

1 **LONDONDERRY, NH PLANNING BOARD**
2 **MINUTES OF THE MEETING OF FEBRUARY 11, 2009 AT THE MOOSE HILL**
3 **COUNCIL CHAMBERS**
4

5 7:00 PM: Members Present: Art Rugg; John Farrell; Rick Brideau, Ex-Officio;
6 Kathy Wagner, Ex-Officio; Charles Tilgner, P.E., Ex-Officio; Mary Soares; Rob
7 Nichols; Laura El-Azem; Chris Davies, alternate member; Cole Melendy, alternate
8 member
9

10 Also Present: André Garron, AICP; Tim Thompson, AICP; John Vogl, GIS
11 Manager; John Trottier, P.E.; Cathy Dirsra, Planning Department Secretary
12

13 A. Rugg called the meeting to order at 7 PM.
14

15 **Administrative Board Work**
16

17 A. Plans to sign - Kimball Subdivision
18

19 J. Trottier said all precedent conditions for approval have been met and the
20 staff recommends signing the plans.
21

22 **J. Farrell made a motion to authorize the Chair and Secretary to sign**
23 **the plans. R. Brideau seconded the motion. No discussion. Vote on the**
24 **motion: 9-0-0.** A. Rugg said the plans will be signed at the conclusion of the
25 meeting.
26

27 B. Plans to sign – Mohawk Amended Site Plan (Phasing)
28

29 J. Trottier said all precedent conditions for approval have been met and the
30 staff recommends signing the plans.
31

32 **J. Farrell made a motion to authorize the Chair and Secretary to sign**
33 **the plans. R. Brideau seconded the motion. No discussion. Vote on the**
34 **motion: 9-0-0.** A. Rugg said the plans will be signed at the conclusion of the
35 meeting.
36

37 C. Reaffirmation of Conditional Approval Request – Falling Water Professional
38 Office Site Plan
39

40 T. Thompson referenced the letter from George Chadwick requesting an
41 extension for 120 days. He said that staff recommends granting the
42 extension. He also said that the applicant would like to request a special
43 meeting with the Board if they are ready prior to the 120 days. Consensus of
44 the board was that they would agree to a special meeting.
45

46 **J. Farrell made a motion to grant an extension for 120 days. R.**
47 **Brideau seconded the motion. No discussion. Vote on the motion: 9-0-**
48 **0.** Conditional Approval was extended for 120 days.
49

1 D. Extension Request – Church of the Nazarene Site Plan

2
3 T. Thompson referenced the letter from Jason Hill, Holden Engineering,
4 requesting an extension for 120 days. He said that staff recommends
5 granting the extension.

6
7 **J. Farrell made a motion to grant an extension for 120 days. R.**
8 **Brideau seconded the motion.** No discussion. **Vote on the motion: 9-0-**
9 **0.** Extension of 120 days was granted.

10
11 E. Extension Request – Elizabeth Meadows Subdivision

12
13 T. Thompson referenced the letter from Jiri Hajek, Eric Mitchell & Associates,
14 requesting an extension for 120 days. He said staff supports the extension.

15
16 J. Hajek said they would like a 120 day extension to revise their plans in
17 response to DPW engineering review comments.

18
19 **J. Farrell made a motion to grant an extension for 180 days. R.**
20 **Brideau seconded the motion.** No discussion. **Vote on the motion: 9-0-**
21 **0.** Extension of 180 days is granted.

22
23 F. Voluntary Merger – Lots associated with the Cider Mill Site Plan

24
25 T. Thompson gave the Board a status of the project and said that this merger
26 is the remaining part necessary for complete approval of this project.

27
28 **J. Farrell made a motion to authorize the chair to sign the merger. R.**
29 **Brideau seconded the motion.** No discussion. **Vote on the motion: 9-0-**
30 **0.**

31
32 G. Regional Impact Determinations

33
34 T. Thompson stated that James & Mary Reed are proposing a 2 lot subdivision
35 on Map 9, Lot 63. He said that staff recommends this project is not a
36 development of regional impact, as it does not meet any of the regional
37 impact guidelines suggested by Southern NH Planning Commission (SNHPC).

38
39 **J. Farrell made a motion to accept staff recommendations that this**
40 **project is determined not to be of regional impact under RSA 36:56.**
41 **R. Brideau seconded the motion.** No discussion. **Vote on the motion: 9-**
42 **0-0.** Regional impact determination accepted.

43
44 H. Approval & Signing of Minutes – January 14 & 22

45
46 **J. Farrell made a motion to approve the minutes from the January 14**
47 **meeting. R. Brideau seconded the motion.** No discussion. **Vote on the**
48 **motion: 7-0-2.**

1 (M. Soares & L. Wiles abstained because they were absent at the January 14
2 meeting). Minutes are approved and will be signed at the conclusion of the
3 meeting.
4

5 **J. Farrell made a motion to approve the minutes from the January 22**
6 **meeting. R. Brideau seconded the motion. No discussion. Vote on the**
7 **motion: 6-0-3.**

8 (R. Brideau, R. Nichols, J. Farrell and L. Wiles abstained because they were
9 absent at the January 22 meeting). Minutes are approved and will be signed
10 at the conclusion of the meeting.
11

12 I. Discussions with Town Staff
13

14 A. Garron said that staff recently met with Congresswoman Shea-Porter,
15 Senators Judd Gregg and Jeanne Shaheen in regards to the economic
16 stimulus package. He said that next week they hope to meet with the
17 Governor and the DOT Commissioner and hopefully the Commissioner of
18 Department of Resource and Economic Development (DRED) in order to keep
19 Londonderry at the front and center of their attention.
20

21 A. Garron said staff is also moving forward with two marketing initiatives.
22 They recently interviewed proposals for upgrade of our economic
23 development website. They selected a consultant but have put that on hold
24 until they work through the interview process with a marketing firm to help
25 with marketing Londonderry. He said that once they have that firm on board
26 the two will work collaboratively so that the message will be weaved into the
27 economic development website.
28 He said that on the marketing side they were able to get a \$5,000 grant from
29 the Rockingham Economic Development Corporation towards the project. He
30 said they have also submitted for two other grants to help offset costs.
31 A. Garron said they were successful in obtaining an economic development
32 website grant through the DRED to offset costs.
33

34 T. Thompson said that he and J. Trottier met with CLD consulting engineers
35 on Phase 4 and 5 of the Elliot Medical Facility project. He said the deadline is
36 coming up for the March meetings. Friday February 13 is the deadline for the
37 March 4 meeting. Friday February 20 is the deadline for the March 11
38 meeting. He said the applicant has asked if the Board would consider placing
39 them on the agenda for the second meeting next month. The Board agreed to
40 place them on the agenda for the March 11 meeting.
41

42 T. Thompson said that he and J. Trottier met with the new owners of the car
43 wash at the VIP Discount Auto Center on Garden Lane. They currently have
44 two vacuum islands and the remainder of the area is for parking. They are
45 proposing to add a third vacuum island which would mean the loss of one
46 parking space. They have asked the Board if staff could handle this project
47 administratively or if they would require a minor site plan review. The Board
48 agreed that staff can handle the project administratively.
49

50 J. Farrell said he met on site today with Tupelo's owner and town staff, and

1 Tupelo has decided to stay in Londonderry vs. moving to Derry. Tupelo said
2 that last year they pushed 25,000 people through that site and this year they
3 plan to push over 30,000 through that site this year. J. Farrell said they met
4 with the Police Department, Planning Department and Public Works in regards
5 to the logistics of this site considering that they do abut residential
6 properties.

7
8 A. Rugg reminded everyone that March 10 is town meeting day and the polls
9 will be open from 7:00am to 8:00pm. He also reminded everyone that March
10 14 is the town meeting.

11
12 K. Wagner said that A. Garron and staff will be at the town meeting to give a
13 presentation on the Pettengill Rd project so that the facts will be made clear
14 to the residents.

15
16 A. Rugg said there will be a workshop session on March 11 in regards to the
17 process for subdivision and site plan requirements.

18
19 **Public Hearings**

20
21 A. Annual Determination of Growth Sustainability - Public Hearing

22
23 T. Thompson gave a brief presentation related to his memo to the Planning
24 Board (see attachment #1).

25
26 A. Rugg asked for public input, but there was none.

27
28 **J. Farrell made a motion to determine that The Town of Londonderry**
29 **will be in a period of sustainable growth and there will be no cap on**
30 **the number of building permits issued. This decision will expire**
31 **December 31, 2009. R. Brideau seconded the motion.** No discussion.
32 **Vote on the motion: 9-0-0.**

33
34 B. Public Hearing - Address Corrections - Nashua Road (West Broadway)
35 Address Corrections

36
37 K. Marchant, Assessor and Jim Bilodeau, 911 Coordinator for the Fire
38 Department, presented to the Board the issues surrounding the address
39 corrections needed for Nashua Road (West Broadway). K. Marchant said all
40 the certified letters were sent back undelivered. She said that street name
41 signs are starting to be placed on the light poles in town for better
42 identification. She also said they have been working with the post office on
43 this issue and that there are union issues involved in the number of deliveries
44 being made in Londonderry and Derry. She said the post office has the
45 authority to determine the zip code but not the address.

46
47 A. Rugg asked for public input.

48
49 Marie Brownell (& Richard), Brownell Insurance Agency, 5 Nashua Road, is
50 concerned because the cost to her business would be substantial. She's also

1 worried about the possibility that in the future the decision might be made to
2 change the address back again and this would cost her more money.
3 J. Farrell agreed with M. Brownell and suggested meeting with the
4 postmaster in Londonderry and Derry to work this out. M. Brownell asked if
5 this issue could be tabled until the post office has their own meeting and
6 makes a decision. J. Farrell said he wants to invite the postal district manager
7 to a Planning Board meeting for clarification on where they stand on this
8 issue.

9
10 Debbie Ball, Coldwell Banker, said they have the same concerns as M.
11 Brownell. She said there is no such address as 5 Nashua Rd in Londonderry
12 so customers would not be able to find them.

13
14 Ralph Valentine, 1 & 3 Nashua Rd, said he is concerned about licenses being
15 issued to these local businesses and he said that the address issue has
16 always been a problem.

17
18 **M. Soares made a motion to continue this public hearing to March 11.**
19 **R. Nichols seconded the motion.** A. Rugg said this public hearing will be
20 continued to March 11.

21
22 [The Board decided to take the next item out of order.]

23
24 D. Zoning Ordinance Amendments Workshop - Fence regulations requested by
25 Building Division

26
27 R. Canuel, said that enforcement becomes very difficult when the regulations
28 are vague. He presented the Board with some suggestions (see attachment
29 #2).

30
31 T. Thompson asked the Board if they want to move this to a public hearing
32 next month. The Board said the public hearing would be March 11.

33
34 A.Rugg asked for public input.

35
36 John Michaels said it should be noted that these are town regulations and not
37 the state.

38
39 [The Board decided to take the next item out of order.]

40
41 E. Conceptual Discussion - Laura & Patrick El Azem - Subdivision without
42 required frontage

43
44 *[L. El-Azem recused herself from the Board.]*

45
46 Laura El-Azem, 22 Summer Dr, said they would like to carve out another lot,
47 approximately 1½ acres, to build another house on. She said they currently
48 don't have the required frontage due to a paper roadway that was never
49 completed. The lot currently is on a temporary cul-de-sac. J. Trottier said he
50 would be concerned about the drainage and lot sizing for a second lot and

1 suggested that L. El-Azem check the topographic plans available in the
2 planning division. The Board said they would be supportive of this project and
3 a variance for frontage from the ZBA.
4

5 C. Zoning Ordinance Amendments Workshop - FI District

6
7 *[L. El-Azem reassumed her seat at the Board]*
8

9 T. Thompson presented the updates to the proposed amendments that were
10 completed thus far. (See attachment #3) He still has work to do on the
11 signage questions that were previously raised by the Board and property
12 owners.
13

14 A. Rugg asked for public input.
15

16 John Michaels said that he feels in order to get a conditional use permit the
17 language would have to be changed. A. Garron said that if you look at the
18 objectives and characteristics section it refers back to the master plan design
19 charrette. He said that the purpose behind it is that we have a particular
20 layout in which the roadway network is there to maximize the use of the
21 property. He said if they have a use that comes in that is of a size that would
22 block that intent, then the Board has the authority to look at that and
23 determine whether or not the project would prevent other projects from
24 being built.
25

26 J. Vogl, GIS Manager, gave an overview of the Community Viz GIS program,
27 which allows for scenarios to be generated to envision development impacts.
28

29 The Board said they would like T. Thompson to hold off on the FI District until
30 after the Community Viz program has been researched further with the
31 Economic Development Taskforce.
32

33 F. Workforce Housing - Monthly Workshop Session

34
35 T. Thompson provided the Board with some draft ordinance language (See
36 attachment #4).
37

38 [J. Farrell left at 9:55pm.]
39

40 There were various discussions relative to the impact fee and GMO waivers,
41 parking requirements, and general requirements of the new state law on
42 workforce housing.
43

44 T. Thompson asked the Board if they preferred the short or long version of
45 the retention section. The Board agreed with the long version, as it would
46 allow potential developers to know what the requirements are in the
47 ordinance rather than a reference in the ordinance to lein and covenant
48 language.
49

50 M. Soares asked if this was ready for a public hearing. T. Thompson

1 suggested maintaining the workshop schedule for now, as there are still
2 refinements needed to the ordinances, and he is awaiting further feedback
3 from Ben Frost at NH Housing Finance Authority.
4

5 A. Rugg stated that there would be another workshop on March 11.
6
7

8 **Other Business**
9

10
11 **Adjournment:**
12

13 **M. Soares made a motion to adjourn the meeting. R. Brideau seconded the**
14 **motion.** No discussion. **Vote on the motion: 9-0-0.** Meeting adjourned at
15 10:38PM.
16
17

18
19 These minutes prepared by Cathy Dirsra, Planning Division Secretary.
20
21

22
23 Respectfully Submitted,
24
25

26
27 Mary Wing Soares, Secretary
28

2008/2009 Growth Management Ordinance - Determination of Growth Sustainability

Public Hearing

February 11, 2009

How the Annual Evaluation Works

- Requirements spelled out in Section 1.4 of the Zoning Ordinance
 - Board must also make a determination based on the 1998 Ordinance (former Section 1304)
 - Determination must be made by March 1 of each year
 - Current Ordinance requires 2 of 3 criteria to be met to declare "unsustainable growth" and limit building permits
 - 1998 Ordinance requires 3 of 3 criteria to be met to declare "unsustainable growth" and limit building permits
-

What are the Criteria?

- The present year number of building permits authorized by the Building Department exceeds the average rate of dwelling unit authorizations in Londonderry over the six preceding calendar years
 - A percentage increase in housing units over the preceding calendar year equal to [or greater than] the rate of increase in housing units for that preceding year summed across the six municipalities which abut Londonderry (Auburn, Derry, Hudson, Litchfield, Manchester, and Windham)
-

What are the Criteria? (cont'd)

- The maximum rate of dwelling units authorizations whose projected to demands can be adequately serviced and provided with facilities at a prudent level of fiscal strain, based upon the following:
 - School enrollment vs. school capacity
 - Strain on public facilities
 - Percentage of total budget appropriations made up of capital improvements
-

Criterion 1: 6 year average analysis

- The average number of permits authorized over the preceding six years is **100**. In 2008, Londonderry authorized **41** permits ($41 < 100$).

