

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

5 7:00 PM: Members Present: Art Rugg; John Farrell; Kathy Wagner, Ex-Officio;
6 Charles Tilgner, P.E., Ex-Officio; Mary Soares; Lynn Wiles; Chris Davies, alternate
7 member; Cole Melendy, alternate member
8

9 Also Present: André Garron, AICP; Tim Thompson, AICP; Janusz Czyzowski, P.E.;
10 John Trottier, P.E.; Cathy Dirsra, Planning Department Secretary
11

12 A. Rugg called the meeting to order at 7:02 PM. A. Rugg appointed C. Davies to
13 vote for R. Nichols and C. Melendy to vote for L. El-Azem
14

15 A. Rugg said the Board will address the two following public hearings before the
16 administrative board work.
17

18 **Public Hearings**
19

20 A. Tarrytown Real Estate Holdings, Map 6, Lot 31 - Application Acceptance and
21 Public hearing for a Site Plan and Conditional Use Permit to construct a
22 60,600 square foot medical office building (Phases IV & V of Elliot Medical
23 Center at Londonderry) - ***Request Continuance to April 1, 2009***
24

25 T. Thompson referenced the letter from Amy Sanders, CLD Consulting
26 Engineers, requesting a continuance to April 1, 2009, to allow additional time
27 to obtain permits. He stated that CLD continues to work to secure the
28 necessary permits to complete the Elliot Health Systems' formal application
29 for their proposed medical office facility on Buttrick Road.
30

31 **J. Farrell made a motion to continue the public hearing to April 1,**
32 **2009 at 7pm. M. Soares seconded the motion. No discussion. Vote on**
33 **the motion: 8-0-0.** Hearing will be continued to April 1, 2009 at 7PM.

34 A. Rugg said this will be the only public notice. Final notice was given to
35 abutters for the continuance, including the date, time and location.
36

37 B. Pittore Brothers Paving, Map 13, Lot 99 - Continued Public Hearing for a Site
38 Plan and Conditional Use Permit for a change in use (from residential to
39 commercial paving company) and associated site improvements. -
40 ***WITHDRAWN TO PRE-APPLICATION DESIGN REVIEW***
41

42 T. Thompson referenced the letter from Jiri Hajek, Eric Mitchell & Associates,
43 Inc, making a formal request to table the referenced non-residential site plan
44 application to date uncertain, which in essence is a withdrawal to pre-
45 application design review. Abutters will be renotified when the project is
46 converted back to formal application.
47

1
2 **Administrative Board Work**

3
4 A. Extension Request - LHRA Bus Terminal Site Plan

5
6 T. Thompson referenced the letter from Earle Rosse, Chairman LHRA,
7 requesting a one year extension of the site plans that will expire on April 9,
8 2009. They stated that the Goffstown Truck Company (GTC), the town's
9 school bus service provider, has delayed its decision to build a permanent bus
10 terminal in town. Costs have fluctuated dramatically since the LHRA originally
11 received construction proposals from general contractors nearly 18 months
12 ago. They are in the process or re-evaluating development costs and may, in
13 the future, reopen discussion with GTC.

14
15 **J. Farrell made a motion to grant a one year extension to April 9,**
16 **2010. M. Soares seconded the motion.** No discussion. **Vote on the**
17 **motion: 8-0-0.** Extension to April 9, 2010 was granted.

18
19 B. Extension Request - Kelcourse (Sanborn Road) Multi-Family Site Plan

20
21 T. Thompson referenced the letter from Deborah Brewster, TF Moran Inc.,
22 requesting an extension of the site plans to November 3, 2011, which is when
23 the NHDES Wetlands Permit will expire. If the Board sees this favorable, then
24 both the Town and the State permits will run concurrently and if the project
25 does not start construction by 2011, then all permits will terminate
26 simultaneously. Currently the approved plans will expire on April 15, 2009.
27 The letter stated that due to the present economy, their client will not be
28 starting the construction of the previously approved 96-unit multi-family site
29 plan development prior to the current site plan approval expiration date.

30
31 **J. Farrell made a motion to grant an extension to November 3, 2011.**
32 **M. Soares seconded the motion.** No discussion. **Vote on the motion: 8-**
33 **0-0.** Extension to November 3, 2011 was granted.

34
35 C. Regional Impact Determinations

36
37 T. Thompson stated there are two projects to be considered for regional
38 impact determinations. Marco & Jean Barbato are proposing a 2 lot
39 subdivision on 17 Dianna Road, Map 3, Lot 138A and Fortier Enterprises, LLC
40 is proposing the conversion of an existing gas station to a seasonal restaurant
41 on 9 Nashua Road, Map 10, Lot 136. He said that staff recommends these
42 projects are not developments of regional impact, as they do not meet any of
43 the regional impact guidelines suggested by Southern NH Planning
44 Commission (SNHPC).

