



LONDONDERRY TOWN COUNCIL

John Farrell • Chair
Joe Green • Vice Chair
Jim Butler • Councilor
Deb Paul • Councilor
Chad Franz • Councilor

Michael Malaguti • Town Manager
Kellie Caron • Assistant Town Manager &
Director of Economic Development
Justin Campo • Finance Director

Agenda
December 19, 2022 – 7:00 P.M.
Moose Hill Council Chambers

A. CALL TO ORDER

B. PUBLIC COMMENT

C. PUBLIC HEARING

D. NEW BUSINESS

1. Proposed Amendment to Section 5.7 of the Town Charter (Treasurer)
(Michael Malaguti, Town Manager; Justin Campo, Finance Director)
2. Budget Workshop
3. **Order #2022-22** – An order Relative to the Expenditure of Maintenance Trust Fund for Various Projects
(Dave Wholley, Director of Public Works)
4. **Ordinance #2022-07 – Rezoning Application (Gizmo Enterprises, LLC)** – First Reading
(Kellie Caron, Assistant Town Manager/Economic Development Director)
5. **Resolution #2022-23 – Commercial Industrial Tax Exemption Program (Revision)** – First Reading
(Michael Malaguti, Town Manager; Kellie Caron, Assistant Town Manager/Economic Development Director)

E. OLD BUSINESS

F. APPROVAL OF MINUTES

December 5, 2022 Town Council Minutes

G. APPOINTMENTS/REAPPOINTMENTS

1. Appointment/Reappointments of members to the Conservation Commission
2. Appointment/Reappointment of Members to the Planning Board
3. Appointment/Reappointment of Members to the ZBA
4. Appointment/Reappointment of Members to the Heritage Commission
5. Appointment/Reappointment of Members to the Recreation Commission
6. Interview of Members for the Senior Resources Committee

H. OTHER BUSINESS

1. Liaison Reports
2. Town Manager Report
3. Assistant Town Manager Report

I. ADJOURNMENT

J. MEETING SCHEDULE

1. Town Council Meeting 01/09/2023
Moose Hill Council Chambers, 7:00 P.M.

PROPOSED CHARTER AMENDMENT – APPOINTMENT OF TOWN TREASURER

Shall the municipality approve the charter amendment reprinted and summarized below: (words removed are [bracketed] and new words are **in bold**)

Section 5.7. Treasurer

There shall be a Town Treasurer (hereinafter called “Treasurer”) who shall have all the powers and duties granted by this Charter and State Law. The Treasurer shall be [elected on an at-large basis to a term of three (3) years at the Town Election] **appointed by the Town Council upon recommendation of the Town Manager for a three (3)-year term.** Vacancies in the office of Treasurer shall be filled pursuant to state law.

If the amendment is adopted, the Town Treasurer shall be appointed by the Town Council for a three (3)-year term instead of being elected for a three (3)-year term. If the amendment is adopted, the elected Treasurer shall remain in office until the 2024 annual town election.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

December 6, 2022

Sherry Farrell
Town Clerk
Town of Londonderry
268B Mammoth Road
Londonderry, NH 03053

Re: Proposed charter amendments

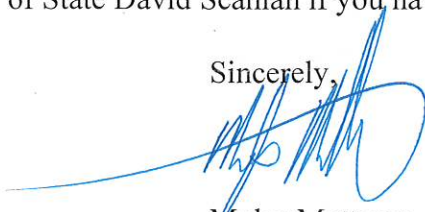
Clerk Farrell:

Pursuant to RSA 49-B:4-a, on behalf of the Town of Londonderry you submitted a proposed charter amendment for review, received November 21, 2022.

Upon review, the New Hampshire Attorney General's Office, the Secretary of State's Office, and the Department of Revenue Administration, pursuant to RSA 49-B:4-a, do not object to the proposed amendment to the town charter relating to changing the town treasurer from an elected position to a position appointed by the town council upon the recommendation of the town manager.

Please feel free to contact myself, Peter Roth of the Department of Revenue Administration, or Secretary of State David Scanlan if you have any questions.

Sincerely,



Myles Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

cc: David Scanlan, Secretary of State
Bruce Kneuer, Department of Revenue Administration
Peter Roth, Department of Revenue Administration

ORDER #2022-22

An Order Relative to

EXPENDITURE OF

MAINTENANCE TRUST FUNDS FOR VARIOUS PROJECTS

Reading: 12/19/2022

Adopted: 12/19/2022

WHEREAS voters since 2003 have approved funding for the maintenance and repair of public buildings and grounds in the town; and

WHEREAS by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$6,200.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

NOW THEREFORE BE IT ORDERED by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$6,200.00, from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

John Farrell, Chairman
Town Council

Sharon Farrell
Town Clerk

A TRUE COPY ATTEST:
12/19/2022

Description	Vendor	Amount
<p>Emergency Roof Repair-Leach Library (temporary) Materials and labor to make a temporary repair to 200' of rubber roof seam, as well as, sand ballast to prevent lifting of rubber membrane. Materials for permanent repair are included to be installed in Spring when weather and temperatures are adequate for appropriate repair.</p>	<p>Haggar Building and Remodeling Materials/parts Invoice #1876 Labor 2 days 2 employess Pallet of tube sand Labor 1 day 4 men Sub-total Invoice #1876 Material for Spring Invoice #1873</p>	<p>\$ 350.00 \$ 1,350.00 \$ 1,100.00 \$ 800.00 \$ 3,600.00 \$ 2,600.00</p>
<p>Total Town Council EMTF Order</p>		<p>\$ 6,200.00</p>

Haggar Building and Remodeling
6 Ruskin Avenue
Methuen, MA 01844
(978) 685-0461
haggarconstruction@comcast.net
www.haggarbuild.com



Haggar
Building & Remodeling

BILL TO
Daww Wholley
270 Mamouth Rd
Londonderry, NH

Invoice # 1876

DATE 12/12/2022 TERMS Due on receipt

DUE DATE 12/12/2022

PO #
Temp. Roof Repair & Sand Bags

DATE	DESCRIPTION	QTY	RATE	AMOUNT
	Install metal flashing around perimeter of roof to temporarily repair roof due to heavy wind blowing rubber up at edge Apply caulk at all screws to seal. Material cost 350.00 Labor 2 men 2 days	1	1,700.00	1,700.00
	Furnish 1 pallet 50lb bags of sand \$1,100.00	1	1,900.00	1,900.00
	Place 50lb bags of sand in rows of 5 s added tgete is to be 10 rows to start with on rubber roof to secure roof due to incorrect installation of rubber. 4 men 8 hours \$800.00 Rubber is not glued down in the field Also the edge should have been mechanically fasten and that was not done.			

Please remit payment to:
Attn: Accounts Receivable
401 Main Street, Unit 202
Salem, NH 03079

TOTAL DUE

\$3,600.00

.....
All payments made by credit/debit card or bank transfer subject to 3% processing fee
.....

Haggar Building and Remodeling
6 Ruskin Avenue
Methuen, MA 01844
(978) 685-0461
haggarconstruction@comcast.net
www.haggarbuild.com



Haggar
Building & Remodeling

BILL TO
Davw Wholley
270 Mamouth Rd
Londonderry, NH

Invoice # 1875

DATE 12/12/2022 TERMS Due on receipt

DUE DATE 12/12/2022

PO #
Roof Repair Library

DATE	DESCRIPTION	QTY	RATE	AMOUNT
	Here is a separate Invoice to cover the cost of materials already purchased to repair roof, that I will finish in the spring.	1	2,600.00	2,600.00
For Inv# 1873 material costs				

Please remit payment to:
Attn: Accounts Receivable
401 Main Street, Unit 202
Salem, NH 03079

TOTAL DUE \$2,600.00

.....
All payments made by credit/debit card or bank transfer subject to 3% processing fee
.....



Town of Londonderry
Planning and Economic Development Department

268B Mammoth Road
Londonderry, NH 03053
Phone 603.432.1100 x 134
www.londonderrynh.org

To: Town Council
From: Kellie Caron, Assistant TM | Director of Economic Development
CC: Michael Malaguti, Town Manager
Date: December 19, 2022
Re: Rezoning Recommendation from Planning Board

On October 5, 2022, the Planning Board held a public hearing on a request to rezone a portion of 0 RR Rockingham Road (Map 13 Lot 143) State of New Hampshire DOT (Owners) and Gizmo Enterprises, LLC (Applicant) from AR-I (Agricultural Residential 1) to C-II (Commercial-II).