■ **CONDITION NOT MET**

- Given that the first condition was not met, Section 1304 of the 1998 GMO will not meet the conditions of unsustainable growth.
-

Criterion 2: Local vs. Region

- The number of housing units authorized by the Londonderry Building Division grew by **0.4831%** between 2007 and 2008; the number of housing units authorized by the building departments in abutting municipalities grew by **0.4230%** between same period ($0.4831\% > 0.4230\%$).

■ **CONDITION MET**

Criterion 3, Part 1: School Capacity

- The most recent stated enrollment capacity of the School System is **6,347**. The present enrollment as of December 2008 (as reported in the 2008 School District Profile Sheet, dated 12/11/08) is **5,409**. (5,409 Enrollment < 6,347 Capacity)

■ **CONDITION NOT MET**

Criterion 3, Part 2: Public Facilities

- Over the past several years, Londonderry has taken steps to address the growing demand on public facilities by funding and/or completing projects such as:
 - New Police Station;
 - New Town Hall;
 - New South Fire Station;
 - Additional funds for intersection improvement at Litchfield/Stonehenge and Rt. 128;
 - Funding for intersection improvements at the Page/Route 28 Intersection.
-

Criterion 3, Part 2: Public Facilities (cont'd)

- These projects have been approved in past CIP's or are current projects in the approved 2010-2015 CIP. Based on what has been completed by Londonderry's CIP and what is proposed to be expended on public facilities in the 2010-2015 program, there does not appear to a strain on public facilities based to the rate of residential growth.

■ **CONDITION NOT MET**

Criterion 3, Part 3: % of budget made up of capital improvements

- The combined municipal and school appropriations for capital expenditures, including debt service and capital outlay on average from 2003/2004 to 2008/2009 totals **\$6,040,795.50**. The total combined town and school appropriation for 2008-2009 is **\$52,274,411**. The total capital expenditure on average compared to the total budget appropriation represents **12.1277%**, which is less than the 15% cap of the total combined appropriations.

■ **CONDITION NOT MET**

Conclusion

- Given that two of three of the 2002 GMO criteria have not been met and three of the three criteria of the 1998 GMO have not been met:
 - **Staff recommends that the Planning Board make a determination that for 2009, the Town of Londonderry will be in a **period of sustainable growth**, and there will be **no cap** on the number of building permits issued.**
 - This decision will end on December 31, 2009.
-

MEMORANDUM

To: Planning Board

From: Timothy J. Thompson, AICP 
Town Planner

Date: February 11, 2009

Subject: **2008/2009 Growth Management Determination**

The Planning Board, in accordance with section 1.4 - Growth Management and Innovative Land Use Control of the zoning ordinance must make a determination of sustainability prior to March 1, 2009. The Board must also make a GMO determination using Section 1304 of the 1998 Growth Management Regulations as well.

Both versions of the GMO will be combined this year because the end result will be the same. The current GMO requires that 2 of 3 criteria from Section 1.4 must be met to make a determination of "unsustainable growth." Also, in accordance with Section 1304 of the 1998 Ordinance, 3 of 3 criteria must be met to make a determination of "unsustainable growth."

Evaluation:

In accordance with the Londonderry Growth Management and Innovative Land Use Control Regulation Section 1.4 (2002 GMO Version) and Section 1304 (1998 GMO Version), a determination of unsustainable growth occurs when two of three (or 3 of 3 of 1998 GMO) of the following findings are made:

- A. *The present year number of building permits authorized by the Building Department exceeds the average rate of dwelling unit authorizations in Londonderry over the six preceding calendar years;***

The average number of permits authorized over the preceding six years is **100**. In 2008, Londonderry authorized **41 permits** (41 < 100).
Condition not met

Section 1304 of the 1998 GMO requires that 3 of 3 conditions be met. **Given that the first condition was not met, Section 1304 of the 1998 GMO will not meet the conditions of unsustainable growth.** The remainder of the analysis will focus solely on the 2002 GMO.

- B. *A percentage increase in housing units over the preceding calendar year equal to [or greater than] the rate of increase in housing units for that preceding year summed across the six municipalities which abut Londonderry (Auburn, Derry, Hudson, Litchfield, Manchester, and Windham).***

The number of housing units authorized by the Londonderry Building Division grew by **0.4831%** between 2007 and 2008; the number of housing units authorized by the building departments in abutting municipalities grew by **0.4230%** between same period (0.4831% > 0.4230%).

Condition met

- C. *The maximum rate of dwelling units authorizations whose projected to demands can be adequately serviced and provided with facilities at a prudent level of fiscal strain, based upon the following:***

- 1. *The rate of residential development at which the number of pupils projected by the Londonderry School Board to be enrolled in the Londonderry School System would not in any given year exceed the stated capacity of the Londonderry School System in that year, based upon facilities development as contained in the Capital Improvement Program most recently approved by the Planning Board;***

The most recent stated enrollment capacity of the School System is **6,347**. The present enrollment as of December 2008 (as reported in the 2008 School District Profile Sheet, dated 12/11/08) is **5,409**. (5,409 Enrollment < 6,347 Capacity).

Condition Not Met

- 2. *The rate of residential development determined by the Planning Board, based upon careful studies and consultation with the agencies involved, to be the highest which would not exceed the Town's capacity to service growth with public facilities other than schools, as planned in the six year Capital Improvements Program most recently approved by the Planning Board.***

Over the past several years, Londonderry has taken steps to address the growing demand on public facilities by funding and/or completing projects such as:

- New Police Station;
- New Town Hall;
- New South Fire Station;
- Additional funds for intersection improvement at Litchfield/Stonehenge and Rt. 128;
- Funding for intersection improvements at the Page/Route 28 Intersection.

These projects have been approved in past capital improvements programs or are current projects in the approved 2010-2015 CIP. Based on what has been completed by Londonderry's capital improvements program and what is proposed to be expended on public facilities in the 2010-2015 program, there does not appear to be a strain on public facilities based to the rate of residential growth.

Condition Not Met

3. ***The combined municipal and school appropriations for capital expenditures, including debt service and capital outlay, will on average exceed 15% of the total municipal and school department appropriations combined over the period covered in the current Capital Improvements Program.***

The combined municipal and school appropriations for capital expenditures, including debt service and capital outlay on average from 2003/2004 to 2008/2009 totals **\$6,040,795.50**. The total combined town and school appropriation for 2008-2009, as reported by the Finance Department, is **\$52,274,411**. The total capital expenditure on average compared to the total budget appropriation represents **12.1277%**, which is less than the 15% cap of the total combined appropriations.

Condition not met

Conclusion:

Given that two of three of the 2002 GMO criteria have not been met and three of the three criteria of the 1998 GMO have not been met:

Staff recommends that the Planning Board make a determination that for 2009, the Town of Londonderry will be in a period of sustainable growth, and there will be no cap on the number of building permits issued.

This decision will end on December 31, 2009.

Table 1. RECENT REGIONAL BUILDING INVENTORY

Year	Nearby Municipalities										Totals	
	Londonderry	Auburn	Bedford	Derry	Hudson	Litchfield	Manchester	Merrimack	Windham	Nearby	Abutters	
ADDED HOUSING UNITS AUTHORIZED ON PERMITS 1990 - 2007												
1990	69	12	56	171	122	49	322	58	25	815	701	
1991	103	13	87	177	99	91	59	36	22	584	461	
1992	118	22	117	169	104	58	104	119	53	746	510	
1993	84	31	147	147	99	43	(32)	123	71	629	359	
1994	85	28	138	111	102	65	116	86	65	711	487	
1995	101	25	159	33	83	59	127	74	79	639	406	
1996	112	25	372	60	106	43	283	97	66	1,052	583	
1997	161	19	352	88	118	66	454	164	81	1,342	826	
1998	187	34	297	74	182	74	166	174	120	1,121	650	
1999	150	46	227	111	197	111	183	191	94	1,160	742	
2000*	146	42	309	105	48	71	176	200	259	1,210	701	
2001*	117	34	217	39	136	18	272	239	157	1,112	656	
2002*	44	33	197	58	218	67	719	71	177	1,540	1,272	
2003*	132	45	116	66	202	61	361	101	111	1,063	846	
2004*	177	43	139	43	152	65	572	89	141	1,244	1,016	
2005*	90	32	142	44	131	123	336	49	128	985	794	
2006*	97	65	155	60	150	140	706	60	150	1,486	1,271	
2007*	57	11	33	159	52	48	199	15	61	578	530	
2008*	41	4	21	74	29	13	176	17	50	384	346	
TOTAL HOUSING UNITS 1990 - 2008												
1990	6,739	1,354	3,853	11,869	6,902	1,845	44,361	7,915	3,327	81,426	69,658	
1991	6,808	1,366	3,909	12,040	7,024	1,894	44,683	7,973	3,352	82,241	70,359	
1992	6,911	1,379	3,996	12,217	7,123	1,985	44,742	8,009	3,374	82,825	70,820	
1993	7,029	1,401	4,113	12,386	7,227	2,043	44,846	8,128	3,427	83,571	71,330	
1994	7,113	1,432	4,260	12,533	7,326	2,086	44,814	8,251	3,498	84,200	71,689	
1995	7,198	1,460	4,398	12,644	7,428	2,151	44,930	8,337	3,563	84,911	72,176	
1996	7,299	1,485	4,557	12,677	7,511	2,210	45,057	8,411	3,642	85,550	72,582	
1997	7,411	1,510	4,929	12,737	7,617	2,253	45,340	8,508	3,708	86,602	73,165	
1998	7,572	1,529	5,281	12,825	7,735	2,319	45,794	8,672	3,789	87,944	73,991	
1999	7,759	1,563	5,578	12,899	7,917	2,393	45,960	8,846	3,909	89,065	74,641	
2000*	7,718	1,622	6,401	12,735	8,165	2,389	45,892	8,959	3,906	90,069	74,709	
2001*	7,835	1,664	6,710	12,840	8,213	2,460	46,068	9,159	4,165	91,279	75,410	
2002*	7,879	1,698	6,927	12,879	8,349	2,478	46,340	9,398	4,322	92,391	76,066	
2003*	8,025	1,731	7,124	12,937	8,567	2,545	47,059	9,469	4,499	93,931	77,338	
2004*	8,202	1,776	7,240	13,003	8,769	2,606	47,420	9,570	4,610	94,994	78,184	
2005*	8,292	1,819	7,379	13,046	8,921	2,671	47,992	9,659	4,751	96,238	79,200	
2006*	8,389	1,851	7,521	13,090	9,052	2,794	48,328	9,708	4,879	97,223	79,994	
2007*	8,446	1,916	7,676	13,150	9,202	2,934	49,034	9,768	5,029	98,709	81,265	
2008	8,487	1,927	7,709	13,309	9,254	2,982	49,233	9,783	5,090	99,287	81,795	
ANNUAL % INCREASE IN DWELLING UNITS												
1990	1.02%	0.89%	1.45%	1.44%	1.77%	2.66%	0.73%	0.73%	0.75%	1.00%	1.01%	
1991	1.51%	0.95%	2.23%	1.47%	1.41%	4.80%	0.13%	0.45%	0.66%	0.71%	0.66%	
1992	1.71%	1.60%	2.93%	1.38%	1.46%	2.92%	0.23%	1.49%	1.57%	0.90%	0.72%	
1993	1.20%	2.21%	3.57%	1.19%	1.37%	2.10%	-0.07%	1.51%	2.07%	0.75%	0.50%	
1994	1.19%	1.96%	3.24%	0.89%	1.39%	3.12%	0.26%	1.04%	1.86%	0.84%	0.68%	
1995	1.40%	1.71%	3.62%	0.26%	1.12%	2.74%	0.28%	0.89%	2.22%	0.75%	0.56%	
1996	1.53%	1.68%	8.16%	0.47%	1.41%	1.95%	0.63%	1.15%	1.81%	1.23%	0.80%	
1997	2.17%	1.26%	7.14%	0.69%	1.55%	2.93%	1.00%	1.93%	2.18%	1.55%	1.13%	
1998	2.47%	2.22%	5.62%	0.58%	2.35%	3.19%	0.36%	2.01%	3.17%	1.27%	0.88%	
1999	1.93%	2.94%	4.07%	0.86%	2.49%	4.64%	0.40%	2.16%	2.40%	1.30%	0.99%	
2000	1.89%	2.59%	4.83%	0.82%	0.59%	2.97%	0.38%	2.23%	6.63%	1.34%	0.94%	
2001	1.49%	2.04%	3.23%	0.30%	1.66%	0.73%	0.59%	2.61%	3.77%	1.22%	0.87%	
2002	0.55845%	1.9435%	2.8439%	0.4503%	2.6111%	2.7038%	1.5516%	0.7555%	4.0953%	1.6668%	1.67223%	
2003	1.64486%	2.5997%	1.6283%	0.5102%	2.3579%	2.3969%	0.7671%	1.0666%	2.4672%	1.1317%	1.09390%	
2004	2.15801%	2.4212%	1.9199%	0.3307%	1.7334%	2.4942%	1.2062%	0.9300%	3.0586%	1.3096%	1.29950%	
2005	1.08538%	1.7592%	1.9244%	0.3373%	1.4684%	4.6050%	0.7001%	0.5073%	2.6942%	1.0235%	1.00253%	
2006	1.15628%	3.5116%	2.0609%	0.4584%	1.6571%	5.0107%	1.4609%	0.6180%	3.0744%	1.5284%	1.58887%	
2007	0.67488%	0.5741%	0.4299%	1.2091%	0.5651%	1.6360%	0.4058%	0.1536%	1.2130%	0.5856%	0.65219%	
2008	0.48309%	0.2076%	0.2724%	0.5560%	0.3134%	0.4359%	0.3575%	0.1738%	0.9823%	0.3868%	0.42301%	

* Data is based on actual Census reported building permit information. net of demolition:

Building permit data source through 1996: NH OSP, net of demolitions

Building permit data source 1997-2000: US Census, net of demolitions

Analysis by Herr & James Associates.

2002 analysis provided by the Planning & Economic Development Office

Table 2. LONDONDERRY LOCAL NORMS ANALYSIS

2/2/2009

Year	Dwelling units authorized		Dwelling units total	Enrollment grades K-12		
	#	Previous 6-year avg		Actual	Projected	Capacity
1980	119		4,408			
1981	105		4,513			
1982	79		4,592			
1983	206		4,798			
1984	316		5,114	3,455		
1985	451		5,565	3,600		
1986	407	213	5,972	3,720		
1987	293	261	6,265	3,884		
1988	272	292	6,537	3,959		
1989	133	324	6,670	3,999		
1990	69	312	6,739	4,078		
1991	103	271	6,808	4,234		
1992	118	213	6,911	4,301		
1993	84	165	7,029	4,385		
1994	85	130	7,113	4,496		
1995	101	99	7,198	4,639		5,037
1996	112	93	7,299	4,738		5,037
1997	161	101	7,411	4,911		5,037
1998	187	110	7,572	5,138		5,037
1999	150	122	7,759	5,199	5,176	5,037
2000	146	133	7,718	5,338	5,311	5,037
2001	117	143	7,835	5,654	5,711	5,289
2002	44	146	7,879	5,700	5,716	6,347
2003	132	134	8,025	5,549	5,734	6,347
2004	177	129	8,157	5,514	5,756	6,347
2005	90	128	8292	5,571	5,728	6,347
2006	97	118	8389	5,452	5,626	6,347
2007	57	110	8446	5,323	5,607	6,347
2008	41	100	8487	5,409	5,501	6,347
2009					5,443	6,347

Enrollments data source: Londonderry School District Profile (12/11/2008) and Bruce Mayberry School Impact Fee Methodology 2002.

