Joint Committee of the Planning Board & Planning, Licenses, & Development Committee

AGENDA

January 11, 2021 at 6:30 PM

This meeting will be conducted remotely.* The public may access this may meeting by using the options provided in the box on the right side of this agenda.

1. **Statement of Authority to Hold Remote Meeting**

2. **Call to Order & Roll Call**

3. **Minutes of December 14, 2020**

4. **Continued Public Workshop**

Ordinances O-2020-10 & O-2020-11 – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene's downtown area (*Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus*); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District. This proposed map change would affect 316 parcels, encompassing a total land area of approximately 220-acres, and would result in the removal of the Central Business and Central Business Limited Zoning Districts. The full text of the ordinances and the proposed Land Development Code is available at www.keenebuildingbetter.com/ldc, or by appointment at City Hall. To make an appointment, email communitydevelopment@ci.keene.nh.us or call (603) 352-5440.

   a. **Review of Articles 23, 24, 26, & 27 of the proposed City of Keene Land Development Code**

   b. **Continued Discussion on Congregate Living / Social Service Uses**

   c. **Public Comment**

5. **Next Meeting – Tuesday, January 19, 2020**

6. **Adjourn**

OPTIONS FOR ACCESSING THIS MEETING:

- To participate online:
  - Go to www.zoom.us/join
  - Enter Meeting ID - 893 8296 4232
- To participate by telephone:
  - Call (646) 558-8656 or (888) 475-4499 *(toll-free)*
  - Enter Meeting ID - 893 8296 4232
- **Technical Issues:** If you encounter issues accessing this meeting call (603) 209-4697 during the meeting.
- **Meeting Information** (including agendas and minutes) will be available on the Joint Committee webpage at: ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee.
- **If you have concerns** related to accessing/participating in this or future public workshops, please contact City staff at 603-352-5440 or via email at: communitydevelopment@ci.keene.nh.us
- **Written comments** on the ordinances may be emailed in advance of the meeting to: communitydevelopment@ci.keene.nh.us or mailed to: City Hall, 3 Washington St, 4th Floor, Keene, NH 03431.
- **Cheshire TV** will broadcast this meeting live on Channel 1302.

**In Emergency Order #12, issued by the Governor pursuant to Executive Order #2020-04, which declared a COVID-19 State of Emergency, the requirement that a quorum of a public body be physically present at the meeting location under RSA 91-A:2, III(b), and the requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the meeting location under RSA 91-A:2, III(c), have been waived. Public participation may be provided through telephonic and other electronic means.*

CITY OF KEENE
NEW HAMPSHIRE

JOINT PLANNING BOARD/ PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE MEETING MINUTES

Monday, December 14, 2020 6:30 PM Remote Meeting via Zoom

Planning Board Members Present
Douglas Barrett, Chair
Christopher Cusack, Vice-Chair
Mayor George Hansel
Councilor Michael Remy
David Orgaz
Michael Burke
Pamela Russell Slack
Andrew Weglinski

Planning, Licenses and Development Committee Members Present
Councilor Kate Bosley, Chair
Councilor Mitch Greenwald
Councilor Philip Jones
Councilor Gladys Johnsen
Councilor Catherine Workman

Planning Board Members Not Present
Tammy Adams, Alternate
Gail Somers
Emily Lavigne Bernier, Alternate

Staff Present
Rhett Lamb, Community Development Director
Mari Bruner, Planner
Tara Kessler, Senior Planner

1. Statement of Authority to Hold Remote Meeting

Chair Barrett began the meeting by reading the following statement with respect to holding remote meetings: *"In Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04, certain provisions of RSA 91-A regulating the operation of public body meetings have been waived during the declared COVID-19 State of Emergency.*

Specifically:
• *The requirement that a quorum of a public body be physically present except in an emergency requiring immediate action under RSA 91-A:2, III(b);*
• *The requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the location specified in the meeting notice as the location of the meeting under RSA 91-A:2, III(c).*
• *Provided, however that the public body must:*

- *Provide access to the meeting by telephone, with additional access possibilities by video or other electronic means;*
- *Provide public notice of the necessary information for accessing the meeting;*
- *Provide a mechanism for the public to alert the public body during the meeting if there are problems with access; and*
- *Adjourn the meeting if the public is unable to access the meeting.*

• *All votes are to be taken by roll call.*
• *All committee participants shall identify the location from where they are participating and who is present in the room with them.*

Chair Barrett said the public may access the meeting online by visiting the Zoom website, www.zoom.us/join, and entering the Meeting ID 893 8296 4232 or call (888) 475-4499, Enter Meeting ID: 893 8296 4232. View live on Cheshire TV channel 1302. For issues with access during the meeting call: (603) 209-4697. The agenda and supporting materials are available at: ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee.
Members of the public shall not be permitted to speak nor shall comments be taken until the Chair asks for public comment.

2. Call to Order & Roll Call
Chair Barrett called the meeting to order at 6:30 pm and a roll call was taken.

3. Minutes of November 9, 2020 & November 16, 2020
Chair Barrett offered the following correction to the November 16, 2020 minutes - page 19 should be Chair Barrett not Chair Bosley.
A motion was made by Councilor Jones to approve the November 9, 2020 and November 16, 2020 meeting minutes as amended. The motion was unanimously approved by roll call vote.

4. Adoption of 2021 Meeting Schedule
A motion was made by Councilor Mitch Greenwald to approve the 2021 meeting schedule. The motion was seconded Pamela Russell Slack and was unanimously approved by roll call vote.

5. Continued Public Workshop Ordinances O-2020-10 & O-2020-11 – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene's downtown area (Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District. This proposed map change would affect 316 parcels, encompassing a total land area of approximately 220-acres, and would result in the removal of the Central Business and Central Business Limited Zoning Districts. The full text of the ordinances and the proposed Land Development Code is available at www.keenebuildingbetter.com/ldc, or by appointment at City Hall. To make an appointment, email communitydevelopment@ci.keene.nh.us or call (603) 352-5440.

Senior Planner Tara Kessler addressed the Committee first. Ms. Kessler stated this is the third meeting of the public workshop for these Ordinances. She then went over the schedule of upcoming meetings of this public workshop phase. Ms. Kessler added this session was intended to be an in person session but due to the trends with COVID19 the City's Emergency Management Director and Health Official strongly recommended that this session be in remote format.

Ms. Kessler then reminded the public of the multiple ways that they can participate in, view, or provide comment on these ordinances and meetings.

Ms. Kessler reviewed the articles in the proposed land development code that would be reviewed at tonight's meeting. She stated that before staff begin a presentation on this topics, they felt it was important to reserve time for the Joint Committee members to debrief and discuss any

questions or comments they have on the materials covered to date. She noted at the last meeting there were a number of comments from the public regarding congregate living and social service uses and there was a question raised as to whether the proposed Ordinances would be in compliance with the federal Fair Housing Act. While staff considered the requirements of this Act in their development of the proposed ordinances, they have reached out to the consulting firm Camiros, who has experience working with cities on congregative living and social service ordinances, for their professional opinion on how the proposed Ordinances align with their understanding of the Fair Housing Act and their knowledge of how other communities have implemented regulations around congregate living. Staff is also consulting with the city attorney and will follow up with the Joint Committee on this item in January.

Another item addressed at the last meeting, which was raised by Councilor Clark is on solar energy systems. At the present time medium and large solar systems are proposed to be permitted in some zoning districts by a Conditional Use Permit. Staff would like to propose an edit to permit solar energy systems in industrial districts by right.

Ms. Kessler noted that staff would be looking for direction from the Joint Committee members on proposed edits. The public workshop phase is the time for the Joint Committee to make amendments to the proposed Ordinances.

Councilor Johnsen asked about the changes that the public had requested regarding the location of homeless shelters and asked for an update. Ms. Kessler stated this is an item staff will be looking to the Joint Committee for edits or changes.

Councilor Jones stated he was looking to discuss concerns raised by David Curran as to the buffers not being large for transition districts. Ms. Kessler noted that she thinks Mr. Curran was raising concern for areas where there is no transition district between the commercial districts and residential zoning districts. A specific geographic area where there is a gap in this transition is on Water Street where the proposed Downtown Growth District would be directly adjacent to the Residential Preservation District. Ms. Kessler stated staff is looking into this item but does not have a recommendation today.

Chair Bosley stated the suggestion by Councilor Clark regarding solar systems is important and felt it should be amended.

Councilor Johnsen addressed the homeless issue and stated she understands there is a lot of anger with respect to locating homeless shelters in certain neighborhoods and felt it is an important issue for her.

Councilor Workman stated she understands everyone one in every ward is not going to be happy with the changes being proposed and felt staff has done a good job differentiating between a large group home and a small group home. She felt a message needs to be sent to the community at large that everyone needs a place to live in the community, regardless of whether they are in treatment or out of treatment and felt she would rather see as people in need of treatment getting help.

Mr. Kopczynski stated staff and the consultants have been very diligent in trying to satisfy the community needs from the standpoint of neighborhood desires and the need in the community. He noted the provision of these uses is an opportunity that does not currently exist in this community and how the intensity of these uses can have an impact on certain areas.

Chair Barrett agreed this was a difficult task and not everyone is going to be happy with the decisions this committee makes. He referred to the sober houses in his neighborhood and feels that staff has done a great job balancing the various community concerns.

Ms. Russell Slack stated she lives next to three sober homes and has lived next to them most of her life and agreed there can be issues but they can be easily resolved. She felt having shelters in specific areas will prevent people having to go before the Zoning Board for variances.

Ms. Kessler reviewed Article 19 - Subdivision Regulations of the proposed Land Development Code._Ms. Kessler explained a subdivision is when a property is divided into two or more parcels. She added a subdivision can also happen if there is a merger of two or more parcels of common ownership into one parcel or to shift boundary lines. Ms. Kessler noted that all regulations related to subdivisions, including boundary line adjustment and voluntary mergers have now been included into one place in the proposed Land Development Code. Today these regulations are included in the Planning Board Site Plan and Subdivision Regulations, and the Planning Board Development Standards, and regulations related to Conservation Residential Developments are in the Zoning Regulations. The standards being proposed that are specific to the review of subdivision applications are primarily related to consideration of important natural resources/features of a site (e.g. wetlands, steep slopes), conformance with zoning regulations, and whether the proposed lots would continue to be viable for development.

This chapter also includes standards related to conservation residential development subdivisions (these standards are in the Zoning Regulations and the Planning Board's Regulations). Ms. Kessler explained conservation residential development (CRD) is a type of residential subdivision in which 50-60% of the original parcel remains in permanently protected open space in exchange for greater flexibility in minimum lot sizes, setbacks, and placement of lots. It is permitted in the low density, low density 1 and rural districts. CRD is required for subdivisions with three or more lots and a road; however, there is the option for a waiver from requirement, which will still be retained. Staff has attempted to streamline the application process by reducing the number of steps required of the applicant for demonstrating the proposed subdivision.

Staff has also proposed changes to dimensional requirements and density factors. Today a density factor calculation is required to understand how many dwelling units can be created in this type of subdivision. The applicant must divide the total acreage of the parcel to be subdivided by the density factor to identify how many units can be established. The proposal is to change the density factor from 5 acres per dwelling unit if 50% of the land area is permanently preserved as open space, to 4 acres per dwelling unit; and, from 4 acres per dwelling unit if 60% of the land area is conserved as open space to 3 acres per dwelling unit. There are also changes proposed to setbacks and minimum lot sizes. Ms. Kessler referred to a chart which illustrates these changes and noted the chart distinguishes between tract and lot and explained a tract is the existing parcel (before the subdivision). Lot is the parcels that would be create as a result of the subdivision.

Ms. Kessler noted everything highlighted in yellow on this chart is what is being proposed to change the rest is what exists right now. Staff is proposed a change to the required perimeter building setback, which is 100-feet in any zoning district from a road and 50-feet from tract boundaries. Staff propose to retrain this requirement for the rural district, where there is more land area, and to reduce this requirement in the Low Density and Low Density 1 districts. Staff is proposing 100-feet be reduced to 30-feet and 50-feet be reduced to 20-feet.

In the current regulations, the minimum lot area required in the Low Density 1 district is 16,000 square feet and in Low Density is 8,000 square feet. The proposal is to reduce the minimum lot size in Low Density 1, if city water is available, to 8,000 square feet and 6,000 square feet for Low Density.

Ms. Kessler went on to review Article 20 – Site Development Standards of the proposed Land Development Code. The Planning Board currently has 19 site development standards and this is what the Planning Board or staff looks at when reviewing site plan applications. Site plan review is required by either the Planning Board or the Community Development Department for any proposed development or redevelopment for commercial or multi-family uses. Single-family and Two-family properties/uses are exempt from site plan review.

Ms. Kessler reviewed the general changes being proposed to these development standards. She noted that staff have proposed to make changes to some of the standards that have presented issues in the past due to lack of specificity or clarity (e.g. screening). Changes are proposed to the landscaping, lighting, screening, noise and architecture and visual appearance standards, which will be reviewed in more detail. Some of the standards, which are similar in nature, are proposed to be merged into one standard. The proposed Code merges Traffic & Comprehensive Access Management into one standard; and Surface Water and Wetlands into one standard. The following standards were removed: floodplain (if there are regulations that apply, they will be adhered to, but there won't be a separate standard); air quality (there are restrictions as to how much can be applied locally, there are state standards for this item); and stump dump standards (will be reviewed if there are concerns but this standard is rarely applicable).

Ms. Kessler began a review of the proposed changes to standards.

With respect to landscaping, the proposed new standards include:

- Prohibiting invasive species (today it is just a guideline)
- Requiring that plant materials be hardy to regional climate conditions
- Providing clarity that all landscaping approved as part of a site plan shall be considered as elements of the site in the same manner as parking, building materials, and other site details.
- Parking lot landscaping/screening has been moved to the Zoning Regulations Parking Chapter.
- There is also language being proposed to address allowance for administrative approval for minor revisions to landscaping changes (today this is done on an ad hoc basis).

With respect to the screening standard, Ms. Kessler noted that changes were made to provide more specificity about screening requirements. She noted that the current standards are either very specific about certain screening requirements or are fairly open ended. Staff have proposed standards that are clearer as to what needs to be screened and how.

Ms. Kessler reviewed the current screening standards. She then when on to discuss the proposed changes. She noted that there are more specific screening standards proposed for service areas, drive-through uses, and mechanical equipment.

