

2011

Town of Lee

Zoning Ordinance

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2011

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**ZONING ORDINANCE
FOR THE TOWN OF LEE, NEW HAMPSHIRE
MARCH 2011**

**ARTICLE I
PREAMBLE**

In order that we preserve the rural character of the Town and for the general welfare of its inhabitants, the Town of Lee, in official Town Meeting, assembled on April 9, 1966 and amended on March 11, 1969; March 10, 1971; March 6, 1973; March 5, 1974; March 4, 1975; March 2, 1976; March 8, 1977; November 7, 1978; March 11, 1980; March 10, 1981; March 9, 1982; September 14, 1982; March 8, 1983; March 13, 1984; March 12, 1985; October 29, 1985; March 11, 1986; November 4, 1986; March 10, 1987; March 14, 1989; March 13, 1990; March 12, 1991; March 9, 1992; March 10, 1993; March 7, 1994, March 15, 1995, March 14, 1997, March 11, 1998; March 10, 1999 ;March 14, 2001;March 12, 2002; March 11, 2003, March 9,2004, March 8, 2005. March 14, 2006; March, 2009; and March 8, 2011 hereby adopts the following ordinance, pursuant to authority conferred by Chapter 31, Section 60-89 and Chapter 36, New Hampshire Revised Statutes Annotated, recodified as Chapter 672-677 New Hampshire Revised Statutes Annotated in 1984.

**ARTICLE II
DEFINITIONS**

Abutter: Any person whose property adjoins or is directly across the street or stream from land under consideration by the Planning Board or Zoning Board of Adjustment.

Accessory Building: Any building attached or unattached to the main residential building in which a permitted use may exist.

Accessory Use: A use which is clearly incidental to the principle use of the premises an which is conducted in the same residential structure or on the same residential lot.

Adult Bookstore or Adult Video Store: A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, to the display, sale or rental of the following:

A) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1, or,

B) instruments, devices, or paraphernalia which are designed for use in connection with "sexual conduct" as defined in NH RSA 571-B:1, other than birth control devices.

An adult bookstore or adult video store does not include an established that sells such items as an incidental or accessory part of its principal stock and trade and does not devote more than 15% of the total floor area of the establishment to the sale of such items.

Adult Motion Picture Theater: An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the presentation time is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as forth in NH RSA 571-B:1, for observation by patrons. For the purposes of this ordinance, substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven days within any 56 consecutive day period.

Adult Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machine, projectors, or other image producing devices or maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of "harmful to minor" and/or "sexual conduct" as set forth in NH RSA-B:1.

Adult Drive-In Theater: An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion picture, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

Adult Cabaret: A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

Adult Motel: A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction of materials which meet the definition of "harmful to minors" ¹and/or "sexual conduct" as set forth in NH RSA 571-B:1.

Agriculture, Farm, Farming: ¹ The word "farm" means any land, buildings or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence of the owner(s) located on such land. Structures shall include all farm outbuildings used in the care of livestock, in the production and storage of fruit, vegetables, or nursery stock, in the production of maple syrup, the production of annual or perennial plants, and any other structures used in the agricultural operations.

¹ Amended March 8, 2011

¹ Amended March 14, 2006

1. The words “agriculture” and “farming” shall mean all operations of the farm, but shall not be limited to:
 - a.) The cultivation, conservation, and tillage of the soil,
 - b.) The storage, use, and application of fertilizers, manures and other soil amendments,
 - c.) The storage, use, and application of agricultural crop protection materials,
 - d.) The raising and sale of livestock, including but not limited to; dairy cows and the production of milk and other dairy products, beef animals, swine, sheep, goats, domesticated strains of buffalo or bison, llamas, alpacas, emu, ostriches, yaks, elk, fallow deer, red deer, and reindeer,
 - e.) The breeding, board, raising, training, riding instruction, and selling of equines,
 - f.) The commercial raising, harvesting, and sale of fish or other aquaculture products,
 - g.) The raising, breeding and sale of poultry or game birds,
 - h.) The raising of bees and the production of honey,
 - i.) The raising, breeding, and sale of domesticated strains of fur-bearing animals,
 - j.) The production and sale of greenhouse crops,
 - k.) The production, cultivation, growing, harvesting, and sale of any other agricultural, floriculture, forestry, or horticultural crops including, but not limited to, berries, herbs, maple syrup, fruit, vegetables, tree fruit and nuts, flowers, seeds, grasses, nursery stock, sod, trees and tree products, including Christmas trees, trees grown for short rotation fiber, or any other plant that can be legally grown and harvested for sale or subsistence,
 - l.) Any other practice or activity on the farm incident to, or in conjunction with such farming operations, including , but not restricted to:
 - 1.) Preparation for market, delivery to storage, markets or other distribution points, of any products or materials from the farm,
 - 2.)The transportation to the farm of supplies and materials,
 - 3.)The transportation of farm workers,
 - 4.)Forestry or lumbering operations,
 - 5.)The irrigation of growing crops, from private, public and or other riparian water supplies where not prohibited by regulation,
 - 6.)The marketing or selling at wholesale or retail, or in any other manner on-site and off-site, any products from the farm, and other related supplies or materials that do not exceed in average yearly dollar volume the value of the products from the farm,
 - 7.)A roadside farm stand or farm market, as defined below, shall be considered part of an agriculture or farming operation and not considered commercial, provided that at least 50% of the average gross sales yearly dollar value is attributable to products produced on the farm or farming operation by the stand or market operator.

Farm Market

The purpose of the farm market is to provide opportunities for agricultural producers to retail their products directly to consumers and enhance income through value-added products, services and activities. Permitted activities include but are not limited to; the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts; agricultural tourism, pick- your-own operations; community supported agriculture; farm vacations. If the Farm Market includes any permanent

structures/buildings, they are subject to the current Zoning Regulations in the Town of Lee and subject to site review by the Town of Lee's Planning Board.

Roadside Farm Stand

The purpose of a temporary roadside farm stand is to allow farmers, who are actively farming, low cost entrance into direct marketing their farm products. It is characterized as a direct marketing operation is seasonal in nature and features on-farm produce as well as locally produced agricultural products, enhanced agricultural products and handmade crafts. Permitted activities include: but are not limited to; the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts, pick- your-own fruits, vegetable and nuts; community supported agriculture (CSA), agricultural tourism. The roadside farm stand is required to be registered with the Town of Lee. Any temporary buildings/structures are exempt from the definition of building/structures as defined in Article V, Residential Zone of the 2006 Town of Lee Zoning Ordinance as amended – (example if future changes are done to the Articles it may change the numbering) and Article XV, Wet soils Conservation Zone and they are exempt from the Setback provisions from Article V, Residential Zone and Article XV, Wet Soils Conservation Zone

Agricultural Tourism

The purpose of Agricultural Tourism is to attract people to farms, promote the sale of agricultural products using agriculture related tours, events and activities, as well as non-agricultural related activities. These tours, events, and other activities are to supplement farm income. Activities include, but are not limited to petting farms, farm animal attraction, school tours, outdoor trails, crop mazes, hayrides, pony rides, livestock and or equine events, group picnics, on-and- off site food catering services, craft shows, outdoor recreation, and educational activities. If a fee is charged, in order to be a permitted use, the farm must be actively producing agricultural products for sale. Farms where the seller is not actively producing agricultural products for sale will require a Special Exception.

Aquifer: A geological formation composed of rock or sand and gravel that contains significant amounts of potentially productible, potable water.

Bogs: Consist of peat or muck deposits of significant depths and are characterized by a distinct group of trees and plants which are adapted to the bog's highly acidic conditions. The water in a bog is practically devoid of oxygen and nutrients. Bogs usually develop in undrained glacial depress.

Common Area: Any and all portions other than the individually owned lots. Common area must comprise at least twenty-five (25%) of the total land area and must be accessible to all residential lots.

Common Open Space: Common land area within the Cluster Residential Development which shall not be built upon and shall remain in its natural or undeveloped state.

Condominiums

Condominiums: Real property, and any interests therein lawfully submitted by the recordation of a condominium instrument pursuant to New Hampshire RSA 356-B. No condominium shall be deemed a condominium unless the undivided interests in the common area(s), including land, accessory roads and buildings, are vested in the unit owners.

Condominium Instruments: A collective term referring to the declaration, bylaws, site plans and floor plans recorded pursuant to the provisions of New Hampshire RSA 356-B. Any exhibit, schedule, or certification accompanying a condominium instrument, and recorded simultaneously therewith shall be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of New Hampshire RSA 356-B.

Condominium Unit: A dwelling unit together with the undivided interest in the common area pertaining to that unit.

Common Area(s): Any and all portions of the condominium other than the dwelling units.

Common Expense: All expenditures lawfully made or incurred by or on behalf of the unit owner's association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

Common Open Space: Common land area with the condominium development which shall not be built upon and shall remain in its natural state.

Communal Septic System and Communal Water Supply System: Non-municipal systems with two or more services, for which the responsibility for maintenance shall be considered common expense.