Dwelling units source: see Table 1 notes.

01-02 Testing!Analysis

Table 3. LONDONDERRY GROWTH STRAIN ANALYSIS

2/2/2009

Year	Londonderry				Abutting communities			
	Public school pupils		Housing units authorized		% Housing increase	% Housing increase		H. units authorized
	Enrollment	Capacity	Annual	Prior 6yr avg		x 100%		
1990	4,078		69	312	1.02%	1.00%		701
1991	4,234		103	271	1.51%	0.71%		461
1992	4,301		118	213	1.71%	0.90%		510
1993	4,385		84	165	1.20%	0.75%		359
1994	4,496		85	130	1.19%	0.84%		487
1995	4,639	5,037	101	99	1.40%	0.75%		406
1996	4,738	5,037	112	93	1.53%	1.23%		583
1997	4,911	5,037	161	101	2.17%	1.55%		826
1998	5,138	5,037	187	110	2.47%	1.27%		650
1999	5,199	5,037	150	122	1.93%	1.30%		742
2000	5,338	5,037	146	133	1.89%	1.34%		701
2001	5,654	5,289	117	143	1.49%	1.22%		656
2002	5,700	6,347	44	146	0.56%	1.67%		1,272
2003	5,549	6,347	132	134	1.64%	1.09%		846
2004	5,514	6,347	177	129	2.16%	1.2995%		1,016
2005	5,571	6,347	90	128	1.0854%	1.0025%		794
2006	5,452	6,347	97	118	1.1563%	1.5889%		
2007	5,323	6,347	57	110	0.6749%	0.6522%		
2008	5,409	6,347	41	100	0.4831%	0.4230%		

Current year indicator demonstrating "unsustainability."

Year with two or three indicators demonstrating "unsustainability."

* - Building data is through December, enrollment is based on latest School District Report.

Abutting communities: Auburn, Derry, Hudson, Litchfield, Manchester, Windham.

Data source: Table 2.

FENCE REGULATIONS

4.7 DEFINITIONS

FENCE: A barrier used as a boundary, means of protection, privacy screening or confinement, enclosing a field or yard. Designs of Chain-link, Wire, Post & Rail, Paddock, Stockade, Lattice, Stone, or Brick, are typical fence types, exclusive of hedges, shrubs, trees, or other natural growth. Fences of more than 6 feet in height erected on residential properties are considered structures and shall be subject to the setback provisions of the AR-1 zoning district.

CHAPTER 3 TOWN-WIDE REGULATIONS

3.14 FENCES

- 3.14.1 Fences shall be subject to the following regulations to insure safe sight lines, and to limit barriers that materially impede vision along the public right-of-way.
- 3.14.1.1 No fence shall be erected which constitutes a Spite Fence according to RSA 476.
 - 3.14.1.2 All private fences are prohibited within the public right-of-way.
 - 3.14.1.3 No fence shall obstruct the proper sight distance as established by the Londonderry Department of Public Works.
 - 3.14.1.4 No fence shall be erected which incorporates barbed wire, razor wire, or other sharp edges in its construction, with the exception of security fences for commercial and industrial properties as approved by the Planning Board.
- 3.14.2 Fences located in the front yard of residential properties may not exceed four (4) feet in height. The front yard, for the purpose of this section, shall be that portion of the property encompassing the area from the front property line to the 40 foot setback line. For corner lots fronting on two public rights-of-way the front yard shall apply to both property lines abutting the right-of-way.
- 3.14.2.1. The height of fences located at the front setback line of residential properties shall be limited to the height restrictions established for the AR-1 district.
 - 3.14.2.2 Fences located along the side and rear property lines in the AR-1 district may not exceed six (6) feet in height.

3.14.1.3 Fences installed on properties in the Commercial and Industrial zones shall be subject to Planning Board approval.



2.5 INDUSTRIAL DISTRICTS

2.5.1 Industrial District

2.5.1.1 Objectives and Characteristics

The ~~three~~ industrial subdistricts (IND-I, ~~IND-II~~, and FI) are designed to provide areas for industrial development to include, but not limited to, manufacturing, transportation services, warehouse facilities, and wholesale businesses. The industrial district will consist of land areas zoned for industrial use as recorded in the office of the Town clerk.

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2.5.1.2 Subdistrict Uses

2.5.1.2.1 Industrial I (IND-I): this district is primarily intended to provide for industrial uses suitable for location in areas of close proximity to non-industrial development.

2.5.1.2.1.1 Permitted uses: see use Table Section 2.2 of this Zoning Ordinance.

~~2.5.1.2.2~~ Industrial II (IND-II): this district is primarily a district which allows a more intensive industrial use than IND-I

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~~2.5.1.2.2.1~~ Permitted uses: see use Table Section 2.2 of this Zoning Ordinance.

~~2.5.1.2.3~~ Flexible Industrial (FI): This district is primarily intended to promote appropriate industrial development in targeted areas identified by various planning studies, charrettes, and the Master Plan.

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~~2.5.1.2.3.1~~ Permitted Uses: See use tables section 2.2 and 2.2.2 of this zoning ordinance.

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~~2.5.1.2.3.2~~ Specific Standards for the FI Zone are found in Section 2.5.3.

2.5.1.3 General Standards

Within the industrial district and ~~the IND-I and IND-II~~ subdistricts, the following regulations and controls are required for the development and continued use of the area.

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2.5.1.3.1 Setbacks - no building shall be located on a lot nearer to the front, side or rear lot line than the minimum setback set forth below.

2.5.1.3.1.1 Minimum setback distances for structures from property line:

front 30 feet
side 20 feet
back 20 feet

If a property abuts more than one existing and/or proposed right-of-way, the building setback will be 30 feet from each right-of-way. The Planning Board, during site plan review, may allow certain signs, utility systems (including power and communication), or related facilities within the setback areas.

2.5.1.3.2 Minimum lot size - minimum lot size in all industrial districts are subject to Planning Board approval based on sewage disposal requirements, soil types, topography, vehicular access, intended use and compatibility with adjacent areas but shall be not less than one acre (43,560 sq. Ft.) With at least one hundred fifty (150) feet of frontage on a Class V or better road.

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Table 1 - Minimum Dimensional Requirements for Longer Term Airport Parking Areas

(Based on 8.5' x 18" Parking Stall, except for zero (0) degrees)

Angle of Parking Space (Degrees)	"A" (Ft.)	"A" (Ft.)	One-Way Traffic "C" (Ft.)	Two-Way Traffic "C" (Ft.)	"D" (Ft)	One Way Traffic "E" (Ft.)	Two-Way Traffic "F" (Ft.)
0	20.0	8.0	12.0	20.00	---	28.0	36.0
30	17.0	14.7	12.0	20.0	—	41.4	49.4
45	12.0	18.7	12.0	20.0	31.5	49.4	57.4
60	9.8	19.8	12.5	20.0	35.4	52.1	59.6
90	8.5	18.0	22.0	22.0	36.0	58.0	58.0

Note: See parking diagram under Table 2, Section 3.10

- 2.5.2.4.7 Handicapped parking spaces - parking spaces designed to accommodate the needs of the handicapped shall be provided in accordance with federal and state law. See the Town of Londonderry Site Plan Regulations
- 2.5.2.4.8 Sewage and waste disposal - all industrial operations will be subject to the Londonderry industrial pretreatment program which will ensure that all liquid wastes meet federal, state and local regulations prior to disposal into a municipal system.
- 2.5.2.4.9 Curb and gutter - curb and gutter shall be installed within off-street parking and loading areas in order to manage storm drainage, channelize traffic, protect buildings and landscaping areas, and separate pedestrian and vehicular circulation areas
- 2.5.2.4.10 Sidewalks - sidewalks shall be provided onsite as necessary to protect pedestrians and promote the safe and efficient movement of pedestrian and vehicular movement. Sidewalks shall have a minimum unobstructed width of four (4) feet. Sidewalks which are constructed to a six (6) foot width and directly abut the front of a parking or loading space may include two (2) feet of the sidewalk width when determining the length of the parking or loading space.
- 2.5.2.4.11 Electrical power - if the proposed development has a useful life of at least one (1) year, then the electrical power and communications system lines shall be installed underground within the site.
- 2.5.2.4.12 Performance standards per Section 3.2 shall apply in the airport district except for aeronautical facilities

2.5.2.5 Planning Board Site Plan Review - In the Airport District, the Londonderry Planning Board shall shall review projects following the procedures outlined in RSA 674:54 as stipulated by the most recently adopted Intermunicipal Agreement between the Town of Londonderry and the City of Manchester.

2.5.3 Flexible Industrial (FI) District

2.5.3.1 Objectives and Characteristics

The Flexible Industrial District (FI) is intended to allow for the development of gateways to the Town of Londonderry, centers of commerce, and employment centers for the Southern NH region.

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Deleted: exercise site plan review authority under RSA 674:43 and regulations adopted thereunder, except for the development or change or expansion of use of those aeronautical activities within the fence that do not include the construction or alteration of a building. Such aeronautical activities shall instead be subject to the following:¶
 <#>The proposed development must meet the standards of the Town Site Plan Regulations for surface water drainage control.¶
 <#>The airport shall submit to the Town engineer its permit application and accompanying plans, specifications, drainage calculations and other supporting documentation for the proposed development simultaneously with submittal to the state and/or federal agencies having jurisdiction over the development. The Town engineer shall review the application for compliance with Town drainage standards and to determine that there are no evident encroachments on abutting property. The Town may also participate in the regulatory proceedings of such state and federal agencies to the extent permitted by statutes and regulations governing those proceedings.¶
 <#>The proposed development shall not be deemed approved until the Town engineer issues written confirmation of compliance with site plan drainage standards and the absence of evident encroachments.¶
 <#>The Planning Board shall hold an informational public hearing at which a representative of the airport shall attend and discuss the proposed development with the Planning Board and interested members of the public.¶
 <#>The airport representative shall respond in writing to all input, oral or written, received from the Board or members of the public during the informational public hearing.¶
 <#>The Planning Board shall not have the authority to disapprove the development or the plans, specifications or response of the airport representative to the inp... [1]

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It is the desire of the Town of Londonderry that all of these activities be developed in a manner that both serves the business interests contained in the district, and in a manner that that conveys a campus atmosphere to those arriving here. Traffic circulation and alternate modes of transportation need to be provided for, as does parking for employees and visitors alike. A wide variety of industrial, supporting commercial development, and open space & recreational amenities are desired, in accordance with the various planning efforts undertaken by the Town in recent years (primarily the 2004 Master Plan which includes the 2003 Londonderry Business Park Design Charrette). All of these activities are envisioned as being developed in a manner that involves significant amounts of landscaping, retention of significant amounts of undeveloped open space, the retention of native plant materials, a high level of quality in individual building and site design, and flexibility on the part of the Town so as to achieve the design suggested in those documents.

2.5.3.2 General Standards

Within the FI District the following regulations and controls are required for the development and continued use of the area.

2.5.3.2.1 ~~Setbacks - No building shall be located on a lot nearer to the front, side or rear lot line than the minimum setback set forth below.~~

Minimum Setback Distances for Structures from Property Line:

Front	- 30 feet
Side	- 20 feet
Back	- 20 feet

2.5.3.2.1.1 Setbacks may be reduced by the Planning Board as set forth in Section 2.5.3.3.4.

2.5.3.2.1.2 If a property abuts more than one existing and/or proposed right-of-way, the building setback will be 30 feet from each right-of-way. The Planning Board, during site plan review, may allow certain signs, utility systems (including power and communication), or related facilities within the setback areas.

2.5.3.2.2 **Minimum Lot Size** - Minimum lot size in the FI District is subject to Planning Board approval based on on such requirements as parking, lighting, building size, sewage disposal requirements, soil types, topography, vehicular and non-vehicular access, intended use and compatibility with adjacent areas, but shall be not less than one acre (43,560 sq. ft.) with at least one hundred fifty (150) feet of frontage on a Class V or better road.

2.5.3.2.3 **Building Height** - Except for structures not intended for human occupancy (chimney, water tower, etc.) height of buildings shall not exceed 50 feet, or as specified by the Federal Aviation Administration as part of their permitting process or by the limitations outlined in the Airport Approach Height Overlay (Section 2.6.6 of this Ordinance).

2.5.3.2.4 **Minimum Green Space** - The parcel must contain a minimum of 25% of the total land in the parcel dedicated as green space (landscaping or undeveloped areas).

2.5.3.2.5 Transportation Demand Management/Sustainable Site & Building Design

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2.5.3.2.5.1 Development within the FI District shall be required to meet one of the 2 following requirements, unless waived by the Planning Board as outlined in Section 2.5.3.2.5.2:

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2.5.3.2.5.1.1 **Transportation Demand Management.** The proposed development shall incorporate Transportation Demand Management (TDM) techniques in the proposed operation of the facility (Such as car/vanpooling or rideshare programs, establishment of a Transportation Management Authority, establishment of bus or transit service or contribution towards the establishment of a bus or transit service, flex-time work schedules, etc. For more examples of TDM strategies see <http://www.vtpi.org/tdm/>). The applicant shall provide documentation to the Town outlining the types of TDM methods proposed, and documentation to ensure the continued use of the TDM methods meeting the approval of the Planning Board; or

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2.5.3.2.5.1.2 **Sustainable Site & Building Design.** The proposed development of the property shall be determined to meet the "Certified" level of LEED (Leadership in Energy and Environmental Design) Certification or higher (Silver, Gold, or Platinum). The project need not actually receive LEED certification, but must be able to demonstrate that the project would meet the "certified" level of certification criteria.

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2.5.3.2.5.2 Waiver of TDM/Sustainable Site & Building Design Requirement

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2.5.3.2.5.2.1 The Planning Board, may, with sufficient justification presented, waive the requirements of Section 2.5.3.2.5.1 where it is shown that the Transportation Demand Management or Sustainable Site & Building Design standards impose an unreasonable burden on development of property within the FI District.

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2.5.3.2.6 Storage Areas

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2.5.3.2.6.1 No outdoor storage is allowed in the FI District unless specifically approved as part of a site plan approved by the Planning Board.

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2.5.3.2.6.2 All outdoor storage shall be visually screened from access streets, arterials and adjacent property. Outdoor storage shall be meant to include parking of all company owned and operated motor vehicles, with the exception of passenger vehicles. No storage shall be permitted between a frontage street and the building line.

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2.5.3.2.6.3 Bulk storage of gasoline, chemicals, petroleum products, and flammable materials shall not be permitted except as accessory to a principal use, accessory to a service station, laboratory, production operation, airport service or the servicing of company owned or leased vehicles.

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2.5.3.2.7 Parking, Loading, & Vehicle Access Standards - See Section 3.10 of this Ordinance.

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2.5.3.2.8 Landscaping Standards - All landscape designs shall comply with the Town of Londonderry Site Plan Regulations.

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2.5.3.2.9 Sign Standards - All signs, their quantity and location, shall comply with the permitted Industrial District signs as outlined in Section 3.11 of this Ordinance.

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2.5.3.2.10 Lighting Standards - All lighting shall comply with the Town of Londonderry Site Plan Regulations.

2.5.3.3 Conditional Use Permits

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2.5.3.3.1 Uses Permitted by Conditional Use Permit: Some developments (see Use Table, Section 2.2) in the FI District will require a conditional use permit from the Planning Board, in addition to any other necessary subdivision or site plan approvals. The conditional use permit is meant to provide flexibility, minimize adverse impacts, and allow the Board to participate jointly with the applicant in preparing development proposal that is consistent with this ordinance, local regulations, and the 2004 Master Plan.

