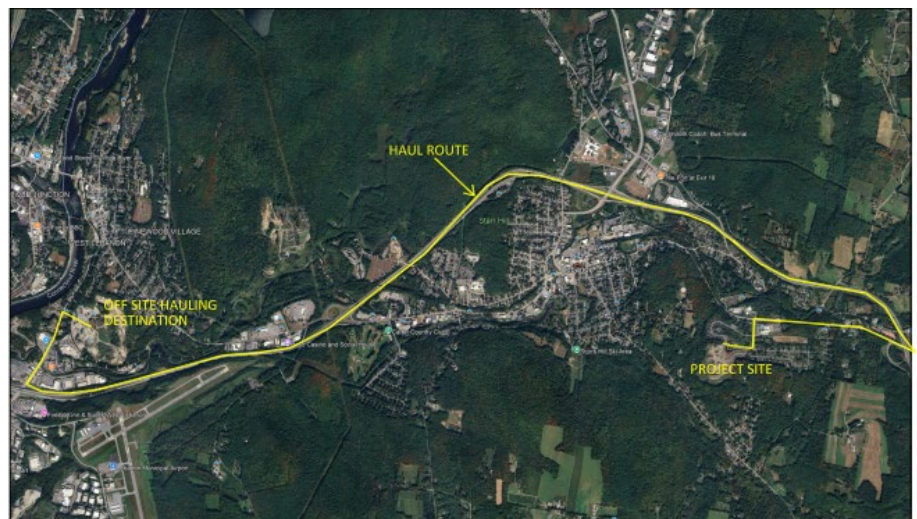


Figure 2

1 The group discussed times of the day that the trucks would be hauling material and asked for
2 consideration of the school day (both for traffic/safety concerns and for noise concerns),
3 especially if the Densmore Brickyard site is used for dumping. Dr. Ford Burley suggested the
4 final decision on the haul routes be made at a later date, when more finalized information is
5 provided to the Board. Mr. Vincent said this project's haul amounts are greater than the typical
6 project.

7
8 The group discussed the team's plans to stabilize the steep slopes in the project. Mr. Rokeh said
9 the slope will be a 2-foot-thick ledge, which Mr. Vincent said should be stable unless they are
10 built on silt or sand subsoils.

11
12 Mr. Rokeh reviewed the Phasing Plan. Mr. Corwin explained that the restriction to 50% for the
13 building permits in each phase ensures that the infrastructure gets completed before developers
14 can begin selling lots to future homeowners.

15
16 Chair Faunce opened the public comment portion of the meeting.

17
18 Mr. Warren Klecan (abutter) said this project does not seem to get the care and concern from the
19 City that other projects seem to get. He said the residents in the area are requesting the following
20 considerations during the construction of this project:

- 21 • 7AM to 3PM workday Monday-Friday hauling from site (no work on weekends)
- 22 • Limit the number of trucks hauling material each day
- 23 • Enforce a 15-mph speed limit
- 24 • Employ dust control measures
- 25 • Enforce trucks to use covers to manage spillage

26
27 Dr. Ford Burley estimated about 14 trucks per day would be used to haul the remaining material
28 at the site, based on the information provided by the applicant.

29
30 Ms. Melissa Robinson (abutter) made the following comments:

- 31 • barrier gate (to protect cars coming in and out and going down Hillcrest St) is not in current
32 plans – She said neighbors previously fought hard for a gate to be included but it is missing
33 from plans. She said she was told the gate is not going to be installed until the whole project
34 is completed
- 35 • The bike path that runs near the site is being used by cars at high rates of speed.
- 36 • Shorten or improve the hauling time
- 37 • Dust is a constant problem. She said the siding and her windows of her house are covered.
- 38 • The trucks are dangerous and children in the neighborhood are not safe

39
40 Chair Faunce asked if the Hillcrest barrier gate could be added back to the plans. Mr. Rokeh said
41 they would consider it, depending on why it was removed. Chair Faunce said a condition of
42 approval can be added that the gate will be added back, contingent upon the reason it was
43 removed. Mr. Corwin said staff would look into the gate and whether signage or markings could
44 be added to the bike path.

45
46 Mr. David Kuhn (neighbor) said

- 47 • The bike path really is just a wider piece of road and needs proper markings and signage to
48 notify users it is a bike path.

- The trucks are going down Moulton Ave during school drop-off and pick-up and it is not a safe situation for kids.

Mr. Rory Gawler (abutter) made the following comments:

- Noise produced by the trucks is disturbing.
- Every truck that leaves the site is a truck that will later enter the site. He said the truck trips are actually double what is being discussed. He said “truck trips” should also include the water truck that goes by to control the dust.
- Reverse alarms on trucks are loud. He said he asked the site supervisor to have trucks run forward only.
- He said he does not understand why the applicant does not use the road owned by the developer (Hemlock Ridge Dr) that runs parallel to Prospect Street.
- He said he was told last May by the Fire Chief that blasting operations would last five weeks. He said they lasted into late fall, and resumed in the spring. He said the drilling of the blast holes is also loud and disturbing.

Ms. Kellen Appleton (abutter) said there is a lack of trust on the part of the residents because the plan for blasting and trucking timelines have not been communicated very well. She suggested that the Board make a condition of approval that the applicant should communicate in writing with abutters/tenants regarding the truck routes and times and when blasting will happen. Chair Faunce suggested that the construction trailer at the site could be a location for an information kiosk. Mr. Rokeh said the construction foreman is open to having an email list of residents to notify them of when blasting is going to happen.