With respect to service areas, which would include waste storage/collection areas, the following standards are proposed:

- Must be located to the side or rear of buildings
- Must be screened from view from adjacent property or rights of way
- Dumpsters shall be fully screened by a solid enclosure (shall be at least 6-ft high or equal to height of container if higher than 6-ft)
- Screening must be compatible with principal building's material, color, texture

With respect to drive-through uses, the following standards are proposed:

- Requirement that drive-through windows and lanes shall be to the side and rear of building
- Shall be screened from adjacent rights of way, existing residential property, or residential zoning districts shall be compact, evergreen hedge not less than 4-ft at maturity (at a minimum) or a solid fence of wood or masonry at least 6-ft high (she noted that this is a current standard).

Ms. Kessler noted the Planning Board has a waiver process for these standards, which an applicant can seek if they cannot meet the above screening requirements.

Mr. Weglinski asked how side and rear of building is defined. Ms. Kessler noted that is a good question, as the language is not clear enough. Staff will revisit this language to make it more precise. The intent was to prevent the vehicles from queueing in front of the front of the building, which is typically the façade that faces the street.

With respect to mechanical equipment, standards are organized by roof-mounted, ground-mounted and wall-mounted, and the following changes are proposed:

- Roof-mounted Equipment:
  -Shall be set back from edge of roof at least 10-ft and screened from ground level view
  -New buildings shall provide a parapet wall or other architectural element to screen from view
  -For existing buildings with no or low parapet walls, equipment shall be screened on all sides by an opaque screen compatible with the principal building in terms of texture, materials and color.

- Wall-mounted Equipment:
  -If mounted on a surface visible to the public right of way shall be fully screened by landscaping or an opaque screen or covering compatible with the principal building.
  -New mechanical supply lines, pipes and ductwork shall be placed in inconspicuous locations or concealed with architectural elements or painted to blend in with wall surface.

- Ground-Mounted Equipment:
  -If visible from the public right of way or adjacent property shall be fully screened
  -Screening shall be landscaping or opaque screen compatible with the building and as high as the highest point of the equipment

Chair Barrett asked about standards for screening solar systems. Ms. Kessler stated staff will discuss this issue and come back to the Board regarding this item. Mr. Lamb added that it is important to note these standards do not apply for single and two family dwellings; it is mostly a commercial development. Mr. Weglinski noted there was an item that came before the Historic

District Commission regarding wall mounted equipment that was closer to the ground and felt clarification was required for screening with respect to height.

Ms. Kessler moved on to discuss changes proposed to the lighting development standard. At the present time flood lighting is prohibited unless the applicant can demonstrate to the Planning Board it will not have issue for abutters. Staff are proposing to grant the Community Development Director with the authority to approve whether floodlighting would be permitted. She noted that a minor change is the requirement that the color-corrected temperature of lighting shall not exceed 3,500 Kelvins, this is to address the whiteness of light emitted by LED lights. Another minor change is the proposal is to allow for security lighting to be on for not more than 1-hour before or after the activity occurs (currently it is only allowed for 1-hr after the activity ceases). Changes are proposed to the parking lot lighting levels. Rather than have a range of acceptable light levels for parking lots based on activity level, staff are proposing to have the following standards: Average illumination shall not exceed 3.5 foot candles and the Uniformity ratio shall not exceed 5:1 (currently 4:1). With respect to Gas Station Lighting, staff are proposing to change the allowed light levels. Currently there is a maximum illuminance permitted under canopies of 5.5 foot candles – staff did a field review of existing gas stations in Keene and found that the light levels under these canopies varied considerably and were between 8 and 50 fc. As a result staff is suggesting that the average illuminance under canopy lighting (including vehicle fueling station islands) may not exceed 12.5 foot candles. Ms. Kessler that the walkway lighting standards today are fairly restrictive. Today the standard is that the average illuminance cannot exceed 0.5 foot candles and the maximum lighting level is 2 foot candles. Staff is proposing average illuminance on a surface shall not be less than 0.5 foot candles and maximum would be 5 foot candles

Chair Barrett referred to the gas station canopy lighting and noted it has a significant increase and asked how staff came to that conclusion. Ms. Kessler stated this standard was based on a review conducted by staff of model guidelines published by the Illumination Engineers Society.

Ms. Kessler reviewed the proposed changes to the noise development standard. She noted that the current standard is that "All development shall comply with the City's Noise Ordinance" which is vague and noted it is difficult to apply this standard to development review. As a result, the proposed standard references noise limits proposed in Anti-Nuisance standards in Zoning Regulations (reviewed at November 16 meeting). The current noise standard is a maximum of 70 dB(A) at the property line for property in all districts. What was reviewed at the November 16 is for residential districts the maximum noise level is 60 dB(A) at the property lines during daytime and 50 dB(A) at night. All other districts would be 70 dB(A) at the property lines during daytime and 55 dB(A) at night. She noted that the standard also describes a process for an applicant to demonstrate compliance with this standard to the Planning Board.

Ms. Kessler went on to review the proposed changes to the architecture and visual appearance standards. She noted that early on in this process there was an interest in making this standard more objective and predictable. There was an effort to try to build in more predictable standards for visual appearance of buildings into the proposed form based zoning; however, it became clear from the stakeholders engaged that a checklist approach may not be appropriate for Keene. There was concern that making the standards too objective would either make development look too uniform, or be too restrictive, or potentially lead to haphazard design. In response to this concern, staff revisited the existing standards and proposed additional standards to provide greater clarity and objectivity while providing room for the Board interpretation. She reviewed

this proposed standards, which would be in addition to the existing standards for architecture and visual appearance.

- New massing/scale standards:
  -For buildings of 150-ft in length or more, facades shall be divided into "modules" that are no wider than 50-feet expressed through significant architectural changes (e.g. change in materials, pattern elements, building setback).
  -Commercial storefronts to include traditional pedestrian-oriented elements (e.g. display windows, transoms, pilasters, etc.)
  -Additions to existing structures shall be compatible in size and scale with the principal building

- New visual interest standards
  -Facades shall express a traditional visual distinction between the ground floor and upper stories through architectural features or detailing, change in materials, or a change in pattern elements such as fenestration.
  -Buildings shall be designed with consistent building materials and treatments that wrap around all facades visible from the public right of way.
  -If parapet walls are used, they shall feature 3D cornice treatments or other shadow creating details along their tops.
  -Modifications and additions to existing structures shall be harmonious with the character of the existing structure.

- New site design and relationship to surrounding community standards:
  -All principal buildings located on lot shall be oriented toward a public right of way, unless it is determined that the primary façade cannot face the street due to site constraints, in which case, the elevation facing the street shall be designed with form, composition and details consistent with and appropriate to the primary façade.
  -A cohesive visual character shall be maintained within a development through the use of coordinated hardscape (e.g. paving materials, lighting, outdoor furniture, etc.) and landscape treatments.

Councilor Jones referred to noise – at one time decibel levels were used but there was an issue with a residence on Colorado Street where the downbeat of a Night Club located nearby was impacting this residence by causing vibrations/rattling of windows. The police could not enforce the standard because the decibel limits were not exceeded and the City ultimately changed the standard to remove reference to noise limits. Councilor Jones stated he did not recall what exactly the change was. Chair Barrett noted the Anti-Nuisance Standard now includes a vibration component and felt that would cover what Councilor Jones mentioned. Mr. Kopczynski felt after this code is adopted the noise ordinance would need to be revisited as the central business district will no longer exist. It will also need to be reviewed from the standpoint of policing.

Ms. Kessler moved on to review proposed changes related to the review of site plan applications. She indicated that the proposed Code establishes a Minor Project Review Committee, as allowed by NH RSA 674:43,III, to review minor site plan review applications. The Code also proposes revisions to the thresholds for the types of development that would require either Planning Board review (Major Projects), Minor Project Review Committee review (Minor Projects) or administrative review by the Community Development Director.

She displayed two tables, showing the current and proposed thresholds for site plan reviews.

Ms. Kessler went on to say at the present time, the state statute only gives authority to the Planning Board to act on site plans or a technical committee designated by the Planning Board to act on minor site plan applications. Today a building that is greater than 1,000 square feet has to be reviewed by the Planning Board. The other thresholds to go before the Planning Board is if the proposed use/development would result in an increase of 100 new vehicle trips per day or 50 vehicle trips during the peak hour; if there is a change of use; if there is a change in site configuration that increases the potential for adverse impacts to drainage systems, surface waters, groundwater, floodplains, pedestrian/ vehicular safety; or if there are modifications proposed to the Site or Building (e.g. lighting, landscaping, driveways, visual appearance, etc.) that the Community Development Director determines warrants full Planning Board review.

The proposed changes to these thresholds are described below.

- New Buildings:
  - New buildings proposed to be over 5,000 square feet in gross floor area would need to go before the Planning Board as a Major Site Plan.
  - Proposed buildings between 1,000 and 5,000 square feet in gross floor area would be reviewed by the Minor Project Review Committee as a Minor Site Plan.
  - Proposed buildings less than 1,000 square feet in gross floor area would be reviewed administratively for conformance with the Site Development Standards and other land development regulations prior to the issuance of a building permit.

- Additions:
  - For additions greater than 15% of the gross floor area of the principal building would need to go before the Planning Board as a Major Site Plan.
  - Additions between 10% and 15% of the gross floor area of the principal building would go before the Minor Project Review Committee as a Minor Site Plan.
  - Anything less than that can be reviewed administratively.

- Vehicle Trips:
  - An increase of greater than 100 vehicle trips per day or 50 vehicle trips in the peak hour would need to go before the Planning Board as a Major Site Plan.

- Impervious Surface
  - Proposals that involve more than 10,000 square feet of contiguous impervious surface would need to go before the Planning Board as a Major Site Plan.
  - Anything less would be at the discretion of the community development director as to whether it requires review as a Minor Site Plan or Administrative Review.

- Land Disturbance:
  - An acre or more of land disturbance would need to go before the Planning Board as a Major Site Plan.
  - Anything less would be at the discretion of the community development director as to whether it requires review as a Minor Site Plan or Administrative Review.

- Change of Use:
  - Language is proposed to allow for the discretion of the community development director as to what entity would review the proposed change, based on the impact the change would have on the site or the exterior of the neighborhood.

The same thresholds as Change of Use would be true for modifications to the site.

Ms. Kessler went on to review the role of the proposed Minor Project Review Committee. She noted that it would be composed of City staff (e.g. Community Development Director, Zoning Administrator, City Engineer, etc.). The Planning Board would designate authority to this Committee to review and decide on Minor Site Plans. Public hearings will still be required, and legal notice and abutter notice would be required as well. The benefit of this Committee is that it would provide a faster timeline for review than the Planning Board review process. Applications would be due 9 business days prior to Committee meeting versus the 26 business day deadline for Major Projects to the Planning Board. This committee would meet twice a month versus the Planning Board which meets once a month. The Committee would be required to decide on application within 60-days, and there is an appeal timeframe of 20-calendar days after decision is issued. Appeals would be to the Planning Board. She noted that this Committee would not be permitted to act on site plan applications where a waiver is requested from the standards or a conditional use permit is required.

Ms. Kessler explained that for projects that would require Administrative Review, the Community Development Director would review work that is being proposed and would have to decide within 14 days of submission of a complete application whether the development standards are being met prior to the issuance of a building permit. Formal site plans would not be required for this type of review and the submission requirements be less onerous.

Councilor Greenwald asked whether a member of the public will be included in the Minor Project Review Committee to provide some balance. Mr. Kopczynski stated the reason staff is involved with the committee is to make sure technical items are considered such as drainage, fire connections/service, zoning, etc. Ms. Kessler responded to Councilor Greenwald that the statute calls for qualified administrative staff only to serve on this committee (such as staff from Public Works, Engineering, Community Development, Planning). Mayor Hansel felt this is the most important item for the land use code update. He felt shortening the time for approval was critical for some businesses, especially coming out of the pandemic. He hoped city staff will push through these applications whenever possible. The Mayor asked if an applicant was requesting a waiver from a lighting study, whether this will move onto Planning Board review. He felt this was a common waiver request. Ms. Kessler noted that requests for exemptions from providing application materials like a lighting study could be reviewed and granted by the Minor Project Review Committee. However, she noted that waivers from the site development standards would need to be approved by the Planning Board as staff felt it was similar to the variance process. However, if the city sees a significant amount of waivers are being submitted from similar standards and are being granted by the Board, then this standard may need to be revisited. Mayor Hansel asked whether the Minor Project Review Committee could move an item up to the Planning Board for review. Ms. Kessler answered in the affirmative and added the applicant would also have the choice to request to go before the Planning Board.

Vice-Chair Cusack asked whether something like a boundary line adjustment could go before the Minor Project Review Committee, which he felt was something that could be easily done by this committee. Ms. Kessler stated this is something she has thought about and will investigate further. The statute currently requires that the Planning Board act on Boundary Line Adjustments; however, she has not confirmed whether they can delegate this authority to the Minor Project Review Committee.

Mr. Lamb added this is the biggest item of process change in the proposed ordinances and is a way to meet an important goal but lessening the time applications are approved while also making sure the standards are met.

Ms. Kessler reviewed Article 21 - Historic District Regulations of the proposed land development code. She noted that not many changes are being proposed to these regulations and that City staff have consulted the Historic District Commission on the changes that are being proposed. She noted that about 190 properties fall within Keene's Downtown Historic District and displayed a map of the district boundary. She explained that currently these regulations are located in three areas - Chapter 18 of City Code, the Zoning Regulations in Chapter 102 of City Code, and the Historic District Regulations. This Code proposes to consolidate these standards in one place, and to remove the reference to the Historic District from the Zoning Ordinance. She explained that the bulk of changes proposed is the reorganization of the standards and edits to the make the language easier to read and more straightforward. She noted that the most significant change is to exempt buildings younger than 50 years from the Historic District Regulations. These properties will still be subject site plan review and zoning. There is also an effort to increase the types of works that can be reviewed administratively.

Councilor Greenwald did not think there were buildings in the downtown that were 50 years old. Ms. Kessler noted this was for buildings that are 50 years or younger and noted some of the newer development in the Downtown, including the Coop Buildings and the Moco Arts building. Once a building becomes 50 years old, it will become subject to these regulations. Planner Mari Brunner, stated the when the Historic District was originally established it was centered around Main Street and in 2011 there was an extension of the district to Gilbo Avenue and there are buildings on Gilbo Avenue nearing the 50 year mark but are not yet that old.