Attached to this memorandum are the initial rezoning request, the Staff Memorandum to the Planning Board summarizing the request, the Planning Board Notice of Decision and minutes of the October 5, 2022 Planning Board meeting.

The Planning Board made a motion to ***recommend that the Town Council deny the applicant's request to rezone a portion of 0 RR Rockingham Road (otherwise known as the Londonderry Rail Trail - Map 13 Lot 143-0, Zoned AR-1) located to the east of Four Commercial Lane (Map 13 Lot 104-2), to Commercial II (C-II).***

The motion passed, 7-0-1 with Deb Paul abstaining.

The reasons for recommending denial to Town Council are as follows: (1) the rezoning of the AR-1 parcel to as commercial property would eliminate the 50 ft landscaping buffer that is currently imposed on abutting commercial and industrial property which would negatively affect the scenic landscape and viewscape of the existing rail trail to which residents and the community alike have grown accustomed; (2) rezoning is not aligned with the master plan; (3) there is the potential of improper spot/split zoning; (4) safety concerns with no buffer to the users of the rail trail; (5) potential conflict with the Rail Trail agreement between the Town of Londonderry and the State of New Hampshire, Department of Transportation; (6) the inability of the applicant to obtain site plan approval; and (7) negative planning effects for the Town in the immediate and long term future.

STAFF RECOMMENDATION

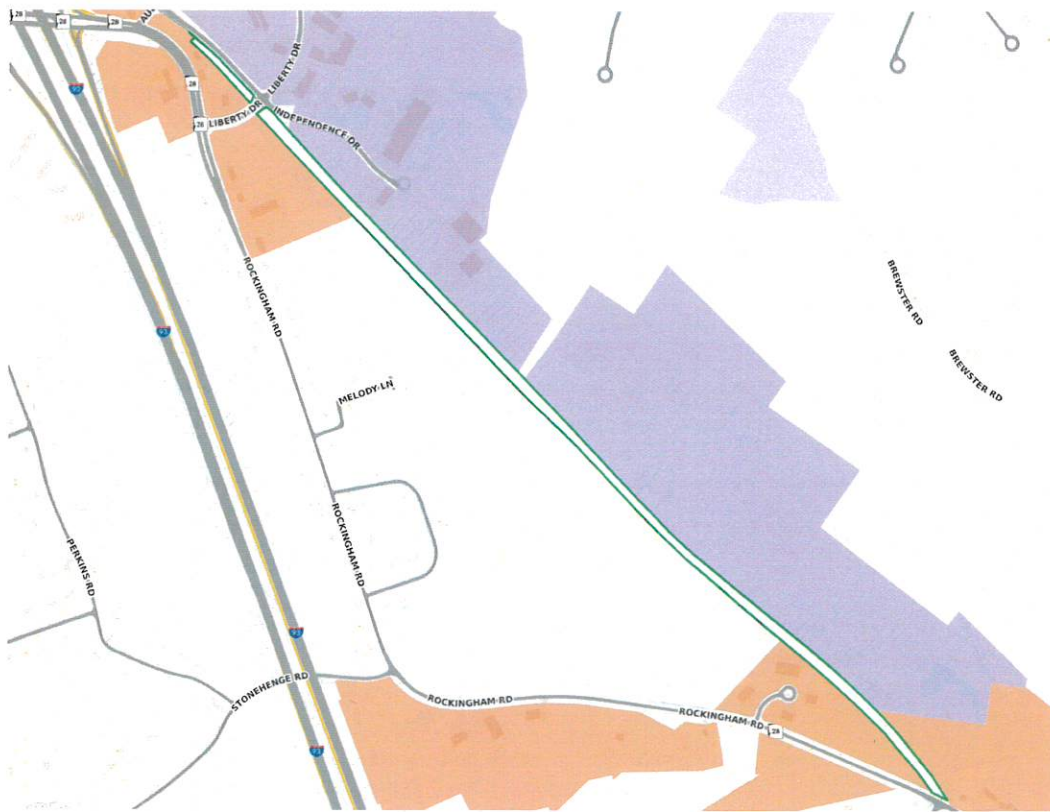
To: Planning Board
From: Kellie Walsh, Town Planner
Re: Rezoning Request

Date: October 5, 2022

Rezoning request to rezone a portion of 0 RR Rockingham Road (Map 13 Lot 143) State of New Hampshire DOT (Owners) and Gizmo Enterprises, LLC (Applicant) from AR-I (Agricultural Residential 1) to C-II (Commercial-II).

Existing Conditions and Background:

The Applicants are requesting rezoning of one property to Agricultural Residential (AR-I).



0 RR Rockingham Road (Map 13, Lot 143) is a parcel more commonly known as the Rail Trail. In this request, the focus is on a portion of the rail trail beginning at the northern side of Rockingham Road (Route 28) and ending near Auburn Road. The corridor is approximately 80-100 feet wide.

This section of the rail trail (Map 13, Lot 143) abuts a light industrial park and commercial business park (zoned C-II), residential parcels (AR-1), and a parcel owned by Eversource/PSNH (zoned Ind-II and AR-I). Additionally, there are wetlands located in close proximity to the subject area.

The 2013 Master Plan identifies this area as a "G-2 Controlled Growth Sector". According to the Master Plan:

The Controlled Growth Sector is assigned to areas that may support mixed use development due to proximity to one or more existing or planned thoroughfares. Development in this Sector should occur in the form of conservation subdivisions containing open space or activity centers.

Rezoning Request:

The Applicants are requesting rezoning a portion of the rail trail beginning at the northern side of Rockingham Road (Route 28) and ending near Auburn Road.

Please see the attached rezoning request. The Applicant has provided a draft (unstamped) existing conditions plan of parcel 13-104-2 (Groundhog Landscaping) as well as information from NHDOT Bureau of Rail and Transit.

Board Action Required

Should the Board find that the request is reasonable and consistent with the surrounding uses and the Master Plan, the Board may make a recommendation motion as follows:

Move to ***recommend*** to the Town Council approval of the rezoning request to rezone a portion of 0 RR Rockingham Road (Map 13 Lot 143) State of New Hampshire DOT (Owners) and Gizmo Enterprises, LLC (Applicant) from AR-I (Agricultural Residential 1) to C-II (Commercial-II).

Conversely the Board may make a motion to recommend that the Town Council ***deny*** the request for re-zoning, if it finds that the request is not consistent with the Master Plan and the surrounding uses.



Town of Londonderry

Planning & Economic Development Department

268B Mammoth Road
Londonderry, New Hampshire 03053
Phone (603) 432-1100 x149
www.londonderrynh.org



NOTICE OF DECISION

The Londonderry Planning Board held a public hearing on Wednesday, October 5, 2022 to consider the following:

Rezoning request by Gizmo Enterprises, LLC (Applicant) and State of New Hampshire (Owner) to rezone a portion of 0 RR Rockingham Road (otherwise known as the Londonderry Rail Trail - Map 13 Lot 143-0, Zoned AR-1) located to the east of Four Commercial Lane (Map 13 Lot 104-2), to Commercial II (C-II)

Member A. Sypek made a motion to recommend to Town Council to deny the applicant's request to rezone a portion of 0 RR Rockingham Road (otherwise known as the Londonderry Rail Trail - Map 13 Lot 143-0, Zoned AR-1) located to the east of Four Commercial Lane (Map 13 Lot 104-2), to Commercial II (C-II).

Member J. Butler seconded the motion.

The motion passed, 7-0-1 with Deb Paul abstaining.

The reasons for recommending denial to Town Council are as follows: (1) the rezoning of the AR-1 parcel to as commercial property would eliminate the 50 ft landscaping buffer that is currently imposed on abutting commercial and industrial property which would negatively affect the scenic landscape and viewscape of the existing rail trail to which residents and the community alike have grown accustomed; (2) rezoning is not aligned with the master plan; (3) there is the potential of improper spot/split zoning; (4) safety concerns with no buffer to the users of the rail trail; (5) potential conflict with the Rail Trail agreement between the Town of Londonderry and the State of New Hampshire, Department of Transportation; (6) the inability of the applicant to obtain site plan approval; and (7) negative planning effects for the Town in the immediate and long term future.

This notice is given pursuant to RSA 676:3.