The group discussed whether a condition of approval could be added that prohibits truckloads until an approved plan has been established. Mr. Rokeh said trucks must be used to continue construction of the project. Mr. Gawler asked if the trucks doing the large-scale hauling could be limited. He also asked if the City prohibits the use of air brakes (“jake brake”) and asked they not be used on Moulton Ave. Mr. Rokeh said if the Board grants the applicant’s waiver requests, the number of trucks will be reduced.

Mr. Corwin suggested that the Board address the following at tonight’s meeting:

- The updated phasing requested by the applicant
- Building permit waiver request
- Grading waiver request
- Add a condition of approval that puts a moratorium on the trucks hauling material for a certain amount of time

Dr. Ford Burley suggested the following language:

- Trucks hauling material shall be limited to ten a day.
- Before June 14th, 2025 and after August 26th 2025, they shall not pass in front of the Lebanon Middle School between the hours of 6:45am and 8:15am and between the hours of 1:45pm and 3:15pm.
- At no time shall they use their Jake Brakes (engine brakes) while on Prospect St., Molten Ave. or Laplante Rd.
- All trucks hauling material shall have and make use of their covers.
- No hauling during weekends
- Hauling limited to the hours between 7:00am and 4:00pm on weekdays.

He also suggested that the blasting schedule be approved no later than by the Planning Board's August meeting so it can be enforced in time for the start of the school year.

Chair Faunce closed the public comment portion of the meeting.

Mr. Corwin noted that a waiver is not required from Section 13.11.A.

A MOTION was made by Richard Ford Burley that, for the application of Brady Sullivan Prospect Hill regarding PB2025-23-FMAJA, the Lebanon Planning Board approves waivers for the following sections of the Subdivision Regulations:

- ***Section 13.10.A – A minimum of four (4) inches of topsoil shall be provided to cover all finished slopes***
- ***Section 14.4.C – No building permit(s) shall be issued for the final fifty percent (50%) of lots or units in the subdivision until all improvements required by the Board, including, but not limited to, wastewater, water, power, streets and sidewalks, have been fully completed by the applicant and inspected and approved by the City.***

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 Brady Sullivan Prospect Hill, LLC, regarding 10 Prospect Street (Tax Map 108, Lot 2), zoned R-3, PB2025-23-FMAJA, for Site Plan approval to amend the approved plans for Phase 2 of Prospect Hill development to (a) adjust the grading plan for Phase 2B, (b) per Section 7.13.F of the Subdivision Regulations, amend the approved phasing plan to accelerate the timeline for the completion of Phases 2C and 2E and to extend the time to achieve active and substantial development of Phase 2B which is required to be completed by November 15, 2025, pursuant to the phasing plan approved on December 13, 2021 (PB2021-37-FMAJA), and (c) approve a proposed off-site hauling plan for the removal of excess material excavated from the site during the course of construction, as set forth in the application materials and including any and all submissions and testimony provided for and during the public hearing.

This approval is subject to the following conditions:

- 1. The applicant shall comply with all applicable conditions of the Planning Board's Notice of Action dated November 14, 2016 (PB2016-22-EXT-FMAJ) and the Notice of Action dated December 13, 2021 (PB2021-02-EXT & PB2023-37-FMAJA) and all conditions of approval thereof except as superseded by the conditions below.***
- 2. The prior approved phasing plan shall remain in effect except that a) construction of phases may proceed simultaneously and b) active and substantial development of Phase 2B shall be achieved by no later than November 15, 2026.***
- 3. Within 30 days of this approval, the applicant shall update all Subdivision Agreements, Security Agreements, and other documents, as necessary, to reflect the dates of the extended and phased approval (per Section 14.1.B.1.c of the Subdivision Regulations).***
- 4. Within 30 days of this approval and prior to the issuance of any permits, the applicant shall, pursuant to Sections 7.10 and 14.5 of the Subdivision Regulations, enter into a new***

1 *Performance Security Agreement and provide security necessary for the completion of all*
2 *Phase 2B, 2C, 2D, and 2F required improvements and utilities.*

3 *5. Prior to the issuance of any building permits, the applicant shall update the project's*
4 *Alteration of Terrain Permit with NHDES.*

5 *6. Within 30 days of this approval and prior to the issuance of any building permits, the*
6 *applicant shall, to the satisfaction of the Planning & Development Department and the City*
7 *Engineer, provide a complete, updated plan set incorporating the plan sheets submitted with*
8 *this application and making any other revisions necessary pursuant to the approved changes.*

9 *7. The specifications and plans for the rock slopes shall, to the satisfaction of City Engineer,*
10 *state the fill and slope requirements as set forth in Section 13.10 and 13.11 of the Subdivision*
11 *Regulations so that the contractor is contractually obligated to perform the work in*
12 *accordance with those specifications, plans and regulations.*

13 *8. The third-party inspection required pursuant to condition of approval #5 set forth in the*
14 *Notice of Action dated November 14, 2016 (PB2016-22-EXT-FMAJ) shall include periodic*
15 *inspection of the rock slopes ensure their construction in conformance with Section 13.10 and*
16 *13.11 of the Subdivision Regulations.*

17 *9. Within 14 days of this approval, the applicant shall provide a construction schedule to the*
18 *City Engineer in order to secure a third-party inspector pursuant to condition of approval #8*
19 *above and condition of approval #5 set forth in the Notice of Action dated November 14, 2016*
20 *(PB2016-22-EXT-FMAJ).*

21 *10. No unit may sold in any phase until all site improvements within that phase are completed*
22 *to the same degree as required for the issuance of a certificate of occupancy per Section*
23 *14.4.A.*

24 *11. Fencing shall be installed at the top of each slope in excess of 3H to 1V, that are to be*
25 *rock-lined, and shall be a minimum height of 4 vertical feet above ground surface. Fencing*
26 *shall be chain-link with PVC coating to the satisfaction of the Planning & Development*
27 *Department.*