Ms. Kessler reviewed Article 22 – Public Infrastructure Standards. She noted that the standards included in this article currently exist under Chapter 70 of the Keene City Code of Ordinances. This section relates to standards for the development of new infrastructure as it relates to the city's public right of way. It addresses standards for new roads, utility service connections, street access (i.e. driveway connection). The changes being proposed to these regulations are to streamline language to be easier to read and to update definitions of certain terms. More specific changes include removing technical specifications (e.g. size and types of materials) have been removed to give both staff and applicants more flexibility with respect to the construction of new roads/public infrastructure. These specifications would be maintained in Technical Standards published by the Public Works Department. This article proposes to include standards related to utility connection permit, including the new requirement that a connection permit be required for water service and stormwater infrastructure connecting into the City system. She noted that the most significant change is the proposed requirement that "any person who proposes to develop a new public street or to replace 500-ft or more of existing City-owned utilities shall also install telecommunications infrastructure, which shall become the property of the City" This infrastructure would be limited to conduit, vaults, and service conduit to vaults. This requirement is consistent with recommendations in the 2017 Economic Development Plan for the City to adopt a dig once policy.

This concluded Ms. Kessler's presentation.

Maurice Rosenthal of North Hampton, MA addressed the committee first. Mr. Rosenthal asked for clarification about non-conforming properties not being brought to a conforming use based on this new zoning code, which was addressed at a previous meeting. Ms. Kessler stated the

rationale for removing this is because there is a variance process available for such an instance, and it did not seem to be fair to allow for a less stringent process for existing nonconforming uses to switch to another use not permitted in the district than others seeking to establish a nonconforming use in an area.

Mr. Thomas Lacey of 241 Daniels Hill Road was the next speaker. Mr. Lacey stated the surface water ordinance – Article 11 had problems when it was first introduced in 2012 and continues have issues. It applies to random property owners and places a higher burden on those with the lowest risk. It is advertised as an overlay district but felt it is not based on all the exceptions it provides. Mr. Lacey noted the discussion in 2012 should have been about width of the buffer in the rural zone versus areas where no buffers were required along brooks and streams in the Keene valley. He also noted the maps provided to the public did not resemble how surface waters actually worked. Mr. Lacey offered a solution to align Keene's definitions to state definitions and this can be done by removing Item D – Tax Ditches, this will have no effect on man-made ditches. This will move streams that are actually streams into the ordinance which is what was promised originally. He stated he would also like to see the same buffer width of 30 feet for all districts and could not see why the rural zone would have a larger buffer especially because this is an area that has the least risk for pollution and high volume of runoff.

Mr. Lacey recalled his time on the Conservation Commission in 2016 when they appeared before the Joint Committee and raised the issues with the ordinance and it was around the tax ditches – and how Beaver Brook has now become man made because it has been dredged. Mr. Lacey felt it was time to fix the disparities in this ordinance.

Mr. Lamb in response stated a presentation on this item happened two meetings ago. Ms. Kessler added staff has been carrying the recommendation of the subcommittee of the Conservation Committee from 2016 forward. At the September meeting staff did note, after consultation with the Conservation Commission and direction from this committee it was agreed to keep the ordinance as is, especially as it relates to the exemption of tax ditches.

Mr. Lacey stated what he took away from the Conservation Commission minutes is that they rendered no opinion on this topic. He added the tax ditch issue is an item the Planning Department has championed and disagreed the Conservation Commission was in favor as no vote was taken. Mr. Lamb who is the staff liaison for the Conservation Commission stated the item was presented to the Commission and they agreed.

Mayor Hansel stated he too was a member of the Conservation Commission in 2016 and recognize the problems Mr. Lacey is bringing up. He noted the land use code is a big document and many changes are being made. He added tax ditch is an issue that has been on his radar but wasn't sure it can be reviewed as part of this process as it takes a lot of review. However, noted he wanted to acknowledge Mr. Lacey's concerns as they are valid.

Ms. Jen Knight of Prospect Street addressed the committee next. Ms. Knight addressed the issue with respect to Group Homes. Ms. Knight asked whether the city will be looking at services that are already established in the community before making a decision as to whether or not a group home will go into that particular neighborhood. She explained two blocks North of Court Street there is the Harmony Lane apartments, there is also the low income housing at the end of North Street, sober living on 361 Court Street and there have concerns raised by the neighbors about the home across from 361 Court Street regarding the number of police calls and the number of

people living there. At the end of Prospect Street near Harmony Lane a home was turned into a Habitat for Humanity Home.

Ms. Knight noted they keep losing more and more of their open spaces, the area is getting crowded, and traffic is increasing. She asked whether there would be any sort of process that would happen for an entity like a group home to be located in a neighborhood such as this. Ms. Kessler responded by saying there are three categories of group homes being proposed. Today the definition of family is four or fewer unrelated people and a family under current zoning can occupy a single family home. This would be the case for an established group home or a new one and they will be allowed wherever a single family home is permitted and this is consistent with the Fair Housing Act. There are two types of groups being proposed for this code – small (maxed at 8 unrelated persons) and large (maxed at 16 unrelated persons). Today there is no cap on the number of people who can live in a group home and it is permitted in any zoning district except in Residential Preservation either by right or by special exception.

Ms. Kessler stated concerns from this neighborhood, which is in the Medium Density were heard. Staff is proposing that group homes in this district would be permitted by Conditional Use Permit for up to eight people. She noted there will be a review process under the conditional permit process and the review criteria will look at things like whether this use will be harmonious with surrounding neighborhood, whether outdoor activity will be properly screened, no excessive burden on public utilities, no increase to traffic. The ordinance also indicates there will only be one group home permitted per lot. Ms. Kessler added separation distances is not something that has been addressed. Ms. Knight asked the committee to consider this issue, she felt their neighborhood is already bearing the brunt for these types of uses. Chair Barrett asked for clarification on separation distances raised by Ms. Knight. He noted this is something that has been addressed in other districts for other uses. Ms. Kessler stated staff did look at separation distances as a way to mitigate density impact, but the proposal to place caps on the number of unrelated individuals and limiting the number of homes per lot is a way staff addressed density for other uses like Homeless Shelter.

Councilor Johnsen stated she was at one of the meetings Ms. Knight is referring to and stated she shares the concerns raised by her based on some of the issues the Councilor observed. Ms. Knight asked for clarification on the number of parking spaces for instance for a group home consisting of 8 individuals. Ms. Kessler stated the standard would be one parking space per bed.

This concluded the public comment.

A motion was made by Councilor Kate Bosley to continue the public Workshop for Ordinances O-2020-10 & O-2020-11 to January 11, 2021. The motion was seconded by Councilor Phil Jones. Councilor Johnsen encouraged others in the neighborhood to also voice their concerns. The motion was unanimously approved by roll call vote.

Ms. Kessler recognized Chair Barrett whose term ends at the end of this year. She thanked him for his service to this Committee. She also recognized Vice-Chair Cusack and Michael Burke who will also be stepping down. She thanked them for their service as well.

Adjourn

The meeting adjourned at 9:30 pm

Respectfully submitted,

Krishni Pahl,
Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner

ARTICLE 23. FLOODPLAIN REGULATIONS

23.1 GENERAL 23-2

23.2 ADMINISTRATIVE PROVISIONS 23-3

23.3 FLOODWAY REQUIREMENTS 23-5

23.4 FLOODPLAIN REQUIREMENTS 23-7

23.5 COMPENSATORY FLOOD STORAGE 23-10

23.6 SUBSTANTIAL IMPROVEMENT &
DAMAGE.. 23-13

23.1 GENERAL

23.1.1 Authority

This Article is adopted pursuant to the authority of NH RSA 674:16, NH RSA 674:17, and NH 674:56.

23.1.2 Purpose

A. The floodplains and floodways of the City represent a substantial public interest. Collectively, they are an essential component of the City's natural resource infrastructure, and their capacity and function must be protected and, when possible, enhanced.

B. The regulations in this Article have been established to ensure that no construction takes place in high hazard floodway areas and that any development within the floodplain is done so as to preserve the full function and capacity of this essential resource system.

C. It is the specific purpose of this Article to:

1. Reduce flood hazard threats to the health, safety and general welfare of City residents.
2. Protect occupants of floodplain or floodway areas from a flood.
3. Protect the public from the burden of extraordinary financial expenditures for flood control or flood damage repair.
4. Protect and when possible enhance the capacity of the floodway and floodplain areas to absorb, transmit and store floodwaters.
5. Minimize prolonged disruption of commerce and public services.
6. Minimize damage to public facilities; utilities such as water and gas mains, electric, telephone and sewer lines; streets; and bridges located in special flood hazard areas.
7. Avoid increases in flood intensity, height, extent, or duration.
8. Ensure that those who occupy or develop in flood hazard areas recognize the risk to themselves, adjacent property owners and the general public.

23.1.3 Applicability

A. Certain areas of the City are subject to periodic flooding, causing serious damage to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the City has chosen to be a participating community in the National Flood Insurance Program (NFIP), and agrees to comply with the requirements of the National Flood Insurance Act of 1968, as amended, as detailed in this Article.

B. These Floodplain Regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Cheshire, New Hampshire", dated May 23, 2006 or as amended, together with the associated Flood Insurance Rate Maps (FIRM) dated May 23, 2006, or as amended, which are declared to be part of this Article and are hereby incorporated by reference.

C. This Article establishes a permit system and review procedure for development in a special flood hazard area of the City.

D. For the purposes of this Article, the term "new construction" means structures for which the "start of construction" commenced on or after the effective date the Floodplain Regulations were initially adopted by the City and includes any subsequent improvements to such structures.

23.2 ADMINISTRATIVE PROVISIONS

23.2.1 Floodplain Administrator

A. In accordance with NH RSA 676, the Floodplain Administrator shall enforce and administer the provisions of this Article.

B. The Building and Health Official, or their designee, is hereby appointed to administer and implement these regulations and is referred to herein as the "Floodplain Administrator."

C. The duties and responsibilities of the Floodplain Administrator shall include, but are not limited to the following.

1. Ensure that permits are obtained for proposed development in a special flood hazard area.
2. Review all permit applications for completeness and accuracy, and coordinate with the applicant for corrections or further documentation, as needed.
3. Interpret the special flood hazard area and floodway boundaries and determine whether a proposed development is located in a special flood hazard area, and if so, whether it is also located in a floodway.
4. Provide available flood zone and base flood elevation information pertinent to the proposed development.
5. Make the determination as to whether a structure will be substantially improved or has incurred substantial damage and enforce the provisions of this Article for any structure determined to be substantially improved or substantially damaged.
    a. For the purposes of this Article, "substantial damage" shall mean damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the assessed value of the structure before the damage occurred.
6. Issue or deny a permit based on review of the permit application and any required accompanying documentation.
7. Ensure prior to any alteration or relocation of a watercourse that the required submittal and notification requirements in this Article are met.
8. Review all required as-built documentation and other documentation submitted by the applicant for completeness and accuracy, and verify that all permit conditions have been completed in compliance with this Article.
9. Notify the applicant in writing of either compliance or non-compliance with the provisions of this Article.
10. Ensure the administrative and enforcement procedures detailed in NH RSA 676 are followed for any violations of this Article.
11. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the City, within 6-months after such data and information becomes available, if the analyses indicate changes in base flood elevations, special flood hazard area or floodway boundaries.
12. Maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations, including local permit documents; flood zone and base flood elevation determinations; substantial improvement and damage determinations; variance and enforcement documentation; and, as-built elevation and dry floodproofing data for structures subject to this Article.
13. Delegate duties and responsibilities set forth in this Article to qualified technical personnel, inspectors, or other community officials as needed.

23.2.2 Determination of Flood Hazard Boundaries

A. The Floodplain Administrator shall determine whether any portion of a proposed development is located in a special flood hazard area and, if so, whether it is also located in a floodway, using the effective FIRM.

1. If the development is located wholly or partially in a special flood hazard area, the Floodplain Administrator shall determine the flood zone and the applicable requirements in this Article that shall apply to the development.

B. Where it is unclear whether a site is in a special flood hazard area or in a floodway, the Floodplain Administrator may require additional information from the applicant to determine the development's location on the effective FIRM.

C. If any portion of a development including a structure and its attachments (e.g. deck posts, stairs) is located in multiple flood zones, the flood zone with the more restrictive requirements documented in this Article shall apply.

D. Where a conflict exists between the floodplain limits illustrated on the FIRM and actual natural ground elevation, the base flood elevation(s) in relation to the actual natural ground elevation shall be the governing factor in locating the regulatory floodplain limits.

E. Within a riverine special flood hazard area designated as Zone A, the Floodplain Administrator shall obtain, review, and reasonably utilize any floodway data available from federal, state, or other sources. If floodway data is available, the applicant shall meet the floodway requirements in this Article.

23.2.3 Flood Elevation Determination

The Floodplain Administrator shall determine the flood elevation for a structure as applicable for each Floodplain Development Permit application in the following flood zones.

A. Zone AE

For Zone AE, the base flood elevation is determined from the data provided in the community's Flood Insurance Survey (FIS) and accompanying FIRM.

B. Zone A

1. For Zone A with no base flood elevation shown in the Flood Insurance Survey (FIS) or on the FIRM, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source, including data submitted to the community for development proposals (e.g. subdivisions, site plan approvals).

2. Where a base flood elevation is not available or not known, the base flood elevation shall be determined to be at least 2-ft above the highest adjacent grade. For the purposes of this Article, highest adjacent grade shall mean the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure

3. For a development either greater than 50 lots or greater than 5-acres, the applicant shall develop a base flood elevation for the site and provide it to the Floodplain Administrator with their permit application.

4. If a structure is affected by multiple base flood elevations, the highest base flood elevation shall apply.

23.2.4 Floodplain Development Permit

All proposed development within a special flood hazard area shall require a floodplain development permit from the Floodplain Administrator in accordance with the application and review

procedures for floodplain development permits in **Article 25**, prior to the commencement of any development activities.

23.3 FLOODWAY REQUIREMENTS

23.3.1 General

All development, including new construction or substantial improvement, within any floodway within the City shall be discouraged and shall require a floodplain development permit from the Floodplain Administrator.

23.3.2 Floodway Defined

For the purposes of this Article, floodway is defined as the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

23.3.3 Standards for Development

A. The Floodplain Administrator shall not issue a building permit for any construction or substantial improvement within any floodway unless a floodplain development permit has been granted.