Londonderry Planning Board

LONDONDERRY, NH PLANNING BOARD MINUTES OF THE MEETING OF October 5, 2022, AT THE MOOSE HILL COUNCIL CHAMBERS

I. CALL TO ORDER

Members Present: Art Rugg, Chair; Al Sypek, Vice Chair; Jake Butler, Secretary; Jeff Penta, member; Ann Chiampa, member; Deb Paul, Ex-Officio – Town Council; Giovanni Verani, Town Manager; Roger Fillio, alternate member; and Ted Combes, alternate member

Also Present: Kellie Walsh, Town Planner; John Trottier, Director of Public Works and Engineering; Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary

Chairman Rugg called the meeting to order at 7:00 PM, explained the exit and emergency procedures, and began with the Pledge of Allegiance. He appointed R. Fillio to vote for L. Wiles.

II. ADMINISTRATIVE BOARD WORK

A. APPROVAL OF MINUTES:

Member A. Sypek made a motion to approve the minutes of September 7, 2022, as presented.

J. Butler seconded the motion.

The motion was granted, 7-0-1, with T. Combes abstaining. The Chair voted in the affirmative.

Member A. Sypek made a motion to approve the minutes of September 14, 2022, as presented.

J. Butler seconded the motion.

The motion was granted, 8-0-0. The Chair voted in the affirmative.

B. REGIONAL IMPACT DETERMINATIONS: Town Planner Walsh informed the Board that she had no projects for their consideration this evening.

C. Discussion with Town Staff:

Chairman Rugg asked how construction was going on Harvey Road. J. Trottier told the Board that the construction is going slow and steady. Town Planner Walsh commented that Staff has already rectified some of the concerns raised at the last

Planning Board meeting regarding the Derry Medical Center (DMC) building at Woodmont. She went on noting that Staff will continue to address the other concerns through the inspection and enforcement process. She emphasized that going forward if Board members have complaints regarding approved, active projects to please submit them to the Code Enforcement Officer. She mentioned that Staff is evaluating the request from a Board member that building elevations labeled with materials to be used be provided going forward for all commercial site plans. Chairman Rugg expressed his opinion, that he did not believe there is a statute that would allow the Board to do this unless it is a Historic District. He added that the city of Portsmouth has some strict rules, but that is because a large part of the city is in the Historic District. He said that it might be good to talk to the town attorney to review this. He asked for a non-meeting with the town attorney for a review of the rules of the Planning Board. J. Butler asked if what issues have been rectified and what is still outstanding could be discussed this evening. Chairman Rugg replied that this would be best handled outside the meeting through email with the Town Planner Walsh.

III. Old Business – N/A

IV. New Plans

A. Public hearing on a rezoning request by Gizmo Enterprises, LLC (Applicant) and State of New Hampshire (Owner) to rezone a portion of 0 RR Rockingham Road (otherwise known as the Londonderry Rail Trail - Map 13 Lot 143-0, Zoned AR-1) located to the east of Four Commercial Lane (Map 13 Lot 104-2), to Commercial II (C-II)

Chairman Rugg read the case into the record. Robert Carey, Esquire at 45 S. Main Street, Box 3550, Concord, addressed the Board. He also introduced Todd Bahan, owner at Gizmo properties that is with him this evening in the audience. R. Carey started off the discussion noting that they would a strip of land approximately 1.5 miles long and about 80-feet to 100-feet wide be rezoned to C-II. Chairman Rugg asked if the rezoning was just for Four Commercial Lane. R. Carey replied that Four Commercial Lane is already zoned C-II and the strip he just spoke about is owned by The New Hampshire Department of Transportation (NHDOT) and is currently zoned AR-I. Chairman Rugg clarified that the applicant is asking to rezone from Auburn Road all the way to Liberty Drive. R. Carey commented that this request was made in consultation with the Planning Department this summer to try and figure out a collaborative way to address the situation. Chairman Rugg asked for specifics regarding exactly what he is looking to rezone, as the Board has never had a request such as this. R. Carey replied that he identified the exact strip of land they would like to rezone in Exhibit 1, from his submission, which is attached hereto. He read from his applications as follows: "It begins, roughly, at the northern side of Rockingham Road-Route 28 and ends near Auburn Road, where the track crosses Rockingham Road-Route 28 again." A. Chiampa interjected that it does not cross Route 28 at Auburn Road, but goes straight across Auburn Road. R. Carey noted that intersection is what he is referring to. Chairman Rugg remarked that the Board needs exactly and not roughly. R. Carey asked how the Board would

like him to do this. Chairman Rugg replied that it is up to him, but if he cannot give exactly, it might be a problem. R. Carey noted that he has described it as exactly as he can, stating that he does not have the latitude and longitude. He asked to be able to give an overview and then discuss how it might look. Chairman Rugg stated he could proceed, noting it could potentially be a concern. R. Carey said that his client has owned this property, Four Commercial Lane, since 2004, using it for his business, Groundhog Landscaping. He went on stating that there is no staff on site, but used to store equipment, as well as sand and gravel used for his business. He mentioned that the sand and gravel are stored in very large cylinder blocks in open areas on the site. He pointed out that the functional footprint of the site has encroached past his client's property line into the railroad corridor. He said that his client was unaware of this, and when it was brought to his attention this summer, they immediately reached out to NHDOT. He remarked that NHDOT told his client that they are not concerned about the encroachment. He mentioned that in his application there is a letter from NHDOT which states that they are okay leasing the property to his client. Chairman Rugg pointed out that the letter from NHDOT states they will take the potential lease of the land under advisement and are not in the position to enter a lease. R. Carey agreed noting that NHDOT is awaiting this decision this evening, noting they will not be entering a lease if they cannot rezone it. He discussed that neither the state nor the town is subject to zoning. He asked for this to be rezoned to accommodate the functional footprint of his client's business, noting his client has spent significant amount of money improving recently to make is more cosmetically attractive. He reviewed the other properties in the area noting what they are zoned. He suggested that this rezoning is a reasonable accommodation for a long standing business and other businesses that are along the same corridor that also encroach. Chairman Rugg asked for more specific planning issues. R. Carey replied that there are two planning issues that have been raised, noting the first is what impact the rezoning will have on the buffer. He mentioned that under Londonderry's zoning ordinances, if a commercial and industrial properties is going to build a structure or a parking lot within 200-feet of a residential property must have a 50-foot buffer. He expressed his opinion, that he does not believe this is an issue in this particular case, because what has been developed has been developed for a long period of time and the buffer requirement does not seem to be a controlling factor to what has been developed in this area. He added that the corridor to be rezoned, which is about 80-feet to 100-feet wide, is mostly scrub brush and leaves. He discussed the second planning concern which is related to the Rail Trail, noting the town of Londonderry has an agreement with NHDOT to use this for recreational uses. He said that he believes they can address this concern because both Londonderry and NHDOT are exempt from local zoning. He added that regardless of how this corridor is zoned, it does not change the use that both Londonderry and NHDOT can make of it. He summarized that both planning concerns are addressed by the current and long standing use of the surrounding properties and by RSA 674:54, which exempts Londonderry and NHDOT from any sort of zoning requirements. Chairman Rugg asked for the NHDOT representative's name that he has been discussing this with. R. Carey replied that he has been speaking with Matthew Broadhead, Senior Assistant Attorney General, Bureau Chief, Transportation & Construction Bureau, New Hampshire Department of Justice. He stated that one of the factors to look at

with this rezoning is the surrounding uses and the health, safety and welfare. He remarked that the rezoning will not change the use of this corridor at all and will be consistent to what exists now. He voiced his opinion that his client's property is safer for the people that use the Rail Trail because he has the large cylinder blocks that prevents people from having access to equipment and things that could be a hazard. He added that in years past it helped to also deter vandalism that existed before the Rail Trail was developed. He said that the Board should also look at how this might fit into the Master Plan, stating that this very thin strip of land is not on the Master Plan's radar screen. Chairman Rugg asked for specifics in the Master Plan and how he would address these. R. Carey read from page 24 of the Master Plan as follows: "Residents, businesses, and visitors should expect a government that works diligently to link development with quality of-life, while strengthening community and economic vitality." He said that he believes they meet this guiding principal in the Master Plan with the rezoning request. He noted that there is an above ground septic on the site, so they are limited with moving things around. He added that is acceptable to just rezone the area before Four Commercial Lane or the area that he has defined in Exhibit 1. Chairman Rugg asked for the purpose of the rezoning what he had defined on Exhibit 1. R. Carey replied that the purpose of the rezoning is to accommodate his client's business and noted that there are other businesses that encroach all the way up the corridor as well. Chairman Rugg pointed out that the Board had not received any other letters from the other businesses in that area regarding rezoning. R. Carey said that he believes that they are the first business to take this initiative.