28 *12. Until such time as a full hauling plan is approved by the Planning Board, trucks hauling*
29 *material shall be limited to 10 a day and hauling shall commence no earlier than 7 am and*
30 *shall conclude by no later than 4 pm, Monday through Friday. No hauling shall be permitted*
31 *on the weekends. Additionally, before June 14, 2025 and after August 26, 2025, trucks shall*
32 *not pass in front of the Lebanon Middle School between the hours of 7:00 am and 8:15 am,*
33 *and between the hours of 1:45 pm and 3:15pm. At no time shall such trucks use engine brakes*
34 *while on Prospect St., Moulton Ave., or LaPlante Rd. All trucks hauling material shall have*
35 *and make use of their covers. Such full hauling plan shall be submitted for review and*
36 *approval by the Planning Board at the August 2025 regular meeting.*

37
38 *The MOTION was seconded by Eric Stacy.*

39
40 **The MOTION was approved (6-0).*

41
42
43 Ms. Appleton rejoined the meeting.

44
45 At 8:37pm, Chair Faunce called for a recess.

46 At 8:47pm, the meeting resumed.

47
48 **D. Michael Davidson, 3 Campbell Street (Tax Map 92, Lot 65), zoned LD: Appeal of an**
49 **administrative determination that the conversion of a mixed-use building with an**

1 office and 4 dwelling units to a 7-unit multi-family dwelling requires Site Plan
2 review by the Planning Board per Sections 3.1.C.1 and 3.1.D of the Site Plan Review
3 Regulations. Alternatively, applicant requests a waiver per Section 7.1 to waive the
4 requirement to obtain Site Plan approval. PB2025-24-AAD - Postponed from May
5 12, 2025
6

7 Mr. Corwin said the application is complete enough for the Board to accept jurisdiction and
8 commence review.
9

10 *A MOTION was made by Richard Ford Burley that, application PB2025-24-AAD Michael*
11 *Davidson, 3 Campbell Street (Tax Map 92, Lot 65) zoned LD, with regard to the appeal of an*
12 *administrative determination that the conversion of a mixed-use building with an office and 4*
13 *dwelling units to a 7-unit multi-family dwelling requires Site Plan review by the Planning*
14 *Board per Sections 3.1.C.1 and 3.1.D of the Site Plan Review Regulations, is complete enough*
15 *to accept jurisdiction and commence review. The MOTION was seconded by Kathie Romano.*
16

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

19 Attorney Brian Bouchard and Mr. Tim Sidore were present on behalf of the applicant.
20

21 Mr. Bouchard explained that the City issued an emergency notice to vacate an apartment
22 building located at 3 Campbell St. in January 2025. He said the decision was based on two
23 issues:

- 24 • a heating issue
- 25 • one of the windows in one unit was not adequately sized for emergency egress and ingress.
26

27 He said Mr. Davidson was able to fix the heating issue and he has since been trying to change the
28 window, but he can't change the window because the City maintains that the property is not in
29 compliance. He said Mr. Davidson still hasn't changed the window because he cannot get a
30 building permit from the City. He said the underlying issue is that Mr. Davidson renovated office
31 space into living space within the building, and, although he made no exterior or site changes,
32 the City considers the changes land development under the Site Plan Review Regulations and
33 requires Site Plan approval. He said if the changes are considered land development, it is the type
34 of land development that only requires minor site plan review and not the full site plan review.
35 He said Section 7.1 of the Site Plan Review Regulations say that the City can grant a waiver for
36 any of the requirements of the Site Plan Review Regulations that are not imposed by state law.
37

38 The group discussed how the applicant may have interpreted the Site Plan Review Regulations
39 language. Ms. Romano noted that the office space was converted to living space, and it is not
40 right if no site plan review is done for that living space. Mr. Bouchard said the use of the space
41 has not changed because the building had continued to be used as residential space (in addition to
42 the previous office use). Mr. Bouchard suggested the City waive the requirement and determine
43 that the project requires only minor site plan review.
44

45 *A MOTION was made by Richard Ford Burley that the Planning Board finds that, as written,*
46 *Section 3.1.C.1 of the Site Plan Review Regulations can reasonably be interpreted to mean*
47 *that the conversion of two office units to three residential units within the context of 3*
48 *Campbell St. is a land development that may be handled by the Minor Site Plan Committee.*
49 *The MOTION was seconded by Andrew Faunce.*

Chair Faunce opened the public comment portion of the meeting.

Mr. Nate Reichert (Director of Planning & Development and Zoning Official for the City of Lebanon) read the text of Section 307.5 Dwelling Unit Density of the Zoning Ordinance:

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

He noted that the Planning Board has the authority to determine density, and from density comes the number of apartments (based on the number of parking spaces available) and EV charging requirements. He described the team members included in the Minor Site Plan Committee and noted that he is the Chair of the committee. Dr. Ford Burley said he could add to the motion he had just made that the Planning Board finds that the added density is appropriate to the site.

Mr. Sidore said the applicant has applied for a building permit and to the Heritage Commission to install what is considered the proper window. He said the applicant would like permission to now be able to re-enter the apartment, address the window issue, and reoccupy the apartment while the questions related to the site plan and seek minor site plan review are being resolved. Ms. Romano noted that the applicant needs approval for the unit before it can be rented. Mr. Corwin said he was not sure it is within the Board's jurisdiction to resolve the issues Mr. Sidore noted. He said the Board can make its decision to help provide a path forward.

Chair Faunce closed the public comment portion of the meeting.

A MOTION was made by Richard Ford Burley the Planning Board finds that, as written Section 3.1.C.1 of the Site Plan Review Regulations can reasonably be interpreted to mean that the conversion of two office units to three residential units within the context of 3 Campbell St. is a land development that may be handled by the Minor Site Plan Committee. The Planning Board further finds that the added density related to the specific change in question is reasonable for the zoning of the lot.