Conversion Condominium: A condominium containing structures which before the recording of the declaration were wholly or partially occupied by someone other than the declarant or those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers. No apartment building may be converted to a condominium development unless all requirements for initial condominium development as set forth in this article are met by the conversion condominium. Any modifications to the site upon condominium conversion shall require Site Plan Review by the Planning Board under the regulations set forth herein.

Conversion Space: A portion of a structure within the condominium which may be converted into one or more units and/or common space.

Convertible Land: A building site which is a designated portion of the common area within which additional units can be created, according to New Hampshire RSA 356-B, provided that such conversion will not result in there being less than eighty-five thousand (85,000) square feet per residential unit for the entire tract.

Expandable Condominium: A condominium to which additional land may be added in accordance with the provisions of New Hampshire RSA 356-B.

Unit Owner's Association: An association established for the maintenance of all common area and for the payment of all expenditures associated with common expenses.

Dwelling Unit: Shall mean any building or structure providing complete independent living facilities for one or more persons including provisions for living, sleeping, eating, cooking, sanitation and to include all areas attached thereto.

Driveway: Any designated vehicular access from a single house lot to a public right-of-way or private road. (The Planning Board may allow a single driveway to service more than one house lot, but in no instance shall a driveway be substituted for a private road.)

Duplex: Shall mean a residential structure containing two (2) dwelling units of approximately the same size and of common ownership. Each of the units has a separate entrance, although driveway access and parking may be shared.

Earth: Sand, gravel, rock, soil, loam, topsoil, and clay.

Excavation: A land which is used, or has been used for the commercial taking of earth including all slopes.

Floodplain (Regulatory Floodway): Shall mean the channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. The regulatory floodway shall be as delineated on the flood insurance rate maps and flood boundary maps of the Town of Lee, dated May 17, 2005 as prepared by the Federal Emergency Management Agency, Federal Insurance Administration.

Frontage-Road: Contiguous length of the lot bordering on and accessible from a public right-of-way.

Frontage-Water: Contiguous length of the lot bordering on the water. Road frontage may not be used to satisfy water frontage requirements and water frontage may not be used to satisfy road frontage requirements.

²**Impervious Coverage:** Any and all areas covered by buildings, structures, pavement or materials impervious to water.

In-Law Unit: Shall mean a separate dwelling unit which is contained within a single family residence on a conforming lot. Such unit shall have no more than one (1) bedroom and shall be no larger than six hundred and fifty (650) square feet. The primary unit shall be owner occupied.

Lot Line: A line dividing one lot from another.

Lot of Record: A distinct tract of land recorded in a legal deed and filed at the Registry of Strafford County, New Hampshire.

² Adopted March 1999.

Mandatory Home Owner's Association: A private, non-profit corporation, association, or other non-profit legal entity established by the applicant or developer for the purpose of managing and maintaining all common land, open space and natural areas. Membership in said association shall be mandatory for all property owners and made a required covenant in any deed issued or passed.

Manufactured Housing (Mobile Home): Any structure transportable in one or more sections which in the traveling mode is eight (8) body feet or more in width and forty (40) body feet or more in length or when erected on site, is three hundred and twenty (320) square feet or more and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to required utilities.

Manufactured Housing Park (Mobile Home Park): A tract of land on which there are sited or it is proposed to be sited more than one mobile home but where it is intended that ownership of all lots is to be maintained by a single owner and where the lots are intended to be rented or leased to individuals who will place homes thereon.

Manufactured Housing Subdivision: A tract of land on which there are sites or it is proposed to be sited more than one manufactured home but where it is intended that ownership of the lots is to be the individual homeowner with the exception of any designed common open space.

Marshes: Are treeless Wet Soils dominated by soft-stemmed herbaceous plants. The surface of the marsh is covered with water year round, though seasonal fluctuations in water depth are expected. Marshes range from the wet meadows variety to deep marshes which can be covered by several feet of water.

Multifamily Development Complex: Shall mean one (1) or more multifamily structures on the same site.³

Multifamily Structure: Shall mean a residential structure containing three (3) or more units but no more than six (6) units.

Neighborhood: An area of land, local to the use concerned, generally lying within a radius of one thousand (1,000) feet of such use for the purposes of this ordinance, but including all areas farther away from such use whenever the use creates a condition which by reason of noise, vibration, lighting, smoke, dust or other emission or cause is a detriment, hazard, or is injurious to an area more extensive in size.

Nonconforming Use: The use of any building or land which does not conform to the use regulations of the zone in which such use exists.

Nude Model Studio: A place where a person appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals, with an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

³ Amended March 2001

²⁴**Open Space Residential Development:**

Open Space Residential Development: A residential subdivision of a tract where, instead of dividing an entire tract into house lots of conventional size, the similar number of housing units may be clustered on lots of the same or reduced dimensions. The remaining land in the tract, which has not been built upon, is reserved for common area to be held in some form of undivided ownership or easement so as to prevent it from ever being subdivided.⁴

Presite Built Housing (Modular Homes): Shall mean any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes for installation or assembly and installation on the building site. This shall not include manufactured homes.

Private Road: Any road where the right-of-way for such road is not held by either a town or the State of New Hampshire.

Professional Office: A space or room in which there is no display of unrelated stock or wares in trade commodity sold, nor any commercial use conducted other than the professional offices of a doctor, dentist, lawyer, architect, engineer and related laboratories, insurance agent, Realtor, or other similar professional services.

Recreational Vehicles: Shall mean a vehicle (travel trailers and mobile homes) used for personal pleasure or travel and not for full-time occupancy. This shall not include off-highway vehicles.

Right-of-Way: Includes all town, state and federal highways, right-of-way dedicated to the public use, streets as defined under Lee Subdivision Regulations, and the land on either side of the same as covered by state statutes, to determine the width of the right-of-way.

Seasonal: Refers to less than one hundred and eighty-three (183) calendar days.

Setback: Shall mean the area required by state or local ordinance designated from the property lines to the closest building or parking area.

Sexual Encounter Center: A business or commercial enterprise that as one of its business purposes, offers for any form of consideration:

- A) physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more persons are in the state of nudity; or
- B) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or
- C) when the activities in sections A or B above are characterized

²⁴ Amended March 2004

⁴ Amended March 2001

by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1; or

D) massage parlor and escort services with an emphasis on sexual conduct as set forth in RSA 571-B:1.

Sexually Oriented Businesses: adult bookstore, adult video store, adult motion picture theater, adult motion picture arcade, adult drive-in theater, adult cabaret, adult motel, adult theater, nude model studio, sexual encounter center, or any combination of the above.

SIGNS:

Sign: Shall mean any exterior structure or painting including a diagram, or lettering which identifies, gives direction or calls attention to any premises, person, product activity or business.

Agricultural Sign: A sign which identifies an agricultural property.

Commercial Sign: Shall mean a sign which is not part of or attached to any building but is located elsewhere.

Free Standing or Group Sign: Shall mean a sign which is not part of or attached to any building but is located elsewhere.

Developmental Sign: Shall mean a sign of permanent nature which identifies a subdivision of ten (10) lots or more.

Directional Sign: Shall mean a sign of a permanent nature which directs the traveling public to specific building, activities or location.

Grandfathered Sign: Shall mean any nonconforming sign in any zone legally in existence prior to March 15, 1989.

Pylon or Pole Sign: Shall mean a sign supported or suspended from a free standing column which is taller than eight (8) feet in height.

Residential Accessory Sign: Shall mean a sign which identifies an accessory use.

Roof Sign: Shall mean any sign erected upon or over the roof of a building exclusive of individual lettering which is not permitted under the terms of this ordinance.

Size of a Sign: Means the total exposed surface area in square feet visible from any one point. It shall mean the outside dimensions of the message bearing structure. Where a sign is composed of fabricated letters attached or painted onto a wall, the size shall be calculated as twice the average letter height times the length of the message.

Special Exception Sign: Shall mean a sign which advertises a business which has been approved by a Special Exception from the Zoning Board of Adjustment.

Temporary Sign: Shall mean any banner, pennant, or advertising display constructed of light materials intended to be displayed for less than a one (1) month period.

Soil Series: Land types as described by the Soil Survey of Strafford County, New Hampshire, dated March 1973, including the "very poorly drained" and "poorly drained" soils and as may be changed or amended from time to time by the U.S. Department of Agriculture, National Resource Conservation Service.

Swamps: Are areas where the water table is at or near the ground surface for a significant part of the year. The vegetational community consists mostly of trees and woody shrubs.

Street: A public road, highway or thoroughfare which constitutes or is designed to constitute the main access to more than one lot and which has been legally dedicated and accepted for public use.

Structure: Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences and boundary walls, but shall include but not be limited to parking areas, driveways, roads, and leach fields.

Trailer Camp (Recreational Campground): A land area occupied or designed for occupancy by two (2) or more trailers or campers, in use for seasonal living purposes.

Undevelopable Land: Shall mean land designated as: floodplain, Wet Soils, and land with slopes greater than fifteen percent (15%).

Visual Vegetative Barrier: A natural or man-established planting of trees and/or shrubs.

Visual Topographic Barrier: A natural or man-established ridge or berm covered so as to prevent erosion.