Chairman Rugg asked if the Board had any questions. J. Trottier noted that he is familiar with this site plan, but does not remember being as expanded as it is here this evening. He asked if the applicant stated that this encroachment was discovered this summer. R. Carey replied that it was and the site was re-surveyed after the concerns were brought to the applicant's attention. He commented that the survey results were supplied to the town. J. Trottier asked if the expansion of the site just occurred. R. Carey responded that the expansion did not just occur, noting that the expansion looks to have been there for almost 20 years that his client has owned the property. J. Trottier commented that the town would never had approved a site plan that would have encroached into the 50-foot buffer. R. Carey interjected that when the site plan was initially approved, there was no encroachment into the buffer, and as the property has been used over time the encroachment has occurred. J. Trottier pointed out that he has heard from many people that they like the buffer on the Rail Trail, specifically up by Liberty Drive where there are commercial entities. He added that if this is rezoned, that 50-foot buffer would go away. He explained that even if this is rezoned, the applicant would need to come back for a site plan, as he has expanded the use on his site. Town Planner Walsh mentioned that the town does have concern about potential conflict with the Rail Trail agreement, which is between the town of Londonderry and NDHOT. She said that the concern is specifically to allowing commercial uses on the Rail Trail. Chairman Rugg remarked that this would be between the Town Council and the Town Attorney, and he would like the Board to stick to the planning issues. Town Planner Walsh commented that she understands that there have been a number of enforcement issues on this property noting the applicant met with Staff

at that time where a number of ways to deal with the encroachment were discussed. She said that one of the ways discussed was a rezoning request, which is before the Board this evening. J. Butler asked if they were encroaching into the Rail Trail property or the buffer. R. Carey replied that they are in the NHDOT property, but are still roughly 30-feet to 40-feet from the Rail Trail pavement. J. Butler mentioned that in reviewing the GIS it appears as if the applicant has been encroaching since 2010. He asked if the applicant is looking to rezone his portion to lease it from NHDOT. R. Carey replied that is correct. He remarked that they were under the impression that they would have to rezone the whole strip of land, but if the Board would feel more comfortable just rezoning the piece in front of Four Commercial Lane, that is okay with the applicant and he believes it would be okay with NHDOT. T. Combes mentioned that the area to be rezoned is about a half an acre of land that is impacted and thought this might be spot zoning, which he did not think the Board likes to do. Chairman Rugg agreed that the Board would like to keep away from spot zoning. G. Verani asked if it would not be spot zoning since they are contingent to a C-II zone. Chairman Rugg pointed out that the site is contingent to both AR-I and C-II, but the planning question for the Board is whether or not to create more C-II area versus keeping the Rail Trail intact. He added that this would be setting a precedent and the possibility of losing the buffer on the Rail Trail. He mentioned that when the subsidized elderly housing on Sanborn Road was proposed the Conservation Commission wanted more of a buffer put in there, which the developer was able to do. He added that on the eastern end of the Rail Trail, Pittore Bros. Site Plan, which is in design review is also encroaching. He said that Pittore Bros. has been before the Heritage Commission, which recommended to eliminate the encroachment and increase the buffer vegetation. T. Combes asked if there would be an option to increase screening to block the concrete areas from the Rail Trail and allow the business to be able to operate. Chairman Rugg replied that he did not think this would serve the vision for the Rail Trail, as the AR-I zone offers certain opportunities for vegetation. Town Planner Walsh mentioned that in the past the Board has been cautioned about conditioning rezoning recommendations and she would advise against this. Chairman Rugg agreed. G. Verani asked how the applicant could proceed with a site plan for that piece of land that they would lease, even if they got the rezoning. Town Planner Walsh replied that they would be referring to property lines and property bounds. G. Verani pointed out that even with the C-II rezoning, it would not accomplish the main goal. He asked if any part of the site could be relocated to comply with the AR-I zone. R. Carey replied that they did look at it, and it was a close call. He added that the material on the site is material from a farm, such as gravel and sand, and said it is almost a hybrid agricultural use. He commented that NHDOT noted that this strip of land will never be developed regardless of what zone is it as it is just a tiny corridor of land, which would be strip zoning. Chairman Rugg mentioned that in all his experience with planning, you never say never. R. Carey said that he cannot imagine any compatible useful structure that can fit there. Chairman Rugg interjected that this is currently, but he does not know what will happen two years or ten years from now, as zoning is permanently with the property. R. Carey agreed, but asked the Board to consider the existing uses and the dimensions of the strip. G. Verani reiterated that even with the C-II rezoning the applicant would need to comply to site plans regulations, which does not

change the buffer, so he did not think this would accomplish the goal. A. Sypek commented that he is having a hard time with this, as someone would have to know that they are encroaching onto someone's else's land. He voiced his opinion that he is opposed to recommending this adding he would not want to look at cinder blocks when walking down the Rail Trail. R. Fillio remarked that he believes the Board has to be careful with this, specifically with setting a precedent. He stated that this would destroy the ambience of the Rail Trail. J. Penta commented that his biggest issue is that there is a reason this was zoned AR-I, such as the recreational aspect and ambience of the Rail Trail. He said that this could open the town up to different development along the Rail Trail and there could be more piles of dirt along it, which he does not want to see. D. Paul explained that she is not going to say she is for or against this rezoning, as she will save her vote for when the applicant is before the Town Council. She cautioned the Board on setting a precedent. A. Chiampa mentioned that there is a site plan in 2005 with a survey to back it up and then five years later the encroachment started. She asked why this happened. She pointed out that the applicant is encroaching 32-feet into where the Rail Trail property starts, which is not a mistake in her opinion. She echoed that this could set a precedent and then other properties could go to NHDOT and try to get a lease to accommodate their needs. She added that she is concerned about wetlands in the area. She mentioned that she went down to the site yesterday and viewed the encroachment, noting that the piles are two to three feet higher than the fence. She said that so many people use the Rail Trail and appreciate the beauty of it. She noted that there have been enforcement issues in the past, as well as some legal issues, and she is not sure if they are resolved. She expressed her opinion that it is not right to rezone this area and destroy the 50-foot landscape buffer along the area. Chairman Rugg voiced his concern that this is not consistent with the use of the Rail Trail or the AR-I zone. He commented that this could establish precedent, precipitate other changes along the Rail Trail and lose the aesthetics of the Rail Trail. He added that he does not believe that this is good planning, as planning is for the long term.

Chairman Rugg opened up the discussion to the public.

Ray Breslin, Three Gary Drive, addressed the Board. R. Breslin said that he echoes the concerns of Board members. He stated that the Rail Trail should have a buffer. He voiced his opinion that he believes this would set a precedent and he does not think is wise.

Bob Rimol, Two Faye Lane, President of Trailways. B. Rimol said that he believes that Groundhog Landscaping has been a good neighbor to the Rail Trail. He said that they have never have any trash. He commented that Trailways has no objections to the encroachment onto NHDOT property and did not know that Groundhog was encroaching. He added that he believes that there are probably other businesses that are encroaching as well. He stated that he does not believe there is a safety issue or an aesthetic issue. He said that Londonderry Trailways works very hard to keep the Rail Trail safe. He asked if the Board had any questions.

Chairman Rugg brought the discussion back to the Board as there was no further public input. J. Butler asked if the state had any issues with the encroachment. Chairman Rugg replied that he believes the state has not taken a position as far as he can see from the paperwork presented. R. Carey remarked that he has had many conversations with Matthew Broadhead, Senior Assistant Attorney General and they do not have any issues with it and are willing to work with them. He said that in the application, Exhibit 2, is a letter from NHDOT, and is attached hereto. Chairman Rugg read from Exhibit 2 as follows: "The Department continues to review your lease request and is following its normal surplus property process and is not in the position, yet, to enter into a lease for this property." R. Carey read from Exhibit 2 as follows: "the Department grants you permission to submit applications for the development and/or alteration of the property to the Londonderry Town Council and to any land use board of the Town of Londonderry." He reiterated that NHDOT does not have any issue with the encroachment. Chairman Rugg asked for a written letter stating that. A. Chiampa asked if there was an opinion from the Heritage Commission or Conservation Commission. Town Planner Walsh replied that rezoning applications do not go before the Heritage Commission or Conservation Commissions. She noted that at the last Heritage Commission meeting, Staff made the Commission aware of the application. Chairman Rugg stated that there was a discussion regarding this and the consensus was the Commission was not in favor of rezoning. Associate Planner Gandia read from the draft minutes of the September 28, 2022, Heritage Commission meeting as follows: "As a comment, the applicant should be forewarned that this rezoning request is not likely to be favorably viewed by the Heritage Commission."