The MOTION was seconded by Andrew Faunce.

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

A MOTION was made by Kellen Appleton to extend the meeting to 10:00pm. The MOTION was seconded by Richard Ford Burley.

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

E. 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

1 **on September 9, 2019 (PB2018-34-SPA). PB2025-25-EXT - Postponed from May 12,**
2 **2025**

3
4 Ms. Romano recused herself from the discussion of this item.

5
6 Chair Faunce said because this request for extension follows a March 17, 2025 ruling on the
7 same matter, the applicant has the burden to present some new material fact or change in
8 circumstance that the majority of the Board determines by vote to be sufficient to open a new
9 hearing on the same request.

10
11 He gave a brief history of the extension request. He said on March 17, 2025, the Lebanon
12 Planning Board granted a one-year extension of all deadlines that applied to the River Park
13 project. The Superior Court's decision to grant 11 months and two days of injunctive relief was
14 both the necessary new material fact cited by the Board to justify its rehearing of that 2024
15 extension request and the basis of its decision for approval of a one-year extension of all phases,
16 restoring the originally agreed upon amounts of time for all phases of the project.

17
18 He said the majority of the Board perceived no case had been made by the applicant to support a
19 two-year extension. The Condition of Approval in the September 9, 2019 Notice of Action,
20 which is a foundational agreement of record for the project, is that an updated phasing schedule
21 shall be provided with any extension request. He said, while the applicant did not provide an
22 updated phasing schedule in its most recent extension request, the Board expedited its March 17,
23 2025 decision by making the subsequent submission of that schedule within 30 days of
24 Condition of Approval. He said, in doing so, the Board relaxed a requirement of that 2019
25 governing agreement to be applicant's benefit. He said, while notified of the Board's decision in
26 the customary fashion, the applicant did not provide the requested information, effectively
27 voiding that one-year extension that the Board had approved.

28
29 Chair Faunce said, additionally, the applicant did not file an appeal within the allowable 30-day
30 period, which provided the opportunity to contest the Board's decision on its merits. He said, for
31 tonight, the first decision of the Board is whether the applicant has offered a new material fact or
32 change in circumstances to warrant a rehearing of the previously settled matter.

33
34 He said the Board is first determining whether it is holding a hearing, by virtue of holding a
35 limited public hearing to determine what new material fact or change in circumstance and that is
36 through an interaction with the applicant to ask questions in order to learn more about materials
37 that the applicant has provided for our consideration.

38
39 Attorney Robert Taylor and Mr. David Clem (XYZ Dairy) were present on behalf of the
40 applicant.

41
42 Chair Faunce noted that the applicant has submitted a large amount of information since the last
43 time they attended a Planning Board meeting. Chair Faunce asked if the applicant was presenting
44 as a new material fact that they have added tortious interference and civil conspiracy to the legal
45 filing for the courts consideration in 2026, and, in preparation for tonight's hearing, that the
46 applicant has presented a series of City staff emails and the applicant's interpretation of their
47 intent as evidence to support those claims.

48
49 Attorney Taylor said Mr. Clem had submitted a letter to Staff, but Attorney Taylor said he

proposed to present some new information that justifies reconsideration of the two-year extension request and not was proposing to go back through Mr. Clem's letter or amendments.

Attorney Taylor made three points as to why the extension should be granted. See Figure 3.

Attorney Taylor urged the Planning Board not to listen to City Staff and to grant the applicant's extension request.

Attorney Taylor said if he goes into court on appealing Planning Board decisions, they'll be set aside and every single one of them over the last year will be voided. He said the applicant has suffered as a result of it. He said if the Board had independent counsel, it would have been different.

CONCLUSIONS

1. Mr. Clem's letter of 23 May 2025 to the PB, and the evidence submitted with it, proves that the PB "staff" are severely biased against the Project – hence the need for reconsideration of the PB's recent decisions against XYZ without their involvement.
2. The Building Inspector's 30 May 2025 Attempt to Terminate the XYZ Permit is a misconstruction of the Building Permit, the Building Code, and NH Law that will take time to correct – hence the need for the 2-year extension.
3. The Planning Board's improper reliance on conflicted attorneys, and the PB Chair's bias and improper *ex parte* communications with City Officials, have tainted the PB's prior decisions against XYZ – hence the need for those those decisions to be reconsidered by impartial members only, with help from independent counsel.

Figure 3: Points made by Attorney Robert Taylor, attorney for XYZ Dairy

A MOTION was made by Richard Ford Burley to extend the meeting to 10:15pm. The MOTION was seconded by Eric Stacy.

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

Chair Faunce recused himself from the rest of the discussion for this request.

Dr. Ford Burley said he was not comfortable going forward with any further discussion of this information until the Board has a chance to talk to independent counsel.

A MOTION was made by Richard Ford Burley to continue the discussion of the public hearing for 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). PB2025-25-EXT - Postponed from May 12, 2025, to a future meeting.

The Board members discussed whether it should make a decision at this meeting or postpone this discussion to a future meeting.

Attorney Decker said he did not agree that he was in conflict in this situation. He said that assertion requires further analysis and legal advice, whether that is from him or from independent counsel.