45
46 **J. Farrell made a motion to accept staff recommendations that these**
47 **projects are determined not to be of regional impact under RSA**
48 **36:56. M. Soares seconded the motion.** No discussion. **Vote on the**
49 **motion: 8-0-0.** Regional impact determinations accepted.
50

1 D. Signing of Minutes – February 11

2
3 Minutes for February 11 have been signed.

4
5 E. Discussions with Town Staff

6
7 A. Garron said that staff will be giving an update on the status of the
8 Pettengill Road project as well as article 10 on the Page Road & Route 28
9 intersection. A. Rugg reminded everyone that starting at 9:00AM on Saturday
10 March 14 in the high school cafeteria is the deliberation part of the town
11 meeting.

12
13 **Public Hearings**

14
15 C. Continued Public Hearing - Address Corrections - Nashua Road (West
16 Broadway) Address Corrections

17
18 J. Farrell said that staff met last week with the post office representatives.
19 They have reached a compromise and should be able to resolve everything in
20 the next couple weeks. T. Thompson said that staff recommends recessing
21 until after the resolutions.

22
23 **J. Farrell made a motion to recess the public hearing. M. Soares**
24 **seconded the motion. No discussion. Vote on the motion: 8-0-0.** A.
25 Rugg said this public hearing is recessed and abutters will be notified if the
26 hearing is reopened. J. Farrell said he strongly suspects it will not have to be
27 reopened.

28
29 D. Public Hearing - Zoning Ordinance Amendments - Fence regulations &
30 definition

31
32 T. Thompson presented the proposed amendments to Section 4.7. (See
33 attachment #1). He stated that Gene Harrington from the Conservation
34 Commission recommended some changes related to agricultural fences for
35 livestock. T. Thompson asked the Board's consensus as to whether or not it
36 would be deemed a substantive change which would necessitate reposting for
37 another hearing. The Board felt it would not be necessary to repost for
38 another hearing.

39
40 A. Rugg asked for public input.

41
42 Dick Higgins, 87 Pillsbury Rd, asked how tall the fence would have to be
43 before it's considered a structure. T. Thompson said if it's 4' or less it can go
44 right up to the boundary and if it's 6' or higher it's considered a structure.
45 There was no further public input

46
47 **J. Farrell made a motion that we recommend to the Town Council**
48 **adopting the amendments to Section 4.7 of the Zoning Ordinance**
49 **with the recommended changes by staff. M. Soares seconded the**

1 **motion.** No discussion. **Vote on the motion: 8-0-0.** This recommendation
2 will be sent to the Town Council.

3
4 E. Workshop - Planning Board Review Process - Discussion of the MRI Report

5
6 A. Garron said that evaluating the Planning Board Review Process was part of
7 the master plan. He is encouraged that there weren't many changes made to
8 our process. He also stated that there are some minor inaccuracies that need
9 to be addressed. J. Czyzowski said he would have liked meeting with MRI to
10 have some input for the report and he feels it would have been helpful to
11 interview other people as well.

12
13 T. Thompson suggested starting the report's recommendations on page 8. He
14 stated he would take the first couple of issues out of order from the report.

15
16 **Issue #6 – Road Requirements**

17 Staff re-emphasized that the road standards were changed to allow road
18 widths of 24 feet with open drainage for low volume roads carrying less than
19 400 vehicles per day. These amendments were adopted by the Planning
20 Board in November 2008 as amendments to the Subdivision Regulations.
21 Since the changes were made while the report was being developed, the
22 issue, in staff' opinion, has already been addressed.

23
24 J. Farrell asked J. Czyzowski about the "book of standards" that DPW was
25 developing. J. Czyzowski stated that if the standards for roads and drainage
26 were in a book of standards it would speed up the process for engineers
27 submitting plans. This would eliminate a lot of details and decrease the items
28 that need to be reviewed by our engineering consultants. J. Czyzowski said
29 he can have a draft version of the Londonderry book of standards ready
30 within 60 days for the Board to review.