A. Sypek made a motion to recommend to the Town Council to deny the rezoning request to rezone a portion of 0 RR Rockingham Road (Map 13 Lot 143) State of New Hampshire DOT (Owners) and Gizmo Enterprises, LLC (Applicant) from AR-I (Agricultural Residential 1) to C-II (Commercial-II).

J. Butler seconded the motion.

The motion was granted, 7-0-1, with D. Paul abstaining. The Chair voted in the affirmative.



TOWN OF LONDONDERRY

LONDONDERRY PLANNING BOARD & TOWN COUNCIL

268B Mammoth Road Londonderry, NH 03053 Phone: 432-1100, ext.134 Fax: 432-1128

APPLICATION FOR REZONING REQUEST

LOCATION OF PROPERTY:

Street address 0 RR Rockingham Road Tax map 013 Parcel 143-0

CURRENT ZONING: AR-I

PROPOSED ZONING: C-II

Owner's name (s) State of New Hampshire, DOT Tel. No. _____

Owner's address See attached sheet.

Owner's Email address See attached sheet.

Applicant's name(s) Gizmo Enterprises, LLC Tel. No. (603) 437-4464 Applicant's address 4 Commercial Lane, Londonderry, NH 03053-1316

Applicant's Email address todd@groundhognh.com

Representative's name Robert S. Carey, Esquire Tel. No. (603) 223-9110 Representative's address: 45 S. Main St., Box 3550, Concord, NH 03302-3550; Email: Rcarey@orr-reno.com

Please explain the purpose for your rezoning request including how the proposed zoning fits in with the neighboring properties and can be justified on the bases of the health, safety and general welfare of the community. Also, please provide an explanation as to how the request is in accordance with comprehensive plan and/or master plan. Attach additional sheets if necessary.
Please see attached for purposes of rezoning request.

I understand that I must appear in person at any public hearing scheduled by in this matter. If I cannot appear in person, I will designate a representative or agent in writing below to act on my behalf. I hereby designate Robert S. Carey to represent me as a representative/agent in the pursuance of this rezoning request.

Please see Owner Authorization (Exhibit 2) of Purpose of Rezoning Request _____

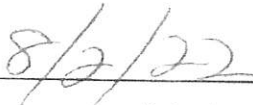
Owner's Signature

Owner's Signature

Applicant's Signature



Applicant's Signature



Dated

Total fee due (to be calculated by the Planning Department): \$ _____

NOTE: PLEASE REFER TO THE INSTRUCTION SHEET PROVIDED AS A REZONING REQUEST REQUIRES PUBLIC HEARINGS WITH BOTH THE PLANNING BOARD & TOWN COUNCIL. ADDITIONAL FEES ARE DUE TO THE TOWN COUNCIL FOR ITS PUBLIC HEARING. YOU WILL BE CONTACTED BY THE TOWN MANAGER'S OFFICE FOR FURTHER INSTRUCTION.

Owner's address:

Louis T. Barker, NHDOT Railroad Planner
Department of Transportation
7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483
(603) 271-2425
Louis.A.Barker@dot.nh.gov

Matthew T. Broadhead, Senior Assistant Attorney General
Department of Justice
33 Capitol Street
Concord, NH 03301
(603) 271-3658
Matthew.T.Broadhead@doj.nh.gov

Purpose of Rezoning Request

The property to be rezoned is a non-developable section of DOT's railroad corridor. It begins, roughly, at the northern side of Rockingham Road-Route 28 and ends near Auburn Road, where the track crosses Rockingham Road-Route 28 again. See Ex. 1 (GIS aerial map of RR corridor). The corridor is approximately 80 to 100 feet wide. It is being used for the rail trail.

DOT supports this re-zoning request. See Ex. 2 (DOT letter). So does the Londonderry Rail Trail.

DOT is exempt from local zoning. See RSA 674:54. The property is zoned AR-1. We are requesting that it be re-zoned to C-II (Commercial).

There are three zoning districts that abut the railroad corridor. The property to the north is zoned IND-II. Much of it is owned by PSNH. The property to the south is zoned C-II and AR-1.

This application is filed by one of the C-II abutters, Gizmo Enterprises, which has owned the property since 2004. See Ex. 3 (GIS aerial map of property). The property is used to store landscaping equipment and materials. The materials are stored in rows of large cement blocks, which partly encroach onto the DOT property. See Ex. 4 (draft existing conditions plan). DOT is willing to lease that section of its property to Gizmo Enterprises.

There are three reasons that support this request.

First, the change in zoning will not impact the present use of the property. DOT is exempt from local zoning ordinances. The Londonderry Rail Trail's use of the corridor will continue, uninterrupted.

Second, the change in zoning would not adversely affect the health, safety and general welfare of the community. As noted above, the property to be re-zoned is non-developable. In addition, the abutting properties would continue their existing uses. The change would reduce the buffer for the abutting properties that are zoned commercial and industrial. But from the current state of these properties, it is reasonable to conclude that the buffer has been irrelevant to any development plans and their use would likely be unaffected by the change in zoning. See Ex. 1 (GIS aerial map of RR corridor).

Third, the change comports with the goals of the Master Plan. The proposed re-zoning is a minor, inconsequential change that will accommodate a long-standing local business—Gizmo Enterprises is owned by Todd Bahan, who also owns Groundhog

Landscaping and uses the Gizmo property for the business. The re-zoning is a practical solution to enable Gizmo to continue to use its property as it has for many years.

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EXHIBIT 1



Property Information

Property ID 013-143-0
Location 0 RR ROCKINGHAM RD
Owner NEW HAMPSHIRE, STATE OF



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

Town of Londonderry, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 04/01/2022
Data updated 04/01/2022

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

EXHIBIT 2



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

March 11, 2022

Todd Bahan
Gizmo Enterprises, LLC
P.O. Box 1316
Londonderry, NH 03053-1316

Re: 4 Commercial Lane, Londonderry, NH
Potential lease of state-owned railroad property

Dear Mr. Bahan,

The Bureau has received a request submitted on your behalf to lease approximately 15,000 square feet (final square footage to be determined) of railroad property for commercial use (Groundhog Landscaping and Property Maintenance, Inc. of 4 Commercial Lane) to address a historic encroachment. As you know, the subject property is located in the Town of Londonderry, owned by the State, and under the jurisdiction of the Bureau of Rail & Transit. This railroad corridor has been out of service since the 1970's and has been developed into a rail trail by the Town of Londonderry who has a Rail Trail Agreement with the Bureau.

The Department continues to review and consider your lease request and is following its normal surplus property process and is not in the position, yet, to enter into a lease for this property. However, please be advised if the Department does enter into a lease with you for this property it will likely include standard lease language that requires, "The Tenant to comply with all laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises during the term of the lease..." Without waiving the application of RSA 674:54 or any other similar law that provides that the State property utilized for government purposes is not subject to local restrictions or obligations, the Department grants you permission to submit applications for the development and/or alteration of the property to the Londonderry Town Council and to any land use board of the Town of Londonderry. However, regardless of how the parcel is zoned today or in the future, you will be expected to comply with the same as a condition of the lease.

If you should have additional questions, please feel free to reach out to Lou Barker, NHDOT Railroad Planner, via phone (603-271-2425) or email (Louis.A.Barker@dot.nh.gov).


Sincerely,

Shelley Winters
Administrator, Bureau of Rail & Transit

EXHIBIT 3



Property Information
Property ID 013-104-2
Location 4 COMMERCIAL LN
Owner GIZMO ENTERPRISES, LLC


**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**
Town of Londonderry, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.
Geometry updated 04/01/2022
Data updated 04/01/2022

Print map scale is approximate.
Critical layout or measurement activities should not be done using this resource.