B. A floodplain development permit shall only be issued under the following conditions.

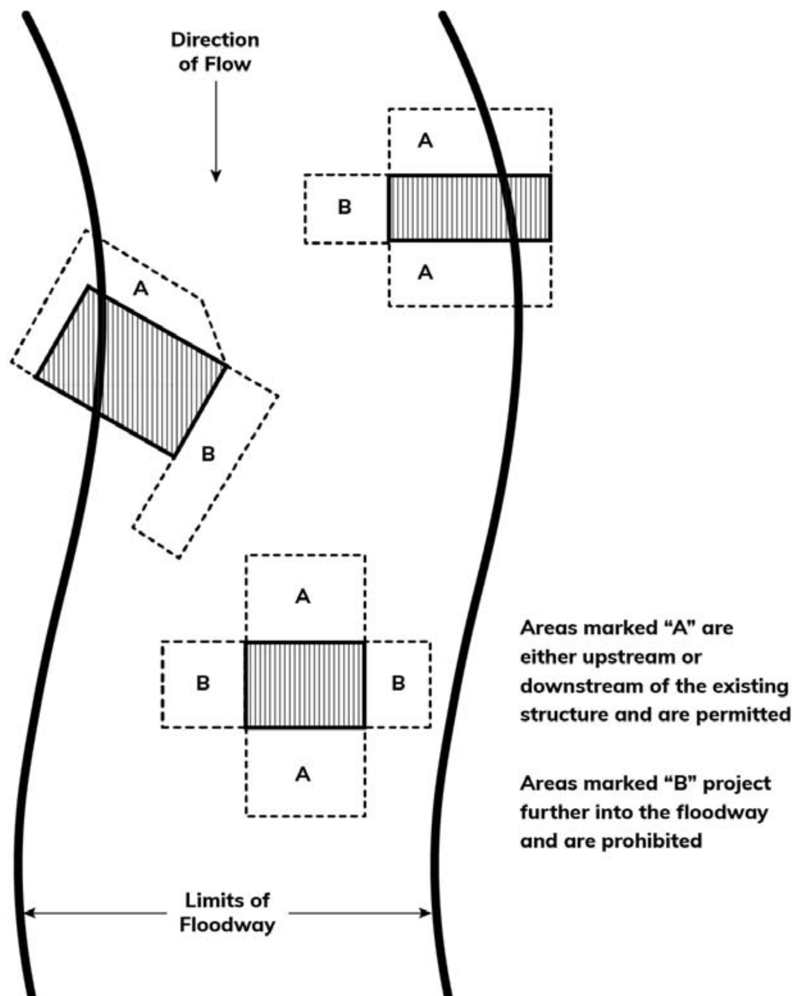
1. New freestanding buildings are not permitted in the floodway.
2. Floodproofing is not permitted in the floodway below the 100-year flood elevation.
3. Additions to existing buildings in the floodway are permitted, but only in the direction of the flow of water, either upstream or downstream. Additions are not permitted to project further into the floodway. See the illustration in **Figure 23-1** entitled "Additions to Structures in the Floodway" for examples of how additions to an existing building in the floodway may be built.
4. Plans for any additions in the floodway shall show the limits of the floodway and floodplain in the area of the proposed addition, and the plan shall be certified by a NH licensed hydraulic engineer that the addition will not change the floodway or floodplain so as to affect any other properties.
5. Any addition must have the lowest floor level, including basement, 1-ft above the 100-year flood elevation.
   a. For the purposes of this Article, lowest floor level shall mean the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a structure's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Article.
6. A certification prepared by a NH licensed engineer, along with supporting technical data and analyses, shall be submitted for any development, including fill, new construction, substantial improvements and other development or land disturbing activity that demonstrates that such development will not cause any increase in the base flood elevation at any location in the community.
   a. If the analyses demonstrate that the proposed activities will result in any increase in the base flood elevation, the applicant must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA prior to permit issuance by the Floodplain Administrator. The Floodplain Administrator reserves the right to deny a floodplain permit for the project if concerns about the development being reasonably safe from flooding remain following issuance of the CLOMR.

b. If a permit is issued and the project completed, the applicant must also obtain a Letter of Map Revision (LOMR) from FEMA. CLOMR and LOMR submittal requirements and fees shall be the responsibility of the applicant.

7. Within a riverine special flood hazard area where a base flood elevation has been determined but a floodway has not been designated, for any development, including fill, new construction, substantial improvements and other development or land disturbing-activity, the applicant shall submit certification prepared by a NH licensed engineer, along with supporting technical data and analyses, that demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood elevation more than 1-ft at any point within the community.

   a. If the analyses demonstrate that the proposed activities will result in more than a 1-ft increase in the base flood elevation, the applicant must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA prior to permit issuance by the Floodplain Administrator. The Floodplain Administrator reserves the right to deny a permit for the project if concerns about the development

Figure 23-1 Additions to Structures in the Floodway



being reasonably safe from flooding remain following issuance of the CLOMR. If a permit is issued and the project completed, the applicant must also obtain a Letter of Map Revision (LOMR) from FEMA. CLOMR and LOMR submittal requirements and fees shall be the responsibility of the applicant.

8. Applicants must provide flood storage compensation either in the floodway or floodplain using the same rules for compensation as when building in the floodplain. Flood storage compensation is allowed off-site with the property owner's permission.

23.4 FLOODPLAIN REQUIREMENTS

23.4.1 General

A. All development, including new construction or substantial improvement, within any special flood hazard area within the City shall be discouraged and shall require a floodplain development permit from the Floodplain Administrator.

1. The Floodplain Administrator shall not issue a building permit for any construction or substantial improvement within special flood hazard areas unless a floodplain permit has been granted.

2. For the purposes of this Article, special flood hazard area shall mean the land in the floodplain within the City subject to a 1% or greater chance of flooding in any given year. The area is designated as Zone A and AE on the flood insurance rate map.

B. All development located in a special flood hazard area shall be:

1. Reasonably safe from flooding.

2. Designed and constructed with methods and practices that minimize flood damage.

3. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement (including structures and above ground gas or liquid storage tanks).

4. Constructed with flood damage-resistant materials.

5. Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

6. Adequately drained to reduce exposure to flood hazards.

7. Compliant with the applicable requirements of the State Building Code and the applicable standards in this Article, whichever is more restrictive.

23.4.2 Structure Requirements

A. New construction of a residential structure, or an existing residential structure to be substantially improved or replaced, or that has incurred substantial damage, located in a special flood hazard area shall have the lowest floor elevated at least 1-ft above the base flood elevation.

B. New construction of a non-residential structure, or an existing non-residential structure to be substantially improved or replaced, or that has incurred substantial damage, located in a special flood hazard area shall:

- **1.** Have the lowest floor elevated at least 1-ft above the base flood elevation; or
- **2.** Together with attendant utility and sanitary facilities:
  - **a.** Be floodproofed at least 1-ft above the base flood elevation so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - **b.** Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - **c.** Be certified by a NH licensed professional engineer or architect that the dry flood-proofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Section. Such certification shall be provided to the Floodplain Administrator in the form of a completed and signed Floodproofing Certificate for Non-Residential Structures.

C. A fully enclosed area for new construction of a structure, or an existing structure to be substantially improved or replaced, or that has incurred substantial damage located in a special flood hazard area that is below the lowest floor of a structure, below the base flood elevation, and therefore subject to flooding, shall meet the following requirements.

- **1.** Be constructed with flood damage-resistant materials.
- **2.** Be used solely for the parking of vehicles, building access, or storage.
- **3.** Be constructed with the floor of the enclosed area at grade on at least one side of the structure.
- **4.** Be constructed with flood openings installed in the enclosure walls so that they are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a NH licensed engineer or architect or must meet or exceed the following minimum criteria.
  - **a.** A minimum of 2 flood openings on different sides of each enclosed area having a total net area of not less than 1-square inch for every square foot of enclosed area subject to flooding shall be provided.
  - **b.** The bottom of all flood openings shall be no higher on the enclosure wall than 1-ft above either the interior or exterior grade, whichever is higher.
  - **c.** Flood openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. A fully enclosed area that has a floor that is below grade on all sides, including below-grade crawlspaces and basements, is prohibited for new structures, existing structures to be substantially improved or replaced, or that have incurred substantial damage located in a special flood hazard area.

23.4.3 Detached Accessory Structures

A. In a special flood hazard area, new construction or substantial improvement of a small, detached accessory structure of 500-sf or less does not have to meet the elevation or non-residential dry floodproofing requirements as detailed in **Section 23.4.2** if the following wet floodproofing standards are met.

1. The structure has unfinished interiors and is not used for human habitation.
2. The structure is not located in the floodway.
3. The structure is not used for storage of hazardous materials.
4. The structure is wet floodproofed and designed to allow for the automatic entry and exit of flood water as detailed in **Section 23.4.2.C.4**.
5. The structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
6. When possible, the structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than the principal structure.
7. Service facilities, such as electrical, mechanical and heating equipment, shall be elevated or dry floodproofed to or above the base flood elevation.

23.4.4 Manufactured Home and Recreational Vehicle Requirements

A. A new manufactured home to be placed, or an existing manufactured home to be substantially improved or replaced, or that has incurred substantial damage, located in a special flood hazard area shall comply with the following standards.

1. Have the lowest floor elevated at least 1-ft above the base flood elevation.
2. Be on a permanent, reinforced foundation.
3. Be installed using methods and practices which minimize flood damage.
4. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
5. Comply with the requirements of **Section 23.4.2.C** in cases where fully enclosed areas are present below an elevated manufactured home, including enclosures surrounded by rigid skirting or other material attached to the frame or foundation. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have flood openings.

B. A recreational vehicle located within a special flood hazard area shall meet one of the following requirements.

1. Be on a site for fewer than 180 calendar days.
2. Be fully licensed, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions.
3. Meet the requirements for "manufactured homes" as stated in this section.

23.4.5 Water Supply & Sewage Disposal Systems

A. The following standards shall apply to all water supply, sanitary sewage, and on-site waste disposal systems located in a special flood hazard area.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
2. New and replacement sanitary sewage systems shall be designed and located to

minimize or eliminate infiltration of flood waters into the systems and discharge from the system into flood waters.

3. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

23.4.6 Watercourse Alterations

A. Prior to a floodplain development permit being issued by the Floodplain Administrator for any alteration or relocation of any riverine watercourse, the applicant shall:

1. Notify the Wetlands Bureau of the NH Department of Environmental Services and submit copies of such notification to the Floodplain Administrator, in addition to the copies required by NH RSA 482-A: 3.
2. Submit to the Floodplain Administrator certification provided by a NH licensed engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

B. Prior to a permit being issued for any alteration or relocation of any riverine watercourse, the Floodplain Administrator shall notify adjacent communities and the State NFIP Coordinating Agency, and submit copies of such notification to FEMA's Federal Insurance Administrator.

23.5 COMPENSATORY FLOOD STORAGE

No floodplain development permit shall be issued unless it can be demonstrated to the satisfaction of the Floodplain Administrator that the project will result in no reduction in the net flood storage capacity of the floodplain.

23.5.1 Location Requirements

A. Compensatory storage will be allowed where it can be demonstrated that properties adjacent to the compensatory storage site and the fill site will not experience increased flooding as a result of a 25-year storm event or as a result of drainage characteristics of the subject site(s) or adjoining properties.

1. Such storage compensation must be in close proximity to the area where flood storage capacity is being reduced and in the same hydraulic reach and the same watershed.
2. The conclusion that adjacent properties will not experience increased flooding shall be confirmed by a report stamped by a NH licensed engineer.

B. Unless otherwise approved, compensatory storage must be done on a foot-by-foot basis.

C. Compensatory storage will not be accepted at a higher elevation, but may be provided at a lower elevation if approved by the Floodplain Administrator and if the applicant provides written certification from a qualified hydrologist or NH licensed engineer that the proposed compensation will meet the objective of 100% compensatory storage as well as the other objectives and requirements of this Article.

1. The city may require the applicant to pay the city for an independent third-party review of any compensatory storage proposal that does not meet the foot-by-foot rule.

D. Any excavation required for compensatory storage shall be within the same hydraulic reach of the same water body and the same watershed. Such excavation shall have an

unrestricted hydraulic connection to the same waterway or waterbody; shall avoid disruption of wetlands whenever possible; shall comply with the City's Surface Water Protection Overlay District, in **Article 11** and obtain any required federal and state permits.

E. Compensatory storage that is located in an adjacent municipality may be permitted when any of the following is demonstrated.

1. There is an intermunicipal agreement between the City and the adjacent municipailty pursuant to which the adjacent municipality has agreed to enact and enforce an ordinance which incorporates the terms and conditions of the City's compensatory storage regulations with respect to properties within its municipal boundaries. A floodplain development permit shall be issued only upon adoption of said ordinance.
2. The owner of the property in the adjacent municipality imposes a covenant upon the land which is pledged to provide compensatory storage for the fill occurring in the City, which incorporates by reference the terms and conditions of the City's compensatory storage regulations and which restricts the use of said property in a manner which is consistent with and bound by the provisions of said ordinance, and which specifically confers upon the City the legal right and standing to enforce said restrictions. Said covenant and related documents shall be subject to the reasonable approval of the Floodplain Administrator as to form and content.
3. The adjacent municipality has acquired the necessary property rights in the land which is pledged to mitigate the filling in the City and, pursuant to which, it has imposed sufficient restrictions to ensure that any storage capacity pledged to offset the effects of filling in the City will remain viable and in place in perpetuity, and which confers upon the City the legal right and standing to enforce said restrictions. The form and content of said restrictions and the documentation in support thereof shall be subject to the reasonable approval of the Floodplain Administrator.

F. With respect to off-site compensation, whether in the City or an adjacent municipality, compensatory storage must be permanently reserved for that purpose.

23.5.2 Storage Credit

A. Extra compensatory flood storage that is created on a site through construction or restoration may, on a case-by-case basis, subject to review and approval by the Floodplain Administrator, be "banked" for future credit within the same hydraulic reach of the floodplain. It should not be assumed that "extra" storage can be used at another site, and credit will not be granted if the receiving site is not in the same hydraulic reach and in close proximity to the donor site.

1. Transfer of storage credit from one site to another shall require formal written approval by the Floodplain Administrator and must provide the permanent protection specified in this Section.

23.5.3 Hydrologic Impact

A. For any proposed compensatory storage, the applicant must demonstrate that wetlands will not be disturbed. This shall require a wetlands delineation by a NH certified wetland scientist or high intensity soil survey, unless otherwise approved.

1. If wetlands will be disturbed, the applicant must demonstrate that such disturbance is unavoidable, that the disturbance has been minimized as much as possible, and that all disturbed wetland values and functions will be fully replaced on or adjacent to the site.

B. A high intensity soil survey must be submitted as part of any proposed compensatory excavation, and a full wetlands delineation in accordance with federal standards shall be required, if

the high intensity soil survey indicates the probability of wetlands.

C. The applicant must identify the height of seasonal high groundwater as part of the design of any compensatory storage proposal. This shall normally require the installation of one or more observation wells, although the City may accept other sources of this information.

D. The bottom of a compensatory storage basin shall not come in contact with or go below the seasonal high groundwater elevation unless approved by the Floodplain Administrator.