Attorney Decker made the following limited recommendation:
He said none of the three items that were raised tonight were previewed to anyone. He said there was no reason the Board had to be ambushed tonight; the material could have been submitted

1 earlier. He suggested to the Board that the reason for that was to intimidate the Board into taking
2 unconsidered action. He said his recommendation is that the Board continue this matter to
3 another hearing. He suggested Chair Faunce not recuse himself until he's had more opportunity
4 to consider the situation. He noted that the Board is not prepared to address any of this ambush
5 information tonight, none of which actually addresses the subsequent application doctrine, which
6 was what the Board was expecting.
7

8 Mr. Stacy read a prepared written statement in favor of granting a new hearing to consider the
9 requested extension.
10

11 ***A MOTION was made by Richard Ford Burley to continue the discussion of XYZ Dairy, LLC***
12 ***& Lyme Properties 2, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & 7), zoned CB, IND-***
13 ***L and R-3: Applicant requests a two (2)-year extension of the River Park Site Plan approval***
14 ***(PB2010-25-SPR), as most recently amended on September 9, 2019 (PB2018-34-SPA).***
15 ***PB2025-25-EXT - Postponed from May 12, 2025 to the July 14, 2025 Planning Board***
16 ***meeting. The MOTION was seconded by .***
17

18 ****The MOTION was approved (4-1)***
19 ***(Voting in Favor: Ford Burley, Zook, Appleton, Kennelly)***
20 ***(Voting Against: Stacy)***
21

22 Chair Faunce and Ms. Romano rejoined the meeting.
23

24 **F. LRX 1 Martin Drive, LLC, 1 Martin Drive (Tax Map 129, Lot 19), zoned GC:**
25 **Request for Site Plan Review to replace an existing +/- 3,393 sq. ft. building with a**
26 **new +/- 3,683 sq. ft. building to be used as a car wash, together with associated site**
27 **improvements including stormwater management, landscaping and lighting.**
28 **PB2025-21-SPR - Continued from May 12, 2025**
29

30
31 ***A MOTION was made by Richard Ford Burley to extend the meeting to 10:30pm. The***
32 ***MOTION was seconded by Kathie Romano.***
33

34 ****The MOTION was approved (7-0).***
35
36

37 Mr. Jeff Merritt and Mr. Brent Cole (Granite Engineering), and Renee Costa (owner), were
38 present on behalf of the applicant. Mr. Merritt gave an overview of the project. He said the
39 existing rear building on the car wash will be demolished and rebuilt into a new building with
40 four car wash bays and a detail bay. He reviewed the waivers that the applicant is requesting.
41

42
43 ***A MOTION was made by Richard Ford Burley to extend the meeting to 10:45pm. The***
44 ***MOTION was seconded by Eric Stacy.***
45

46 ****The MOTION was approved (7-0).***
47
48

49 Chair Faunce asked whether signage or pavement markings would be added to aid traffic flow in

1 and out of the car wash. Mr. Merritt said they could do that very easily. He noted that the traffic
2 flow lane will accommodate cars turning left to get into wash bay 1, even though it is a fairly
3 tight turn.

4
5 Chair Faunce opened the public comment portion of the meeting. No one from the public spoke.
6 Chair Faunce closed the public comment portion of the meeting.

7
8 Mr. Corwin confirmed that a waiver was not needed from Section 6.2.B – perimeter landscaping
9 requirements.

10
11 ***A MOTION was made by Richard Ford Burley that, for the application of LRX 1 Martin***
12 ***Drive, LLC, PB2025-21-SPR, the Lebanon Planning Board approves partial waivers from the***
13 ***following sections of the Site Plan Review Regulations:***

- 14 • ***Section 6.2.B – perimeter landscaping requirements***
- 15 • ***Section 6.2.D – landscaping around buildings requirements***
- 16 • ***Article V submission requirements and Article VI design requirements as applicable***
17 ***outside of the designated development area***
- 18 • ***Section 5.1.E.16 – landscaping plan requirements***
- 19 • ***Section 6.2.E.2 – requiring landscape beds at the end of parking rows***
- 20 • ***Section 6.5.D.5 – requiring construction of a sidewalk along the property's frontage***

21
22 ***The MOTION was seconded by Kellen Appleton.***

23
24 ****The MOTION was approved (7-0).***

25
26
27 ***A MOTION was made by Kellen Appleton that the Lebanon Planning Board approves the***
28 ***application of LRX 1 Martin Drive, LLC, regarding 1 Martin Drive (Tax Map 129, Lot 19),***
29 ***zoned GC, PB2025-21-SPR, for Site Plan approval to replace an existing +/-3,393 sq. ft.***
30 ***building with a new +/- 3,683 sq. ft. building to be used as a car wash, together with associated***
31 ***site improvements including stormwater management, landscaping and lighting as shown on a***
32 ***plan set titled “Lady Rich Express Carwash, LLC,” prepared by Granite Engineering, dated***
33 ***April 14, 2025, revised May 28, 2025, Project No. 24-0702-1, including any and all***
34 ***submissions and testimony provided for and during the public hearing.***

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

40
41 ***This approval is subject to the following conditions:***

42
43 ***General Conditions***

44 ***1. This approval shall automatically expire and be deemed void upon failure to meet any of the***
45 ***conditions of approval set forth herein within the timeframes specified. It shall be the***
46 ***applicant's responsibility to be familiar with and aware of these conditions of approval, and it***
47 ***shall be the applicant's responsibility to satisfy these conditions of approval and to satisfy***
48 ***them within the relevant timeframes outlined below.***

2. *The development is subject to the Site Plan Review Regulations adopted May 13, 1991, last revised March 24, 2025, and the Zoning Ordinance adopted January 16, 2013, last amended March 19, 2025, which are the regulations in effect at the time the application was submitted.*
3. *A building permit must be applied for and issued within two (2) years of the date of this approval (4.10.A), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 4.10.B.*
4. *“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.*
5. *“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.*
6. *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.*
7. *The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.*
8. *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.*
9. *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).*
10. *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 and Section 6.10.B.5 of the Site Plan Review Regulations.*

Conditions to be Satisfied Prior to Application for a Building Permit and Prior to the Start of Any Construction Activities

11. *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) *Redistribute 4 of the trees on the east side of the site to the north side.*

- b) *Amend the cover sheet to provide description of plan revisions. (5.1.E.4.d)*

The applicant shall provide the Planning and Development Department with one (1) full size copy of the revised plan set, and a digital copy of the revised plan set saved in a PDF-A format for archival purposes.