Waste or Waste Matter: Any matter consisting of garbage, refuse, radioactive or nuclear material, sludge from a waste or water treatment plant, or air pollution control facility, other discarded or abandoned material, including solid liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, or any matter defined as "hazardous" or potentially harmful by the State Division of Public Health Services, or the U.S. Environmental Protection Agency.

Water Impoundment: shall mean any water that is dammed, diked, dug out, and/or raised above the natural water level to include but not limited to multipurpose ponds, wildlife ponds, and farm ponds.

¹ **Wet Soils:** Shall mean those soils classified as poorly or very poorly drained as defined by the Soil Drainage Class Interpretive Limits section of Site-Specific Soil Mapping Standards for New Hampshire and Vermont, Version 2.0 January, 1999, published by the Society of Soil Scientist of Northern New England (SSSNNE Special Publication #3), or the current version of this publication. Agricultural

¹ March 2005

waste storage facilities, constructed and operated in accordance with NHDAMF (New Hampshire Department of Agriculture Markets and Food) best management practice guidelines, shall not be construed as a wet soil area for the purpose of this ordinance.

Wireless Communication Facility: Any towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or any other spectrum-based transmissions/receptions.

Woodworking or Cabinetry: Any business which manufactures wood products and/or cabinetry. The floor space not to exceed one thousand square feet, and employment not to exceed two employees and/or agents.

Zoning Board of Adjustment: Shall consist of five (5) members who shall be appointed by the Board of Selectmen as required under New Hampshire RSA 673:3 and shall be the power to hear and decide appeals if it is alleged there is error in any order made by an administrative official in the enforcement of any ordinance; and authorize upon appeal in specific cases such Variance or Special Exception from the terms of the ordinance. (See Article XXI herein.)

ARTICLE III GENERAL PROVISIONS

- A. BUILDING REGULATIONS:** The building regulations ordinance as adopted by the Town of Lee, March 13, 1956 and all subsequent amendments, shall apply to all zones.
- B. SUBDIVISION REGULATIONS:** The regulations permitting the subdivision of land as adopted by the Town of Lee, March 14, 1962 and all subsequent amendments shall apply to all zones.
- C. TEMPORARY SHELTER:** No owner or occupant of land shall permit fire or other ruins to be left, but within one (1) year shall remove or refill the same to ground level or shall repair, rebuild or replace the structure.

Temporary shelter may be placed in the vicinity of a single or two family residential structure which has been rendered uninhabitable by a catastrophic event for up to ninety (90) days from the date of the event. Utility and sanitary arrangements are subject to the Health Officer/Building Inspector approval. The Selectmen shall be empowered to grant additional time as deemed necessary for reconstruction.

- D. ⁵AGRICULTURE:** Normal agricultural practices shall be permitted in all zones according to the following standards:

Agriculture, Farm, Farming: ¹ The word “farm” means any land, buildings or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence of the

⁵ Amended March 8, 2011

¹ Amended March 14, 2006

owner(s) located on such land. Structures shall include all farm outbuildings used in the care of livestock, in the production and storage of fruit, vegetables, or nursery stock, in the production of maple syrup, the production of annual or perennial plants, and any other structures used in the agricultural operations.

1. The words “agriculture” and “farming” shall mean all operations of the farm, but shall not be limited to:

- a.) The cultivation, conservation, and tillage of the soil,
- b.) The storage, use, and application of fertilizers, manures and other soil amendments,
- c.) The storage, use, and application of agricultural crop protection materials,
- d.) The raising and sale of livestock, including but not limited to; dairy cows and the production of milk and other dairy products, beef animals, swine, sheep, goats, domesticated strains of buffalo or bison, llamas, alpacas, emu, ostriches, yaks, elk, fallow deer, red deer, and reindeer,
- e.) The breeding, board, raising, training, riding instruction, and selling of equines,
- f.) The commercial raising, harvesting, and sale of fish or other aquaculture products,
- g.) The raising, breeding and sale of poultry or game birds,
- h.) The raising of bees and the production of honey,
- i.) The raising, breeding, and sale of domesticated strains of fur-bearing animals,
- j.) The production and sale of greenhouse crops,
- k.) The production, cultivation, growing, harvesting, and sale of any other agricultural, floriculture, forestry, or horticultural crops including, but not limited to, berries, herbs, maple syrup, fruit, vegetables, tree fruit and nuts, flowers, seeds, grasses, nursery stock, sod, trees and tree products, including Christmas trees, trees grown for short rotation fiber, or any other plant that can be legally grown and harvested for sale or subsistence,

i.) Any other practice or activity on the farm incident to, or in conjunction with such farming operations, including , but not restricted to:

- 1.) Preparation for market, delivery to storage, markets or other distribution points, of any products or materials from the farm,
- 2.) The transportation to the farm of supplies and materials,
- 3.) The transportation of farm workers,
- 4.) Forestry or lumbering operations,
- 5.) The irrigation of growing crops, from private, public and or other riparian water supplies where not prohibited by regulation,
- 6.) The marketing or selling at wholesale or retail, or in any other manner on-site and off-site, any products from the farm, and other related supplies or materials that do not exceed in average yearly dollar volume the value of the products from the farm,
- 7.) A roadside farm stand or farm market, as defined below, shall be considered part of an agriculture or farming operation and not considered commercial, provided that at least 50% of the average gross sales yearly dollar value is attributable to products produced on the farm or farming operation by the stand or market operator.

2.) Temporary structures for seasonal farm stands must be removed upon conclusion of the season activity. The roadside farm stand is required to be registered with the Town of Lee.

Farm Market

The purpose of the farm market is to provide opportunities for agricultural producers to retail their products directly to consumers and enhance income through value-added products, services and activities. Permitted activities include but are not limited to; the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts; agricultural tourism, pick- your-own operations; community supported agriculture; farm vacations. If the Farm Market includes any permanent structures/buildings, they are subject to the current Zoning Regulations in the Town of Lee and subject to site review by the Town of Lee's Planning Board.

Roadside Farm Stand

The purpose of a temporary roadside farm stand is to allow farmers, who are actively farming, low cost entrance into direct marketing their farm products. It is characterized as a direct marketing operation is seasonal in nature and features on-farm produce as well as locally produced agricultural products, enhanced agricultural products and handmade crafts. Permitted activities include: but are not limited to; the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass produced items that reflect the history and culture of agriculture and rural America; crafts, pick- your-own fruits, vegetable and nuts; community supported agriculture (CSA), agricultural tourism. The roadside farm stand is required to be registered with the Town of Lee. Any temporary buildings/structures are exempt from the definition of building/structures as defined in Article V, Residential Zone of the 2006 Town of Lee Zoning Ordinance as amended – (example if future changes are done to the Articles it may change the numbering) and Article XV, Wet soils Conservation Zone and they are exempt from the Setback provisions from Article V, Residential Zone and Article XV, Wet Soils Conservation Zone

Agricultural Tourism

The purpose of Agricultural Tourism is to attract people to farms, promote the sale of agricultural products using agriculture related tours, events and activities, as well as non-agricultural related activities. These tours, events, and other activities are to supplement farm income. Activities include, but are not limited to petting farms, farm animal attraction, school tours, outdoor trails, crop mazes, hayrides, pony rides, livestock and or equine events, group picnics, on-and- off site food catering services, craft shows, outdoor recreation, and educational activities. If a fee is charged, in order to be a permitted use, the farm must be actively producing agricultural products for sale. Farms where the seller is not actively producing agricultural products for sale will require a Special Exception.

E. SANITARY PROTECTION: All dwellings and commercial properties shall provide both waste water disposal systems and sufficient water supply which shall be constructed and installed in accordance with the standards of the Lee Building Regulations, the New Hampshire Department of Health, and Welfare and the New Hampshire Water Supply and Pollution Control Division.

F. FLOODPLAIN: Within the Regulatory Floodway, any development or encroachment (including fill) which would result in any increase in flood levels during the base flood discharge is prohibited. Development shall mean any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

ARTICLE IV ZONES

For the purpose of this ordinance, the Town of Lee is divided into three (3) zones: the Residential Zone (Zone A), the Commercial Zone (Zone C) and the Wet Soils Conservation Zone and Aquifer Conservation District, as shown on the Official Map dated March 11, 1969 and amended March 2, 1976; March 8, 1977; September 14, 1982; March 12, 1985; March 12, 1986 and March 14, 1989 and filed with the Town Clerk. Said Official Map is a part of this ordinance and is incorporated herein by reference.

Residential Zone (Zone A): Shall comprise of whole town with the exception of Zone C.

Commercial Zone (Zone C): Shall comprise that area north and south of Route 4 as outlined below, and as shown on the Official Zoning Map. Starting at the Junction of Routes 4 and 125, running East for one thousand (1,000) feet along Route 4, and then North parallel to Route 125 to the Lee-Barrington Town Line. Thence running South along the Lee/Barrington Town Line to five hundred (500) feet South of the Route 4 right-of-way. Thence running East parallel to Route 4 to a point one thousand (1,000) feet East of the Lee Traffic Circle. Also running South of the junction of Route 4 and Route 125 five hundred (500) feet East and West of the Route 125 right-of-way to the junction of Route 125 and Steppingstone Road.