1. Those portions of a compensatory basin which will be below seasonal high groundwater elevation may not be counted as storage, and calculations submitted by the applicant must demonstrate that this requirement has been taken into account.
2. The City may allow and in some instances will encourage compensatory basins at levels below seasonal high groundwater elevations in order to create additional wetlands. However, the applicant must demonstrate to the satisfaction of the Floodplain Administrator that compensatory basins at elevations below seasonal high groundwater levels will not result in groundwater contamination. The city may require the applicant to pay for an independent qualified third-party review to ensure that this standard is met.
3. Snow storage shall normally not be allowed in compensatory basins which come into contact with or go below seasonal high groundwater levels, and the City may require that stormwater be diverted or isolated from the bottom of such basins.
4. If wetlands are created as part of a compensatory basin, the City encourages, and for larger basins may require, that the wetland system be designed and planted so as to ensure high wetland values and functions.

E. The applicant must provide certification and documentation from a NH licensed engineer with training and experience in the field of hydrology that the project, in combination with proposed compensatory storage, will result in no net loss of flood storage capacity.

23.6 SUBSTANTIAL IMPROVEMENT & DAMAGE

23.6.1 Determination of Substantial Improvement or Damage

A. For all development in a special flood hazard area that proposes to improve an existing structure, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, repairs of damage from any origin (e.g. flood, fire, wind, snow, etc.) and any other improvement of or work on such structure including within its existing footprint, the Floodplain Administrator, in coordination with any other applicable community official(s), shall be responsible for the following.

1. Review description of proposed work submitted by the applicant to determine if the proposed work would be considered a substantial improvement. For the purposes of this Article, substantial improvement mean any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, taking place during a 5-year period, the cumulative cost of which equals or exceeds 50% of the market value of the building or structure before the improvement or repair is started.
    - **a.** If the structure has incurred substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. For the purposes of this Article, substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the assessed value of the structure before the damage occurred.
2. Use the community's current assessed value of the structure (excluding the land) to determine the market value of the structure prior to the start of the initial repair or improvement, or in the case of damage, the market value prior to the damage occurring.
    - **a.** If the applicant disagrees with the use of the community's assessed value of the structure, the applicant is responsible for engaging a licensed property appraiser to submit a comparable property appraisal for the total market value of only the structure.
3. Review cost estimates of the proposed work including donated or discounted materials and owner and volunteer labor submitted by the applicant. Determine if the costs are reasonable for the proposed work, or use other acceptable methods, such as those prepared by licensed contractors or professional construction cost estimators and from building valuation tables, to estimate the costs.
4. Determine if the proposed work constitutes substantial improvement or repair of substantial damage as defined in **Section 23.6.1.**
5. Notify the applicant in writing of the result of the substantial improvement or substantial damage determination.
    - **a.** If the determination is that the work constitutes substantial improvement or substantial damage, the written documentation shall state that full compliance with the provisions of this Article is required.

B. Repair, alteration, additions, rehabilitation, or other improvements of historic structures shall not be subject to the elevation and dry floodproofing requirements of this Article, if the proposed work will not affect the structure's designation as a historic structure. The documentation of a structure's continued eligibility and designation as a historic structure shall be required by the Floodplain Administrator in approving this exemption.

23.6.2 Documentation of Substantial Improvement

Following completion of new construction of a structure or an existing structure that was substantially improved or replaced, or that incurred substantial damage, or the placement or substantial improvement of a manufactured home, the applicant shall submit the following to the Floodplain Administrator.

A. A completed and certified copy of an Elevation Certificate that includes the as-built elevation (in relation to mean sea level) of the lowest floor of the structure and whether or not the structure has a basement.

B. If a non-residential structure includes dry floodproofing, a completed and certified copy of the Floodproofing Certificate for Non-Residential Structures that includes the as-built elevation (in relation to mean sea level) to which the structure was dry floodproofed and certification of floodproofing.

ARTICLE 24. EARTH EXCAVATION REGULATIONS

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24.1 GENERAL

24.1.1 Purpose

The purpose of these Earth Excavation Regulations is to:

1. Provide reasonable opportunities for the excavation of earth materials from land situated within the City;
2. Minimize safety hazards created by excavation activities;
3. Safeguard the public health and welfare;
4. Preserve and protect natural resources and the aesthetic quality of areas located near excavation sites;
5. Prevent land, air, and water pollution; and,
6. Promote soil stabilization.

24.1.2 Applicability

A. The regulations in this Article apply to excavation activity, excavation operations, processing activities, and all other activities associated with the commercial taking of earth, production and processing of construction aggregate, transportation of earth and site restoration. Associated excavation and processing activities also include, but are not limited to, digging, drilling, blasting, bulldozing, crushing, washing, screening, sorting, scaling, weighing, stockpiling, loading, and transporting earth.

B. These regulations apply only to portions of land located in the Industrial, Industrial Park, Corporate Park, Agriculture, and Rural zoning districts. Earth excavation activities shall not be permitted within any other zoning districts.

C. These regulations shall not include any portion of land located within, over, or covering the areas identified as “Excluded Area” on **Figure 24-1** "Earth Excavation Excluded Areas and Access Routes". These excluded areas include:

1. Lands identified as overlaying a stratified drift aquifer in the City.
2. Delineated primary and secondary wellhead protection areas in the City as well as existing and proposed maintained municipal well sites
3. Land areas identified as primary or secondary viewshed areas under the Telecommunication Overlay District **(Article 13**), unless the applicant can demonstrate to the satisfaction of the Planning Board that the proposed operation will not be visible from vistas and public rights-of-way in the City.

D. For the purposes of this Article, the term existing excavation shall mean any excavation which lawfully existed as of August 24, 1979, and from which earth material greater than 1,000 cubic yards has been removed during the 2-year period before August 24, 1979. Said excavation shall not have expanded, without a permit issued pursuant to the City’s Code of Ordinances, beyond the limits of the City in the area which, on August 24, 1979, and at all times subsequent thereto, has been contiguous to and in common ownership with the excavation site as of that date. Moreover, said excavation shall have been appraised and inventoried for property tax purposes as a part of the same tract as the excavation site as of that date. The excavation site is any area of contiguous land in common ownership upon which excavation takes place.

24.1.3 Earth Excavation Permit

A. No property owner shall permit any excavation of earth on their property without first obtaining an earth excavation permit from the Planning Board in accordance with **Section 25.19**, unless said excavation is expressly excepted from the permit requirement as set forth in **Section 24.1.4**, or in accordance with NH RSA 155-E.

24.1.4 Exceptions

In addition to the exceptions expressly set forth in NH RSA 155-E:2, the following types of excavations shall be excepted from the permit requirements of this Article. Such exceptions must still comply

Figure 24-1 Earth Excavation Excluded Areas and Access Routes

with the express operational standards of NH RSA 155-E:4-a, and the express reclamation standards of NH RSA 155-E:5.

A. Any excavation where no more than 1,000 cubic yards of earth material are removed every 2-years, and is exclusively incidental to the lawful construction or alteration of a building or structure, and parking lot or way, including a driveway on a portion of the premises where the removal of earth materials occurs. Removal of earth shall not commence until all required state and local permits have been issued by the authority having jurisdiction.

B. Excavation incidental to agricultural or silvacultural activities, normal landscaping, and minor topographical adjustments.

   1. For purposes of this Article,"normal landscaping" shall mean the planting of vegetation over a reasonably short period of time, with the sole purpose of enhancing or beautifying an existing developed condition, and not for the purpose of engaging in the commercial distribution of earth.

   2. For purposes of this Article, "minor topographical adjustments" shall mean the sculpting of topography over a reasonably short period of time to directly support the intended function or effect of the agricultural, silvacultural or landscaping activity, and not for the purpose of engaging in the commercial distribution of earth.

C. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under NH RSA 12-E.

D. Any person owning land directly abutting a site that was taken by eminent domain or by any other governmental taking, upon which

construction is taking place, may stockpile earth taken from the construction site. Said abutter may remove the earth at a later date without a permit after such person provides written notification to the Community Development Department.

24.2 PROHIBITED PROJECTS

The Planning Board shall not grant approval for an earth excavation permit in the following instances.

A. When the excavation is not permitted by these regulations, zoning or other applicable ordinance, code, regulation, or state or federal law.

B. When all necessary local, state or federal permits have not been obtained.

C. When the issuance of a permit would present a potential hazard to human health, safety and welfare, or to the environment caused by adverse impacts associated with an excavation project. Examples of such hazards include adverse impacts caused by noise, traffic, dust or fumes; adverse visual impacts; premature degradation of roadways; erosion, soil instability, and/or sedimentation; adverse impacts to surface and ground waters; loss of fragmentation of important habitat; air quality degradation; pollution of soils; or diminution of the value of abutter properties.

D. When the excavation would violate the operational standards set forth in this Article and in NH RSA 155-E:4-a; or, when the applicant cannot comply with the reclamation standards set forth in this Article and in NH RSA 155-E:5 and NH RSA 155-E:5-a.

E. When the existing visual barriers in the areas specified in NH RSA 155-E:3, III, would be removed, except to provide access to the excavation.

F. When the excavation is proposed to be within 50-ft of the boundary of a disapproving abutter, or within 10-ft of the boundary of an approving abutter, unless requested by said approving abutter from the Planning Board.

G. When the excavation would substantially damage any known aquifers or existing or potential well sites or surface water supplies, so designated by the City of Keene Water Supply Master Plan, the City of Keene GIS database, or the U.S. Geological Survey.

24.3 SITE DESIGN & OPERATIONAL STANDARDS

All excavation projects requiring an earth excavation permit shall comply with the design and operational standards set forth in this Section, and the minimum and express operational standards of NH RSA 155-E:4-a.

24.3.1 Excavation Setback

All excavations shall comply with the setback requirements set forth in this Section to provide buffers to the proposed excavation operations. Buffer areas shall be managed in accordance with the buffer management standards set forth in **Section 24.3.2.**

A. Public Rights of Way. The excavation perimeter shall be at least 200-ft from any public right-of-way, unless such excavation is a highway excavation.

B. Abutting Boundary Lines. The excavation perimeter shall be at least 300-ft from the boundary line of any abutting property not owned by the applicant.

C. Access Driveway. The access driveway shall be at least 150-ft from the boundary line of any abutting property not owned by the applicant, and at least 150-ft from any public right-of-way, except where the access driveway intersects the public right-of-way.

D. Surface Water Resources. The excavation perimeter shall be set back at least 250-ft, and the access driveway shall be set back at least 150-ft, from any surface water resource.

1. If an applicant obtains a wetlands permit from the NH Department of Environmental Services to alter, fill, or otherwise disturb wetlands on the excavation site, the area covered by the wetlands permit shall be exempt from the setback requirement.

The use of an existing driveway for the primary excavation access, when said driveway is located within the setback to surface water resources, shall be permitted as long as said driveway complies with the Access Driveway Standards in **Section 24.3.17** of this Article, and does not need to be widened or improved in such a way as to further encroach into the surface water resources setback.

24.3.2 Buffer Management Standards

Buffers around the excavation perimeter shall be sufficiently vegetated to provide full, opaque, and year round screening of the excavation perimeter from adjacent rights-of-way or abutting properties. The intent of this standard is to avoid adverse visual and noise impacts from excavation operations.

A. If buffers are not sufficiently vegetated to provide adequate visual and noise screening, the applicant shall provide adequate screening by other means, including planting additional vegetation and/or constructing a berm. To the extent that a berm is constructed, said berm shall be located within the excavation perimeter.

B. All buffer areas created by setback standards shall remain in a natural vegetated condition, except when additional plantings are approved as part of the application. No cutting or removal of living vegetation shall be permitted over the life of the excavation operation, except for the control and management of non-native and invasive species following best management practices as defined by the NH Department of Environmental Services.

C. The boundary between the excavation perimeter and the buffer areas shall be clearly marked on the site to avoid encroachment into the buffer. The boundary of approved setbacks from surface water resources within the excavation perimeter shall also be clearly marked on the site to avoid encroachment.

D. Buffer areas shall not be used for storage or disposal of stumps, boulders, earth materials, and/or other debris including, but not be limited to carelessly discarded rubbish, refuse, trash, garbage, dead animals and/or other discarded materials of every kind and description.

24.3.3 Excavation Below the Water Table

A. Excavation shall not be permitted lower than 6-ft above the seasonal high water table, as indicated by borings or test pits, without the issuance of an exception.

B. An exception to this standard shall be granted if the applicant demonstrates that such excavation will not adversely affect water quality or quantity, provided, however, that written notice of such exception shall be recorded in the County Registry of Deeds as part of the decision, and 1-copy filed with the NH Department of Environmental Services.

24.3.4 Ground Water Quantity

When the applicant proposes excavation below the seasonal high ground water table, the applicant shall complete a hydro-geologic analysis to demonstrate that the excavation activities will not affect ground water levels so as to adversely impact public or private wells, surface water levels, or wetlands. This analysis shall include pre-excavation ground water level measurements, a constant discharge pump test, and ongoing ground water level monitoring. The following procedures shall be used to perform the analysis and monitoring.

A. Water Table Elevation. The applicant shall determine the seasonal high ground water table elevations in the excavation area for the overburden and for the bedrock (if bedrock is to be excavated), as determined by digging test pits, borings and/or installing monitoring wells.

1. A sufficient number of test pits, borings and/or monitoring wells shall be analyzed to provide a reasonably accurate depiction of the ground water levels in and around the excavation area. The Community Development Director, in consultation with the Planning Board's consultant, shall make

a determination regarding the number of test pits, borings, and/or monitoring wells needed to meet this standard.

2. The applicant shall maintain a log of all test pits, borings and monitoring wells which shall include at least the location, depth, and profile description of the test pit, boring and/or well, as well as the elevation of the seasonal high ground water table at each location.

B. **Baseline Measurements.** The applicant shall identify the location of public and private wells within one half (½) mile of the proposed excavation area and the location of all surface water bodies and wetlands within 300-ft of the excavation perimeter.

1. The applicant shall notify all landowners with wells located within one half (½) mile of the excavation area of the permit requirement for ground water level monitoring. Said notifications shall be made in writing and shall indicate the procedures to be used for measuring ground water levels.

2. A baseline water depth or elevation for all public and private wells, surface water bodies and wetlands identified above shall be determined as follows.

   a. To establish a baseline water elevation in the case of drinking water wells, water depths shall be measured at least once every 8-hours for a 7-day period.

   b. To establish water elevations in surface waters, water elevations shall be measured at fixed stations at least once a day for a 7-day period.

3. The applicant shall conduct a 72-hour constant discharge pump test performed in accordance with the following procedure.

   a. A well shall be installed within the excavation area to a depth 50-ft greater than the maximum proposed depth of the excavation.

   b. A 72-hour constant discharge pump test shall be conducted at a rate great enough to draw the water elevation in the test well to a depth equal to or greater than the maximum proposed depth of the excavation. In the event that the bottom of the test well is above the ground water level existing at the time of the test, then the pump test shall not be required

   c. After the constant discharge test has been pumping for 72-hours, and while the constant discharge pump continues to operate, the applicant shall record the depth of the water in the test well and all of the wells, and surface waters identified above.