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2.5.3.3.2 Dimensional Relief by Conditional Use Permit: The Planning Board may through the granting of a Conditional Use Permit adjust standards of any dimensional requirement of the district (including but not limited to: setback, density, green space, frontage, or parking) for projects that are truly supportive of the goals of the FI District as noted above, and where such adjustments would allow the developer to more fully meet these goals and objectives..

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2.5.3.3.3 The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approval. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.

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2.5.3.3.4 Application Procedure - Applications for conditional use permits (CUP) within this district shall be made in accordance with the following procedures:

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2.5.3.3.4.1 It is recommended that all projects requiring a CUP conduct a preliminary meeting with staff prior to review by the Design Review Committee and the Town's Review Consultant. The purpose of the preliminary meetings shall be to provide guidance on the design of the proposed plan.

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2.5.3.3.4.2 The applicant will then develop the proposed plan to a point at which the plan is eligible for design review.

2.5.3.3.4.3 The application will then begin Pre-Application Design review, followed by the Conditional Use Permit Review outlined in this section, and in accordance with the other applicable procedures adopted by the Planning Board.

2.5.3.3.4.4 Unless otherwise addressed in this ordinance, all applications shall meet those requirements set forth in the relevant sections of the Subdivision & Site Plan Regulations of the Town of Londonderry.

2.5.3.3.5 Approval of Applications Requiring a Conditional Use Permit - Prior to issuance of a building permit, the applicant shall acquire a conditional use permit as well as any other necessary Planning Board approval. A conditional use permit shall be issued only if the development complies with all of the requirements of Section 2.5.3.3.6. The Planning Board may also condition its approval on additional, reasonable conditions necessary to accomplish the objectives of this section or of the 2004 Master Plan, Londonderry Business Park Design Charrette Report, Zoning Ordinance, or any other federal, state, town resolution, regulation, or law.

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2.5.3.3.6 The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit in the Flexible Industrial District. The applicant shall demonstrate that:

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2.5.3.3.6.1 The proposed use is consistent with the Objectives and Characteristics of the Flexible Industrial District, Section 2.5.3.1;

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2.5.3.3.6.2 Granting of the application is in the public interest;

2.5.3.3.6.3 The property in question is reasonably suited for the use requested, and the design of the site represents to the extent practicable preservation of natural resources, open space, and does not create a hazard to surface or underground water resources.

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2.5.3.3.6.4 Compliance with the standards required by the FI zone would result in a design that is not in the best interest of the Town of Londonderry as expressed in the Objectives and Characteristics (Section 2.5.3.1), and the applicant has demonstrated that the alternative design for which the Conditional Use Permit is sought better achieves the Objectives and Characteristics of the district, while not diminishing surrounding property values or the ability of nearby parcels to develop in accordance with the Objectives and Characteristics of the district; and

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2.5.3.3.6.5 The application demonstrates that the alternative design for which the Conditional Use Permit is sought does not impact the general health, safety, and general welfare of the Town, and is otherwise in compliance with all requirements of the Zoning Ordinance, Site Plan Regulations, and Subdivision Regulations, as applicable to the proposed project.

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¶
<#>The property in question is reasonably suited for the use requested, and the design of the site represents to the extent practicable preservation of natural resources, open space, and does not create a hazard to surface or underground water resources.¶
<#>The proposed the property ¶

Londonderry Zoning Ordinance Use Table

Overlay Districts

	AR-1	R-III	C-I	C-II	C-III	C-IV	IND-I	IND-II	FI	AD	POD - 102*	POD - 28*	CO	AH	AZ	FP
RESIDENTIAL AND AGRICULTURAL																
Agriculture	P	P														
Assisted Living Facilities		P	P	P	P						P	P				
Back Lot Development	C												See specific district regs.			
Dwelling, multi-family		P														
Dwelling, single family	P	P			S											
Dwelling, two-family	P	P			S											
Elderly Housing	P	P	P	P	P	P					P	P				
Manufactured housing	P															
Mixed use residential						P										
Mobile homes	P															
Nursing Home and accessory uses		P	P	P	P						P	P				
Planned residential development	P															
Preexisting manufactured housing parks	P															
Presite Built Housing	P															
CIVIC USES																
Community center			P	P		C										
Cemetery	P															
Public Facilities	P		P	P		C	P	P	P	P						
Public Utilities	P	P	P	P			S	S	S	S						
Recreational Facilities, Public	P			P							P	P				
Religious Facilities	P		P	P	P	P					P	P				
Cultural Uses and Performing Arts									P							
BUSINESS USES																
Aeronautical Facilities										P						
Assembly, testing, repair and packing operations up to 250,000 sq. ft.									P							
Assembly, testing, repair and packing operations 250,001 sq. ft. or larger									C							
Bed and Breakfast Homestay	P															

P = Permitted Use

C = Requires Conditional Use Permit

S = Requires Special Exception

Londonderry Zoning Ordinance Use Table

	AR-1	R-III	C-I	C-II	C-III	C-IV	IND-I	IND-II	FI	AD	POD - 102*	POD - 28*	CO	AH	AZ	FP
Business center development			P	P							P	P				
Conference/Convention Center									P							
Day Care Center, Adult						C										
Drive-thru window as an accessory use			P	P												
Drive-in establishments			P	P												
Drive-in theatres				P												
FI District Services									(See FI District Services Use Table, Section 2.2.2)							
Financial institution			P	P												
Funeral homes			P	P	P											
Education and Training Facilities up to 50,000 sq. ft									P							
Education and Training Facilities 50,001 sq ft. or larger									C							
Excavation, including Temporary and Permanent Manufacturing Plants as an accessory use.	P		P	P	P		P	P		P						
Group Child Care Center					P	C	S	S			C	C				
Home Occupation	S															
Hotels				P					P							
Manufacturing, Heavy								P		P						
Manufacturing, Light up to 250,000 sq. ft.				P			P	P	P	P						
Manufacturing, Light 250,001 sq ft or larger				P			P	P	C	P						
Membership club			P	P												
Motels				P												
Motor Vehicle Maintenance, Major Repair and Painting								P		P						
Motor vehicle rental										P						
Motor Vehicle Station, Limited Service				P		C**				P						
Recreation, commercial			P	P							P	P				
Retail sales establishment			P	P		P					P	P				
Outdoor Storage of goods or materials (not to exceed 5-10% of the gross floor area) as an Accessory Use									C							

P = Permitted Use

C = Requires Conditional Use Permit

S = Requires Special Exception

Londonderry Zoning Ordinance Use Table

	AR-1	R-III	C-I	C-II	C-III	C-IV	IND-I	IND-II	FI	AD	POD - 102*	POD - 28*	CO	AH	AZ	FP
Rental Car Terminal up to 50,000 sq. ft									P							
Rental Car Terminal 50,001 sq. ft. or larger									C							
Repair services			P	P		P	P	P		P	P	P				
Research or Development Laboratories				P			P	P	P	P						
Restaurant			P	P		C				P	P	P				
Restaurant, fast food			P	P												
Sales of Heavy Equipment or Heavy Trucks as an accessory use							C	C	C							
School, Private					P						P	P				
Service establishment			P	P			P	P		P	P	P				
Sexually oriented businesses			P	P												
Storage, self serve				P			P	P			C	C				
Terminal, Airplane										P						
Terminal, Trucking up to 100,000 sq. ft.								P	P	P						
Terminal, Trucking 100,001 sq. ft. or larger								P	C	P						
Vehicle Sales Establishment				P												
Warehouses and Storage up to 250,000 sq. ft.				P			P	P	P	P	C	C				
Warehouses and Storage 250,001 sq. ft. or larger				P			P	P	C	P	C	C				
Wholesale Businesses up to 250,000 sq. ft.				P			P	P	P	P						
Wholesale Businesses 250,001 sq. ft. or larger				P			P	P	C	P						

*Any use permitted in the underlying zoning district, which is not a permitted use in the Performance Overlay District is considered a Conditional Use

**See section 2.4.1.B.4 for additional dimensional requirements related to fuel dispensers

P = Permitted Use

C = Requires Conditional Use Permit

S = Requires Special Exception

Londonderry Zoning Ordinance Use Table

FI District Services Use Table	FI
Accessory Uses up to 5,000 sq. ft. - Including but not limited to, retailing, cafeteria, personal services, restaurant or auditorium accessory with and incidental to a principal use	P
Accessory Uses from 5,001 – 20,000 sq. ft. Including but not limited to, retailing, cafeteria, personal services, restaurant or auditorium accessory with and incidental to a principal use	C
Automotive Repair up to 5,000 sq. ft.	P
Automotive Repair from 5,001 to 10,000 sq. ft.	C
Computer Services up to 5,000 sq. ft.	P
Computer Services from 5,001 to 10,000 sq. ft.	C
Service/Commercial Businesses up to 5,000 sq. ft. (Including restaurants and gas stations)	P
Service/Commercial Businesses from 5,001 to 20,000 sq. ft. (Including restaurants and gas stations)	C
Daycare up to 5,000 sq. ft.	P
Daycare from 5,001 to 10,000 sq. ft.	C
Health Clubs up to 5,000 sq. ft.	P
Health Clubs from 5,001 to 20,000 sq. ft.	C
Personal Service Businesses up to 5,000 sq. ft.	P
Personal Service Businesses from 5,001 to 20,000 sq. ft.	C

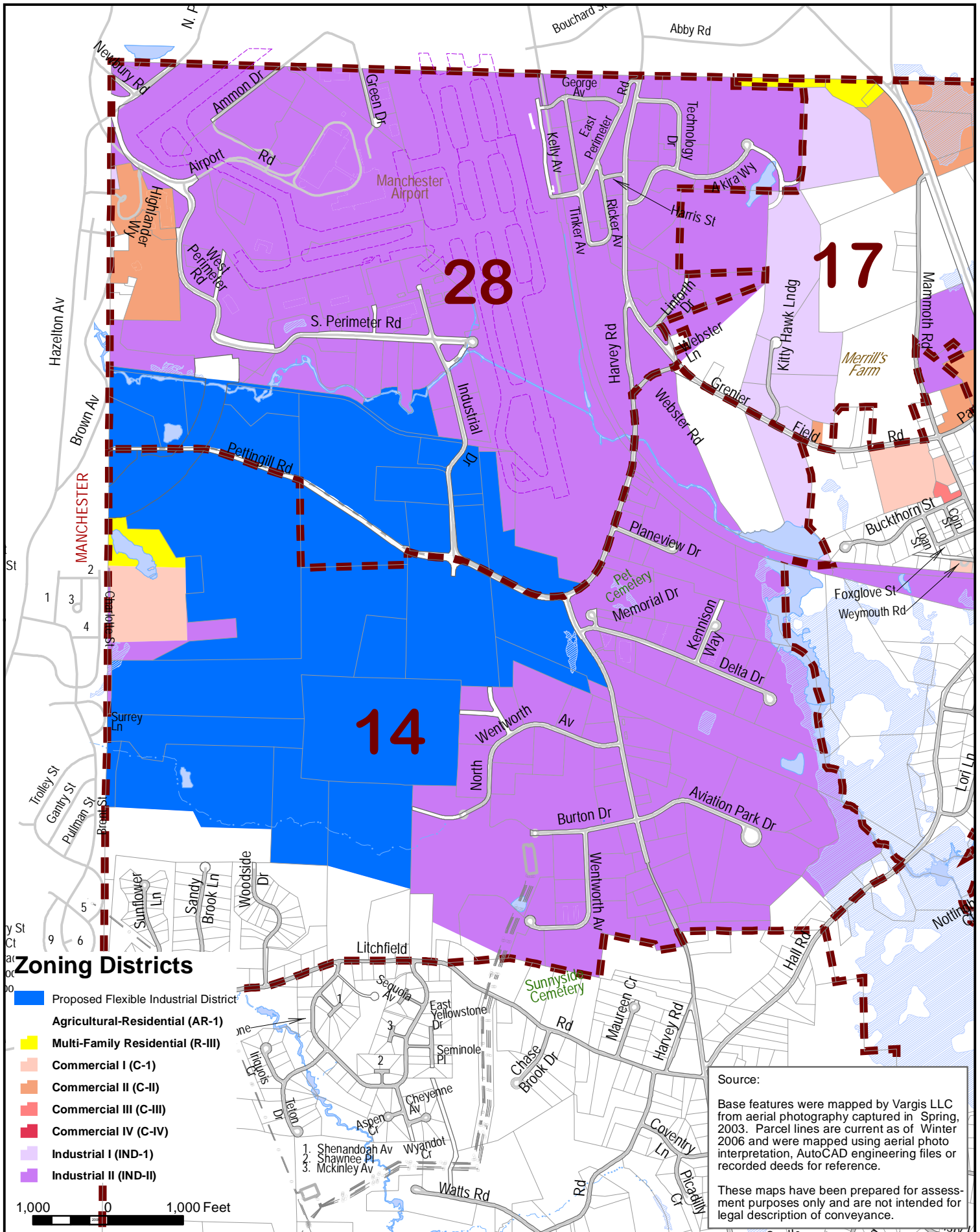
P = Permitted Use

C = Requires Conditional Use Permit

S = Requires Special Exception

Proposed FI District Parcels

Jan 16, 2009





1.2 IMPACT FEES

1.2.1 Authority

These provisions are established pursuant to New Hampshire RSA 674:21, V.

1.2.2 Purpose

These provisions are intended to:

- 1.2.2.1 Assist in the implementation of the 1988 Town of Londonderry Master Plan, especially:
 - 1.2.2.1.1 Recommendation six (6) under the community facilities, which states, "Consider an impact fees program with regards to Londonderry's community facility development," and;
 - 1.2.2.1.2 Recommendation two (2) under transportation, which states, "Seek the participation of private developers in cost sharing for the needed improvements to Town roads and intersections." Recommendation six (6) under the community facilities, and recommendation two (2) under transportation.
- 1.2.2.2 Insure the adequate provision of public facilities necessitated by the growth of the Town of Londonderry.
- 1.2.2.3 Assess an equitable share of the growth-related cost of new and expanded public capital facilities to all types of new development in proportion to the facility demands created by that development.

1.2.3 Findings

The Londonderry Planning Board has made the following findings based on extensive consultation with all municipal departments, and a careful study of municipal facility needs.

- 1.2.3.1 The Londonderry Planning Board adopted a Master Plan in January 1988, and updated in 1997 and 2004.
- 1.2.3.2 The Londonderry Planning Board has prepared, and regularly updated, a Capital Improvements Program and Budget as authorized by the Londonderry Town Meeting of March 11, 1988.
- 1.2.3.3 The Master Plan and the Capital Improvement Program demonstrate that significant new growth and development is anticipated in residential and non-residential sectors which will necessitate increased expenditures to provide adequate public facilities.
- 1.2.3.4 The Town of Londonderry is responsible for and committed to the provision of public facilities and services at standards determined to be necessary by the Town to support residential and non-residential growth and development in a manner which protects and promotes the public health, safety and welfare.
- 1.2.3.5 The cost of providing public capital facility capacity to serve new growth will be disproportionately borne by existing taxpayers in the absence of impact fee assessments.
- 1.2.3.6 The calculation methodology for impact fees, as established by Section 1.2.6.1, shall represent a fair and rational method for the allocation of growth-related capital facility costs to new development. Based on this methodology, impact fees will not exceed the costs of:
 - 1.2.3.6.1 Providing additional public capital facilities necessitated by the new developments paying impact fees, or
 - 1.2.3.6.2 Compensating the Town of Londonderry for expenditures made for existing public facilities which were constructed in anticipation of new growth and development.