31
32 **Issue #7 – State Permit Requirements**

33 T. Thompson stated that there have been discussions about speeding up the
34 state permit process. He said staff suggests amending the regulations and
35 application checklists to not require permits "in hand" for purposes of
36 application acceptance. By doing this, the length of time required to get a
37 plan accepted by the Board can be significantly reduced, as some permits
38 take months of review time by the state and/or federal government. He
39 further suggested that instead of permits "in hand" the acceptance threshold
40 be proof of application for the required permits. By doing this, we can be
41 reasonably assured that the design is far enough along to be ready for public
42 hearing by the Board. Additionally, by making permits conditions of approval,
43 this would allow applicants to obtain financing much sooner than in the
44 current process, as lending institutions generally require at least conditional
45 approval before they finance a project. He estimated that this could reduce
46 time from initial application to conditional approval by several months. J.
47 Czyzowski said the only drawback with that process is that sometimes the
48 plans change based on the requirements of the state/federal permits and
49 then the permits have to be re-done and additional public hearings and re-

1 notification to abutters would be necessary. T. Thompson said this might
2 happen only 5-10% of the time.

3
4 A. Rugg asked for public input.

5
6 John Michaels said he feels changing the permit requirements would speed up
7 the application process.

8
9 The Board agreed with the checklist change for the state permits. A. Garron
10 said that as long as the applicants understand the process and the possibility
11 that it could mean additional public hearings and additional review costs
12 associated with design changes required to obtain state and federal permits,
13 then we should move forward with the change.

14
15 **Issue 1 – Time Required By Design Review Committee (DRC)**

16 T. Thompson suggested changing the DRC comments deadline to 30
17 "calendar" days instead of 30 "working" days. This would save approximately
18 2 weeks of review time. He said that staff also suggested removing the
19 Londonderry Trailways Committee from the Design Review Committee
20 checklist. T. Thompson also said that submittal of digital plans as a PDF file
21 for DRC is something that is planned for the future.

22
23 **Issue 2 – Engineering Comments**

24 T. Thompson asked the Board if they want to change the process for when
25 applicants receive engineering comments. Staff suggested that the applicants
26 receive engineering comments prior to the public hearings, per the current
27 process. T. Thompson and A. Garron said they will review the process of
28 sending a copy of the escrow invoices sent to applicants as they are received
29 so the applicants will understand what their escrow funds are being used for.
30 The Board asked staff to continue reviewing this item and report back at the
31 next workshop.

32
33 **Issue 3 – Third-Party Engineering Review**

34 J. Czyzowski said that many submitted plans are inconsistent with our
35 regulations. He said that our engineering consultants are not responsible for
36 revising the applicant's plans. He said that this drives up the cost of the
37 entire submittal for applicants. Jerry Fortin, Stantec, said the applicants are
38 responsible for submitting plans that are accurate, according to the site and
39 subdivision regulations. J. Czyzowski recommended having only one round of
40 design review comments and that the Owner/Developer be present at the
41 hearing so they can be made aware of instances where review comments are
42 not addressed. J. Farrell said that our town attorney has stated in the past
43 that staff and our engineering consultant should not be redesigning an
44 applicant's plans. A. Garron said we're trying to strike a happy medium. He
45 said that what he has heard is that we are the scape goat for comments. He
46 feels that the applicant needs to work together before going coming before
47 the Planning Board. The Board asked staff to continue reviewing this item and
48 report back at the next workshop.

49
50 [M. Soares left at 8:30PM]

1
2 **Issue 4 – Bonding Requirements**

3 Currently the regulations call for irrevocable letters of credit or cash for
4 surety purposes. A. Garron said the reason for this change when the
5 regulations were revised in the early 2000's was that in the past the letter of
6 credits and surety bonds required staff vigilance in ensuring the proper
7 release of funds if necessary. The change to the irrevocable letter of credit
8 shifted responsibility from the town to the applicant. He said that the issue
9 with irrevocable letters of credit is the cost to the applicant. They are
10 significantly more expensive than bonds or revocable letters of credit. He
11 suggested that staff will review the issue with legal counsel and the Finance
12 Department and report back to the Board at the next workshop.
13

14 **Issue 5 – On-site Improvement Inspections**

15 J. Trottier gave the Board a list of common concerns that he reviews with the
16 applicant at the pre-construction meetings, and the importance of inspections
17 because of the EPA Stormwater Phase II requirements.
18

19 J. Trottier said that he can think of no cases where field changes required the
20 plan to go back to the Board for review as indicated in the report. However,
21 to protect the interest of the Town, all field changes must be approved by the
22 design engineer and documented on the As-Built plans.
23

24 J. Farrell asked staff to approach the town manager and ask if he can obtain
25 data to back up the report.
26

27 The Board suggested having another workshop in May.
28

29 F. **Historic Overlay District Workshop**

30
31 T. Thompson said that staff's perspective from the February public workshop
32 is that we should table this idea and revisit it in the future.
33