EXHIBIT 4

First Reading:
Second Reading/Public Hearing: 05/09/2022
Second Public Hearing: 06/06/2022
Adopted: _____

ORDINANCE #2022-23
**AMENDING AND EXTENDING THE LONDONDERRY COMMERCIAL
AND INDUSTRIAL PROPERTY TAX INCENTIVE PROGRAM**

- WHEREAS** RSA 72:81 permits a municipality to adopt a new construction property tax exemption (the “Incentive”) for commercial or industrial uses, or both for the purpose of providing incentives to businesses to build, rebuild, modernize, or enlarge within the municipality; and
- WHEREAS** The Town Council believes it is in the public benefit to enhance the Town of Londonderry's commercial/ industrial property tax base with respect to economic activity, cultural and historic character, and sense of community that contribute to economic and social vitality; and
- WHEREAS** It is further declared to be a public benefit to encourage the rehabilitation of underutilized commercial/industrial structures in Londonderry as a means of encouraging growth of economic, residential, and municipal uses in accordance with RSA 9-B; and
- WHEREAS** Short-term property assessment tax relief and a related covenant to protect the public benefit as provided under this article are considered to provide a demonstrated public benefit if the same encourages new construction, substantial rehabilitation and use of qualifying structures, or the replacement of a qualifying structure; and
- WHEREAS** The Town Council determines that it is in the public benefit to make the Program available town-wide; and
- WHEREAS** The Town Council wishes to amend and extend the Incentive previously adopted by Ordinance # 2022-05 on June 20, 2022; and
- WHEREAS** Pursuant to RSA 72:82, II, this Ordinance shall remain in effect until the earlier of: (A) its rescission by further action of the Town Council; or (B) the date which is twenty four (24) months after the adoption of this Ordinance, provided, however, that for any application which has already been granted prior to rescission or expiration, as the case may be, the exemption shall continue to apply at the rate and for the duration in effect at the time it was granted.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Londonderry that the Londonderry Commercial and Industrial Property Tax Incentive Program is hereby amended and extended as set forth in Exhibit A attached hereto.

Sharon Farrell, Town Clerk

John Farrell, Chairman
Town Council

A TRUE COPY ATTEST:

(TOWN SEAL)

EXHIBIT "A"

**LONDONDERRY COMMERCIAL AND INDUSTRIAL
PROPERTY TAX INCENTIVE PROGRAM**

§ 1. Adoption of program.

1.1 Pursuant to the authority granted by RSA 72:27-a, RSA 72:81, and RSA 72:82, and such other relevant authority bestowed upon it as a political subdivision of the State of New Hampshire, the Town of Londonderry ("Londonderry" or the "Town") through its legislative body, the Londonderry Town Council ("Town Council"), adopts the Londonderry Commercial and Industrial Property Tax Exemption Program for application within the geographical limits set forth below.

§ 2. Short title.

2.1 Londonderry Commercial and Industrial Property Tax Incentive Program (the "Program").

§ 3. Enabling statutes.

3.1 NH RSAs 72:27-a and 72:80-83.

§ 4. Purpose; declaration of public benefit.

4.1 It is declared to be beneficial to the public interest to enhance Londonderry's commercial and industrial property tax base to attract, promote and stimulate economic activity.

4.2 It is further declared to be beneficial to the public interest to encourage the rehabilitation of underperforming or underutilized commercial and industrial facilities in Londonderry as a means of encouraging smart growth of economic, residential, and municipal uses in accordance with RSA 9-B.

4.3 Short-term property tax relief and a related covenant to further public interest as described in this ordinance provide a demonstrated public benefit because the property tax relief and related covenant encourage new construction and use of Qualifying Structures, and replacement, substantial rehabilitation and use of Qualifying Structures. A Qualifying Structure is defined in Section 6.4 hereof.

4.4 The Town Council determines that it is in the public interest to make the Program available town wide for commercial and industrial uses as defined herein.

§ 5. Tax relief authority.

5.1 Londonderry, through the Town Council, hereby adopts RSA 72:80-83 in the manner specified under RSA 72:27-a and RSA 72:82. In addition, the Town may modify the incentive program in the same manner as hereby adopted to best suit the needs of the Town and its constituents.

§ 6. Definitions.

6.1 Assessed Value: The Assessed Value of the improvements and structures as of April 1 of the tax year to which the exemption pertains, pursuant to RSA 72:83.

6.2 Commercial Uses: All retail, wholesale, and service uses, including but not limited to: automobile and similar vehicle sales; automobile repair facility/garage; automobile service station; bank; brewery; brew pub; commercial performing and fine arts schools and studios; commercial service establishment; conference center; contractor; contractor's yard; funeral establishment; golf course/country club; grocery/convenience store; hospital; hotel; commercial service establishment; inn (motel); medical office; movie and recording studio; multiunit commercial establishment; nursery; office, pharmacy, printing; professional office; radio broadcasting facility; repairman; restaurant, drive-in restaurant; retail sales establishment; riding school; television broadcasting; transportation center; travel agent; tourist home, and wholesale business.

6.3 Industrial Uses: All manufacturing, production, assembling, warehousing, or processing of goods or materials for sale or distribution, research and development activities, or processing of waste materials, including but not limited to: bottling facility; building material storage yard; crematorium; equipment upfit (repair); industrial establishment; light industrial establishment; industrial repair garage; industrial supply; laboratory (medical/dental); laboratory: research, experimental, testing; light industry; light manufacturing; microbrewery; product assembly; publishing; research and development facility; research lab; sand/gravel pit; self-storage; truck terminal; warehouse, and wood/metal craft.

6.4 Original Assessed Value: The value of the Qualifying Structure assessed at the time that the governing body approves the application for Tax Relief and the owner grants to the municipality the covenant to protect public benefit as required in this ordinance.

6.5 Qualifying Area: The Qualifying Area is the Town of Londonderry.

6.6 Qualifying Structure: A structure located in the Qualifying Area built, rebuilt, modernized, or enlarged to be used for Commercial or Industrial Uses as defined in RSA 72:80 and described herein.

6.7 Replacement: The demolition or removal of a Qualifying Structure and the subsequent construction of a new structure on the same lot.

§ 7. Tax Relief.

7.1 The Tax Relief Period is the finite period of time during which the Tax Relief, as described in section 7.4 below, will be effective, and the percentage amount of new Assessed Value to be exempted, as determined by the Town Council based upon classification of the project by tier, pursuant to RSA 72:81, and in the further exercise of its discretion as set forth in sections 7.4 and 12, below.

7.2 A Tier One Project is a project in which the anticipated increase in valuation of the Qualifying Structure at the completion of construction is ~~tenthirtyfive~~ million dollars (~~\$30510,000,000~~) or more.

7.3 A Tier Two Project is a project in which the anticipated increase in valuation of the Qualifying Structure at the completion of construction is between five ~~two-fifteen~~-million dollars (\$~~25~~5,000,000) and ~~five~~ten million dollars (\$10,000,000), or more.

7.4 A Tier Three Project is a project in which the anticipated increase in valuation of the Qualifying Structure at the completion of construction both exceeds ten million dollars (\$10,000,000) and is a project of exceptional and unusual public benefit to the community as defined herein.

Tier One and Two Projects shall be eligible for Tax Relief in the form of the exemption from taxation authorized pursuant to RSA 72:81, and more specifically defined as follows:

(1) For a Tier One Project:

- a. In the first full tax year for which an exemption is granted following completion of a Qualifying Structure (the “first tax year”), an exemption of between forty (40) and fifty (50) percent of the increase in Assessed Value attributable to construction of new structures, and additions, renovations, or improvements to existing structures (the “Exemption”), as determined by the Town Council.
- b. The duration of the Exemption shall be five (5) years.
- c. In the four (4) tax years immediately succeeding the first tax year for which an exemption is granted, the Exemption shall decrease annually by twenty (20), thirty (30), forty (40), and fifty (50) percent of the prior year’s Exemption, rounded to the nearest whole percent, as set forth in Attachment A.

(2) For a Tier Two Project:

- a. In the first full tax year for which an exemption is granted following completion of a Qualifying Structure (the “first tax year”), an exemption of between thirty (30) and forty (40) percent of the increase in Assessed Value attributable to construction of new structures, and additions, renovations, or improvements to existing structures (the “Exemption”), as determined by the Town Council.
- b. The duration of the Exemption shall be five (5) years.
- c. In the four (4) tax years immediately succeeding the first tax year for which an exemption is granted, the Exemption shall decrease annually by twenty (20), thirty (30), forty (40), and fifty (50) percent of the prior year’s Exemption, rounded to the nearest whole percent, as set forth in Attachment A.

(3) For a Tier Three Project:

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e.a. Upon a finding that a project is a Tier Three Project, the Town Council may grant additional years of Tax Relief, but no more than ten years. The Town Council shall structure the exemption to decrease year-by-year in a similar fashion to Tier One and Two Projects.

§ 8. Public benefits.

8.1 In order to qualify for Tax Relief as set forth in section 7.4 above, the proposed new construction or rehabilitation must, in the reasonable discretion of the Town Council, provide one or more of the following public benefits, and the proposed Replacement must provide one or more of the same public benefits to a greater degree than would a rehabilitation of the same Qualifying Structure, as follows:

- It enhances the economic vitality of the Town;
- It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or
- It increases commercial and industrial activity in the Town, including job creation.
- It increases the Town's commercial or industrial tax base.

§ 9. Covenant to protect public benefit.