Wet Soils Conservation Zone: As defined in Article XV herein.

Aquifer Conservation District: Shall be superimposed over all other zones and is defined in Article XIII herein.

ARTICLE V RESIDENTIAL ZONE (ZONE A)

A. PERMITTED USES

In Zone A, the following uses are permitted:

- 1) Residential;
- 2) Agricultural in accordance with the Terms of Articles II and III herein.
- 3) Municipal buildings and structures;
- 4) Churches on a site approved by the Planning Board;
- 5) Accessory uses and Special Exception uses as permitted herein.

- 6) Recreational Playing Fields, Outdoor: Non-Commercial outdoor playing fields for games like soccer, field hockey, baseball and other similar outdoor sports as approved by the Lee Planning Board. Not structures allowed except for necessities like small sheds for maintenance and restrooms. No lighting or voice amplification equipment. No bleachers more than four (4) feet in height off the ground. No paved parking lots or areas. Site Review by the Planning Board is required to deal with issues such as noise, parking, and traffic.

Commercial excavation shall not be permitted in the residential zone.

One (1) residential structure shall be permitted on each lot unless such lot has received site approval for multi-family or condominium use according to the terms of Article XI and VII of this ordinance.

⁶Duplexes shall be permitted in Zone A on lots greater than five (5) acres with a minimum of 4.0 acres or (174,240 square feet) of contiguous developable land area or as approved by cluster residential subdivision. Duplexes shall not be subject to Lee Site Plan Regulations.

B. LOT REQUIREMENTS

⁷**(1) Lot Size:** All lots used for residential purposes shall contain a minimum of eighty-five thousand (85,000) square feet of contiguous land which is suitable for development. (See Definition of Undevelopable Land - Article II.)

(2) Frontage: Such lot shall have a minimum of two hundred and fifty (250) feet of frontage on a public right-of-way. Frontage and acreage requirements may be waived at the discretion of the Planning Board to permit cluster residential development in accordance with Article VIII herein.

(3) Setbacks: On each lot (except as provided under the terms of articles pertaining to cluster, condominium and manufactured housing subdivisions) the required setback for any building shall be:

Front - Fifty (50) feet from the public right-of-way;

Back and Side - Twenty five (25) feet from the lot lines. When such line is along a right of way, side and/or back setback shall be thirty five (35) feet.

(3-a) When the use is permitted by Special Exception in the Residential Zone, setbacks shall be:

Front - Fifty (50) feet from the public right-of-way.

Back and Side - Thirty-Five (35) feet from the lot line.

Parking areas shall also adhere to the above setback requirements for special exceptions. ⁸

(4) Lot of Record: A building housing a permitted use may be constructed on a lot of record at the time of this ordinance (March 5, 1974) if a waste water disposal system and a water supply system is constructed according to the applicable article of the Lee Building Regulations and provided that all of the setback requirements of this ordinance can be satisfied.

⁶ Amended March 2001

⁷ Amended March 1999

⁸ Amended March 2001

(5) Unconforming Lots: Any vacant lot which does not meet the minimum size and / or frontage requirements of this ordinance and is contiguous to another lot or lots in the same ownership, shall be combined with the contiguous lot(s) prior to sale or development so as to make a conforming or more closely conforming lot.

(6) Seasonal Residence: Seasonal residences may not be converted for year-round use without a conforming waste water disposal system (See Lee Building Regulations). Seasonal residences may not be converted for year-round use unless such residence has a clear safe access for emergency vehicles, as determined by the appropriate local officials, which is maintained year-round. There shall be no expansion in area or volume of the property unless all other requirements of the Lee Building Regulations and Lee Zoning Ordinance can be satisfied.

C. ACCESSORY USES

A resident may use his domicile for such customary uses as consultant, engineer, architect, lawyer, real estate or other recognized professions or such home occupations as hairdressing, dressmaking, upholstering or other noise, smoke, dust and odor free occupations, provided that there is no indication of such occupation visible on the exterior of the building or of the lot, except for a permitted sign, and that no such use requires any more additional parking space than would be required for a normal residency and would cause no diminution in value of surrounding properties. Any use requiring expanded parking facilities, a sign over four (4) square feet in area, outside storage of materials or employees or agents other than the owner or tenant and his spouse or children shall not be permitted except where a Special Exception has first been obtained from the Zoning Board of Adjustment. (See Article XXI herein). A permit from the Building Inspector and approval from the Planning Board must be obtained unless waived.

Where the criteria set forth for Accessory Use cannot be satisfied, the following uses may be permitted by Special Exception from the Zoning Board of Adjustment. Any use not deemed Accessory or permitted by Special Exception shall be prohibited.

D. SPECIAL EXCEPTION

The purpose of this section is to allow, on a selective basis, certain types of low-impact enterprises to be located in the residential zone. The intent is not to allow such enterprises in the midst of compact residential subdivisions or neighborhoods, but rather in areas which are otherwise suitable to such uses. Such enterprises should be low-impact in terms of noise, lighting, hours of operations, traffic, etc., so as to inflict as little disturbance as possible on the quality of life of nearby residences.

⁹Special Exception shall be required for any use requiring expanded parking facilities, a sign over four (4) square feet in area, outside storage of materials, or agents or employees other than the owner and his spouse and children. A Special Exception shall be obtained from the Zoning Board of Adjustment according to the criteria set forth in this ordinance herein and New Hampshire RSA Chapter 673: Local Land Use Boards. Site Approval must be obtained from the Planning Board unless waived. If a building is to be erected, a Building Permit must also be obtained from the Building Inspector.

⁹ Amended March 8, 2011

The following are the uses which may be permitted by Special Exception:

Antique Shops
Barbershops and Beauty Salons
Day Care Centers and Nursery Schools
Nurseries ²
Professional Offices ¹⁰
Real Estate Offices
Craft Shops, Woodworking or Cabinetry
Nursing Homes, Retirement Homes,
Kennels
Public Utility Boxes and Equipment
Bed & Breakfast – Site Review required by Planning Board ¹

A Special Exception shall go with the land and shall be limited only to the use and conditions as set in the granting.

A Special Exception will also be required for a Wet Soils Conservation Zone crossing under the terms of Article XV herein.

Special Exceptions may only be granted where satisfactory provisions and arrangement can be made for the following:

1. Ingress and egress to the property and proposed structures or uses with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and in case of fire or catastrophe;
2. Off-street parking and loading areas where considered necessary by the board;
3. Control of noise, glare, odor or other potentially adverse effects of the proposed use on nearby property and screening or buffering to alleviate such effects;
4. Refuse and service areas;
5. Control of drainage and erosion;
6. Lighting must be installed with due regard to glare, traffic safety and compatibility and harmony with adjoining property and the character of the area.

In addition, any use under Special Exception must conform to the following criteria:

² Amended March 14, 2006

¹⁰ Amended March 10, 2009

¹ Amended March 11, 2003

1. A landscaped buffer zone must be maintained between the Special Exception and any residential lot line.
2. Signs must conform to requirements of Article XVII of this ordinance.
3. Only one (1) residential structure and/or one (1) business, shall be permitted for that use on each lot.

ARTICLE VI COMMERCIAL ZONE (ZONE C)

¹¹A. PERMITTED USES

1. No residential use shall be allowed in the commercial zone.
2. Any industrial or commercial use on a site approved by the Planning Board.
3. Commercial excavation in accordance with the Excavation Permit issued by the Planning Board. (See Lee Site Plan Regulations, Article XII, Earth Removal Operations)

B. APPLICABILITY

1. When a parcel of land is split by zones, it shall be considered to be wholly in that zone which comprises seventy-five percent (75%) or more of the total acreage of the parcel under consideration.
2. The following standards and regulations shall apply to commercial use within Zone C.
3. A commercial use which is grandfathered (in existence prior to the adoption of this ordinance) shall be exempt from these standards and regulations except that:
 - a. Any expansion or modification in dimension or use shall conform;
 - b. Any change in approved use shall require Site Plan Review by the Planning Board.

C. LAND REQUIREMENTS

1. Lot Area: The minimum lot size for commercial use shall be eighty-five thousand (85,000) square feet (Seventy-five percent (75%) of such area must be developable land area) except that a lot of record at the time of this ordinance may be used for one (1) commercial use if all the other requirements of this ordinance may be satisfied.

Where more than one commercial use or structure is proposed, lot size shall be eighty-five thousand (85,000) square feet for the first use and twenty-five thousand (25,000) square feet of developable land area for each additional use.

¹¹ Amended March 1999.

2. Density: Total impervious coverage of the lot shall not exceed twenty-five percent (25%) of the total lot area. In the Aquifer Conservation District, see Article XIII Section D-5.

3. Setback: Each commercial use shall be set a minimum of one hundred and twenty-five (125) feet from the highway right-of-way. Setback shall apply to all structures including parking areas, leachbeds and product display areas. A natural vegetative buffer zone shall be maintained in the setback area with the exception of that area required for safe access and egress.

Side and rear setbacks shall be fifty (50) feet from the adjacent property line. When such lot abuts a residential lot, the setback shall be one hundred (100) feet.