34 Steve Young, 7 Fiddlers Ridge Road, said he felt that the workshop in
35 February was a very hostile environment and that the creative ideas were
36 stifled. He did want to mention a suggestion that he came up with. His
37 suggestion was to supersize special exceptions and flip it to utilize 75% of the
38 home for business and 25% for your home. These wouldn't change the
39 environment. They're not commercial and would not be putting in lighting or
40 enunciation systems or drainage systems. They would remain historic
41 structures. For example, a bed & breakfast with 4 bedrooms would be
42 allowed to have 6 bedrooms if it was considered a historic property and
43 providing there was adequate parking.
44

45 The Board agreed that this would be tabled for the time being, and would
46 revisit the issue in the future.
47

1
2 G. Workforce Housing - Monthly Workshop Session

3
4 T. Thompson gave the Board a presentation on revisions (see attachment
5 #2).

6
7 The Board was generally comfortable with the changes, and requested 1
8 additional workshop in April before holding a public hearing in May.

9
10 **Other Business**

11
12 None.

13
14 **Adjournment:**

15
16 **J. Farrell made a motion to adjourn the meeting. C. Tilgner seconded the**
17 **motion.** No discussion. **Vote on the motion: 8-0-0.** Meeting adjourned at 9:47
18 PM.

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

23
24
25
26 Respectfully Submitted,

27
28
29
30 Mary Wing Soares, Secretary

31
32

Insert New Section:

3.14 FENCES

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3.14.1 Fences shall be subject to the following requirements to ensure safe sight distance and to limit barriers that materially impede vision along the public right-of-way

← --- Formatted: Heading 3

3.14.1.1 No fence shall be erected which constitutes a Spite Fence according to RSA 476.

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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.

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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-I district.

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3.14.2.2 Fences located along the side and rear property lines in the AR-I district shall not exceed six (6) feet in height.

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

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Section 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-I zoning district.

Deleted: An enclosure or barrier, such as wooden posts, wire, iron, etc., used as a boundary, means of protection, privacy screening or confinement, but not including hedges, shrubs, trees, or other natural growth. Fences such as chain-link, wire, post and rail, or paddock fences not more than five feet in height, any fence not more than six feet in height which is located in a side or rear yard that does not adjoin a road right-of-way are not considered structures for purposes of setback requirements under this ordinance

Tim Thompson

From: nashuafarmers@myfairpoint.net
Sent: Friday, March 06, 2009 3:50 PM
To: Tim Thompson
Subject: Zoning ordinance "fences"

Hi Tim

To protect the interests of agriculture I would suggest the following additions to the proposed Section 3.14:

at the end of section 3.14.1.4 ...as approved by the Planning Board, or agricultural fences for the confinement of livestock.

at the end of the first sentence of 3.14.2 ... may not exceed four (4) feet in height except for agricultural fences for the confinement of livestock.

Also at the end of 3.14.2 I believe you want to change it to ... shall apply to the property lines abutting both rights-of-way.

If this isn't clear enough, I can be reached at work Monday 8 am-5 pm or Wed. 8 am-10 am at 883-9531.

Gene Harrington



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.

Deleted: a report by the Planning Board entitled "Impact Fee Analysis: Town of Londonderry,"

- 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.

Deleted: be restricted to persons of low and moderate income as defined by the United States Department of Housing and Urban Development (HUD)

Deleted: low and moderate income

Deleted: restricted

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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 condition~~s~~:

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

- 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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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.

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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See use Table Section 2.2

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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 1.75 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.

Comment [TJT1]: Revised from 1.5
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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:

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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.

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2.3.3.5.3.8.2 R-III: no buffer.

2.3.3.5.4 Additional dimensional standards for internal lots:

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2.3.3.5.4.1 Single and two-family dwelling lots:

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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

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2.3.3.5.4.2.1 Minimum lot area 7,000 SF/unit

2.3.3.5.4.2.2 Minimum lot width No minimum width will be applicable to Multi-family Internal lots. Lot width shall be sufficient to ensure proper building placement, parking and traffic circulation.