9.1 Tax Relief for the construction, rehabilitation or replacement of a Qualifying Structure shall be effective upon the property owner's grant to the municipality of a covenant ensuring that the Qualifying Structure shall be maintained and used in a manner that continues the public benefit for which the Tax Relief was granted and as otherwise provided in this ordinance.

9.2 This covenant shall be released upon the expiration of the Tax Relief Period.

9.2 The covenant shall include provisions requiring the property owner to obtain commercially reasonable casualty insurance, and flood insurance, if relevant. The covenant may include, at the Town Council's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition of damaged structures and property. If the property owner has not begun the process of restoration, rebuilding, or demolition of such structure within one year following damage or destruction, the property owner shall be subject to the termination of the Tax Relief after notice and an opportunity to be heard.

9.3 The Town shall provide for the recording of the covenant to protect public benefit with the registry of deeds. It shall be a burden upon the property and shall bind all transferees and assignees of such property for the duration of the tax relief period, but shall thereafter expire without further affect.

§ 10. Application procedure.

10.1 An owner (or authorized agent, including a prospective purchaser and developer) of a Qualifying Structure who intends to construct, rehabilitate or replace such structure, may submit an application for the Tax Relief to the Town Manager's Office prior to construction, but not after December 31 before the beginning of the tax year for which the exemption is sought. In

such cases, the Town Council may anticipatorily grant the exemption, subject to adjustment when the actual increase in Assessed Value becomes known. The applicant shall include the address of the property, a full description of the intended construction, rehabilitation or replacement, any changes in use of the property resulting from the rehabilitation or replacement, and an application fee. The application shall be on a preapproved application form provided by the Town Manager's Office.

10.2 The application for property tax exemption shall not be deemed to be complete and the governing body shall not schedule a hearing on the application as required under RSA 72:83 until all required information has been submitted.

§ 11. Application fees.

11.1 An application fee of \$150, or an amount subsequently adopted by the Town Council, shall be paid at the time of application submission to the Town Manager's Office, made payable to the "Town of Londonderry."

11.2 The applicant shall also be responsible for the reasonable expenses incurred by the municipality in the drafting, review, and recording of the covenant.

§ 12. Review and decision by Town officials.

12.1 Upon receipt of a complete application, the Town Council shall consider the application in the normal course of business and notify the applicant of its decision no later than February 28 before the beginning of the tax year for which the exemption is sought. The Town Council shall determine:

- Whether the structure will be in the Qualifying Area;
- Whether the structure at issue is a Qualifying Structure;
- Whether there is a public benefit to granting the Tax Relief;
- The classification of the project by tier; and
- Within the parameters specified in section 7, above, the specific Tax Relief, if any, to be awarded for the Qualified Structure. The Town Council shall base this determination upon the extent of public benefit demonstrated by the applicant, assigning a higher percentage amount to applicants demonstrating a greater public benefit, and vice versa.

12.2 In determining the existence and extent of a public benefit, the Town Council shall also identify the costs and detriments associated with the proposed development or project, and weigh such factors against any public benefit. Only if the public benefit is found to specifically outweigh any costs and detriments shall the Town Council grant the Exemption.

12.3 After determining the applicable tier, in setting the applicable percentage, and in granting additional years of Tax Relief for a Tier Three project, the Town Council shall also factor the extent of the public benefit and the costs and detriments associated with the proposed development or project.

12.4 The Town Council may seek assistance from Town officials, legal counsel, boards or commissions in making its determinations, and shall conduct a public hearing.

12.5 After following the procedures established herein, the Town Council may grant the Tax Relief, provided:

- The Town Council finds a public benefit as defined herein; and
- The specific public benefit is preserved through a covenant as set forth above; and
- The Town Council finds that the proposed use is consistent with the applicable master plan, zoning ordinance or development regulations.

12.6 If the Town Council grants the Tax Relief, it shall identify the specific public benefit achieved as defined herein.

12.7 The burden of demonstrating the applicable tier and the public benefit shall be on the applicant. The Town Council or its agents may request such additional or updated information as is necessary to determine eligibility. Should the Town in its discretion determine that third party review or consultation is required, the applicant shall bear the associated cost. *See* RSA 72:83, III. If the Town Council determines that the applicant provided incorrect or false information during the application process or failed to provide information after such a request, the Town Council may refuse to grant the exemption without further inquiry.

12.8 If the Town Council, in its sole discretion, denies the application for Tax Relief, such denial shall be accompanied by a written explanation. The governing body's decision may be appealed either to the Board of Tax and Land Appeals or the Superior Court in the same manner as provided for appeals of current use classification pursuant to RSA 72:83; provided, however, that such denial shall be deemed discretionary and shall not be set aside by the Board of Tax and Land Appeals or the Superior Court except for errors of law or abuse of discretion.

12.9 For the purpose of determining the applicable tier for a Project, the Town Council may assign a reasonable value to factors not yet known or reflected directly in the anticipated valuation of the property after construction, including, but not limited to, significant job creation, and add such assigned value to the anticipated valuation after construction.

§ 13. Duration and limitations of property tax incentive program.

13.1 Pursuant to RSA 72:81, the exemption shall apply only to municipal and local school property taxes assessed by the municipality which shall exclude state education property taxes under RSA 76:3 and county taxes assessed against the municipality under RSA 29:11

13.2 If the municipality completes a revaluation during the period for which an exemption has been granted, the amount of the exemption shall be adjusted by the difference in equalization ratios applicable in the municipality before and after the revaluation. The amount and length of the property tax exemption shall be determined by the Town Council on a per-case basis, by categorizing the project by tier as set forth herein.

13.3 Tax Relief shall not be granted to an applicant who has begun construction. RSA 72:83, I.

13.4 The Town Council may grant waivers from this ordinance where not inconsistent with the purpose and intent of RSA 72:80-83, provided, however, that the Town Council may not waive a provision of this ordinance required by statute.

13.5 The Town may require the submission of an annual update to determine continued eligibility for, and the proper amount of, Tax Relief. The Town Council may conduct an annual hearing to review the update and may adjust the Tax Relief based upon changed conditions. If the Town Council determines that the applicant provided incorrect or false information in an annual update or failed to provide information necessary for an annual update after such a request, the Town Council may terminate the exemption upon notice and an opportunity for the applicant to be heard.

13.6 This ordinance shall expire twenty four (24) months after its passage, unless sooner terminated or extended by vote of the Town Council.

§ 14. Resumption of full tax liability.

14.1 Upon expiration of the Tax Relief Period, the property shall be taxed at its market value in accordance with RSA 75:1.

§ 15. Extent of Tax Relief.

15.1 Tax Relief granted under this ordinance shall be calculated on the Assessed Value at the time of the commencement of the Tax Relief Period in excess of the Original Assessed Value.

15.2 Tax Relief granted under this ordinance shall pertain only to assessment increases attributable to the construction, rehabilitation or replacement performed under the conditions approved by the Town Council and not to those increases attributable to other factors, including but not limited to market forces.

15.3 Nothing herein shall prohibit an owner from seeking an abatement of the original assessed value prior to any adjustment granted hereunder.

§ 16. Violations and penalties; enforcement.

16.1 If the property owner fails to maintain or utilize the building according to the terms of the covenant, or fails to restore, rebuild, or demolish the structure following damage or destruction as provided above, the Town Council shall, after notice and an opportunity to be heard, determine whether and to what extent the public benefit of the Qualified Structure has been diminished and may terminate or reduce the property tax exemption amount and period in accordance with such determination.

16.2 Any tax payment required under this section 16 shall be payable according to the following procedure:

16.2.1 The Commissioner of the Department of Revenue Administration shall prescribe and issue forms to the local assessing officials for the payment due,

which shall provide a description of the property, the market value assessment according to RSA 75:1, and the amount payable.

16.2.2 The prescribed form shall be prepared in quadruplicate. The original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the payment along with a special tax warrant authorizing the collector to collect the payment under the warrant. The quadruplicate copy of the form shall be retained by the local assessing officials for their records.

16.2.3 Upon receipt of the special tax warrant and prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice of payment.

16.2.4 Payment shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18% per annum shall be due thereafter on any amount not paid within the thirty-day period. Interest at 12% per annum shall be charged upon all taxes that would have been due and payable on or before December 1 of each tax year as if no Tax Relief had been granted.

§ 17. Collection of unpaid taxes.

17.1 All taxes levied pursuant to RSA 72 which are not paid when due shall be collected in the same manner as provided in RSA 80.