4. Frontage: Any lot in Zone C shall have two hundred and fifty (250) feet of frontage on a public right-of-way.

D. ACCESS: Each property owner shall be permitted one (1) access per one thousand (1,000) feet of frontage. Access must be reviewed and approved by the Road Agent and the State Highway Department (if applicable).

E. AQUIFER ORDINANCE: The provisions of Article XIII of this ordinance shall override any provisions set forth herein.

F. SITE PLAN REVIEW REGULATIONS: Site Plan Review Regulations for the Town of Lee shall apply to all commercial and multifamily uses in this zone. This shall include any commercial buildings constructed in any zone, any expansion or modification of any existing Site Plan (or any commercial structure or site) or any change in any use.

G. BUILDING REGULATIONS: The Building Regulations for the Town of Lee shall apply to any construction within any zone.

ARTICLE VII CONDOMINIUM DEVELOPMENT

A. PURPOSE

The purpose of this article is to provide a flexible policy for quality condominium development consistent with the rural character, health, safety, and welfare of the Town of Lee and which will: result in a more economical subdivision layout; encourage a variety of residential dwellings; encourage ingenuity and originality in total subdivision and individual site design; preserve open space to serve recreational, scenic, conservation and other purposes related thereto within the densities established for the gross tract. All development shall be done in accordance with New Hampshire RSA 356.

B. PROCEDURE

¹²**Site Plan Review:** Proposals for a condominium development in the residential zone shall be submitted to the Planning Board. The Planning Board shall review such plan in accordance with the Planning Board's duties under Lee Site Plan Regulations. The Planning Board shall approve, approve with modification, or deny the proposal as provided by the state statute. Any development not part of

¹² Amended March 1999.

the approved plan shall constitute a violation of this ordinance. Any land identified as convertible land, for future construction, shall show future development plans. In the case of expendable condominium(s) a separate application for the proposal shall be made upon expansion. The proposal shall contain the following:

1. Site Plans shall show all proposed building, lighting, parking areas, signs and landscaping at a scale sufficient to permit the study of elements of the plan.
2. Utilities, Roads and Drainage plans shall be submitted.
3. Elevations and Floor Plans of all proposed buildings.
4. Location of adjacent structures and other outstanding features within two hundred (200) feet of the property line.
5. Other additional information deemed necessary by the Planning Board.

C. STANDARDS AND REGULATIONS

¹³The following standards shall be met for condominium development. Article V of this ordinance shall not apply to condominium development.

1. Minimum Land Area: for a condominium development, shall be twenty (20) contiguous acres in one (1) parcel. No more than twenty five percent (25%) of the minimum lot area shall be comprised of undevelopable land. (If such is the case, permitted density shall be reduced accordingly.)

2. Maximum Dwelling Units: There shall be no more than six (6) dwelling units per residential structure.

3. Distance Between Structures: shall be a minimum of fifty (50) feet.

4. Density: The required land area per condominium unit shall be not less than three (3) acres being 130,680 square feet.¹⁴ This density shall be maintained and applied to any convertible land or conversion space to be developed in the future. There shall be no minimum lot size for unit construction, provided soil and slope conditions are acceptable.

5. Frontage: There shall be a minimum of two hundred and fifty (250) feet of frontage on a public right-of-way.

¹³ Amended March 1999.

¹⁴ Amended March 2001

6. Buffer: There shall be a minimum buffer zone of one hundred (100) feet provided between any structure and the perimeter of the tract. The intent of the buffer zone is to provide visual vegetative screening from adjacent lots.

7. Common Land Area: Unless identified as convertible land, all areas designated as common land shall be permanently maintained as such and shall be guaranteed as such by a covenant describing the established common land area. Conservation Easements shall be encouraged on all dedicated open space land.

8. Open Space: Shall comprise a minimum of twenty-five percent (25%) of the total land area of the parcel and shall be contained in a contiguous section. The Planning Board shall retain the authority to waive this requirement on an individual parcel basis taking into consideration adjacent land use and specific conservation considerations.

9. Development Schedule: A timetable for completion of the condominium development shall be established and provisions made to indemnify the occupants of the development and the Town, should the condominium development not be completed. The Town may require the necessary performance bond(s) to ensure compliance.

10. Roads and Parking: Internal streets within the development shall conform to design and construction specifications of the Lee Subdivision Regulations. Such roads shall provide access to each unit. When the development contains ten (10) or more units, the main road shall be dedicated to the public. Accessory roads and ways within the development shall be private roads and shall be the responsibility of the Home Owner's Association. Area used for right-of-way shall be deducted from the permitted density.

Whenever possible (taking into consideration conservation and space limitations of the individual parcel) such streets shall be of a loop design with only one entrance onto an existing public road.

A minimum of two (2) off-street parking spaces shall be provided for each dwelling.

11. Building Height: No building shall exceed thirty-five (35) feet in height.

12. Setback: A condominium structure shall be setback a minimum of thirty-five (35) feet from the interior roadway.

13. Water and Waste Water Disposal: Water and Waste water disposal shall be provided by a community system or individual water or waste disposal system(s), upon approval by the Lee Planning Board. Systems shall be constructed and maintained in accordance with the standards of the Lee Building Regulations and the New Hampshire Water Supply and Pollution Control Division.

Nutrient loading analyses, according to Town guidelines, shall be submitted to the Planning Board to demonstrate that groundwater supplies shall be adequately protected.

If water is provided by a community supply it shall be constructed in accordance with the standards of the New Hampshire Water Supply and Pollution Control Division and the Lee Building Regulations.

14. Utilities: Any or all utilities, facilities, services, etc. shall be subject to inspection by the appropriate Town Officials or their designees. Any costs incurred shall be borne by the condominium developer.

15. Local Regulations: All subdivision and building regulations for the Town of Lee, where applicable, shall apply unless otherwise stated in this article.

D. DESIGN REQUIREMENTS

In addition to the requirements of the Lee Subdivision Regulations and the Lee Site Plan Regulations, condominium developments shall comply with the following design requirements.:

1. Architectural Style: Within the development, architectural styles which are compatible with the natural amenities and topography of the site will be encouraged.

2. Minimize Alteration of Site Features: Individual buildings, streets, and parking areas shall be designed and situated to minimize alteration to natural site features to be preserved, to relate to surrounding properties, to improve the view from the view of buildings, to lessen the area devoted to motor vehicle access, to achieve the best possible relationship between development and the land, to avoid adverse effects of noise, shadows and traffic on the residents of the development, and to insure no diminution in value of surrounding properties shall occur.

3. Open Space: Open Space areas shall include irreplaceable natural features located in the tract, such as but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings, and marshes. These should be distributed throughout the development as part of a design which will serve to unify the development visually and functionally and to buffer the development from surrounding land uses. No common open space shall be denuded, defaced, nor otherwise disturbed without prior written approval of the Planning Board.

Open space is intended for passive recreational uses and wildlife habitat and shall be easily accessible to all units within the development.

4. Drainage: Natural surface drainage channels shall be either incorporated into the overall site design or shall be preserved as part of the required open space.

E. MAINTENANCE OF COMMON AREA

In the condominium project, the maintenance of common area(s) and payment of common expense(s) shall be done in accordance with the provisions of New Hampshire RSA 356-B.

1. In the case where a condominium development consists of ten (10) units or less, all deed restrictions, organizational provisions for a Unit Owner's Association, and any other management concerns for common areas shall be approved by the Planning Board with the advice of the Town Attorney. Any costs incurred shall be borne by the condominium developer.

2. In the case where the condominium development consists of more than ten (10) units, final approval for all deed and financial arrangements of the Condominium Development shall be done in accordance with New Hampshire RSA 356-B through the State of New Hampshire Attorney General's office. Any costs incurred shall be borne by the condominium developer.

3. In addition to No's (1) and (2) above, review by the Town Attorney will be required to assure the validity of common ownership for tax purposes. Any cost incurred shall be borne by the condominium developer.

F. HEALTH AND SAFETY CLAUSE

In the event that the Unit Owner's Association fails to maintain the common area(s) relative to the health and safety of the condominium inhabitants or abutting property owners, the Board of Selectmen shall serve written notice upon such association setting forth the deficiencies in the maintenance of common areas relative to health and safety. Such notice shall include a demand that said deficiencies be cured forthwith, and that a statement of intent to comply and a date of compliance be filed with the Board of Selectmen within fourteen (14) days of said notice.

If such maintenance shall not have been performed or said statement of intent not filed by the stated time, the Town in order to preserve the taxable values of the properties within the condominium development and to prevent any common area(s) from becoming a detriment to public health and safety, may enter upon such common area(s) and maintain it for not more than one (1) year. Said entry shall not vest any right in the general public to the use and the enjoyment of the common area(s).

Before the expiration of that period, the Town shall upon its initiative or upon the request of the Unit Owners Association therefore responsible for the maintenance of the common area(s), call a public hearing to be held by the Board of Selectmen. Notice of such hearing shall be given to such Unit Owners Association and to the unit residents of the condominium.