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- 1.2.3.7 Impact fee payments from new development will enable the Town of Londonderry to provide adequate public facilities to serve new growth, and provide new development with a reasonable benefit in proportion to its contribution to the demand for such facilities.
- 1.2.3.8 The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessitated to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare.

1.2.4 **Definitions**

Fee Payer - A person applying for the issuance of a building permit, subdivision or site plan approval, special exception, variance or other local land use decision which would create new development.

New Development - Any activity which results in a net increase in the demand for additional public capital facilities, as defined in this ordinance:

1. The creation of new dwelling units, except for the replacement of existing units of the same size and density;
2. A net increase in the gross floor area of any nonresidential building or in the habitable portion of a residential building;
3. The conversion of a legally existing use to another permitted use if such change of use would create a net increase in the demand for additional public capital facilities, as defined by this ordinance.

Gross Floor Area - The entire square footage of a building calculated from the dimensional perimeter measurements of the first floor of the building with adjustments to the useable area of the other floors made in a manner consistent with Londonderry property tax assessment procedures. For residential structures, gross floor area shall not include portions of residential structure or accessory structure which is not available for human habitation.

Public Capital Facilities - Facilities and equipment owned, maintained or operated by the Town of Londonderry as defined in the Capital Improvement Program and which are listed in the adopted impact fee schedule.

1.2.5 **Imposition of Public Capital Facilities Impact Fee**

- 1.2.5.1 Any person who, after March 9, 1994 seeks approval of new development within the Town of Londonderry, New Hampshire, is hereby required to pay a public capital facilities impact fee in the manner and amount set forth in Section 1.2.6.
- 1.2.5.2 A person may request, from the Planning Board, a full or partial waiver of impact fee payments required in this ordinance. The amount of such waiver shall not exceed the value of the land, facilities construction, or other contributions to be made by that person toward public capital facilities. The value of on-site and off-site improvements which are required by the Planning Board as a result of subdivision or site plan review, and which would have to be completed by the developer, regardless of the impact fee provisions, shall not be considered eligible for waiver or credit under Section 1.2.11 of this Ordinance.
- 1.2.5.3 A person undertaking new development for residential use in which all or a portion of its occupancy will be restricted to persons age fifty five (55) and over, and where it can be shown to the satisfaction of the Planning Board that such restricted occupancy will be maintained for a period of at least twenty (20) years, may apply for a waiver of the school impact fees for the said restricted occupancy units.
- 1.2.5.4 A person undertaking new development for residential use in which all or a portion of its occupancy will ~~meet the requirements of "workforce housing" as defined by RSA 674:58~~, and where it can be shown to the satisfaction of the Planning Board that such ~~"workforce" housing~~ will be maintained with appropriate restrictions for a period of at least twenty (20) years, may apply for a waiver of impact fees for said ~~workforce~~ units.
- 1.2.5.5 No building permit for new development requiring payment of an impact fee pursuant to Section 1.2.6 of this Ordinance shall be issued until the public facilities impact fee has been determined and assessed by the Planning Board or its authorized agent.
- 1.2.5.6 A person undertaking new development for residential use in which all or a portion of its occupancy will be assisted living facilities restricted to persons who are age fifty five (55) and over and/or disabled, may apply for a waiver of Recreation Impact Fees for said restricted units where it can be shown to the satisfaction of the Planning Board that internal private recreation programs will be provided to the occupants by the developer and provisions to that effect will be maintained with appropriate restrictions for a period of at least twenty (20) years.

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1.3 RESIDENTIAL DEVELOPMENT PHASING

1.3.1 Authority

Pursuant to the provisions of the New Hampshire RSA 674:21, the Town of Londonderry adopts the following phasing standards for residential development, to be administered by the Planning Board in conjunction with the Londonderry Subdivision Regulations.

1.3.2 Purposes

The purposes of this Section of the Zoning Ordinance are as follows:

- 1.3.2.1 To guide efforts by the Town to monitor, evaluate, plan for and guide residential growth in Londonderry that is consistent with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such development without establishing absolute limits on the overall growth rate of the community;
- 1.3.2.2 To provide for the current and future housing need of existing residents and their families;
- 1.3.2.3 To phase in or control the implementation and development of tracts of land and future subdivisions thereon, at a rate which will be compatible with the orderly and gradual expansion of community services, including but not limited to education, fire protection, road maintenance, waste disposal, police protection and recreation; and
- 1.3.2.4 To provide a mechanism to allow for phased development of residential projects to manage the impact on municipal services.

1.3.3 Phasing of Developments

A phasing plan shall be submitted for Planning Board approval for all residential developments of more than fifteen (15) lots or dwelling units (unless exempted under §1.3.4), and at the applicant's option may be submitted for smaller developments. Such plans shall comply with the following phasing requirements:

- 1.3.3.1 For development proposed under the provisions of Section 3.3 Planned Residential Development: twenty five (25) dwelling units per year from the date of final approval;
- 1.3.3.2 For development located in the R-III district: Two (2) multi-family buildings, the total number of dwelling units not to exceed forty eight (48) per year from the date of final approval;
- 1.3.3.3 For other residential development proposed to be serviced with public water and public sewerage, and proposing no dwelling structures within 200 feet of a street other than one created by that development: twenty (20) dwelling units per year from the date of final approval;
- 1.3.3.4 For all other residential developments: fifteen (15) dwelling units per year from the date of final approval.

1.3.4 Exemptions from Phasing

The Planning Board shall grant exemption to the phasing requirements of Section 1.3.3 under the following conditions:

1.3.4.1 The proposed project is for Elderly Housing as defined in Section 4.7. The owner of record shall enter an agreement, to be filed in the Rockingham County Registry of Deeds, certifying that the project will be utilized and restricted to 100% elderly occupants (age 55 and older).

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1.3.4.2 The proposed project is for "workforce housing" as defined by RSA 674:58, and approved by the Planning Board per the procedures outlined in RSA 674:60.

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1.4 GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**1.4.1 Authority**

The Section is enacted in pursuant to RSA 674:21 and 674:22.

1.4.2 Purposes

The purposes of this Section of the Zoning Ordinance are as follows:

- 1.4.2.1 Promote the development of an economically sound and environmentally stable community which considers and balances regional development needs.
- 1.4.2.2 Guide efforts by the Town to monitor, evaluate, and establish a rate of residential growth in Londonderry that is consistent with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such growth.
- 1.4.2.3 Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth to allow the Town time to correct any deficiencies that have developed.
- 1.4.2.4 Protect the health, safety, convenience, and general welfare of the Town's residents.
- 1.4.2.5 This ordinance is grounded upon its correlation with the Master Plan and Capital Improvements Plans of the Town of Londonderry.

1.4.3 Findings - The Town Hereby Finds That:

- 1.4.3.1 Londonderry's developable land resources are still sufficient to support extensive growth. The 1997 Master Plan for the Town of Londonderry indicates there were 5,884 acres of available developable land in 1996.
- 1.4.3.2 Housing demand has been and is projected to be large. The number of housing units in Londonderry increased 47% between 1980 and 1990, and grew another 14.53% from 1990 to 2000. Studies made for the 1997 Master Plan project another 22.98% increase from 2000 to 2010.
- 1.4.3.3 Londonderry population growth reflects housing growth that has been and is projected to be large. Londonderry population increased at an average annual rate of 3.15% over a twenty-year period from 1980-2000. Total population grew 46% between 1980 and 1990, and another 17.5% from 1990 to 2000. Projections of population growth to 2020 indicate average annual growth rates between 2000 and 2020 ranging from a low of 2.07% (Office of State Planning, 1997) to a high of 2.14% (Master Plan, 1997). The rate of growth is predicted to accelerate based on a study of the Secondary Impacts of the I-93 Widening project prepared by Parsons Brinckerhoff Quade & Douglas, Inc. for the New Hampshire Department of Transportation.
- 1.4.3.4 The Town is straining to meet projected service and facility demands. For example, the 1997 Master Plan projects a continuing 2% per year pupil enrollment growth through 2010. The most recent Capital Improvements program (CIP) includes a new \$12 million School Building Program in fiscal year 2002-2003. The Master Plan projects a 2.4% annual growth in local auto trip generation, certain to demand road improvements. Police and fire facilities, for which improvements are already sought, will be further strained by continuing rapid growth.

1.4.4 Determining Maximum Sustainable Growth

Not later than March 1 of each year, the Planning Board shall determine Londonderry's maximum sustainable rate of residential development for the twelve months beginning March 1 of that year. The maximum annual sustainable rate of growth shall be the highest figure that does not exceed a 2.0% increase in Londonderry's housing stock over the

preceding calendar year and also does not exceed more than two of the following three measures:

- 1.4.4.1 The average rate of dwelling unit authorizations in Londonderry over the six preceding calendar years;
- 1.4.4.2 A percentage increase in housing units over the preceding calendar year equal to the rate of increase in housing units for that preceding year summed across the six municipalities which abut Londonderry (Auburn, Derry, Hudson, Litchfield, Manchester, and Windham);
- 1.4.4.3 The maximum rate of dwelling unit authorizations whose projected demands can be adequately serviced and provided with facilities at a prudent level of fiscal strain, based upon the following:
 - 1.4.4.3.1 The rate of residential development at which the number of pupils projected by the Londonderry School Board to be enrolled in the Londonderry School System would not in any year exceed the stated capacity of the Londonderry School System in that year, based upon facilities development as contained in the Capital Improvement Program most recently approved by the Planning Board, and/or
 - 1.4.4.3.2 The rate of residential development determined by the Planning Board based upon careful studies and consultation with the agencies involved to be the highest which would not exceed the Town's capacity to service growth with public facilities other than schools, as planned in the six-year Capital Improvement Program most recently approved by the Planning Board, together with facilities anticipated to be provided by developers and others, and/or
 - 1.4.4.3.3 The combined municipal and school appropriations for capital expenditures, including debt service and capital outlay, will on average exceed 15% of the total municipal and school department appropriations combined over the period covered in the current Capital Improvements Program.

1.4.5 Planning Board Monitoring and Notification

It shall be the responsibility of the Planning Board to monitor growth in the Town and region, assembling as soon as practicable following the end of the calendar year such information as is necessary for making the determination of whether unsustainable growth conditions exist, and if they do, determining the annual rate of development which, at maximum, could be sustained. The Planning Board shall also monitor the progress of the Town and School District in providing services and facilities on the schedules called for in the Capital Improvement Program.

- 1.4.5.1 Hearing - Prior to making a final determination of the maximum sustainable annual rate of residential development, the Planning Board shall hold a public hearing with ten days notice to seek input from the public.
- 1.4.5.2 Notification - The Planning Board shall notify the Town Council, the Building Inspector, the Town Clerk, and the general public of its determination of the maximum sustainable rate of residential growth by, among other things, posting a notice to that effect in Town Offices. That determination shall apply for a period of one year from the date of notice to the Town Council or, if sooner, until notification of a subsequent determination by the Planning Board under the provisions of Section 1.4.5.

1.4.6 Limiting the Issuance Of Permits

The Planning Board's notice of unsustainable growth conditions shall include notice that limitations on the issuance of permits will be required during the period of such conditions, and notice of what the sustainable annual rate of development has been determined to be, and notice of how many building permits for new dwelling units will be allocated during said period.

1.4.7 Procedures for Permit Limitations

- 1.4.7.1 Available building permits shall be allocated according to the following procedure. The number of dwelling units that may be authorized shall not exceed the smaller of (a) the number of units allowed to be authorized that calendar year under Section 1.4.4 but not yet authorized in the current calendar year, or (b) the number of dwelling units comprising a 2% increase in Londonderry housing stock at the beginning of the calendar year minus the number of housing units authorized in the eleven months preceding this determination.
- 1.4.7.1.1 Except as otherwise provided in this Section no building permit may be issued without a permit scoring sheet application (henceforth "application") issued by the Planning Board. For purposes of this section, each proposed dwelling unit in a mobile home, single-family dwelling, two-family dwelling or multifamily dwelling, shall require a separate application sheet.
- 1.4.7.1.2 From March 1 through March 21, the Planning Board shall, on a form prepared by the Board, review and score each application for allocation of building permits for the period.
- 1.4.7.1.3 Prior to April 1, applications will be scored according to the following priority system:
- 1.4.7.1.3.1 First priority shall be given to dwelling units which are exempt from the provisions of Section 1.4 under [Section 1.4.8](#), RSA 674:39 or RSA 676:12.
- 1.4.7.1.3.2 Second priority shall be given to dwelling units in proposed two-lot subdivisions; provided that no more than 10% of the number of available dwelling unit authorizations may be allocated on this basis, and no more than one per subdivision.
- 1.4.7.1.3.3 Priority for any remaining dwelling unit authorizations shall be based upon the number of points earned from the point system described in Section 1.4.7.2.
- 1.4.7.1.3.4 In the event of a tie at the lowest priority or score for which authorizations will be made, the remaining number of unit authorizations shall be divided among all the projects having earned that priority or score. Division shall be in proportion to the number of units each applicant has applied for or, to the extent proportionate permit allocation is impossible, by lottery.
- 1.4.7.2 For purposes of determining priority in the system of permit allocation, development shall be assigned points or point debits according to the following:
- 1.4.7.2.1 For development authorized under either Section 3.3 Planned Residential Development or Section 2.3.2 Multi-Family Residential: one (1) point;
- 1.4.7.2.2 For development proposed to be serviced with Town sewerage, and proposing no dwelling structures within 200 feet of a street other than one created by that development: one (1) point;
- 1.4.7.2.3 For development proposing no construction within lands Mapped as recommended open space by the Open Space Task Force and also not assessed under RSA 79-A Current Use Taxation at any time within the preceding three years: one (1) point;
- 1.4.7.2.4 For development documented to increase traffic at build-out by no more than 10% on any existing street: one (1) point;
- 1.4.7.2.5 For Elderly Housing (age 55 and older) as defined in Section 4.7 Definitions, provided that the owner of record shall enter an agreement, to be filed in the Rockingham County Registry of Deeds, certifying that the project will be utilized and restricted to 100 % elderly occupants as such for a period of no less than twenty years. One (1) point;

- 1.4.7.2.6 For development in which at least 25% of the dwelling units proposed will be "affordable:" one (1) point. For these purposes, "affordable" shall mean subject to restrictions limiting sale or lease to households with incomes no higher than 80% of the regional median at rates affordable to them, under administrative guidelines to be adopted and from time to time amended by the Planning Board;
- 1.4.7.2.7 For development within a sub area of the Town determined by the Planning Board to have a localized facility capacity shortfall: a two (2) point debit if further growth would seriously inconvenience or disadvantage others already in the neighborhood, such as through school overcrowding; or a one (1) point debit if further growth would constitute a demonstrated threat to health (such as incapacity of waste management facilities) or safety (such as a severe road hazard), provided in such cases that actions have been committed by the Town to address the capacity shortfall.
- 1.4.7.2.8 One point for each year the project has been denied a Building Permit Allocation Certificate.
- 1.4.7.3 If by April 1, the surplus permits have not been issued for the year, a second allocation process using the procedure set forth in §1.4.7.1 and 2 shall take place. The Planning Board shall score applications submitted from May 1 through May 21. All applications shall be completed prior to June 1. If necessary a third allocation process shall be held with applications received from August 1 through August 21 and certificates issued by September first (September 1)
- 1.4.7.4 The owners of the lots scoring enough points to be awarded a building permit for a given period may apply for building permits from the Building Department from April 1 through December 31. Any application scoring enough points to be awarded a building permit that is not applied for by December 31 shall lapse.
- 1.4.7.5 Building permits, which are not used within one year of issuance, shall lapse.
- 1.4.7.6 Lapsed building permits may not be renewed if a notice of unsustainable growth remains in effect. In the case of such a lapsed permit, the number of permits available for the following year shall be increased by one.
- 1.4.7.7 An application earning enough points may be used for a building permit on any lot within the subdivision for which it was awarded but may not be used for lots outside that subdivision.
- 1.4.7.8 Building permits for non-residential construction, or for expansion, alteration, renovation or replacement of existing dwelling units, are not limited by Section 1.4.
- 1.4.7.9 Nothing in Section 1.4 shall be construed to authorize or require issuance of a building permit that is not eligible for issuance under any other provision of law.