1 **Londonderry Town Council Minutes**
2 **Monday, December 5, 2022**
3 **7:00 PM**
4 **Moose Hill Council Chambers**

5
6
7 **Attendance:** Present: Chairman John Farrell; Vice Chairman Joe Green; Councilors Jim Butler,
8 Chad Franz, and Deb Paul; Town Manager Michael Malaguti; Finance Director Justin Campo

9
10 **Call to Order**

11
12 Chairman Farrell called the Town Council meeting to order at 7:00 PM. The Pledge was led by
13 Chairman Farrell. This was followed by a moment of silence for the anniversary of Pearl Harbor,
14 December 7th, and for the first responders, people who volunteer and all those who serve us.

15
16 **PUBLIC COMMENT**

17
18 **Name:** Doug Thomas

19 **Address:** 143 Mammoth Rd, Londonderry

20 Thomas shared that there is certain federal funding for energy. He shared an article and stated that
21 he would send it along to everyone.

22
23 “The NH Department of Energy (NHDOE) has created a webpage on its website to offer
24 information on certain federal funding programs stemming from the passage of the Infrastructure
25 Investment and Jobs Act (IIJA, or Bipartisan Infrastructure Law). These programs will likely be
26 of strong interest to NH residents, businesses, and institutions. The IIJA makes significant
27 investments in energy efficiency, renewable energy, and grid resiliency over the next five years.
28 NHDOE’s webpage is meant to be a resource for certain federal funding opportunities offered by
29 the US Department of Energy (USDOE).

30
31 NHDOE’s IIJA webpage can be found here: Infrastructure Investment and Jobs Act (IIJA) Funding
32 Programs | NH Department of Energy

33
34 The webpage separates the IIJA programs based on applicant type – schools, municipalities,
35 utilities, hydroelectric facilities, nonprofits, etc. The webpage will continue to evolve overtime as
36 the US Department of Energy issues additional guidance across various programs. Interested
37 parties are encouraged to continually monitor the webpage. A comprehensive list of all USDOE
38 IIJA programs can be found here: Clean Energy Infrastructure Homepage | Department of Energy

40 NHDOE is also working on a webpage to advertise updates on the Inflation Reduction Act (IRA)
41 program that will be live in the near future. USDOE has announced funding allocations to states
42 across two large rebate programs for homeowners. Information on these allocations can be found
43 here: [Home Energy Rebate Program | Department of Energy](#)

44
45 At this time, these rebates are not available. USDOE is currently conducting stakeholder outreach,
46 developing program guidance, and hosting listening sessions with key stakeholders. Interested
47 parties can learn more at USDOE’s rebate webpage here: [Home Energy Rebate Program |](#)
48 [Department of Energy](#)”

49
50

51 **PUBLIC HEARING**

52

53 **Motion:** Motion to open the Public Hearing made by Vice Chairman Green/

54 **Second:** Councilor Franz

55 Chair votes 5-0-0.

56

57 **Budget Public Hearing**

58

59 Finance Director Justin Campo presented. Campo went over some of the changes to the Default
60 Budget that have been made since the presentation of the Town Manager’s budget. Campo stated
61 that he updated all the personnel with the recent promotions, changes, and things of that nature,
62 and the Default and Operating Budget has gone down by about \$102,000 from the result. In
63 addition to that, the revenues have increased as well to \$16,041,799.

64

65 Malaguti stated that the personnel changes in the past month are highlighted in his Town Manager
66 report.

67

68 Campo discussed the overtime budget and the welfare situation in town. The Council voted to stay
69 at \$50,000 to allocate to welfare organizations.

70

71 Erin Matlin, Library Director, discussed the request regarding the full-time Library Technician
72 position, and the questions the Council had at the last meeting, like what programs could be cut.
73 Matlin stated that all of their programs are well attended. Matlin stated that residents love the
74 programs. By not filling to position, they would be forced to cut programing so that staff can
75 address the back log of other projects that have been on hold, more specifically children
76 programing. This is a non-MLS position.

77

78 The Council continued the discussion of what should be cut.

79

80

81 **Name:** Dan Bouchard

82 **Address:** O'Connell Drive, Londonderry

83 Bouchard asked, on the Warrant Article that is being thought about, enhancement of first
84 responders' services, is that a one-year thing or is the Council looking at doing it for a few years.
85 Chairman Farrell stated that it would become a part of the Default going forward. Bouchard asked
86 if that would bring the line items where they should be. Chairman Farrell stated yes.

87

88 **Motion:** Motion to close the Public Hearing made by Vice Chairman Green.

89 **Second:** Councilor Franz

90 Chair votes 5-0-0.

91

92 **NEW BUSINESS**

93

94 **Approval of Tentative CBA with Londonderry Police Employee's Association**

95

96 Chairman Farrell stated that the Town Manager and the Finance Director are seeking the approval
97 of the contract negotiations to go forward and move onto the ballot. Town Manager Malaguti stated
98 that they have been in negotiations since their previous collective bargaining agreement is up.
99 Malaguti stated that it has been tough to hire police officers. Malaguti stated that people are going
100 to other municipalities based on their contracts, over Londonderry. Londonderry has fallen behind
101 other communities. Malaguti stated that we have reached an agreement that will make us
102 competitive today. Malaguti stated that this is the first time a five-year agreement has been
103 negotiated. Malaguti went over what the market adjustments would be and changes to the contract.
104 Malaguti stated that an investment of \$1.63M over five years, is not only essential, but the right
105 thing to do. Malaguti stated that he needs a motion to recommend this to the voters for approval.
106 Motion made by Vice Chairman Green, second by Councilor Butler. Chair votes affirmative 5-0-
107 0. Moved to ballot.

108

109 **Confirmation of Kellie Caron as Assistant Town Manager/Economic Development Director**

110

111 Town Manager Malaguti introduced Caron and went over her qualifications. Malaguti stated that
112 it is his pleasure to nominate her to become Assistant Town Manager and Economic Developer.
113 Caron introduced herself to the Council. Motion to appoint Caron made by Councilor Franz,
114 seconded by Vice Chairman Green. Chair votes 5-0-0 and congratulated Caron.

115

116 **Resolution #2022-22 – A Resolution Designating the Economic Development Director as**
117 **Department Head of Planning and Economic Development Department**

118

119 Malaguti stated that this is returning the Department Head back to Caron. Motion to approve
120 Resolution #2022-22 made by Councilor Franz, seconded by Vice Chairman Green. Chair votes
121 in the affirmative, 5-0-0.

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Resolution #2022-21 – A Resolution Creating the Londonderry Utilities Committee

Chairman Farrell stated that this committee won't just look at energy, but all of the services provided, by the private sector. Malaguti stated that the staggering of terms will work itself out. Councilor Paul stated that she does not like the word utilities because it is not tied to just electricity. Councilor Paul stated that the Planning Board and Conservation Commission should be involved. Councilor Paul also stated that she give examples of other committees to Town Manager Malaguti, and most of them have more members. Town Manager Malaguti stated that he did meet with Councilor Paul on Thursday and he told her to voice her suggestions to the Council. Malaguti stated that he is happy to make any suggested changes the Council would like to make. Chairman Farrell stated that thirteen members is too large of a committee for this town. Councilor Paul stated that she would like to see seven members and three alternates.

Name: Doug Thomas

Address: 143 Mammoth Rd, Londonderry

Thomas stated that a state rep should be a member on the board since they have contacts with the state, maybe be a liaison, it may be a good resource for the committee. It would be valuable to use their resources.

Motion to approve Resolution #2022-21 with amendments made by Vice Chairman Green, seconded by Councilor Franz. Chair votes in the affirmative, 5-0-0.

Notify Me Tab

Vice Chairman Green stated that this notification system is great for receiving agendas and other news about the town. Malaguti stated that when we updated the website and so now the notify me tab is up and working. Councilor Paul stated that it's not working for her. Malaguti stated that he will look into it.

Board/Committee Interviews

The Council interviewed Tiffani Macarelli for a voting position on the Conservation Commission. Motion to appoint Macarelli to a voting member on the Conservation Commission with a term expiring 12/2023 made by Councilor Butler, seconded by Councilor Franz. Chair votes 5-0-0.

Approval of Minutes

Motion to approve the Town Council Minutes from November 21st made by Councilor Franz and seconded by Vice Chairman Green. Chair votes 5-0-0.

163 **Adjournment**

164

165 **Motion:** Vice Chairman Green

166 **Second:** Councilor Franz

167 Chair votes 5-0-0

168

169 Minutes taken by Kirby Brown on 12/05/2022

170 Minutes typed by Kirby Brown on 12/07/2022

171 Minutes approved by Town Council on 12/19/2022