At the hearing, such Unit Owners Association or unit owners of the condominium development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year or other designated period. If the Board of Selectmen shall determine that such Unit Owners Association is not ready and able to maintain said common area(s) in a safe and health condition, the Town may, in its discretion, continue to maintain said common area(s) during the succeeding year and subject to a similar hearing and determination, during each succeeding year thereafter.

The cost of such maintenance by the Town shall be assessed against the properties within the condominium development in direct relation to the proportionate interest in the common area(s) and shall become a tax time on said properties. At the time of entering on said common areas, for the purposes of maintenance, notice of such lien shall be filed in the Office of the Registry of Deeds. The decision of the Board of Selectmen in any such case shall constitute a final Administrative Decision.

**ARTICLE VIII
OPEN SPACE RESIDENTIAL DEVELOPMENT**

A. PURPOSE²³

The purpose of this article is to provide permanently preserved open space residential development consistent with the rural character of the Town of Lee. This will encourage and permit a “neighborhood” subdivision layout, and a variety of residential dwellings.

1. To create residential development in which the buildings and accessory uses are located more closely together with reduced lot sizes, into separate groups or neighborhoods, separated by a significant amount of common open space (Minimum of 30,000 sq ft. with no less than 100 ft of frontage.)
2. To permanently preserve open space to serve recreational, scenic, conservation and other related purposes within the densities established for the gross tract due to health and safety. Example: In a 40 acre tract, the maximum number of dwelling units that could be obtained, meeting all of the requirements of the ordinance would be twenty. (20)

B. STANDARDS AND REGULATIONS

Common Land area within the Cluster Residential Development tract will be established and maintained in accordance with the following requirements:

1. Mandatory Home Owners Association: The applicant or developer shall provide for and establish a "Mandatory Home Owners Association" as a legal entity under the laws of the State of New Hampshire or the ownership, care, and maintenance of all such land and improvements. Its articles shall be approved in writing by the Planning Board after review by the Town Attorney prior to development. The cost of such legal review shall be borne by the applicant or the developer. Any changes in such articles of association or incorporation shall require the prior written approval of the Planning Board.

Such association shall be created by a covenant. Such association shall be composed of all persons having ownership within the development and shall be responsible for the perpetuation, maintenance, uses and functions of all common lands and facilities.

All common lands and improvements shall be described and identified as to location, site, use and control in the covenant. Such covenant shall set forth the method of assessment for the maintenance of such land. the covenant shall be written so as to run with the land and become part of the deed to each lot or dwelling unit within the development.

Such covenant and association shall continue in effect so as to control the availability of facilities and land thereby provided; to maintain the land and facilities for their intended function; and to protect the development from additional and unplanned densities. Such association shall not be dissolve, nor shall such association dispose of any common area by sale or otherwise except to an organization conceived and organized to own and maintain such areas without the prior written consent of the Board of Selectmen.

In the event that the association, or any successor organized or any owners of the dwelling units located within the development with ownership in said open space, fails to maintain the open space in

²³ Amended March 2004

reasonable order and condition in accordance with the final plan, the Board of Selectmen shall serve written notice upon such association or dwelling unit owner(s) setting forth the deficiencies in the maintenance, order and condition of the open space. Such notice shall include a demand that said deficiencies be cured forthwith and that a statement of intent to comply and a date of compliance shall be filed with the Board of Selectmen within fourteen (14) days of said notice. If such maintenance shall not have been performed or said statement of intent shall not have been filed by the stated time, the Town, in order to preserve nuisance, may enter upon the common area(s) and maintain such for a period of not more than one (1) year. Said entry and maintenance shall not vest any right in the general public to the use and enjoyment of the common area.

Before the expiration date of that period, the Town shall, upon its initiative or upon the request of the association thereto responsible for the maintenance of the common area, call a public hearing to be held by the Board of Selectmen. Notice of such hearing shall be given to such association and the residents of the development. At that hearing, such association or the residents of the development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue or a succeeding year or other designated period. If the Board of Selectmen shall determine that such association is not ready and able to maintain said common area in a reasonable condition, the Town may, in its discretion, continue to maintain said common area during the next succeeding year and subject to a similar hearing and determination, during each succeeding year thereafter. The decision of the Board of Selectmen in any such case constitute a final Administrative Decision.

The cost of such maintenance by the Town shall be assessed against the properties within the development in direct relation to their proportionate interest in the common area, and shall become a tax lien on said properties. At the time of entering on said common area, for the purposes of maintenance, notice of such lien shall be filed in the Office of the Strafford County Registry of Deeds.

2. Permitted Uses: Cluster Residential Development shall be restricted to single family detached dwellings and to two-family detached residential structures under one ownership.

2-a: ¹⁵**Cluster Developable Net Developable Areas Standards:** The area of the entire tract to be subdivided less:

- a.) 10 percent for subdivision road right-of-way and utilities.
- b.) Rivers, streams, floodplains and water-bodies measured to the high water mark.
- c.) Hydric soils classified as “very poorly drained” and “poorly drained.”
- d.) Slopes greater than fifteen percent (15%).

3. ¹⁶Acre Requirement and Density:

3-a: The tract of land on which a Cluster Development is located shall have a total area of at least twenty (20) acres.

3-b: Permitted Density for single family dwellings; The number of units shall be determined by dividing the number of net developable acres by the conventional lot size of that district (85,000). For two family units each dwelling unit is considered one unit.

4. Minimum Lot Size: In a cluster residential development, individual lot size may be reduced from the general lot size in Article V to specific minimum lot sizes for cluster development, such minimum lot sizes being governed by the type(s) of dwelling unit proposed as follows:

¹⁵ Adopted March 2001

¹⁶ Adopted March 2001

Single Family Detached Dwellings: ¹⁷Minimum lot size for a single-family unit shall be 30,000 square feet of contiguous developable land per unit.

Two Family Residential: ¹⁸A two-unit dwelling shall have a minimum lot size of 60,000 square feet of contiguous developable land.

5. Frontage: There shall be a minimum of two hundred and fifty (250) feet of frontage on a public right-of-way.

6. Buffer Zone: A buffer zone having a minimum depth of one hundred (100) feet shall be provided between any structure and the perimeter of the tract. The intent of the buffer zone shall be to provide visual vegetative screening from adjacent lots. Said buffer zone shall be comprised of vegetation, either natural or planted.

No dwellings, structures or service roads shall be permitted within the designated buffer zone.

7. Lot Dimensions: Internal building lots in addition to acreage requirements shall comply with the following:

Frontage: Shall be one hundred (100) feet for a single family residential lot; or one hundred fifty (150) feet from a duplex.

Setbacks: Building setbacks shall be thirty five (35) feet front and twenty-five (25) feet from rear and side property lines.

Depth: The depth of each lot shall not be less than one hundred (100) feet.

8. Roads and Parking: All internal roads within a cluster residential development shall conform to design and construction standards as set forth in the Lee Subdivision Regulations. Wherever possible, taking into consideration conservation and space limitation of the individual parcel, such street shall be of a loop design with only one entrance onto an existing public road. Such road shall provide access to each unit and shall be dedicated to the public.

In addition, any land dedicated to the right-of-way shall be deducted from the permitted density.

A minimum of two (2) off street parking spaces shall be provided for each dwelling unit.

9. Water and Waste Water Disposal: Water and waste water disposal shall be provided by a community system or individual water or waste disposal system(s), upon approval by the Lee Planning Board. Systems shall be constructed and maintained in accordance with the standards of the Lee Building Regulations and the New Hampshire Water Supply and Pollution Control Division.

¹⁷ Amended March 2001

¹⁸ Amended March 2001

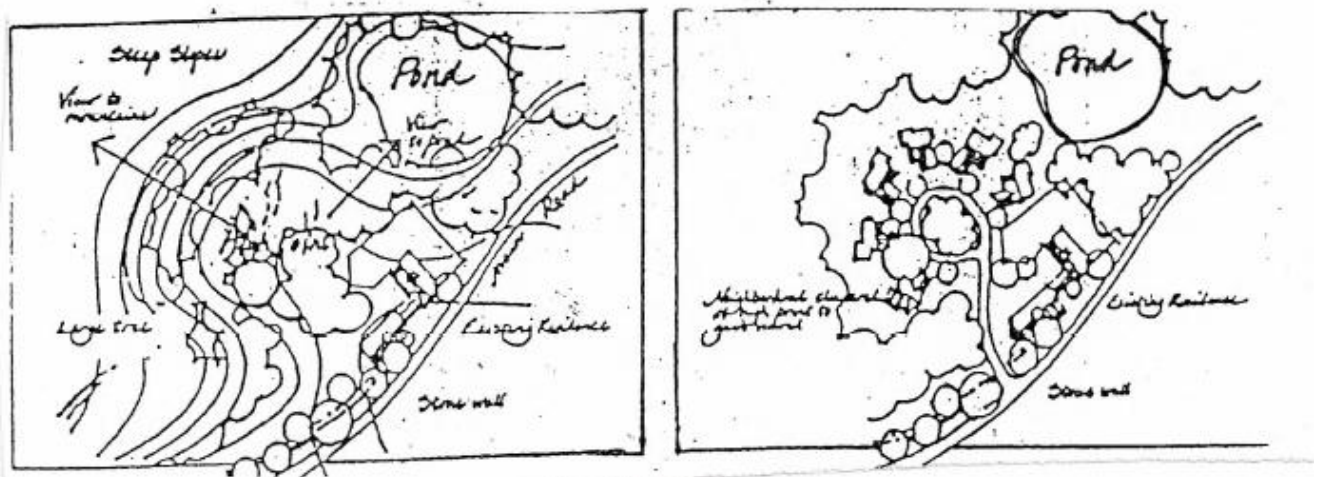
Nutrient loading analyses, according to Town Standards, must be submitted for review which provide evidence that the groundwater will be adequately protected.