1.4.8 **Workforce Housing Exemption**

Projects that are approved by the Planning Board meeting the definition of "workforce housing" under RSA 674:58 and under the procedures of RSA 674:60 shall be exempt from the permit limitations of the Growth Management Ordinance.

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1.4.9 Applicability

Nothing herein is intended to repeal the former Section XIII (numbered as passed by Article 98-01 by the Town Council), as amended, as it applies to subdivisions and site plans approved subject to the permit limitations of such ordinance. Said ordinance shall continue to apply to such subdivisions and site plans.

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1.4.10 Sunset

This Ordinance shall expire on January 1, ~~2015~~ unless re-adopted prior to that date

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2.3.3 WORKFORCE RESIDENTIAL OVERLAY (WRO)

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2.3.3.1 Objectives and Characteristics

The workforce residential overlay (WRO) district is designed to allow for housing of greater densities for income levels associated with those spelled out in RSA 674:58 through 61 (adopted as state law effective July 1, 2009), in areas where municipal services make it appropriate and to promote flexibility in the design of residential projects with various housing types, reduced lot sizes and modified dimensional requirements, while maintaining a fixed maximum density. Flexible design can provide for the appropriate use of the land, facilitate the economical and efficient provision of public services, promote open space conservation, protect the natural and scenic attributes of the land and expand opportunities for the development of affordable workforce housing.

2.3.3.2 District Defined

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2.3.3.2.1 The WRO District shall be described as including the lots identified specifically as follows:

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- On Map 9: Lot 49,
- On Map 10: Lot 41,
- On Map 11: Lots 100, 102, 102-5, and 102-6,
- On Map 12: Lots 59-3, 120, 121, 121-1, 121-2, and 131,
- On Map 14: Lots 10 and 35 (AR-I portion only),
- On Map 15: Lots 1, 83-2, 87-1, 215-1, and 215-2,
- On Map 16: Lots 1, 2, 3, 9 (AR-I portion only), 23, and 38 (AR-I portion only),
- On Map 17: Lots 4 (AR-I portion only), 4-1, and 45 (R-III portion only),
- On Map 18: Lots 13 and 32.

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2.3.3.2.2 The term "overlay district" means a zoning district superimposed on one or more established zoning districts to impose supplemental requirements, restrictions, and performance standards on uses in the district.

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2.3.3.3 Conflicts with Underlying Zoning Standards

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Because of the nature of the regulations in this overlay district, the standards and requirements of this Section shall only apply to those projects that have filed a letter of intent with the Planning Board for the purposes of developing workforce housing, per the requirements of RSA 674:60. All other development of lots in the WRO district shall conform to the standards of the underlying district.

2.3.3.4 Uses

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2.3.3.4.1 See use Table Section 2.2

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2.3.3.4.2 Single family and two family dwellings are allowed per the use Table provided that all such dwelling units shall be in compliance with the Inclusionary Housing section of this ordinance (Section 2.3.4).

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2.3.3.4.3 No lot in the WRO district may be used for the outside storage of more than one unregistered motor vehicle (in accordance with RSA 236:92) or the outside storage of more than one boat other than a rowboat, canoe or other boat less than twenty (20) feet in length. ← --- Formatted: Bullets and Numbering

2.3.3.5 Regulations and Design Criteria ← --- Formatted: Bullets and Numbering

2.3.3.5.1 Affordability: Development of housing in the WRO District shall be limited to projects meeting the definition of “workforce housing” under RSA 674:58. Any applicant seeking to develop housing in the WRO shall be required to file a letter of intent with the Planning Board that the project is intended to be for “workforce housing” per the requirements of 674:60. ← --- Formatted: Bullets and Numbering

2.3.3.5.2 Development plan ← --- Formatted: Bullets and Numbering

2.3.3.5.2.1 The applicant shall prepare and submit to the Planning Board for approval of a development plan of the tract proposed for development (“development lot”), which locates the proposed types of residential development, utilities, access roads and streets. (“development plan”) ← --- Formatted: Bullets and Numbering

2.3.3.5.2.1.1 The development plan shall include general, conceptual site and architectural plans sufficiently detailed to show the intended land uses, structures, improvements, and other features necessary to demonstrate compliance with this Section and other applicable provisions of the Zoning Ordinance. ← --- Formatted: Bullets and Numbering

2.3.3.5.2.1.2 The applicant may elect to develop the development lot in phases.

2.3.3.5.2.1.3 Final approval of development of any portion of the development lot shall require site plan approval according to the Site Plan Regulations of the Planning Board.

2.3.3.5.2.1.4 Once development of any portion of the development lot begins, no portion of the development lot may thereafter be developed or used except in conformity with the approved development plan, or an amended development plan approved by the Board.

2.3.3.5.2.2 The development lot may, but need not, be divided into two or more smaller legal separate lots of record (“internal legal lots”), which shall require subdivision approval by the Planning Board. ← --- Formatted: Bullets and Numbering

2.3.3.5.2.3 The density, design and dimensional requirements of Section 2.3.2.3.2 shall be applied to the development lot and not the internal legal lots. ← --- Formatted: Bullets and Numbering

2.3.3.5.2.4 The internal legal lots, if any, shall be subject to the density, design and dimensional requirements of Section 2.3.2.3.3. ← --- Formatted: Bullets and Numbering

2.3.3.5.2.5 The applicant shall be permitted to allocate permitted density among the internal legal lots in any manner so long as the sum total of development for ← --- Formatted: Bullets and Numbering

all internal legal lots does not exceed the permitted density for the development lot.

2.3.3.5.3 Density, Design and Dimensional Standard for Development Lot

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2.3.3.5.3.1 Permitted density - the maximum permitted number of dwelling units ("permitted density") allowed in the development lot shall be as follows:

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2.3.3.5.3.1.1 For dwellings serviced by municipal sewer, the maximum number of dwelling units permitted on the development lot shall 10 units per acre.

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2.3.3.5.3.1.2 For dwellings serviced by onsite septic systems, there shall be at least 14,000 square feet per dwelling unit. In addition, to protect ground water quality and to promote public health and safety, permitted density shall also be subject to such additional density requirements as are required by "minimum lot size by soil type" in Table 2 of Section 2.3.1, with the following modification: one or two bedroom units - lot size x 0.65. Three bedroom units = lot size x 0.85.

2.3.3.5.3.1.3 The minimum number of dwelling units in any multi-family structure in the WRO shall be 5 units.

2.3.3.5.3.1.4 The maximum number of dwelling units per multi-family building in the WRO shall be thirty-six (36).

2.3.3.5.3.1.5 At least 51% of dwelling units on a development lot in the WRO district must contain at least 2 bedrooms.

2.3.3.5.3.2 Screening, Landscaping and Glare - the development plan and the internal legal lots shall be designed to screen parking lots from streets by building location, grading or screening and to minimize glare on adjoining properties. Glare from any use of land, including site illumination, shall not exceed 0.2 foot candles, measured at ground level, at or beyond the perimeter of the development lot. Lighting fixtures shall be designed for downward casting of light. Major topographic changes or removal of existing trees shall be avoided wherever possible, and water, wetlands and other scenic views shall be preserved wherever possible.

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2.3.3.5.3.3 Open space - no less than the area calculated below shall be retained as unoccupied space free of all buildings, parking and pavement, including street access, drives and walks paved with impervious materials, (but such unoccupied open space may include so-called nature walk areas and the like and other recreational uses approved by the Planning Board.) Open space shall be owned by undivided interests appurtenant to lot ownership. Such open space shall either be maintained in its natural state (except for the walking paths or other uses approved by the Planning Board) or shall have appropriate landscaping of grass, shrubbery, trees, flowers, or suitable ground cover indigenous to the area.

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- 2.3.3.5.3.3.1 Total open space shall not be less than forty percent (40%) of the total development lot area
- 2.3.3.5.3.3.2 Open space shall exclude the area within fifteen feet (15') of each building around its entire perimeter.
- 2.3.3.5.3.3.3 Usable open space shall not be less than ten percent (10%) of the total development lot area. "usable open space" shall not include "unusable land" which is defined as wetlands, excessive slopes (greater than 25%) and land subject to existing utility and drainage easements.

2.3.3.5.3.4 Road design - internal roads shall conform to Town standards for roads in new subdivisions as required by the most recent version of the Town's Subdivision Regulations. ← --- Formatted: Bullets and Numbering

2.3.3.5.3.5 Building separation - single family or two family dwellings shall be at least twenty feet (20') from other dwellings. Multi family dwellings and other buildings shall be at least thirty feet (30') from other dwellings. Up to three (3) buildings may be interconnected by a covered walkway or breeze way for reasons of convenience and shelter from the elements, if such walkway shall not, in the opinion of the Planning Board (after consultation with the fire department) impair access to the buildings by emergency vehicles and equipment. ← --- Formatted: Bullets and Numbering

2.3.3.5.3.6 Dimensional requirements ← --- Formatted: Bullets and Numbering

2.3.3.5.3.6.1 Minimum structure setbacks from the perimeter of the development lot shall be as follows: front - 40 feet; side - 35 feet; rear - 30 feet. If the development lot abuts more than one existing and/or proposed external right-of-way, the building setback will be forty (40') feet from each right-of-way. ← --- Formatted: Bullets and Numbering

2.3.3.5.3.6.2 The maximum building height shall be flexible, based on recommendations from the Senior Building Official and the Fire Marshall, but no residential structure shall be greater than 4 stories.

2.3.3.5.3.6.3 The development lot shall have a minimum frontage of a state highway or Town maintained road of Class V designation or better of at least one hundred feet (100') in the aggregate, which may consist of two (2) fifty foot (50') rights-of-way serving as access to the development lot.

2.3.3.5.3.7 Parking ← --- Formatted: Bullets and Numbering

2.3.3.5.3.7.1 A minimum of 1.5 parking spaces per dwelling unit shall be provided for all dwelling units in the WRO District. Parking spaces may be located offsite (ie: off the internal legal lot as long as the offsite parking is located within the development lot) and the parking spaces shall be within four hundred feet (400') of the building they are intended to serve. Formatted: Bullets and Numbering

2.3.3.5.3.7.2 Parking areas shall be designated in accordance with requirements for parking areas set forth in Section 3.10 of the Zoning Ordinance (parking).

2.3.3.5.3.8 Perimeter buffer - a perimeter buffer to separate and screen incompatible land uses shall surround the development lot except where streets enter the development lot. The buffer shall include a combination of physical space and vertical elements such as plants, berms, fences or walls, as approved by the Board. The width of the buffer area shall vary according to the abutting zoning district as follows: Formatted: Bullets and Numbering

2.3.3.5.3.8.1 Agricultural-residential, Commercial, or Industrial: fifty feet (50') where directly abutting, no buffer where highway separates WRO and a "C" or "I" district. Formatted: Bullets and Numbering

2.3.3.5.3.8.2 R-III: no buffer.

2.3.3.5.4 Additional dimensional standards for internal lots: Formatted: Bullets and Numbering

2.3.3.5.4.1 Single and two-family dwelling lots: Formatted: Bullets and Numbering

2.3.3.5.4.1.1 Minimum lot area 5,000 SF/Unit

2.3.3.5.4.1.2 Minimum lot width 50 ft/unit

2.3.3.5.4.1.3 Minimum setbacks

front - 25 feet

side - see note below

rear - 20 feet

Note: side setbacks may be reduced to any dimension as long as distance between buildings on contiguous lots is greater than twenty feet (20').

2.3.3.5.4.2 Multi family dwelling lots Formatted: Bullets and Numbering

2.3.3.5.4.2.1 Minimum lot area 7,000 SF/unit

2.3.3.5.4.2.2 Minimum lot width 50 ft/unit

2.3.3.5.4.2.3 Minimum setbacks

front - 40 feet

side - 15 feet

rear - 30 feet

2.3.4 INCLUSIONARY HOUSING

2.3.4.1 Purpose:

The purpose of this Section is to encourage and provide for the development of affordable housing within Londonderry. It is intended to ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households. This Section was established in order to meet the goals related to affordable housing provision set forth in the 2004 Master Plan and 2008 Housing Task Force Final Report. Additionally, in implementing this Section Londonderry has considered the region's affordable housing need as defined in the Southern NH Planning Commission Housing Needs Assessment.

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2.3.4.2 Authority:

This Section is adopted under the authority of RSA 674:21, and is intended as an "Inclusionary Zoning" provision, as defined in RSA 674:21(l)(k) and 674:21(IV)(a).

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2.3.4.3 Applicability

2.3.4.3.1 Development in accordance with the provisions of this Section is permitted by conditional use permit within the following zoning districts as defined in this Zoning Ordinance: AR-I, WRO, R-III, and C-IV.

2.3.4.3.2 Permitted Uses: In the interest of encouraging affordability, single-family, duplex, multi-family, and manufactured housing is permitted within an application under this Section in the WRO, R-III, and C-IV districts. In the AR-I District, single-family, duplex, and manufactured housing is permitted within an application under this Section.

2.3.4.3.3 Any person aggrieved by a Planning Board decision that constitutes a denial of a Conditional Use Permit due to noncompliance with one or more of the provisions of this ordinance may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).

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2.3.4.4 Definitions Specific to This Section.

2.3.4.4.1 Affordable Rental Housing – where the rent plus utilities for the dwelling unit does not exceed 30 percent of the allowed individual household income.

2.3.4.4.2 Affordable Owner-Occupied Housing – where the total cost of mortgage principal and interest, mortgage insurance premiums, property taxes, association fees, and homeowner's insurance does not exceed 30 percent of the maximum allowed income of the purchaser. The calculation of housing costs shall be based on current taxes, a 30-year fixed rate mortgage, a 5 percent down payment, and prevailing mortgage rates within the region.

2.3.4.4.3 Area Median Income (AMI) – is the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which

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Londonderry belongs, as is established and updated annually by the United States Department of Housing and Urban Development.