12. *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.*

13. *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.*

1 **14. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site**
2 **Plan Review Regulations. (Note: applicant can request an invoice from the Department of**
3 **Public Works).**

4 **15. The applicant shall apply for an Excavation Permit, Driveway Permit, and/or Stormwater**
5 **Permit, if required by the Department of Public Works.**

6
7 **Conditions to be Satisfied Prior to the Issuance of a Building Permit**

8 **16. Prior to the start of any construction activities on the property, the applicant shall record**
9 **in the Grafton County Registry of Deeds notice of the stormwater management and erosion**
10 **and sediment control plans as required per Section 6.6.H.2.d of the Site Plan Review**
11 **Regulations. Such notice shall be reviewed by the Planning & Development Department prior**
12 **to recording.**

13 **17. Prior to the start of any construction activities on the property for which construction**
14 **inspection is required pursuant to this decision or any applicable ordinance or code, the City**
15 **shall retain the services of an independent third-party inspector, for which the applicant shall**
16 **be responsible for all inspection fees related to (a) on-site work related to sewer, water,**
17 **temporary sedimentation and erosion control, and drainage improvements, and (b) all off-site**
18 **work within the City's right-of-way (including but not limited to water, sewer, driveways,**
19 **drainage), in accordance with Section 8.2 of the Site Plan Review Regulations. The applicant**
20 **shall provide funding for inspection services in a form and amount acceptable to the City and**
21 **shall sign an Infrastructure Inspection Agreement.**

22 **18. Pursuant to Section 213 of the Zoning Ordinance and the Impact Fee Schedule adopted**
23 **on May 20, 2024, the development shall be subject to City of Lebanon impact fees. The**
24 **applicant shall provide a completed Impact Fee Invoice/Acknowledgment form with the**
25 **building permit application.**

26 **19. All water and sewer fees shall be paid as set forth in City Code Chapter 68.**

27 **20. The applicant shall obtain an Excavation Permit, Driveway Permit, and/or Stormwater**
28 **Permit, if required by the Department of Public Works.**

29 **21. Prior to the start of any construction activities on the property, the applicant shall obtain**
30 **or update (if appropriate) any required Federal or State approvals.**

31
32 **Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy**

33 **22. The impact fee calculated pursuant to Condition of Approval #17 shall be paid.**

34 **23. Third-party engineer or design engineer inspection reports and as-built drawings provided**
35 **by the applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate**
36 **System), including tie sheets, shall be reviewed and approved by the City Engineer.**

37 **24. All improvements depicted on the plan shall be completed, and shall be constructed as**
38 **depicted on the approved plan, including any modifications to the plan as may be approved by**
39 **the Planning Board in accordance with the Site Plan Review Regulations.**

40
41 **The MOTION was seconded by Richard Ford Burley.**

42
43 ***The MOTION was approved (7-0).**

44
45 **G. Alice Peck Day Memorial Hospital, 10 Alice Peck Day Drive (Tax Map 90, Lot 59),**
46 **zoned R-3: Request for Site Plan review to a) install a +/-1,200 sq. ft. concrete pad on**
47 **the east side of the existing hospital building and b) construct a proposed 58-space**
48 **parking lot to serve the existing hospital use, together with associated site**
49 **improvements. PB2025-29-SPR**

1
2 *A MOTION was made by Richard Ford Burley to reschedule the public hearing for Alice Peck*
3 *Day Memorial Hospital, PB2025-29-SPR to the June 23, 2025 Planning Board Work Session*
4 *meeting. The MOTION was seconded by Eric Stacy.*

5
6 **The MOTION was approved (7-0).*

7
8 **4. COMMITTEE REPORTS – none**

9
10 **5. OTHER BUSINESS – none**

11
12 **6. APPROVAL MINUTES – none**

13
14 **7. ADJOURNMENT**

15
16 *A MOTION was made by Richard Ford Burley to adjourn the meeting at 10:43pm. The*
17 *MOTION was seconded by Andrew Faunce.*

18
19 **The MOTION was approved (7-0).*

20
21 The meeting adjourned at 10:43pm.

22
23 Respectfully submitted,
24 Paula Roux
25 Recording Secretary
26
27

DRAFT

**LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
MONDAY, JUNE 23, 2025 6:30PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Eric Stacy, Kellen Appleton, Karen Zook (City Council Rep), Kathie Romano (alt)

MEMBERS ABSENT: Jeremy Rutter, Patrick Kennelly

STAFF PRESENT: Tim Corwin (Deputy Planning Director), Nathan Reichert (Director of Planning & Development), Brian Vincent (City Engineer)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:34pm. Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures. Chair Faunce appointed Ms. Romano as a regular voting member for this meeting.

2. PUBLIC HEARING ITEMS

A. Alice Peck Day Memorial Hospital, 10 Alice Peck Day Drive (Tax Map 90, Lot 59), zoned R-3: Request for Site Plan review to a) install a +/-1,200 sq. ft. concrete pad on the east side of the existing hospital building and b) construct a proposed 58-space parking lot to serve the existing hospital use, together with associated site improvements. PB2025-29-SPR - Postponed from June 9, 2025

Mr. Corwin said the application is complete enough for the Board to accept jurisdiction and commence review.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board finds the application of Alice Peck Day Memorial Hospital, 10 Alice Peck Day Drive (Tax Map 90, Lot 59), zoned R-3 PB2025-29-SPR is complete enough to accept jurisdiction and commence review. The MOTION was seconded by Kellen Appleton.