At the discretion of the Planning Board, individual on-site systems may be permitted only on lots larger than forty thousand (40,000) square feet, as soil types permit.

C. DESIGN REQUIREMENTS

In addition to the requirements of the Lee Subdivision Regulations and the Lee Site Plan Regulations, Cluster Residential Developments shall comply with the following design requirements:

1. Natural Features: The developer is expected to understand and design according the natural features of the land and to architectural styles which are compatible with the site. Originality in lot layout will be encouraged to achieve the best possible relationship between the development and the land. (See Diagram)



2. Graphic Representation: A graphic representation of the site should be prepared identifying Wet Soils, slopes greater than fifteen percent (15%) and other natural features.

3. Cluster: Individual lots shall not be designed as a conventional strip development but shall be "clustered" to create a neighborhood effect.

4. Architectural Styles: Within the development, uniform architectural styles which are compatible with the natural amenities and topography of the site will be encouraged.

5. Minimize Alteration of Site Features: Individual lots, buildings, streets, and parking areas shall be designed and situated to: minimize alteration of the site features to be preserved; to lessen the area devoted to motor vehicle access; to avoid adverse effects of noise, shadows, and traffic; and to retain aesthetic qualities.

6. Open Space Areas: Open space areas shall include irreplaceable natural features located in the tract such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings, and marshes. These should be distributed throughout the development as part of a design which will serve to unify the development visually and functionally and to buffer the development from surrounding land uses. No common open space shall be denuded, defaced, or otherwise disturbed without prior written approval of the Planning Board.

Open space intended for recreational or public use shall be easily accessible to pedestrians. Such open space areas shall be linked to residential areas by walkways which shall meet the needs of the elderly and the handicapped.

7. Drainage: Natural surface drainage channels shall be either incorporated into the overall site design or shall be preserved as part of the required open space.

8. The entire development shall be designed so **No Diminution** in value of surrounding properties shall occur.

D. PROCEDURE

The following provisions shall apply to all Cluster Residential Developments:

1. Subdivision Regulations: All pertinent provisions of the Lee Subdivision Regulations shall be compiled with, including but not limited to: street design and construction specifications; the posting of bonds to cover required improvements; and the plat preparation and submission requirements.

2. Site Plan Review: The Lee Site Plan Regulations shall apply to the use, design, siting and development of all proposals, and all common land.

3. Ownership of Common Land Areas: Common land areas, and improvements thereon, shall be held, managed and maintained by the developer until owned and controlled by the "Mandatory Home Owner's Association" as defined herein.

4. Fees: The applicant shall be responsible for all costs incurred by the Town of Lee, its Planning Board, and its officials and representatives in the review of any plans. The Planning Board may require that the applicant post with the Town, at the time of application for cluster residential development plan review, sufficient funds from which anticipated review costs can be paid.

5. Special Studies: The Planning Board may require special studies and/or additional information that it deems necessary to carry out the purposes of the cluster residential development provision. Such studies shall be contracted by the Town; cost shall be borne by the developer of the land under consideration.

6. Public Hearings: No cluster residential development shall be approved or disapproved without first affording the applicant and property abutters public hearing(s) as provided for in the Lee Subdivision Regulations.

The Planning Board shall approve, approve with modifications or disapprove the plans as provided by New Hampshire RSA 676:4.

ARTICLE IX MANUFACTURED HOME SUBDIVISION

A. PURPOSE

The purpose of this article is to provide a flexible policy for quality development of alternative housing types consistent with the rural character, health, safety and welfare of the Town of Lee and which will result in a more economical subdivision layout; encourage a variety of residential dwellings; encourage ingenuity and originality in total subdivision and individual site design; preserve open space to serve recreation, scenic conservation and other related purposes within the densities established for the gross tract.

B. PROCEDURE

¹⁹**1. Site Plan Review:** Proposals for a mobile home subdivision in the residential zone shall be submitted to the Planning Board. The Planning Board shall review such plan in accordance with the he Planning Board's duties under Lee Site Plan Regulations and Lee Subdivision Regulations. The Planning Board shall approve, approve with modifications, or deny the proposal as provided by New Hampshire RSA 676:4. Any development or part of any development not part of this approved plan shall constitute a violation of this ordinance.

Any proposal which is submitted for approval must conform to all subdivision regulations and site plan review regulations for the Town of Lee.

2. Fees: The applicant shall be responsible for all costs incurred by the Town of Lee, its Planning Board, and its officials and representatives in the review of the plans. The Planning Board may require that the applicant post with the Town, at the time of application, sufficient funds from which anticipated review costs can be paid.

3. Special Studies: The Planning Board may require special studies and/or additional information deemed necessary to carry out the purposes of these provisions. The firm or individuals shall be contracted by the Town to carry out the purposes of these provisions. The firm or individuals shall be paid by the applicant.

4. Public Hearing: No subdivision for manufactured housing shall be approved or disapproved without first affording the applicant and the abutters public hearing(s) as provided for in the Lee Subdivision Regulations.

C. STANDARDS AND REGULATIONS

1. Land Area: The minimum land area shall be twenty (20) contiguous acres in one parcel. No more than twenty-five percent (25%) of the parcel shall be undevelopable land area including Wet Soils, floodplains and steep slopes greater than fifteen percent (15%). Should undevelopable land comprise

¹⁹ Amended March 1999.

more than twenty-five percent (25%) of the parcel under consideration, the density of development shall be reduced in order to satisfy this requirement. For example, in a parcel which consists of fifty percent (50%) Wet Soils, the number of dwelling units permitted is calculated by the amount of developable land plus the amount of acreage of undevelopable land up to twenty-five percent (25%) of the total. This figure is then divided by eighty-five thousand (85,000).

2. Frontage: There shall be a minimum road frontage of two hundred fifty (250) feet on a public right of way.

3. Number of Lots: Each manufactured home subdivision must be approvable for a minimum of eight (8) lots.

4. Lot Area:

- a. The overall density of these developments shall not exceed one (1) dwelling unit for each eight-five thousand (85,000) square feet of developable land area.
- b. Individual lot sizes may be reduced to thirty thousand (30,000) square feet providing it meets state requirements for lot size by soil grouping.
- c. The minimum frontage requirement for each lot is one hundred (100) feet.
- d. The minimum depth for each lot shall be one hundred (100) feet.

5. Setbacks: Building setbacks shall be thirty-five (35) feet from an interior roadway; twenty (20) feet from side and back lots and one hundred (100) feet from the perimeter of the tract.

6. Common Land Area: Conservation Easements shall be encouraged on all dedicated open space land. Open space is intended for passive recreational uses and wildlife habitat and shall be easily accessible to all units within the development.

Unless identified as convertible land, all areas designated as common land shall be permanently maintained as such and shall be guaranteed as such by a covenant describing the established common land area.

7. Roads: All roads within a manufactured housing development shall conform to design and construction standards as set forth in the Lee Subdivision Regulations. Wherever possible (taking into consideration conservation space limitations of the individual parcel) such street shall be of a loop design with only (1) one entrance onto an existing public road.

When development contains ten (10) or more units, the main road shall be public and shall provide access to each unit. Accessory roads and ways within the development shall be private roads and shall be the responsibility of the Mandatory Home Owners Association or the Unit Owners Association. In addition, any land dedicated as a right-of-way, public or private shall be deducted from the permitted density.

8. Utilities: Any utilities, facilities, services, etc. shall be subject to inspection by the appropriate Town Officials or their designees. Any costs for such inspections shall be borne by the developer.

9. Fire Protection: Fire Protection shall be provided as set forth in the Lee Subdivision Regulations.

10. Site Plan: A manufactured housing subdivision shall be identified as such on the approved final plans. Seventy-five (75%) percent of such lots shall be initially transferred for placement of manufactured or presite built housing.

D. DESIGN REQUIREMENTS

In addition to the above, a manufactured housing subdivision should be designed according to the standards set forth in Article VIII, Section C herein pertaining to Cluster Residential Development.

E. HOMEOWNER'S ASSOCIATION

If the development includes common area, the applicant or developer shall provide for and establish a "Mandatory Home Owner's Association" as a legal entity under the laws of the State of New Hampshire for the ownership, care and maintenance of any common land and improvements. The cost of such legal review shall be borne by the applicant or the developer. Any changes in such articles or association or incorporation shall require the written approval of the Planning Board. Such articles shall comply with the standards and regulations which are set forth in Article VIII, Section B herein pertaining to Cluster Residential Development.