4. The applicant shall compare the baseline measurements with the post pump test measurements to determine the extent of any adverse impacts. For the purposes of this Section, adverse impacts are defined as a reduction greater than 10% of total available head in any well; and/or any draw down in the surface waters.

C. **Ongoing Monitoring.** Over the life of the excavation permit and any renewal thereof, the applicant shall monitor ground water levels and surface water levels on a monthly basis to determine the extent to which there are any adverse impacts.

1. Ground water levels shall be monitored using monitoring wells established during the permitting process.

2. Surface water levels shall be monitored at the fixed stations established for surface water bodies during the permit process.

3. Levels shall be recorded in the ground water monitoring log.

4. Adverse impacts will be said to occur when the excavation operation causes any abrupt changes in water levels. Adverse impacts will also be said to occur when the excavation operation causes the dewatering of a well located within one half (½) mile of

the excavation area.

a. The applicant shall notify the Community Development Department within 24-hours of any adverse impacts on ground water levels.

b. The applicant shall implement the approved protocol for providing replacement water supplies for water supplies that are disrupted as a result of the excavation operations.

D. Exempt Wells. If a well owner denies the applicant permission to measure water levels, then the applicant shall provide written evidence of said denial to the Community Development Department and the well shall be exempted from the monitoring program.

1. A notice regarding such exemption shall be filed in the County Registry of Deeds and shall include information regarding the right of current and future owners to be reinstated into the monitoring program, and contact information for reinstatement.

2. A landowner previously opting out of the monitoring program may become reinstated in the monitoring program upon making written request to the applicant; however, the landowner shall bear the cost of performing baseline water level measurements. The applicant's acknowledgement of the written request shall be filed in the County Registry of Deeds.

24.3.5 Ground Water Quality

When the proposed operation includes the excavation of bedrock materials, the applicant shall collect and analyze pre- and post-excavation water quality data, as set forth below, to demonstrate that groundwater quality in drinking water wells within one half (½) mile of the excavation perimeter are not adversely impacted.

A. Notification. The applicant shall notify all land-owners within one half (½) mile of the excavation perimeter of the permit requirement for pre- and post-excavation water quality monitoring. Said notifications shall be made in writing and shall indicate the procedures to be used for collecting water samples.

B. Baseline Measurement. Pre-excavation monitoring is required to provide "background" drinking water quality data. Samples shall be taken from no more than 1 drinking water well on every parcel within one half (½) mile of the excavation perimeter:

1. Background data shall consist of two rounds of drinking water samples, collected at least 14 calendar days apart, each of which shall be analyzed for the presence of Volatile Organic Compounds (VOCs) according to EPA Method 524.1, and for nitrates. The results of pre-excavation monitoring shall be provided to the Community Development Department within 45 calendar days of sample collection.

2. All results of pre-excavation monitoring shall be recorded in a ground water quality monitoring log maintained by the applicant.

C. Ongoing Monitoring. Ongoing monitoring shall be conducted semi-annually throughout the term of the permit and any renewal thereof, and for a period of not less than 2-years following the cessation of excavation activities and reclamation of the excavation site.

1. One drinking water sample shall be collected, by the applicant, from the drinking water well of each consenting property owner located within one half (½) mile of the excavation perimeter. Each sample shall be analyzed as described above for the pre-excavation samples. The results of post-excavation monitoring will be provided to the Community Development Department within 45 calendar days of sample collection.

2. All results of post-excavation monitoring shall be recorded in a ground water quality monitoring log maintained by the applicant.

D. Adverse Impact. Drinking water quality will be said to have been adversely impacted if laboratory analysis by a certified laboratory

shows that in post-excavation monitoring, the NH Ambient Groundwater Quality Standards (NH AGQS) for nitrates and VOCs are exceeded. If the required post-excavation monitoring identifies an AGQS exceedance for nitrates or VOCs that did not exist prior to the issuance of said permit, then the applicant shall take the following actions.

1. Exceedances shall be reported to the NH Department of Environmental Services and the applicant will investigate and remediate the groundwater contamination as prescribed by the NH Department of Environmental Services.
2. No further blasting using compounds identified in the water samples shall be allowed until the source of the identified contamination is found.
3. If monitoring indicates that the excavation operation caused the identified contamination, then the applicant shall modify its excavation operation to ensure that future contamination is avoided and shall obtain any and all necessary approvals for such modified operations, including but not limited to an approval for an amendment to their earth excavation permit, if necessary.

E. **Exempt Wells.** If a well owner denies the applicant permission to sample any well, then the applicant shall provide written evidence of said denial and the well shall be exempted from the monitoring program.

1. A notice regarding such exemption shall be filed in the County Registry of Deeds and shall include information regarding the right of current and future owners to be reinstated into the monitoring program, and contact information for reinstatement.
2. A landowner previously opting out of the monitoring program may become reinstated in the monitoring program upon making a written request to the applicant; however, the landowner shall bear the cost of performing baseline water quality monitoring. The applicant's acknowledgement of the written request shall be filed in the County Registry of Deeds.

24.3.6 Toxic or Acid Forming Materials

When the proposed operation includes the excavation of bedrock materials, the applicant shall demonstrate that excavation activities will not adversely impact surface or ground water quality through the unearthing of toxic or acid forming elements or compounds resident in the bedrock or soils. Such demonstration shall be made by obtaining the opinion of a NH licensed engineer or professional geologist. Excavation of bedrock shall not be permitted where bedrock contains toxic or acid forming elements or compounds.

24.3.7 Stormwater Management

Excavation activities within the excavation perimeter and the access driveway shall not cause adverse impacts from stormwater runoff and/or groundwater drainage, including erosion, sediment transport, water quality degradation, and/or increases in volume or velocity of water leaving the site.

A. Excavation operations shall not be located on slopes where adverse impacts from storm water runoff and groundwater drainage cannot be avoided or mitigated.

B. Erosion control, sedimentation control, and drainage management devices shall be designed, constructed, inspected, and maintained according to Best Management Practices as set forth in "Storm water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire," Rockingham County Conservation District, NH Department of Environmental Services, Soil Conservation Service (now the Natural Resources Conservation Service), August 1992, as amended, or as may be required by state or federal permits, which ever provides the highest level of protection.

1. Such devices shall include, but not be limited to, water detention ponds, sedimentation settlement areas, silt fences and other erosion control devices, flow dissipation measures, soil stabilization measures, water storage ponds used to support excavation operations, and/or any other measures necessary to avoid soil erosion and sedimentation of storm water or ground water discharge, and to promote soil stabilization.

C. Erosion control, sedimentation control, and drainage management shall be installed before any site preparation and/or excavation work begins.

D. Erosion control, sedimentation control, drainage management, and dust control devices shall be maintained in good working order during the excavation project.

E. All disturbed soils and exposed excavation sidewalls shall be stabilized following best management practices referenced in **Section 24.3.7.B** to prevent erosion and sedimentation.

F. Excavation areas from which no excavation has or will occur for a period of 30-days or longer shall be stabilized.

G. Drainage shall be designed to prevent the accumulation of freestanding water, except as part of an approved stormwater management system designed to minimize surface water run-off or for use in processing operations and dust control.

H. Any adverse impacts to off-site drainage systems and/or water resources degraded or damaged by pollution, erosion, and/or siltation from the excavation operation shall be restored and/or repaired by the applicant following best management practices, within a reasonable timeframe.

I. The applicant shall maintain a log documenting all inspections, maintenance, and repairs made to these systems; all related adverse impacts caused by the excavation operation; all remediation activities performed; and, all actions taken to prevent future adverse impacts.

24.3.8 Dust Control

Dust control activities and devices shall be incorporated into the excavation operation, on the site and on the access driveway, in a manner that minimizes generation of airborne dust or transportation of dust or mud off the site onto the adjacent roadways.

A. Visual monitoring of airborne dust shall be done on an ongoing basis.

B. Dust control measures such as applying water to access driveways and other areas within the excavation perimeter, washing dirt from truck tires, or other measures as may be deemed necessary, shall be employed to minimize the generation of airborne dust, and/or the transportation of dirt/mud off the site onto adjacent roadways.

C. Inspection of access driveway stabilized construction entrances, designed to eliminate the deposit of dust or mud onto public streets, shall be conducted on a weekly basis to ensure proper functioning. Maintenance of these entrances shall be performed as necessary and any dirt or mud deposited on public streets shall be removed.

D. The applicant shall maintain a log documenting dust control activities, inspection and maintenance of dust and dirt control structures and devices, and clean up of dirt deposited on roadways leading from the site.

24.3.9 Important Habitat

Excavation operations within the excavation perimeter and the access driveway shall not fragment, degrade, or adversely impact the quality and functioning of important wildlife habitat.

24.3.10 Historic Resources

Excavation operations within the excavation perimeter and the access driveway shall be located and designed to avoid removing, covering, altering or otherwise disturbing known important archeological sites as may be listed in the NH Division of Historical Resources databases, unless permitted by the state.

24.3.11 Cultural Resources

All operations shall be designed to avoid disturbing historically significant manmade features including, but not limited to, stonewalls, and cellar holes.

A. If the disturbance of such features cannot be avoided, the applicant shall describe in detail the feature and shall prepare an accurate map locating the feature for historic documentation prior to disturbance or removal.

B. Such documentation shall be submitted to the Community Development Department for inclusion in the City's GIS database. The intent of this standard is to preserve historic features on the landscape, or knowledge thereof.

24.3.12 Steep Slopes

A. Where slopes in the excavation area exceed a 1:1 slope, a fence or other suitable barricade at least 4-ft in height shall be erected along the top and sides of the slope.

B. Any fencing erected around the excavation area shall be placed along the outside edge of the active work area but not within the buffer area, so as to minimize the visibility of the fence from abutting properties and public rights-of-ways.

24.3.13 Maximum Excavation Area

The total combination of any unreclaimed, inactive and active excavation areas shall not exceed 5-acres at any time. The intent of this standard is to allow for reasonable opportunities for excavation while maintaining an operational scale that will minimizing the magnitude of any unintended adverse impacts that might occur.

24.3.14 Hours of operation

A. Excavation activities shall only occur between the hours of 7:00 am and 5:00 pm, Monday through Friday.

1. The sale and loading of stockpiled materials may also occur from 8:00 am to 1:00 pm on Saturdays; however, no other excavation activities shall be permitted on this day.

B. No excavation activities, including sale of stockpiled materials, shall be permitted on Sundays, legal holidays, or at times other than those indicated in this Section, except when prior written consent to temporarily operate during other hours is provided by the Community Development Department due to a local or regional emergency.

24.3.15 Noise

Noise levels generated from excavation activities shall not exceed the background ambient “A” weighted sound pressure level exceeded 90% of the time during the sound level sampling period, (hereinafter ‘dB(A) L(90)’) by more than 10 dB(A) and in any event shall not exceed 55 dB(A) (hereinafter ‘L(max)’).

A. Monitoring Devices. All sound level monitoring devices shall meet American National Standards Institute S 1.4 type 1 or 2 standards, with the device set to “Fast” response. Monitoring devices shall be properly calibrated and maintained in good working order. Monitoring devices shall include data recording capabilities that enable continuous documentation of sound levels during the operating day.

B. Monitoring Locations. Sound levels shall be monitored from at least 2 locations as determined by the Community Development Director, or their designee, with the advice of other City staff and the Planning Board’s consultant.

1. The locations for noise monitoring shall include at least 1 location on the property boundary, either along the public right-of-way or at a point in direct line with the

closest dwelling on an abutting property, and at least 1 location on the property boundary or beyond, at whichever point is deemed by the Community Development Director, or the Planning Board's consultant, as having the greatest likelihood for adverse impact considering the nature of the topography and vegetation, and the exposure of the abutting lands to the excavation operations.

2. If a monitoring location is selected at a point beyond the property boundary, written permission to use that location for monitoring shall be obtained from the property owner of the monitoring site.

3. As noise-generating equipment is relocated within the approved excavation perimeter, new monitoring locations may be selected to help ensure continued compliance with the noise standard.

4. The excavation operator shall maintain a log of all monitoring activities indicating the date, time period and location of the recorded measurements; the operations being performed on the site at the time of monitoring; the weather conditions at the time of the measurement including temperature, wind direction, wind speed, cloud cover and precipitation; and the results of the monitoring, including a graph of the continuous monitoring record, the calculated A weighted sound pressure level exceeded 90% of the measurement time (hereinafter 'dB(A) L(90)') and the calculated maximum dB(A) sound level (hereinafter 'L(max)').

C. **Ambient Sound Levels**. At the selected locations, the background ambient sound levels shall be measured prior to the commencement of the initial operation.

1. The background sound levels shall be measured on the dB(A) scale, by recording continuous measurements during proposed operating hours over 5 consecutive business days prior to the commencement of site preparation activities, and calculating the dB(A) L(90) for the entire monitoring period. Such measurements shall be performed by a consultant hired by the Planning Board at the applicant's expense.

2. The applicant/operator may request that the background sound level be re-measured. Such re-measurement shall be done at a time selected by the Community Development Director in consultation with the applicant and a consultant hired by the Planning Board to perform the measurement at the applicant's expense.

D. **Ongoing Monitoring.** To determine compliance with the noise standard after commencement of the operation, the applicant shall monitor, at the selected monitoring locations, the sound levels generated by the operation, as follows.

1. On an annual basis, at a time selected by the Community Development Director, in consultation with the applicant, sound levels shall be monitored and recorded continuously during operating hours for a period of not less than 20 consecutive operating days. Monitoring shall be made using the dB(A) scale and the dB(A) L(90) during the operating hours for each day and the L(max) sound level throughout each day shall be calculated and entered into a noise monitoring log maintained by the applicant.

2. At any time when new or additional noise generating equipment is placed into operation following the initial 20-day monitoring period, or when noise generating equipment is relocated within the approved excavation perimeter, sound levels shall also be monitored continuously and recorded during operating hours for a period of not less than 5 consecutive operating days. The dB(A) L(90) during the operating hours for each day and the L(max) sound level throughout each day shall be calculated and entered into a noise monitoring log maintained by the applicant.

3. When new or additional noise generating equipment or activities including but not limited to drilling or blasting activities were

not measured during the initial 20-day monitoring period and are to be used only for short durations ranging from a period of hours to several days, not exceeding 5 operating days, sound levels shall be monitored and recorded continuously for the duration of the activities.