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

Mr. Nik Fiore (Engineering Ventures) and Mr. Jamie Chiasson (APD) were present on behalf of the applicant. Mr. Fiore gave an overview of the project, which involves the expansion of the parking lot area and construction of a concrete pad on the east side of the hospital building. He gave an overview of the waivers being requested. He explained that one waiver (Section 5.1.E.5) is for a full survey to be completed on the property. He said only the front part of the parking area will be affected and asked that the applicant be allowed to obtain a partial survey. The group discussed the waiver request for Section 5.1.E.5 at length and agreed to add a Condition of Approval that requires a partial survey to be completed for the affected area of the property.

1 *A MOTION was made by Richard Ford Burley that for the application of Alice Peck Day*
2 *Memorial Hospital, PB2025-29-SPR, the Lebanon Planning Board approves partial waivers*
3 *from the following sections of the Site Plan Review Regulations:*

- 4 • *Section 5.1.E.5 – requirement to provide a current survey*
- 5 • *Article V submission requirements and Article VI design requirements as applicable*
6 *outside of the designated development area*
- 7 • *Section 6.5.I – bicycle parking requirements*

8
9 *The MOTION was seconded by Kathie Romano.*

10
11 **The MOTION was approved (6-0).*
12

13
14 *A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves*
15 *the application of Alice Peck Day Memorial Hospital, regarding 10 Alice Peck Day Drive (Tax*
16 *Map 90, Lot 59), zoned MC-2, PB2025-29-SPR, for Site Plan approval to a) install a +/-1,200*
17 *sq. ft. concrete pad on the east side of the existing hospital building and b) construct a*
18 *proposed 58-space parking lot to serve the existing hospital use, together with associated site*
19 *improvements as shown on a plan set titled “Alice Peck Day Memorial Hospital Parking*
20 *Expansion Site Plans,” prepared by Engineering Ventures, PC, dated 05/12/2025, EV Project*
21 *# 24578 (14 Sheets), including any and all submissions and testimony provided for and during*
22 *the public hearing.*

23
24 *In support of its decision, the Board finds that the applicant has submitted plans, testimony,*
25 *technical data, information, reports, and studies that together satisfactorily demonstrate*
26 *compliance with the applicable requirements of the Site Plan Review Regulations, except as*
27 *may reasonably be addressed through the imposition of certain conditions of approval, set*
28 *forth below, and except as may have been waived pursuant to Section 7.1.*

29
30 *This approval is subject to the following conditions:*

31
32 *General Conditions*

- 33 *1. This approval shall automatically expire and be deemed void upon failure to meet any of the*
34 *conditions of approval set forth herein within the timeframes specified. It shall be the*
35 *applicant’s responsibility to be familiar with and aware of these conditions of approval, and it*
36 *shall be the applicant’s responsibility to satisfy these conditions of approval and to satisfy*
37 *them within the relevant timeframes outlined below.*
- 38 *2. The development is subject to the Site Plan Review Regulations adopted May 13, 1991, last*
39 *revised April 28, 2025, and the Zoning Ordinance adopted January 16, 2013, last amended*
40 *March 19, 2025, which are the regulations in effect at the time the application was submitted.*
- 41 *3. A building permit/zoning permit must be applied for and issued within two (2) years of the*
42 *date of this approval (4.10.A), subject to an extension if applied for by the applicant and if*
43 *approved by the Planning Board per Section 4.10.B.*
- 44 *4. “Active and substantial development,” as defined in Section 8.4.A.1 of the Site Plan Review*
45 *Regulations, shall be achieved within two (2) years of the date of this approval (8.4.A.2),*
46 *subject to an extension if applied for by the applicant and if approved by the Planning Board*
47 *per Section 8.4.A.3. If active and substantial development is not achieved within two (2) years*
48 *of the date of the Planning Board’s approval, the development shall be subject to any changes*

1 *in the City's land use regulations.*

2 *5. "Substantial completion," as defined in Section 8.4.B.1 of the Site Plan Review Regulations,*
3 *shall be achieved within five (5) years of the date of this approval. If substantial completion is*
4 *not achieved within five (5) years of the date of the Planning Board's approval, the*
5 *development shall be subject to any changes in the City's land use regulations.*

6 *6. All required landscape plantings shall meet the minimum size requirements for such*
7 *plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of*
8 *installation.*

9 *7. The applicant shall implement and maintain NHDES Site Specific Best Management*
10 *Practices before, during, and after construction.*

11 *8. Prior to the start of any construction activities on the property, erosion control measures,*
12 *including edge-of-disturbance fencing if applicable, shall be installed and maintained before*
13 *and during any site work, to be verified by the City Engineer or City's third-party inspector on*
14 *site.*

15 *9. The property owner is responsible for the maintenance and operation of the stormwater*
16 *management system in accord with the O&M plan, and such responsibility shall run with the*
17 *land. (Section 6.6.H.2.b of the Site Plan Review Regulations).*

18 *10. All service areas and facilities including garbage and waste disposal containers, recycling*
19 *bins, electrical and mechanical equipment such as transformers and compressors, meter*
20 *clusters, and other utility elements must be screened in accordance with Section 6.2.B.8 and*
21 *Section 6.10.B.5 of the Site Plan Review Regulations.*

22
23 *Conditions to be Satisfied Prior to Application for a Building Permit/Zoning Permit and Prior*
24 *to the Start of Any Construction Activities*