Comment [TJT2]: Revised from 50'

2.3.3.5.4.2.3 Minimum setbacks

front - 40 feet

side - 15 feet

rear - 30 feet

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2.3.3.5.5 Dimensional Relief by Conditional Use Permit

- 2.3.3.5.5.1 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 purpose and objectives of the WRO District as noted above, and where such adjustments would allow the developer to more fully meet these goals and objectives. Formatted: Heading 6
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- 2.3.3.5.5.2 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. Formatted: Heading 6
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- 2.3.3.5.5.3 Application Procedure - Applications for conditional use permits (CUP) within this district shall be made in accordance with the following procedures: Formatted: Heading 6
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- 2.3.3.5.5.3.1 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. Formatted: Heading 7
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- 2.3.3.5.5.3.2 The applicant will then develop the proposed plan to a point at which the plan is eligible for design review.
- 2.3.3.5.5.3.3 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.
- 2.3.3.5.5.3.4 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.
- 2.3.3.5.5.4 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 2.3.3.5.5.5. 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. Formatted: Heading 6
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- 2.3.3.5.5.5 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: Formatted: Bullets and Numbering

- 2.3.3.5.5.1 The proposed use is consistent with the Objectives and Characteristics of the WRO District, Section 2.3.3.1;
- 2.3.3.5.5.2 Granting of the application is in the public interest;
- 2.3.3.5.5.3 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.
- 2.3.3.5.5.4 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
- 2.3.3.5.5.5 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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Comment [TJT3]: New Section to allow PB flexibility in dimensional standards within the WRO.

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(I)(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.

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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,

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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 Conditional Use Permit Criteria – The Criteria of Section 1.5.2 shall be utilized by the Planning Board in the evaluation of Conditional Use Permits for Inclusionary Housing projects.

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2.3.4.5 Definitions Specific to This Section.

Comment [TJT4]: Added to ensure that there are criteria being used for the evaluation of CUP's.

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

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2.3.4.5.2 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.

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

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2.3.4.5.4 Assets – As defined as "Net Family Assets" by 24 CFR Part 5, Subpart F, and as amended from time to time.

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2.3.4.5.5 Income – As defined as "Annual Income" by 24 CFR Part 5, Subpart F, and as amended from time to time.

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2.3.4.5.6 Low Income – A household income (as defined herein) that does not exceed 50 percent of the area median income.

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2.3.4.5.7 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.

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2.3.4.5.8 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.

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2.3.4.5.9 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.

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2.3.4.5.10 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.

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2.3.4.5.11 Rental Housing – Any dwelling unit intended for leasehold occupancy.

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2.3.4.6 Affordable Housing Categories and Incentives

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2.3.4.6.1 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.

	Minimum Set Aside	Density Bonus or Frontage Reduction *
Low Income Owner-occupied Housing	10%	20% Density Bonus or 30' Frontage Reduction
Moderate to Low Income Owner-occupied Housing	20%	25% Density Bonus or 40' Frontage Reduction
Moderate Income Owner-occupied Housing	25%	25% Density Bonus or 50' Frontage Reduction

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

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2.3.4.6.2 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.

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2.3.4.6.3 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.

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2.3.4.7 General Requirements Of Affordable Units

2.3.4.7.1 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. Formatted: Heading 5
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2.3.4.7.2 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. Formatted: Bullets and Numbering

2.3.4.7.3 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. Formatted: Bullets and Numbering

2.3.4.7.4 All applicants under this section must submit the following data to ensure project affordability: Formatted: Bullets and Numbering

2.3.4.7.4.1 Calculation of the number of units provided under this Section and how it relates to its provisions. Formatted: H5
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2.3.4.7.4.2 Project Cost Estimate including land, development and construction costs; financing, profit, and sales costs; and other cost factors. Formatted: Bullets and Numbering

2.3.4.7.4.3 Description of each unit's size, type, estimated cost and other relevant data. Formatted: Bullets and Numbering

2.3.4.7.4.4 Documentation of household eligibility as required in section 2.3.4.6.3 of this Section. Formatted: Bullets and Numbering

2.3.4.7.4.5 All agreements established as part of sections 2.3.4.6.7 through 2.3.4.6.7.2 Formatted: Bullets and Numbering

2.3.4.7.4.6 List of required variances, conditional use permits, and special exceptions including justification of their necessity and effectiveness in contributing to affordability of this Section. Formatted: Bullets and Numbering

2.3.4.8 **Assurance of Continued Affordability** Formatted: Font: Bold
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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:

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

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2.3.4.8.2 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.

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2.3.4.8.3 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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2.3.4.9 Administration, Compliance and Monitoring

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2.3.4.9.1 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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2.3.4.9.2 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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2.3.4.9.3 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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2.3.4.9.4 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

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2.3.5.1 Authority and Purpose

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

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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

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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.

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 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.

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.

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.

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

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subsequently purchases the unit under the procedures required under Section 2.3.5.4 below.

- 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: H6
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- 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.

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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:

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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

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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.

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

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subject to enforcement pursuant to 2.3.5.9 below, and shall, in addition, incorporate the following conditions and restrictions:

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. 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

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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.

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

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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.

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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.

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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 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.

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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.

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