4. In the event that the measurements exceed the noise standards in this Article, the applicant shall bring the operation into compliance by reducing the number of sound sources contributing to the sound level, by relocating equipment on the site, by adding noise attenuating structures around or attachments to the equipment, or by taking whatever other actions may be necessary to bring the operation into compliance.

    a. Any corrective action taken shall be clearly described in the noise monitoring log along with a record of the noise level measurements before and after said correction.

    b. Additional noise levels shall be monitored for no less than 5 consecutive days after the corrective action is taken.

E. **Complaints**. If complaints are received regarding the level of noise generated from the operation, the applicant/operator shall, upon notification by the Community Development Department of the complaint, take measurements at the location where the complaint originates, if permission for entry is granted by the complainant, and at the designated monitoring locations.

1. The date, time, and location of the complaint shall be recorded in the noise monitoring log. Monitoring device readings for the location of the complaint, if permission to monitor is provided, and for the designated monitoring locations shall be recorded for a duration of not less than 5-minutes at each location with the dB(A) L(90) and the L(max) levels calculated for those time periods. All such measurements shall be documented in the noise monitoring log.

2. These measurements shall be compared to the noise level standards set forth in this Article to determine whether the L(max) noise level standard or the dB(A) L(90) limit above the ambient background level established for the operation are being exceeded. The measurements at the complaint location shall use the higher of the ambient background levels determined for the designated monitoring locations.

3. If the measurements taken on the complainant's property or at the designated monitoring locations exceed the noise standards set forth in this Article, the applicant shall take corrective action as specified in the these Regulations to bring the operation into compliance.

4. If, at the location of the complaint, the limit above the ambient background level standard is being exceeded, the operator shall record continuous measurements for a period of not less than 60-minutes to recalculate the dB(A) L(90) for the measurement period. If after this re-measurement the dB(A) L(90) standard is exceeded, the operator shall take whatever actions are necessary to bring the operation into compliance.

    a. Any corrective action taken shall be clearly described in the noise monitoring log along with a record of the noise levels measured.

5. At the applicant/operator's expense, and with the landowners consent, the operator may be permitted to establish the complaint location as an additional designated monitoring site. As such, background ambient noise levels would be established in accordance with the protocol set forth in this Article.

24.3.16 Travel Routes & Site Access

A. All vehicles and equipment used in excavation operations, except the personal vehicles of employees, agents, and representatives of the applicant or operator, shall travel upon streets

and highways designated for such use and shown on a plan approved by the Planning Board during the permitting process.

B. Access to an excavation site shall be accomplished directly from a state numbered highway. Direct access to the excavation site from a City street shall only be permitted when all of the following conditions are met.

1. The travel route along the City street from the excavation access driveway to the nearest state numbered highway is the shortest route to the state numbered highway.
2. The travel route along the City street, from the excavation access driveway to the nearest state numbered highway shall not pass any properties with residential dwellings.
3. The excavation access driveway at its intersection with the City street shall be no closer than 150-ft to the property boundary of any abutting property containing a residential dwelling.

C. No excavation shall occur below any road level within 50-ft of any highway right-of-way, unless such excavation is for the purpose of constructing or maintaining the highway at that location.

24.3.17 Access Driveway Standards

An excavation operation shall be permitted to have only one access driveway. The access driveway shall comply with the following design standards.

A. The access driveway layout shall be articulated so that the excavation area and any processing and stockpiling areas will not be visible from the entrance of the access driveway.

B. The access driveway shall accommodate safe passage of all vehicles.

C. The access driveway shall be designed and constructed with stabilized construction entrances to prevent dust and earth materials from being deposited on City streets or highways by vehicles leaving the excavation site.

D. The access driveway shall be constructed so that stormwater from the driveway is treated according to best management practices (as referenced in **Section 24.3.7.B**) prior to leaving the site or entering any surface waterway, and does not cause erosion or sedimentation.

E. The access driveway shall be gated at the entrance to prevent unauthorized site access during non-operating hours.

F. The access driveway shall be posted in both directions with a speed limit, not to exceed 15 MPH, to minimize dust, noise, and vibration from truck traffic entering and leaving the site.

24.3.18 Traffic

A. Traffic associated with a proposed excavation operation shall not diminish the safety or capacity of City streets, bridges, or intersections.

B. If an applicant proposes to generate 100 or more vehicle trips per day, the applicant shall be required to provide technical studies to demonstrate compliance with this operational standard.

C. The applicant shall propose a maximum number of trips per day for trucks used to transport earth materials and shall demonstrate that this number and the respective weight loads do not diminish the safety or capacity of city streets, bridges, or intersections.

D. The excavation operation shall not exceed the proposed number of trips per day for trucks used to transport earth materials without first seeking to amend the earth excavation permit, unless prior written consent to temporarily exceed the number of trips is provided by the Community Development Department due to a local or regional emergency.

24.3.19 Roadway Degradation

A. No excavation shall cause premature degradation of a City roadway. Premature degradation of a City roadway shall be determined based on a review of the roadway's existing condition at the time the earth excavation permit application is received and a review of the applicant's proposed traffic volume and load weights.

A. Damage or premature degradation of a City roadway that is attributed in whole or in part to the excavation operation, as determined by the Public Works Director, shall be repaired by, and at the expense of, the permit holder to the satisfaction of the Public Works Director.

24.3.20 Scenic Impact

A. Excavations proposed to be located within View Area 1 or View Area 2 of the View Preservation Overlay as defined in the Telecommunication Overlay District in **Article 13**, shall not be permitted unless the applicant demonstrates that the excavation operation will not be visible from any public right-of-way, abutting property, or prominent overlook not located on the excavation site.

1. For the purposes of this Article, a prominent overlook shall mean any tract of land or portion of a tract of land other than the excavation site, with an elevation higher than the excavation area, with an established view point or clearing, and a view-shed that includes the excavation perimeter and would allow direct viewing of excavation operations within the excavation perimeter from said view point or clearing. An established view point is a cleared or naturally created vantage point, either publicly or privately owned, that can be demonstrated as having been customarily used as a view point.

24.3.21 Explosive Management

A. Applicants using explosives in an earth excavation operation shall obtain all necessary state and local permits.

B. No explosive materials shall be stored on an excavation site.

24.3.22 Blasting Notification

No explosive substances shall be used for purposes of excavation without providing public notice of the proposed blasting.

A. Publication. At the beginning of each blasting period, at least 10-days prior to the commencement of blasting, the applicant shall publish a blasting notification in a newspaper of general circulation in every city, town or incorporated placed wherein the proposed excavation is to be located.

1. Said notice shall include the address at which blasting will occur, the dates or range of dates during which blasting is likely to occur, the approximate number of blasting days during the period and an estimate of the average number of blasts per day. The notice shall also provide contact information for the applicant and excavation operator and shall offer to provide any interested parties with telephone notification on the morning of each day that blasting will occur. The notice shall indicate that requests for telephone notification must be made to the applicant in writing.
2. Said telephone notification shall be made each morning of any day on which a blast is scheduled, at least 1-hour prior to the commencement of blasting.

B. Telephone. At the beginning of each blasting period, at least 10-days prior to the commencement of blasting, the applicant shall provide the blast notification described in **Section 24.3.22.A** by certified mailed, to all property owners with property located in whole or in part, within one-half (½) mile of the excavation site.

1. Said notification shall inform the property owner that the applicant will provide telephone notification each morning on days when a blast will be performed and that the property owner may opt out of the

telephone notification program by making such a request to the applicant in writing.

2. The applicant shall provide such telephone notification to all property owners with property located in whole or in part, within one half (½) mile of the excavation site each morning of any day on which a blast is scheduled, at least 1-hour prior to the commencement of blasting.
3. Property owners with property located in whole or in part, within one half (½) mile of the excavation site may choose to opt out of the telephone notification requirement by sending a written request to the operator to cancel telephone notification. Such a request shall not relieve the operator from providing written notification of the blasting schedule at the beginning of each blasting period.

C. Changes. Any changes or additions to the proposed blasting schedule during the year shall require the issuance and publication of a revised schedule.

24.3.23 Disposal

Boulders, stumps, vegetation and other debris shall be disposed of in a lawful manner on the excavation site, or shall be removed.

24.3.24 Hazardous Materials

A. All fuels, lubricants and other toxic, polluting, or hazardous substances shall be used, stored, and disposed of in compliance with local and state laws pertaining to the storage of such materials.

B. A list of all hazardous and toxic substances to be used or stored on the site and a list of agencies and officials to be notified in the event that a spill has occurred shall be maintained on the excavation site.

24.3.25 Record Keeping

All logs required to be maintained by the applicant/operator pursuant to this Article shall be retained by the applicant for a period of not less than 5-years and shall be made available for inspection by the Community Development Department, or its designated agent, upon request.

24.3.26 Other Permits

Applicants for an earth excavation permit shall provide to the Community Development Department, copies of all local, state and/or federal permits required by local, state and federal law.

24.4 RECLAMATION STANDARDS

All excavation projects requiring an earth excavation permit shall comply with the reclamation standards in this Section and the minimum and express reclamation standards set forth in NH RSA 155-E:5.

24.4.1 Incremental Reclamation

A. Except for excavation sites of operating stationary manufacturing plants, any excavated area of 5 contiguous acres or more that is depleted of commercial earth materials (excluding bedrock), or any excavation from which earth materials greater than 1,000 cubic yards have not been removed for a 2-year period, shall be reclaimed in accordance with this Article and pursuant to NH RSA 155-E:5 within 12-months following such depletion or non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership.

A. Pursuant to state law, existing operations in use as of the effective date of this Article shall complete reclamation in compliance with NH RSA 155-E:5 within 1-year following the cessation of the excavation or any completed section thereof.

1. Failure of the City to notify the owner of an existing operation shall not exempt an existing operation from its obligation to comply with the reclamation provisions of this Article.

24.4.2 Requirement

A. At the time of reclamation, all lands that are no longer being used for excavation activities, including excavation areas, processing areas, stockpiling areas, and stormwater management areas, except for exposed ledge, shall be reclaimed.

B. Areas to be reclaimed shall be graded to a natural repose for the type of soil of which they are composed so as to control erosion.

C. Once reclaimed, changes of slope, except for exposed ledge, shall be smooth and graduated rather than sharp, sudden or abrupt.

D. To assure adequate drainage and soil stabilization, and to prevent erosion and sedimentation, the topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow.

24.4.3 Topsoil

A. Except for exposed rock ledge, all areas to be reclaimed shall be spread with native topsoil to a depth of not less than 4-in unless a waiver has been granted.

B. Topsoil of at least the minimum amount needed to restore the site shall be stockpiled on the site until reclamation. The intent of this standard is to ensure that adequate native top soils are available on the site to complete reclamation, and to limit introduction of invasive species seed stocks that could be resident in non-native soils that might otherwise be introduced to the site.

C. Topsoil and overburden stockpiling areas shall be stabilized to prevent erosion by and sedimentation of stormwater runoff, following best management practices.

D. Topsoil in excess of the minimum amount needed to restore the site, but in no case any volume of topsoil greater than 50-cubic yards, may be removed from the site without permit approval from the Planning Board. The intent of this standard is to ensure that all earth materials removed from the site in commercial quantities are properly permitted.

24.4.4 Vegetation

A. Except where ledge rock is exposed, all areas to be reclaimed as specified in a reclamation plan approved by the Planning Board shall have permanent cover vegetation established to assure soil stabilization and to prevent erosion and sedimentation, in accordance with best

management practices and as set forth in an approved reclamation plan.

B. Any portions of lands within the excavation perimeter that are visible from any public way, from which trees have been removed shall be replanted with tree seedlings in accordance with acceptable horticultural practices.

C. Reclamation activities that include planting of vegetation and/or cover crop shall provide adequate soil conditioning and mulching according to best management practices.

D. Seed and plant species to be used in restoring the site shall be native species similar to those species typically found surrounding the site.

24.4.5 Monitoring

A. All excavation sites where reclamation has been completed shall be monitored annually by the applicant over a period of 2-years following the completion date to ensure that reclamation measures have been effective in accordance with these standards and that all planted vegetation has survived.

B. Any plantings shown on a reclamation plan approved by the Planning Board that do not survive within 2-years following completion of the reclamation process shall be replaced with similar sized plant species.

C. The property owner shall use best efforts to remove non-native and invasive species, as defined by the NH Department of Environmental Services, that become established during the monitoring period in the reclaimed areas.

24.4.6 Remediation

Excavation operations that cause adverse impacts shall abate and/or remediate those impacts, restoring all affected areas to a pre-impact condition. Reclamation shall not be said to be complete until all adversely impacted areas have been successfully remediated.

24.5 ENFORCEMENT

A. After a duly noticed public hearing, the Planning Board may suspend or revoke the earth excavation permit of any person who has violated any provision of the permit, this Article, NH RSA 155-E, or of any person who made a material misstatement in the application upon which their permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with this article and NH RSA 677.

B. Any violation of the requirements of these regulations shall also be subject to the enforcement procedures detailed in NH RSA-676.

ARTICLE 26. APPEALS

26.1 APPEAL OF ZONING BOARD OF ADJUSTMENT DECISION 26-2

26.2 APPEAL OF ZONING ADMINSTRATIVE DECISION 26-2

26.3 APPEAL OF PLANNING BOARD DECISION 26-2

26.4 APPEAL OF MINOR PROJECT REVIEW COMMITTEE DECISION 26-3

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26.7 APPEAL OF CITY COUNCIL DECISION 26-3

26.8 APPEAL OF DECISIONS ON STREET ACCESS PERMITS 26-4

26.9 APPEAL OF DECISIONS ON EARTH EXCAVATION PERMITS 26-4

26.1 APPEAL OF ZONING BOARD OF ADJUSTMENT DECISION

A. Appeals concerning any matter within the authority of the Zoning Board of Adjustment shall be in the manner provided for by NH RSA 676:5-7.

B. In accordance with NH RSA 677:1-14, any person aggrieved by the decision of the Zoning Board of Adjustment shall file a motion for a rehearing with the Community Development Department within 30 calendar days after the date of the Zoning Board of Adjustment decision.

1. The motion for rehearing shall fully set forth every ground upon which it is claimed that the decision rendered is unlawful or unreasonable

C. The Zoning Board of Adjustment shall deliberate the motion for rehearing within 30 calendar days of the date of the filing of the motion.

D. If the Zoning Board of Adjustment Board grants a motion for rehearing, the new public hearing shall be held within 30 calendar days of the decision to grant the rehearing, provided all applicable fees are paid and an updated abutters list, including all abutters within 200-ft of the subject parcel, is submitted by the party requesting the rehearing. Notice of the rehearing shall follow the procedures set forth in NH RSA 676:7.

E. If a motion for rehearing is denied by the Zoning Board of Adjustment, the applicant may appeal to the Superior Court within 30 calendar days after the date upon which the Board voted to deny the motion for rehearing.