25 *11. Within 60 days, the applicant shall complete a survey of the front lot line to the satisfaction*
26 *of the Planning & Development Department and the City Engineer, and shall update the plan*
27 *set accordingly. Should any material discrepancies or material changes result from the*
28 *completed survey and the approved plan set, the applicant shall apply to the Planning Board*
29 *for review and approval of the revised plan set.*

30 *12. The applicant shall provide a letter or certification from the engineer or record or other*
31 *qualified design professional confirming that the approved plan set meets the accessibility*
32 *standards of the State of New Hampshire Building Code.*

33 *13. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site*
34 *Plan Review Regulations. (Note: applicant can request an invoice from the Department of*
35 *Public Works).*

36 *14. The applicant shall apply for an Excavation Permit, Driveway Permit, and/or Stormwater*
37 *Permit, if required by the Department of Public Works.*

38
39 *Conditions to be Satisfied Prior to the Issuance of a Building Permit*

40 *15. Prior to the start of any construction activities on the property, the applicant shall record*
41 *in the Grafton County Registry of Deeds notice of the stormwater management and erosion*
42 *and sediment control plans as required per Section 6.6.H.2.d of the Site Plan Review*
43 *Regulations. Such notice shall be reviewed by the Planning & Development Department prior*
44 *to recording.*

45 *16. Prior to the start of any construction activities on the property for which construction*
46 *inspection is required pursuant to this decision or any applicable ordinance or code, the City*
47 *shall retain the services of an independent third-party inspector, for which the applicant shall*
48 *be responsible for all inspection fees related to (a) on-site work related to sewer, water,*
49 *temporary sedimentation and erosion control, and drainage improvements, and (b) all off-site*

1 *work within the City's right-of-way (including but not limited to water, sewer, driveways,*
2 *drainage), in accordance with Section 8.2 of the Site Plan Review Regulations. The applicant*
3 *shall provide funding for inspection services in a form and amount acceptable to the City and*
4 *shall sign an Infrastructure Inspection Agreement.*

5 *17. The applicant shall obtain an Excavation Permit, Driveway Permit, and/or Stormwater*
6 *Permit, if required by the Department of Public Works.*

7 *18. Prior to the start of any construction activities on the property, the applicant shall obtain*
8 *or update (if appropriate) any required Federal or State approvals.*

9
10 *Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy*

11 *19. Third-party engineer or design engineer inspection reports and as-built drawings provided*
12 *by the applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate*
13 *System), including tie sheets, shall be reviewed and approved by the City Engineer.*

14 *20. All improvements depicted on the plan shall be completed and shall be constructed as*
15 *depicted on the approved plan, including any modifications to the plan as may be approved by*
16 *the Planning Board in accordance with the Site Plan Review Regulations.*

17
18 *The MOTION was seconded by Kellen Appleton.*

19
20 **The MOTION was approved (6-0).*

21 22 **3. STUDY ITEMS**

23 **A. Review of 2026-2031 Capital Improvement Plan (CIP) Preliminary Project List -** 24 **Continued from May 27, 2025**

25
26 Chair Faunce asked the group to review the list of CIP projects that had been provided in the
27 May 27, 2025 agenda packet to see if the Board wanted to

- 28 1. provide assistance or information to any project team, or
29 2. have someone from any project team come to a Planning Board meeting to provide more
30 information about the project.

31
32 Chair Faunce noted that project team members could provide information in writing; they did not
33 have to attend a meeting to present to the Board in person.

34
35 The group discussed the projects in great detail and decided to have representatives from the
36 following projects provide more information to the Board:

- 37
38 • (Fire) Station 2 Replacement – location in West Lebanon to be determined
39 • Large Groundwater Well Development – alternative water source for Lebanon
40 • South Main Street Bridge (Dry Bridge) – current status, after recent temporary closure and
41 repair

42
43 Mr. Stacy raised the question of how sidewalk project costs are determined. Mr. Corwin said that
44 was an issue for DPW and not for the Planning Board. The group decided to have someone from
45 DPW come to a meeting to explain how costs for projects, such as the sidewalk projects, are
46 determined (ex. Linear cost per foot, etc.)

Chair Faunce said he'd like to know why so many rotaries/roundabouts are being proposed and/or constructed in Lebanon lately. The group decided to have someone from DPW come to a meeting to discuss the use of rotaries.

The total list of topics that the Planning Board would like to hear more about:

- (Fire) Station 2 Replacement – location in West Lebanon to be determined
- Large Groundwater Well Development – alternative water source for Lebanon
- South Main Street Bridge (Dry Bridge) – current status, after recent temporary closure and repair
- How costs for sidewalk projects are determined
- Use of rotaries in Lebanon

4. COMMITTEE REPORTS

Chair Faunce said the Planning Board Development Regulations Subcommittee (Chair Faunce, Dr. Ford Burley, Mr. Stacy, Mr. Kennelly) will have its first meeting on July 7, 2025 at 5:30pm. He asked the Board members to send any items of concern or interest for this committee to Mr. Corwin.

Chair Faunce said members of the Housing Task Force will be going to the Farmer's Market to interact with the community. He said he would provide a report to the Planning Board next month about the activities of the Task Force.

5. OTHER BUSINESS – no reports

A. Planning Board Process Improvement/Implementation of Rules of Procedure

B. Planning Board Training

6. APPROVAL MINUTES – May 27, 2025, June 09, 2025

The group agreed to postpone approving the minutes of May 27, 2025 and June 09, 2025 until the July 14, 2025 Planning Board meeting.

7. ADJOURNMENT

A MOTION was made by Richard Ford Burley to adjourn the meeting at 7:58pm. The MOTION was seconded by Eric Stacy.

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

The meeting adjourned at 7:58pm.

Respectfully submitted,
Paula Roux
Recording Secretary