2.3.4.4.4 **Assets** – As defined as “Net Family Assets” by 24 CFR Part 5, Subpart F, and as amended from time to time. Formatted: Font: Bold
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2.3.4.4.5 **Income** – As defined as “Annual Income” by 24 CFR Part 5, Subpart F, and as amended from time to time. Formatted: Font: Bold
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2.3.4.4.6 **Low Income** – A household income (as defined herein) that does not exceed 50 percent of the area median income. Formatted: Font: Bold
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2.3.4.4.7 **Low to Moderate Income** – A household income (as defined herein) that is more than 50 percent and does not exceed 80 percent of the area median income. Formatted: Font: Bold
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2.3.4.4.8 **Market Rate Housing** – Any unit within a development, whether the unit is to be owner or renter occupied, that is intended to be available for sale or occupancy at the prevailing market value for the area similar to comparable real estate transactions. Formatted: Font: Bold
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2.3.4.4.9 **Moderate Income** – A household income (as defined herein) that is more than 80 percent and does not exceed 100 percent of the area median income. Formatted: Font: Bold
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2.3.4.4.10 **Owner-occupied Housing** – Any dwelling unit intended to be conveyed in fee simple, condominium or equity-sharing arrangement such as a community housing land trust and limited equity cooperatives. Formatted: Font: Bold
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2.3.4.4.11 **Rental Housing** – Any dwelling unit intended for leasehold occupancy. Formatted: Font: Bold
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2.3.4.5 **Affordable Housing Categories and Incentives** Formatted: H5

2.3.4.5.1 A Site Plan or subdivision plan that will guarantee a designated percentage of units, reserved as affordable housing, may be approved with an increase in the density of the site or a reduction of the minimum site frontage as is set forth in Table 1. The developer shall specify in the application whether the density bonus or the frontage reduction is the option being sought for the development. These bonuses shall not apply to development within the Workforce Residential Overlay (WRO), as that overlay district has increased density allowances built into the district. Formatted: Font: Bold
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<u>Table 1</u>	<u>Minimum Set Aside</u>	<u>Density Bonus or Frontage Reduction *</u>
<u>Low Income Owner-occupied Housing</u>	10%	20% Density Bonus or 30' Frontage Reduction
<u>Moderate to Low Income Owner-occupied Housing</u>	20%	25% Density Bonus or 40'

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		Frontage Reduction
Moderate Income Owner-occupied Housing	25%	25% Density Bonus or 50' Frontage Reduction

* At no point shall a frontage reduction reduce a lot's frontage to less than 50' total.

2.3.4.5.2 A site plan or subdivision plan can mix affordable housing types and accumulate density bonuses to a maximum bonus equal to 30 percent where municipal sewer and water are available or in areas without water and sewer service to the maximum density permitted by on-site well and septic standards of the New Hampshire Department of Environmental Services as applied to the site.

2.3.4.5.3 When mixing affordable unit types the designated affordable percentage for each individual affordable housing type may be less than that required in Table 1. The density bonus is then proportioned to the actual percentage of designated affordable units provided, so that if the applicant provides only one-half of the required designation of one type of affordable housing they will receive one-half of the density bonus. The combined total of all affordable housing types must equal a 15 percent designation of affordable units, at a minimum.

2.3.4.6 General Requirements Of Affordable Units

2.3.4.6.1 The dwellings qualifying as affordable housing shall be compatible in architectural style and appearance with the market rate dwellings in the proposed development. The affordable units should be interspersed throughout the overall development.

2.3.4.6.2 To ensure that the application is completed as permitted, the dwellings qualifying as affordable housing shall be made available for occupancy on approximately the same schedule as a project's market units, except that the certificates of occupancy for the last 10 percent of the market rate units shall be withheld until certificates of occupancy have been issued for all the affordable housing units. A schedule setting forth the phasing of the total number of units in a project under this Section, along with a schedule setting forth the phasing of the required affordable housing units shall be established prior to the issuance of a building permit for any development subject to the provisions of this Section.

2.3.4.6.3 To ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of an affordable unit must submit copies of their last three years' federal income tax returns and written certification verifying their annual income level, combined with household assets, does not exceed the maximum level as established by this ordinance in sections 2.3.4.4 and 2.3.4.5.1 of this Section. The tax returns and written certification of income and assets must be submitted to the developer of the housing units, or the developer's agent, prior to the transfer of title. A copy of the tax return and written certification of income and assets must be submitted to all parties charged with administering and monitoring this ordinance, as set forth in sections 2.3.4.8 through 2.3.4.8.4 of this Section, within 30 days following the transfer of title.

2.3.4.6.4 All applicants under this section must submit the following data to ensure project affordability:

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2.3.4.6.4.1 Calculation of the number of units provided under this Section and how it relates to its provisions.

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2.3.4.6.4.2 Project Cost Estimate including land, development and construction costs; financing, profit, and sales costs; and other cost factors.

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2.3.4.6.4.3 Description of each unit's size, type, estimated cost and other relevant data.

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2.3.4.6.4.4 Documentation of household eligibility as required in section 2.3.4.6.3 of this Section.

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2.3.4.6.4.5 All agreements established as part of sections 2.3.4.6.7 through 2.3.4.6.7.2

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2.3.4.6.4.6 List of required variances, conditional use permits, and special exceptions including justification of their necessity and effectiveness in contributing to affordability of this Section.

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2.3.4.7 Assurance of Continued Affordability

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In order to qualify as affordable housing under this Section, the developer must make a binding commitment that the affordable housing units will remain affordable for a period of 30 years. This shall be enforced through a deed restriction; restrictive covenant; or a contractual arrangement through a local, state or federal housing authority or other non-profit housing trust or agency. For the 30-year term, the deed restriction, restrictive covenant, or contractual arrangement established to meet this criterion must make the following continued affordability commitments:

2.3.4.7.1 Affordable housing units offered for sale shall comply with Section 2.3.5, Retention of Housing Affordability.

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Affordable units offered for sale and approved by the planning board as part of a subdivision or site plan and subject to RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Londonderry. The initial value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town's lien is indexed over time at a rate equal to a consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the housing unit's fair market value, minus the adjusted lien value. The restrictive covenant and lien shall be in a form approved by the planning board.

2.3.4.7.2 Affordable housing rental units shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions.

Comment [TJT1]: Alternative to creating Section 2.3.5. The covenant and lien would contain all of the information covered in the proposed Section 2.3.5 as required by NHHFA to monitor compliance for municipalities.

2.3.4.7.3 Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Section must be documented on all plans filed with the Planning Board and the Rockingham County Registry of Deeds.

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2.3.4.8 Administration, Compliance and Monitoring

2.3.4.8.1 This Section shall be administered by the Planning Board. Applications for the provisions provided under this Section shall be made to the planning board and shall be part of the submission of an application for site plan or subdivision plan approval.

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2.3.4.8.2 No certificate of occupancy shall be issued for an affordable housing unit without written confirmation of the income eligibility of the tenant or buyer of the affordable housing unit and confirmation of the rent or price of the affordable housing unit as documented by an executed lease or purchase and sale agreement.

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2.3.4.8.3 On-going responsibility for monitoring the compliance with resale and rental restrictions on affordable units shall be the responsibility of the Community Development Department or their designee.

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2.3.4.8.4 The owner of a project containing affordable units for rent shall prepare an annual report, due on December 31 each year, certifying that the gross rents of affordable units and the household income of tenants of affordable units have been maintained in accordance this Section. Such reports shall be submitted to the Community Development Department or their designee and shall list the contract rent and occupant household incomes of all affordable housing units for the calendar year.

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2.3.5 Retention of Housing Affordability

2.3.5.1 Authority and Purpose

2.3.5.1.1 Authority: This ordinance is adopted as an “innovative land use control” pursuant to RSA 674:21.

2.3.5.1.2 Purpose: The purpose of this ordinance is to provide a means by which Londonderry may promote the long-term affordability of housing units built as part of a development approved by the planning board under the terms of the Londonderry’s inclusionary housing provisions. It is intended to ensure that the units remain affordable to households of low- and moderate-income, while also facilitating homeowners’ capacity to benefit from property value appreciation. It creates a lien interest in the property held by the Town, enforceable by the Town as a mortgage.

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- Comment [TJT2]: Entire Section can be eliminated if the Board chooses to utilize the alternative language in Section 2.3.4.7.1
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2.3.5.2 General Provisions

2.3.5.2.1 Definitions. For purposes of this section:

2.3.5.2.1.1 “Affordable Housing Unit” means a residential dwelling unit intended to be affordable to persons of low or moderate incomes, which an applicant agrees to produce as a condition of approval of an “inclusionary” housing development as described in Section 2.3.4 of this Ordinance. More particularly an “Affordable Housing Unit” means the following, as determined by the planning board at the time a particular development is granted

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approval by the Board: A unit of housing which – in addition to any other specific conditions of approval imposed by the planning board at the time of approval – is required to be administered in accord with the general provisions as set forth herein; which is subject to the procedures set forth in Section 2.3.5.3 below at the time of its initial conveyance; and which is conveyed subject to a contingent subsidy lien and covenants in favor of the Municipality, as set forth in 2.3.5.4 below.

2.3.5.2.1.2 The “Developer” means the person or entity which applies for and receives planning board approval for an “inclusionary” housing project as set forth in Section 2.3.4 of this Ordinance, any person or entity to which rights to construct such a project under such an approval have been conveyed, or any person or party acting as contractor or agent for such a party, or who otherwise performs acts in furtherance of constructing or implementing the approval, or fulfilling any conditions thereof. ← --- Formatted: Bullets and Numbering

2.3.5.2.1.3 “Housing Cost” means the estimated monthly cost to an Owner of an Affordable Housing Unit, including mortgage principal and interest, property taxes (municipal, school, county, and state), homeowner’s insurance, mortgage insurance, and any applicable homeowner’s association fees. Interest calculations shall be based upon the prevailing market interest rate at the time of conveyance for a 30-year fixed-rate conventional mortgage. Schedules used to determine Housing Cost may be adopted and revised as needed by the Planning Board. ← --- Formatted: Bullets and Numbering

2.3.5.2.1.4 The “Municipality” means the Town of Londonderry; provided that, however, and except where responsibilities are specifically assigned herein or where statute creates a non-delegable responsibility, the tasks and functions required herein to be performed by the Municipality shall be performed by the Town Council or its designee, or may be delegated in whole or in part by vote of the Town Council to a third-party designee such as a nonprofit organization or quasi-governmental agency, subject to the supervision of the Town Council or its designee. ← --- Formatted: Bullets and Numbering

2.3.5.2.1.5 The “Owner” shall mean the person(s) who initially separately purchases and occupies the completed Affordable Housing Unit, under the procedures set forth in Section 2.3.5.3 below, as well as any person(s) who subsequently purchases the unit under the procedures required under Section 2.3.5.4 below. ← --- Formatted: Bullets and Numbering

2.3.5.2.1.6 The “Fair Market Value” of the Affordable Housing Unit, at the time of the initial or any subsequent conveyance shall be the price which such unit would command at that time in an arm’s-length transaction on the open market if the unit were not subject to any of the restrictions of this Section, and the Owner were to purchase the property in fee simple absolute. ← --- Formatted: Bullets and Numbering

2.3.5.2.1.7 “First Mortgage” means a recorded mortgage which is senior to any other mortgages or liens against the Affordable Housing Unit (other than the lien for real estate taxes and homeowner assessments, if any), and which is used to secure a loan to an eligible buyer to purchase the unit. ← --- Formatted: H6

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- 2.3.5.2.1.8 “Qualified Purchaser” means a purchaser who has been certified by the Municipality as meeting income standards to purchase an Affordable Housing Unit. It also includes a non-profit organization, the primary purpose of which is to provide or to facilitate the acquisition of housing that is affordable to low- and moderate-income households. ← Formatted: Bullets and Numbering
- 2.3.5.2.1.9 “Area Median Income” means Area Median Income (“AMI”) for a family of four as established and updated periodically by the U.S. Dept. of Housing and Urban Development for the Fair Market Rent Area where the Municipality is located. ← Formatted: H6
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- 2.3.5.2.2 The planning board shall, as a condition of approval, make an initial determination of the following with respect to all included Affordable Housing Units which, unless modified pursuant to Section 2.3.5.3.3 below, shall serve as the basis for conveyance by the Developer: ← Formatted: H6
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- 2.3.5.2.2.1 An estimated projected Fair Market Value for the Affordable Housing Units to be constructed by the Developer, using Developer projections or such other available information as the planning board may require. Construction details shall be provided in sufficient detail to enable a reasonable projection of such Value, and compliance with such details shall be deemed a condition of approval. ← Formatted: H5
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- 2.3.5.2.2.2 An initial target income level for the initial conveyance of the Affordable Housing Units, which shall not be greater than 80% of the Area Median Income (“AMI”). ← Formatted: H6
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- 2.3.5.2.2.3 A corresponding initial selling price for each Affordable Housing Unit, which shall be set at a level that is projected to require a Housing Cost no greater than 30% of the initial target income determined in Section 2.3.5.2.2.2 above. ← Formatted: H6
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- 2.3.5.2.2.4 A corresponding projected initial subsidy for each Affordable Housing Unit, which shall be the difference between the estimated projected Fair Market Value and the initial selling price. The projected initial subsidy shall be between fifteen and thirty-three percent of the estimated projected Fair Market Value of the unit, inclusive. ← Formatted: H6
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- 2.3.5.2.3 Except as expressly set forth in this Section, in the conditions of Development approval by the planning board, or in a lien and covenant document recorded pursuant to Section 2.3.5.3 below, an Owner shall have the same rights and privileges with respect to the Affordable Housing Unit as would any person who owned the unit in fee simple absolute, including but not limited to the right of quiet enjoyment, the right to make improvements, and the right to convey a First Mortgage interest, as detailed below. ← Formatted: H6
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- 2.3.5.3 Procedures at Time of Initial Conveyance - An Affordable Housing Unit shall not be separately conveyed, or initially occupied, except in accordance with the following procedures: ← Formatted: Bullets and Numbering
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2.3.5.3.1 During construction and upon completion of construction, the Municipality shall inspect the unit to confirm that all applicable codes, ordinances, conditions of approval (including construction details presented at the time of approval) and all other legal requirements have been met.

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2.3.5.3.2 Upon successful inspection, the Municipality at the Developer's expense shall cause an independent appraisal to be performed to determine the Fair Market Value of the unit.

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2.3.5.3.3 The initial selling price shall be as set by the planning board at the time of plan approval under Section 2.3.5.2.2; provided, however, that under unusual circumstances the Developer may petition the planning board, which may for good cause and following a hearing for which reasonable notice is provided to the Developer and such others as the planning board may require, amend the initial selling price, the projected initial subsidy, and/or the initial target income level.

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2.3.5.3.4 The Municipality or its agent shall be responsible for certifying potential purchasers as meeting the relevant target income requirements and eligible to purchase the unit and for ranking Qualified Purchasers. Any potential buyer identified by the Developer or its agent must be referred to the Municipality. If, after the impartial application of objective criteria for priority eligibility have been applied to all persons wishing to purchase the unit, there exists more than one top priority income-eligible purchaser ready, willing, and able to execute a purchase and sales agreement at the initial selling price, then the final choice of purchasers shall lie with the Developer.

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2.3.5.3.5 The Town Council shall from time to time establish rules and procedures for determining income-eligibility and priority for ranking Qualified Purchasers, such rules and procedures to be consistent with U.S. Dept. of Housing & Urban Development Program Requirements at 24 CFR Part 5, Subpart F. Such rules may give priority to persons who are already residents of the Municipality, or who are or will be employed in the Municipality. There shall be no requirement for continuing Owner income-eligibility, and no Owner shall, subsequent to purchase, be deemed in violation of this Section or of the Subsidy Lien and Restrictive Covenant for lack of income-eligibility, unless false or fraudulent information is found to have been provided by said Owner at the time of initial eligibility determination.