F. Any further appeal of a final decision or order of the Zoning Board of Adjustment shall be in accordance with NH RSA 677:4.

26.2 APPEAL OF ZONING ADMINSTRATIVE DECISION

A. In accordance with NH RSA 676:5, appeals to written decisions of the Zoning Administrator shall be made to the Zoning Board of Adjustment, provided the notice of appeal is filed with the Community Development Department within 30 calendar days after the date of the Zoning Administrator's decision.

1. The notice of appeal shall specify all grounds on which the appeal is based, and why the request of appeal should be granted.

B. Any person aggrieved by the decision of the Zoning Board of Adjustment shall petition for a rehearing, in accordance with NH RSA 677:1-14, before appealing the decision to the Superior Court.

26.3 APPEAL OF PLANNING BOARD DECISION

A. Appeals concerning any decision of the Planning Board concerning a subdivision, site plan, or conditional use permit shall be made in the form of a petition to the Superior Court in the manner provided for by NH RSA 677:15.

B. Such petition shall be presented to the Superior Court within 30 calendar days after the date upon which the Board decided on the application; provided, however, that if the appeal from the decision of the Planning Board is based on any matters appealable to the Zoning Board of Adjustment, such matters shall be appealed to the Zoning Board of Adjustment before any appeal is taken to the superior court.

26.4 APPEAL OF MINOR PROJECT REVIEW COMMITTEE DECISION

A. Appeals to decisions of the Minor Project Review Committee shall be made to the Planning Board, provided the notice of appeal is filed with the Community Development Department within 20 calendar days from the date of the Minor Project Review Committee's decision, in accordance with NH RSA 674:43(III), all applicable fees are paid, and an updated abutters list, including all abutters within 200-ft of the subject parcel, is submitted by the appealing party.

B. The notice of appeal shall specify all grounds on which the appeal is based.

C. Any aggrieved party appealing a decision of the Minor Project Review Committee is entitled to a de novo public hearing before the Planning Board.

26.5 APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR DECISION

A. Appeals to decisions of the Community Development Director on site plans that have been administratively reviewed shall be made to the Planning Board, provided the notice of appeal is filed with the Community Development Department within 20 calendar days from the date of the Community Development Director's decision, all applicable fees are paid, and an updated abutters list, including all abutters within 200-ft of the subject parcel, is submitted by the appealing party.

B. The notice of appeal shall specify all grounds on which the appeal is based.

C. Any aggrieved party appealing a decision of the Community Development Director is entitled to a de novo public hearing before the Planning Board.

26.6 APPEAL OF HISTORIC DISTRICT COMMISSION DECISION

A. Appeals to decisions of the Historic District Commission shall be made to the Zoning Board of Adjustment in accordance with NH RSA 676:5-7, provided the notice of appeal is filed with the Community Development Department within 30 calendar days after the date of the Historic District Commission decision being appealed, all applicable fees are paid, and an updated abutters list is submitted by the appealing party.

B. The notice of appeal shall specify all grounds on which the appeal is based.

C. Any person aggrieved by the decision of the Zoning Board of Adjustment shall petition for a rehearing, in accordance with NH RSA 677:1-14, before appealing the decision to the Superior Court.

26.7 APPEAL OF CITY COUNCIL DECISION

A. Any person aggrieved by the decision of the City Council in regard to amendments to the City's Zoning Regulations or this LDC shall petition for a rehearing, in accordance with NH RSA 677:1-14.

B. A motion for rehearing shall be filed with the City Clerk within 30 calendar days after the date of the City Council decision and shall fully set forth every ground upon which it is claimed that the decision rendered is unlawful or unreasonable.

C. The City Council shall deliberate the motion for rehearing within 30 calendar days of the date of the filing of the motion.

D. If the City Council grants a motion for rehearing, the new public hearing shall be held within 30 calendar days of the decision to grant the rehearing, provided all applicable fees are paid and an updated abutters list is submitted by the party requesting the rehearing.

E. If a motion for rehearing is denied by the

City Council, the applicant may appeal to the Superior Court within 30 calendar days after the date upon which the City Council voted to deny the motion for rehearing.

F. Any further appeal of a final decision or order of the City Council shall be in accordance with NH RSA 677:4.

26.8 APPEAL OF DECISIONS ON STREET ACCESS PERMITS

A. An applicant or abutter may appeal any decision of the City Engineer relative to decisions on street access permit applications to the Planning Board, provided the notice of appeal is filed with the Community Development Department within 30-calendar days from the date of the City Engineer's decision, and all applicable fees are paid.

B. The notice of appeal shall specify all grounds on which the appeal is based.

C. Any aggrieved party appealing such a decision of the City Engineer is entitled to a de novo review before the Planning Board.

D. The Planning Board shall have final jurisdiction over all such appeals.

26.9 APPEAL OF DECISIONS ON EARTH EXCAVATION PERMITS

A. Following the approval or disapproval of an earth excavation permit, or the approval or disapproval of an amended or renewed permit, or the suspension or revocation of an earth excavation permit, or the approval or disapproval of a waiver or exception to permit requirements, any interested party affected by such decision may appeal to the Planning Board for a rehearing of such decision, or any matter determined thereby, in accordance with the provisions of NH RSA 155-E:9.

B. The motion for a rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and shall be filed within 10-days of the date of the decision appealed from.

C. The Planning Board shall either grant or deny the request for rehearing within 10-days, and if the request is granted, a rehearing shall be scheduled within 30-days. Any person affected by the Planning Board's decision on a motion for rehearing may appeal in conformity with the procedures specified in NH RSA 677:4-15.

ARTICLE 27. ENFORCEMENT

27.1 AUTHORITY.. 27-2

27.2 PERMITS.. 27-2

27.3 CERTIFICATES OF OCCUPANCY 27-2

27.4 STOP-WORK ORDERS 27-2

27.5 FINES AND PENALTIES 27-3

27.1 AUTHORITY

A. The Building and Health Official has the authority to enforce this LDC with respect to property outside of the public right-of-way in accordance with NH RSA 676:15-17(b).

B. The Public Works Director has the authority to enforce this LDC with respect to property within the public right-of-way and with respect to the authority granted to the Public Works Director in **Article 22** of this LDC.

C. The Building and Health Official or the Public Works Director, where appropriate may institute any inspection, action, or proceeding to:

1. Prevent the unlawful erection, relocation, extension, enlargement, or alteration of any structure or sign;
2. Prevent the unlawful use or occupancy of structures or land;
3. Prevent any illegal act, business, or use in or about the premises; and,
4. Restrain, correct or abate violations of this LDC.

27.2 PERMITS

A. The Building and Health Official, or their designee, may not issue any permit for the construction or alteration of any structure or the use or occupancy of any premises unless the plans, specifications, and proposed use of the structure or premises conform to the provisions of this LDC.

B. Any permit issued for the construction or alteration of any structure or for the use or occupancy of any premises contrary to the provisions of this LDC shall be void.

C. Any material misstatement of fact by an applicant for a permit or any material misrepresentation in their plans or specifications shall render void the permit.

27.3 CERTIFICATES OF OCCUPANCY

No structure may be used or changed in use, nor premises occupied or used, until a certificate of occupancy has been issued by the Community Development Department.

27.4 STOP-WORK ORDERS

A. Whenever the Building and Health Official has reasonable grounds to believe that any of the following is occurring with respect to work on any structure or lot in the City, they shall notify the owner of the property or the owner's agent to suspend all work, and any of these persons shall stop work and suspend all building activities until the stop-work order has been rescinded.

1. The work is being performed in violation of the provisions of the applicable building laws, ordinances and regulations of this LDC or the City Codes of Ordinances.
2. The work is not in conformity with the provisions of the approved permit application, plans, specifications, and revisions.
3. The work is in an unsafe and dangerous condition.
4. The work is without a required permit.

B. The order and notice shall be in writing, state the conditions under which the work may be resumed, shall order the abatement of the violation within a reasonable time, and may be served either by delivering it personally or by posting it conspicuously where the work is being performed, and a copy of it shall be sent by USPS Certified Mail to the address set forth in the permit application.

C. Such notice need not be sent and shall not be a prerequisite if the Building and Health Official deems the violation to constitute an emergency and a hazard to the health and welfare of any person, in which case they may order the violation abated immediately and may file a complaint forthwith.

D. The Building and Health Official shall have the right, after taking the preceding steps, to file a petition in the Superior Court requesting that the violator be ordered to cease the violation if, in their judgment, that is the preferable course of action.

27.5 FINES & PENALTIES

A. Any violation of the provisions of this LDC, or of any conditions established by a decision-making authority in conjunction with an approval issued in accordance with this LDC, shall be punishable by a fine as provided in **Section 1-15** of the City Code of Ordinances.

B. Each day that a violation continues to exist, following issuance of a stop-work order by the Building and Health Official to the violator, shall constitute a separate violation.

C. More than one violation may be included on the stop-work order, but shall be subject to a separate fine.

D. The accumulation for payment for previous violations, shall cease upon correction of the violation.

CITY OF KEENE
NEW HAMPSHIRE

MEMORANDUM

Date: January 4, 2021

To: Joint Committee of the Planning Board and the Planning, Licenses and Development Committee

From: Tara Kessler, Senior Planner

Re: Memo from Camiros

Attached to this packet is a memorandum from the consulting firm, Camiros, which is dated December 8, 2020, for your reference in advance of the January 11, 2021 Joint Committee meeting. At the November 16, 2020 Public Workshop on Ordinances O-2020-10 and O-2020-11, some members of the public raised questions regarding the compliance of the proposed congregate living and social service use standards, and more specifically, group home standards, with the federal Fair Housing Act.

While City staff had considered the Fair Housing Act when drafting the proposed standards as part of the draft Land Development Code, we recently requested that Camiros conduct a review of these standards and provide staff with a professional opinion on how closely these standards align with similar regulations adopted by other cities and towns across the country. Camiros is a professional planning consulting firm with national experience in developing local regulations related to this topic. The attached memo is a summary of their assessment. This assessment is focused on the proposed group home regulations, which is a type of housing subject to the Fair Housing Act. City staff will review this memorandum at the January 11, 2021 Joint Committee meeting.

camiros

consultants in planning, zoning, economic development, urban design & landscape architecture

MEMORANDUM

To: City of Keene, NH
From: Camiros
Date: 12.08.2020
Re: Proposed Approach to Regulation of Group Homes in the Proposed LDC

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This memorandum presents a brief assessment of the City of Keene's proposed approach to regulating Group Homes in the context of the City's Draft Land Development Code (October 2020). Nothing in this memorandum should be interpreted or construed as an offering of legal opinion, but rather as an assessment based upon the broad national experience of our firm. In short, the City's current approach is substantially in alignment with what we have seen in numerous other communities. While we defer to the legal opinion of the City Attorney, in our experience such an approach has been successful in addressing these uses and maintaining compliance with the federal Fair Housing Act.

Summary of Approach

The City's approach essentially segments group homes – as a use – into three tiers. Within the current draft Land Development Code, each of these tiers is permitted within different zoning districts as outlined in Article 8 and may be subject to conditional use permit approval.

The first tier is those group homes with up to four residents. For the purposes of the Land Development Code, this first tier is simply considered a single-family home, as it is accommodated within the City's definition of "family." As such, it is subject to the LDC regulations pertaining to single-family homes and is permitted anywhere a single-family home is permitted.

The second tier is defined within the Land Development Code as "Group Home – Small." This tier accommodates group homes with up to eight residents and is allowed in select districts with the approval of a conditional use permit. These group homes are also subject to a series of use standards addressing number of structures per lot, permitting and licensing requirements, and design considerations. It is our understanding that the City arrived at a threshold of eight residents after significant research into best practices and regulations of peer communities. We typically see thresholds used in other communities ranging from eight to twelve residents; the City's use of eight seems logical and in alignment with common practice.

The third tier of group homes is defined as "Group Home – Large," and includes those facilities providing accommodation to up to 16 residents. Such facilities are allowed in select districts with the approval of a conditional use permit and are – like "Group Home – Small," subject to series of use standards contained within the LDC.

In our estimation, this is a common approach to regulating group homes in accordance with the federal Fair Housing Act. The threshold established at which additional standards or approval processes may be applicable – more than four unrelated residents – is consistent with the definition of "family" contained within the City's Code, which specifies four or fewer unrelated residents. Per a joint statement from the Department of Housing and Urban Development and the Department of Justice released in November 2016:

> *"A local government may generally restrict the ability of groups of unrelated persons to live together without violating the [Fair Housing] Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed."* [1]

[1] U.S. Department of Housing and Urban Development, and U.S. Department of Justice. "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act." Joint Statement of the Department of Housing and Urban Development and the Department of Justice, 2016, p. 10.

Congregate Living and Social Service Conditional Use Permit

"Group Home – Large," and "Group Home – Small," are allowed in select zoning districts with the approval of conditional use permit as specified in Article 15 of the Land Development Code. The conditional use permit process is designed to provide a mechanism for review of the impacts of uses based upon their size, intensity, or anticipated impacts. As these two uses operate not as single-family homes, but as more intense residential dwelling types, requiring their evaluation in accordance a series of clear review criteria is not, in our view, onerous.

The CUP process outlines a series of eight criteria against which applications will be evaluated and establishes guidelines for the Planning Board should the body decide to exercise its discretion in the creation of conditions related to approval of a CUP. We believe this process provides ample opportunity for the Planning Board to make reasonable accommodations as may be necessary to ensure any person with a disability is afforded equal housing opportunity.

Congregate Living and Social Service License

Both large and small group homes are required to obtain a congregate living and social service license, which must be renewed annually. Application for such license requires applicants to assemble and submit information including – among other items – a description of the size and intensity of the facility, and an operations and management plan outlining security, life safety, and other measures. On its face, this requirement is not onerous, but we believe a few key alterations should be made to ensure that the requirement does not potentially run afoul of Fair Housing regulations.

Unlike the Congregate Living and Social Service Conditional Use Permit process, the licensing process provides no criteria for review of the information requested of applicants, simply specifying that the information "may be used by the licensing authority in evaluation of an application and annual renewal for [a Congregate Living and Social Service] License." As such, the potential denial of an application, denial of renewal, or revocation of a license is not buttressed by clear language in the regulations, as it is within the CUP process.

Though the licensing process does contain a requirement for the licensing authority to provide written documentation of the specific reasons resulting in a denial, and an appeal process is provided when an application is denied or a license revoked, we believe that including a series of criteria for review of license applications and annual renewals would strengthen the City's position. These criteria should focus on an evaluation of any violations of conditions issued at approval and/or City ordinances, as the presumption is the license will be renewed so long as the use has operated consistently in the same manner each year.