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2.3.5.3.6 The Developer shall not convey, or agree to convey, the Affordable Housing Unit for a total consideration any higher than the initial selling price as set by the planning board. The Developer shall not convey, or agree to convey, the unit except to the top priority Qualified Purchaser; provided, however, that if the Municipality fails to identify a Qualified Purchaser, or if the Developer, after exercising a good faith effort, fails to produce a purchaser who is subsequently certified by the Municipality as a Qualified Purchaser and who is ready, willing and able to execute a purchase and sales agreement at the initial selling price within 120 days after the Municipality grants a Certificate of Occupancy in Section 2.3.5.3.1 above, the Developer may convey the unit to any purchaser of the Developer's choosing; nevertheless such conveyance shall remain subject to the initial selling price, as set by the Board, and the recording of a Subsidy Lien and Restrictive Covenant, as set forth below. The Developer shall not use these provisions to avoid selling the unit to any Qualified Purchaser, including one identified by the Municipality.

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2.3.5.3.7 The initial Owner shall, at the time of closing, execute and convey to the Municipality a covenant document, to be called a "Subsidy Lien and Restrictive Covenant", which shall be recorded in the Rockingham County Registry of Deeds together with the Owner's deed. This document shall contain the initial value of the Municipality's subsidy lien, and all the elements required under Section 2.3.5.4 below.

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2.3.5.3.8 The initial value amount of the Municipality's subsidy lien shall be the difference between the appraised value reached under Section 2.3.5.3.2 above, and the unit's initial selling price. The burden of the creation of the subsidy shall fall upon the Developer as a condition of approval.

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2.3.5.3.9 In addition, the Developer shall, at the time of the closing, pay to the Municipality an administrative fee for each unit, which shall be used by the Municipality to fund the administration of the unit under this Subsection, including appraisals, drafting of documents, costs incurred for program administration by an independent agent of the Municipality, and other expenses relating to the Municipality's subsidy lien. The amount of the administrative fee shall be two percent (2%), or as otherwise determined by the Town Council, of the unit's initial selling price, provided however that the Town Council may if warranted, pursuant to RSA 41:9-a, prospectively alter the rate of the fee to more accurately reflect actual administrative costs. The fee shall be accounted for in the same manner as an impact fee, as provided in RSA 674:21, V(c).

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2.3.5.3.10 Notwithstanding the foregoing, the initial selling price, the projected initial subsidy, and/or the initial target income as conditions of approval may be reviewed and recalculated by the planning board as needed between the date of approval and conveyance by the Developer, for the purposes of ensuring that the objectives of this ordinance are met. Amendment of any such condition shall only be made following a hearing for which reasonable notice is provided to the Developer and such others as the planning board may require.

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2.3.5.4 Subsidy Lien and Restrictive Covenant - The "Subsidy Lien and Restrictive Covenant" required under 2.3.5.3.7 above shall set forth the initial value amount of the subsidy lien as determined under 2.3.5.3.8 above, shall incorporate all of the requirements for subsequent conveyances of the Affordable Housing Unit as set forth in Sections 2.3.5.5 through 2.3.5.7 below, shall provide that any and all of such requirements shall be subject to enforcement pursuant to 2.3.5.9 below, and shall, in addition, incorporate the following conditions and restrictions:

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2.3.5.4.1 The unit shall be the primary residence of the Owner, and shall be occupied by the Owner.

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2.3.5.4.2 The unit shall at all times be maintained in conformity with all applicable building or housing codes, land use ordinances or conditions of approval, and any other applicable provisions of federal, state, or local law. The Owner shall immediately notify the Municipality of any existing or anticipated violation of any such requirement, or of any provision of the Subsidy Lien and Restrictive Covenant.

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2.3.5.4.3 The Owner shall not, without the prior written consent of the Municipality, convey any mortgage or other lien interest in the unit, other than a First Mortgage interest.

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The Municipality's Subsidy Lien interest shall generally be deemed the equivalent of a second mortgage interest subordinate to any such First Mortgage, and shall entitle the Municipality to the right to notice as a lienholder for all purposes, including foreclosure notice under RSA 479:25. The Municipality may consider an alternative lien position on a case-by-case basis, based on a reasonable assessment of risk and an appraisal of value.

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2.3.5.5 Subsequent Conveyances of the Unit - Except in the cases of purchase of a unit by the Municipality in accordance with Sections 2.3.5.6 or 2.3.5.7 below, or release or termination of the Subsidy Lien and Restrictive Covenant by the Municipality in accordance with Section 2.3.5.8 below, no Owner of an Affordable Housing Unit shall convey the unit except in accordance with the following procedures:

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2.3.5.5.1 An Owner may at any time notify the Municipality in writing of an intent to convey the unit. The Municipality shall, as soon as practicable, cause an appraisal to be conducted to arrive at a current Fair Market Value of the unit (including the value of any fixtures or improvements made by the Owner). If the Owner disagrees with or has doubts or questions concerning the accuracy of the appraisal, the Owner may choose to fund a second appraisal, and the current Fair Market Value shall be deemed to be the average of the two appraisals unless otherwise agreed. If the Owner does not convey the unit within one year after providing written notice of intent to convey the unit or otherwise rescinds its notice of intent to dispose of the unit either directly in writing to the Municipality or constructively by either failing to market the property or withdrawing it from the market, the Owner shall reimburse the Municipality for the cost of its appraisal of the unit. Subsequent notices of intent to convey the unit shall require a new appraisal.

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2.3.5.5.2 The Municipality shall set the maximum resale price of the unit by adjusting the recorded initial value amount of its subsidy lien by the change in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for Boston, Brockton-Nashua, MA-NH-ME-CT for Shelter or a comparable housing cost index should the CPI-U be discontinued, calculating from the time of such recording, then subtracting that adjusted subsidy lien amount from the current Fair Market Value determined under Section 2.3.5.5.1 above. The Municipality shall also, based upon that maximum resale price, determine a revised target income level for which the unit would be affordable at such a resale price, such that the unit's Housing Cost would be no greater than 30% of the revised target income. If the revised target income level is greater than 120% of the Area Median Income or if the adjusted subsidy lien amount is not between fifteen and thirty-three percent of the Fair Market Value, the Municipality may retire or modify the subsidy lien in accordance with Section 2.3.5.8 below. An increase to the subsidy lien will result in a corresponding decrease to the maximum resale price; a decrease to the subsidy lien will result in a corresponding increase to the maximum resale price. In neither case will the Owner's equity be affected, if any.

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2.3.5.5.3 The Municipality or its agent shall be responsible for certifying potential purchasers as meeting the revised target income requirements, in the same manner set forth in Section 2.3.5.3.4 above, and for ranking Qualified Purchasers. Any potential buyer identified by the Owner or its agent must be referred to the Municipality. If, after the impartial application of objective criteria for priority eligibility have been applied to all persons wishing to purchase the unit, there exists more than one top priority income-eligible purchaser ready, willing, and able to execute a purchase

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and sales agreement at the maximum resale price, then the final choice of purchasers shall lie with the current Owner.

2.3.5.5.4 The Owner shall not convey, or agree to convey, the Affordable Housing Unit for a total consideration any higher than the maximum resale price as determined under Section 2.3.5.5.2. The Owner shall not convey, or agree to convey, the unit except to persons who have been certified as income-eligible under Section 2.3.5.5.3; provided, however, that if the Municipality fails to identify a Qualified Purchaser, or if the Owner, after exercising a good faith effort, fails to produce a purchaser who is subsequently certified by the Municipality as a Qualified Purchaser and who is ready, willing, and able to execute a purchase and sales agreement at the maximum resale price within 120 days after the Owner's written notice of intent to convey the unit, the Owner may convey the unit to any purchaser of the Owner's choosing; nevertheless such conveyance shall remain subject to the maximum resale price, to the purchaser income qualification procedures for subsequent conveyances, and to the Subsidy Lien and Restrictive Covenant, and such a conveyance shall permit, but shall not obligate, the Municipality to modify or retire the adjusted subsidy lien in accordance with Section 2.3.5.8 below. Nothing in the foregoing shall be construed to relieve or limit the Owner's obligation to engage in good faith and energetic efforts to market the unit for purposes of identifying a purchaser who is likely to meet the income qualification standards herein. The Owner shall not use these provisions to avoid selling the unit to any Qualified Purchaser, including one identified by the Municipality.

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2.3.5.5.5 At the time of closing, the new Owner shall execute a Subsidy Lien and Restrictive Covenant, substantively similar to that executed by the prior Owner, and the Municipality shall execute a certification of compliance with the conveyance procedures required by the Subsidy Lien and Restrictive Covenant. Both of these documents shall be recorded together with the new Owner's deed. The seller shall also, at the time of the closing, pay to the Municipality an administrative fee of two percent (2%), or as otherwise determined by the Town Council, of the resale price, but such fee shall be subject to adjustment, as set forth in 2.3.5.3.9 above.

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2.3.5.5.6 Notwithstanding Sections 2.3.5.1 through 2.3.5.5 above, the following types of conveyances are exempt from the Owner Conveyance provisions set forth in this Subsection:

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2.3.5.5.6.1 A conveyance to a first mortgagee resulting from foreclosure, or

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2.3.5.5.6.2 Any of the following, provided, however, that the unit shall, subsequent to such an exempt conveyance, remain subject to the provisions of the Subsidy Lien and Restrictive Covenant:

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- 2.3.5.5.6.2.1 A conveyance resulting from the death of an Owner where the conveyance is to the spouse who is also an Owner.
- 2.3.5.5.6.2.2 A conveyance to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- 2.3.5.5.6.2.3 A conveyance resulting from the death of an Owner when the conveyance is to one or more children or to a parent or parents of the deceased Owner.
- 2.3.5.5.6.2.4 A conveyance by an Owner where the spouse of the Owner becomes the co-Owner of the Property.
- 2.3.5.5.6.2.5 A conveyance directly resulting from a legal separation or divorce, by which a co-Owner becomes the sole Owner of the unit.

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2.3.5.6 Right of First Refusal in Subsequent Conveyances

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Upon receipt of a notice of intent to convey an Affordable Housing Unit under Section 2.3.5.5.1 above, the Municipality shall have the right to purchase the property at the maximum resale price, as determined according to Section 2.3.5.5.2 above. If the Municipality elects to purchase the unit, it shall exercise the purchase right by notifying the Owner, in writing, of such election ("Notice of Exercise of Right") within forty-five (45) days of the receipt of the Intent to Convey Notice, or the Right shall expire. Within seven (7) days of the Municipality exercising its purchase right, the Municipality and the Owner shall enter into a purchase and sale contract. The purchase by the Municipality must be completed within forty-five (45) days of the Municipality's Notice of Exercise of Right, or the Owner may convey the property as provided in Section 2.3.5.5 above. The time permitted for the completion of the purchase may be extended by mutual written agreement of the Owner and the Municipality. If the Municipality has in writing waived its purchase right, or if the Purchase Right has expired, or if the Municipality has failed to complete the purchase within forty-five (45) days of its Notice of Exercise of Right, the Owner may convey the unit according to Section 2.3.5.5 above for no more than the maximum resale price as calculated therein.

2.3.5.7 Municipality's and Owner's Rights in Foreclosure

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2.3.5.7.1 The Owner shall give immediate written notice to the Municipality upon the first to occur:

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2.3.5.7.1.1 the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the unit under the First Mortgage, or

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2.3.5.7.1.2 the date when the Owner becomes twenty-one (21) days late in making a payment on any indebtedness encumbering the unit required to avoid foreclosure of the First Mortgage.

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2.3.5.7.2 At any time within sixty (60) days after receipt of any notice described in Section 2.3.5.7.1.1 above, the Municipality may, but shall not be obligated to, proceed to make any payment required in order to avoid foreclosure or to redeem the unit after a foreclosure. Upon making any such payment, the Municipality shall succeed to all rights of the Owner to the Property and shall assume all of the Owner's rights

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and obligations under the First Mortgage, subject to the terms of the Subsidy Lien and Restrictive Covenant. In such event the Owner shall forthwith quit the unit and relinquish possession thereof to the Municipality, which shall assume ownership of the property.

2.3.5.7.3 The Owner may redeem his or her interest in the unit by payment to the Municipality of all sums paid by the Municipality in connection with the First Mortgage and all other sums reasonably expended by the Municipality in relation to the unit, plus eighteen percent (18%) simple interest from each date of expenditure. This redemption may only occur within forty-five (45) days after the Municipality succeeds to the Owner's rights to the unit, after which the Municipality may proceed to convey the property to an eligible buyer. Notwithstanding such redemption, the property shall nonetheless remain subject to the Subsidy Lien and Restrictive Covenant.

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2.3.5.7.4 If the Municipality conveys the property it may recover all incidental and consequential costs as are reasonably incurred or estimated to be incurred by the Municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses. If after conveyance of the property by the Municipality there are excess proceeds above the Municipality's costs, then within 60 days of settlement by the purchaser or purchasers of the property conveyed, the municipality shall reimburse the Owner from whom the Municipality acquired the property in the amount of such excess proceeds.

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2.3.5.8 Retirement or Modification of Subsidy Lien

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2.3.5.8.1 At the time of any transfer of an Affordable Housing Unit, the Municipality may, but is not obligated to, retire or modify the subsidy lien if, in accordance with Section 2.3.5.2 above, the revised target income level is greater than 120% of the Area Median Income, or if the adjusted subsidy lien amount is not between fifteen and thirty-three percent of the Fair Market Value. Upon making a determination that any such condition has been met, the Municipality may notify the Owner in writing of its intention to retire or modify the subsidy lien. The notice shall indicate the value of the subsidy lien to be retired, or the amount by which the Municipality will reduce or enhance the subsidy lien. Such notification shall be made within 45 days of the Owner's Notice of Intent, as provided under Section 2.3.5.1 above.

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2.3.5.8.2 Reduction or retirement of the subsidy lien shall be accomplished at the time of closing by payment from the Owner to the Municipality, such payment to be deposited in the Municipality's Affordable Housing Revolving Fund [if one exists at the time]. Enhancement of the subsidy lien shall be accomplished at the time of closing by payment from the Municipality to the Owner. Retirement of the subsidy lien shall be accompanied by release of the restrictive covenant by the Municipality and shall eliminate the need to calculate a maximum resale price, allowing the unit to sell at its Fair Market Value.

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2.3.5.9 Default and Other Enforcement - Failure of the Owner to comply with the terms of this ordinance, with any condition of planning board approval, or with the terms of the recorded Subsidy Lien and Restrictive Covenant shall constitute default, which shall entitle, but which shall not obligate, the Municipality to undertake the following actions:

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2.3.5.9.1 Foreclosure on the Subsidy Lien, in accordance with RSA 479:19 et seq., provided that the Owner shall have 60 days after receiving written notice of default from the Municipality to fully correct the reasons for default identified by the Municipality in its notice; and

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2.3.5.9.2 Enforcement under RSA 676:17, 676:17-a, and 676:17-b.

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2.3.5.10 Conveyances to Non-Profit Housing Organizations

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Notwithstanding the foregoing, the Municipality may require that initial or subsequent conveyances of Affordable Housing Units be made to a non-profit organization of the Municipality's choice, where the primary purpose of the organization is to provide or facilitate the acquisition of housing that is affordable to low- and moderate-income households. The Municipality shall release its Right of First Refusal under Section 2.3.5.6 above upon such conveyance, provided that upon subsequent conveyance the organization acquires a similar right of first refusal. The Municipality shall also release its Subsidy Lien and Restrictive Covenant upon conveyance to such an organization. Conveyance to such an organization shall be made at the initial selling price in Section 2.3.5.3.3 or at the maximum resale price in Section 2.3.5.5.2, as appropriate.