ARTICLE X MANUFACTURED HOUSING AND RECREATIONAL VEHICLES

²⁰**A. PRESITE BUILT HOUSING (Modular Homes):** as defined in Article II shall be permitted in the residential zone.

B. MANUFACTURED HOUSING: It shall be unlawful for any person to park a manufactured home on any property, except in locations and in accordance with this ordinance as follows:

1. In an approved manufactured housing park or subdivision;
2. In an approved manufactured housing sales lot;
3. Upon approval of Variance by the Zoning Board of Adjustment. The Zoning Board of Adjustment may approve a mobile home or a recreational vehicle to be located on the site of a new home under construction for a limited period of time.
4. Under the conditions of temporary shelter as outlined in Article III herein.

²⁰ Amended March 1999.

C. RECREATIONAL VEHICLES (Travel Trailers): It shall be unlawful for any person to park a camping trailer, pickup coach, travel trailer, and/or motor home on any property except in locations and in accordance with the following:

1. In an approved recreational camping park;
2. In an approved recreational vehicle sales lot;

3. The resident landowner may store a recreational vehicle owned by himself on his premises provided that said storage is in the rear or side yard, not within the front yard, not any closer than twenty-five (25) feet from any property line. A vehicle so parked shall not be used as living quarters and shall not be connected to any utilities except for periods of less than two (2) weeks when a visitor may utilize such a vehicle owned by a visitor for sleeping purposes only.

D. MANUFACTURED HOUSING PARKS

²¹1. No manufactured housing park or recreational campground or any addition thereto shall be permitted in the residential zone except as may be authorized by the Planning Board as provided in the Lee Subdivision Regulations, Section X. Such campgrounds or parks shall also meet all requirements established for such by the New Hampshire Department of Health and Welfare and the Town Health Regulations.

2. For the purposes of this subsection, a recreational campground shall be defined as a plot of land on which two (2) or more recreational vehicles, campers or manufactured homes are located and occupied for dwelling or living purposes (regardless of whether or not a charge is being made for the accommodations) and which are available for seasonal use.

ARTICLE XI MULTIFAMILY DEVELOPMENT

A. PURPOSE

The purpose of this article is to provide a flexible policy for quality multifamily development consistent with the rural character, health, safety, and welfare of the Town of Lee.

B. REGULATIONS

1. Land Area: The minimum land area for a multifamily development complex shall be twenty (20) acres. No more than twenty-five percent (25%) of the minimum lot area for development may be comprised of undevelopable land, or density shall be reduced accordingly.

2. Frontage: The minimum frontage requirements shall be two hundred and fifty feet (250) on a public right-of-way.

²¹ Amended March 1999.

²²3. Density:

In Zone A: The minimum land area for a multifamily structure (not including an "in-law" unit) shall not be less than three ²³(3) acres being 130,680 square feet of land for each dwelling unit. Each residential structure shall not contain more than six (6) dwelling units. There shall be a minimum of fifty (50) feet between residential structures, including attached garages.

4. Setback: Setback requirements shall conform to that required in that zone with the exception that in a multifamily development complex, front setback requirements shall be the same as that required for a commercial use in all zones.

5. Buffer Zone: For a development complex, there shall be a minimum buffer zone of one hundred (100) feet provided between any structure and the perimeter of the tract. For any multifamily structure, the buffer between the nearest residential lot line and any structure shall be equivalent to at least twenty (20) feet multiplied by the number of dwelling units.

The intent of the buffer zone shall be to provided visual vegetative screening from adjacent lots.

6. Roads: All streets and parking areas within a multifamily development complex shall conform to the road specifications of the Lee Subdivision Regulation.

Wherever possible (taking into consideration space limitations and conservation of the individual parcel), such streets shall be of a loop design and have only one exit/entrance onto any existing right-of-way. Accessory roads or ways within the complex will be private and shall be maintained by the property owner. In addition, any land dedicated as a right-of-way, public or private shall be deducted from permitted density.

7. Driveways and Parking: Multifamily structures shall be permitted only one (1) driveway access off any existing roadway. A minimum of two (2) off-street spaces shall be provided for each dwelling unit.

8. Water and Waste Water Disposal: Water and waste water disposal shall be provided by a community system or individual water or waste disposal system(s), upon approval by the Lee Planning Board. Systems shall be constructed and maintained in accordance with the standards of the Lee Building Regulations and the New Hampshire Water Supply and Pollution Control Division.

Nutrient Loading analyses, prepared in accordance with Town guidelines, shall be submitted to the Planning Board to demonstrate that groundwater supplies shall be adequately protected.

If water is provided by a community supply it shall be constructed in accordance with the standards of the Lee Building Regulations and the New Hampshire Water Supply and Pollution Control Division.

9. Utilities: Any utilities, facilities, services, etc. shall be subject to inspection by the appropriate Town Officials or their designees. Any costs incurred shall be borne by the Developer.

²² Amended March 1999

²³ Amended March 2001

10. Fire Protection: Fire protection shall be provided as recommended by the Lee Fire Chief. Plans for such shall be submitted in conformance with the Lee Subdivision Regulations.

C. PROCEDURES

Proposals for multifamily development or multifamily structures in any zone shall be submitted to the Planning Board. The Board shall review such plans for compliance with Lee Site Plan Regulations. The Planning Board shall approve, approve with modifications, or deny the proposal as provided by statute. Any subsequent development not part of the approved plan shall constitute a violation of this ordinance.

In addition to such information required by Lee Site Plan Regulations, the following shall be required:

- 1. Site Plan:** Shall show all proposed buildings, lighting in parking areas, signs and landscaping at a sufficient scale to permit the study of the elements of the plan;
- 2. Elevations:** Typical elevations drawings and floor plans for all proposed buildings or other structures. No building shall exceed thirty-five (35) feet in height or two and one half (2 1/2) stories. (See Lee Building Regulations)
- 3. Roads and Drainage:** Plans shall be submitted showing road profiles and cross sections (as applicable for any Town roads), drainage plans to demonstrate there will be no drainage off site, and plans of all utilities.
- 4. Fire Protection:** A plan showing the proposed fire pond or other fire protection system shall be submitted and will be subject to approval by the Lee Fire Chief.
- 5. Fees and Costs:** In addition to the usual application fees for Site Plan Review, the applicant shall be responsible for all costs incurred by the Town of Lee in review of site plans.
- 6. Special Studies:** The Planning Board may require special studies and/or additional information deemed necessary to carry out the purposes of the multifamily provisions. Such studies shall be contracted by the Town of Lee. Expenses shall be borne by the developer of the land under consideration.
- 7. Public Hearing:** No multifamily development complex shall be approved or disapproved without first affording the applicant and abutters two (2) public hearings thereon as provided for in the Lee Subdivision Regulations.
- 8. Timetable:** A timetable for completion of site improvements for any multifamily development complex shall be established. The Town may require the necessary performance bond(s) to ensure compliance.
- 9. Regulations:** Lee Subdivision Regulations, Lee Site Plan Regulations, and Lee Building Regulations, shall apply where applicable.

D. DESIGN REQUIREMENTS

In addition to the requirements of the Lee Subdivision Regulations and Lee Site Plan Regulations, multifamily development complexes shall comply with the following design requirements:

- 1. No Diminution:** The entire development shall be designed so no diminution in value of surrounding properties will occur.
- 2. Architectural Styles:** Within the development, uniform architectural styles which are compatible with the natural amenities and topography of the site shall be encouraged.
- 3. Originality:** Originality in the lot layout and architectural style will be incurred to achieve the best possible relationship between development and the Town.
- 4. Minimize Alteration to Site Features:** Individual lots, buildings, streets and parking areas shall be designed and situated to minimize alteration of the site features to be preserved, to lessen the area devoted to motor vehicle access, to avoid adverse affects of noise, shadows and traffic, and to retain aesthetic qualities.
- 5. Open Space:** Open space areas shall include irreplaceable natural features located in the tract such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings, and marshes. These should be distributed throughout the development as part of a design which will serve to unify the development from surrounding land uses. No common open space shall be denuded, defaced, or otherwise distributed without prior written approval from the Planning Board.
- 6. Drainage:** Natural surface drainage channels shall be either incorporated into the overall site design or shall be preserved as part of the required open space.

ARTICLE XII TRANSFER OF DEVELOPMENT RIGHTS

A. PURPOSE

The purpose of this article is to encourage the preservation of farmland, open space, forest, watershed and other significant natural resources as well as retain the rural character of the Town for generations to come.

B. PROCESS

The development rights of a parcel of land to be preserved can be transferred to a contiguous parcel of land which is to be developed. The density of the land to be developed may increase, taking into consideration the net developable area of the parcels under consideration, in exchange for a Conservation Easement or similar permanent restriction of the land to be preserved.

C. CONDITIONS

The transfer of development rights from the land to be preserved is on the condition that at the time of submission of an application under this ordinance said land is under private ownership and the development rights have not been previously transferred.

With the exception of density, the land to be developed under this article must meet all other criteria of the Lee ordinances and all other applicable agencies.

The density of the developed parcel may not be greater than that which would be permitted considering the total developable land area of the parcels.

The Planning Board shall have the right to determine a case on individual merits taking into consideration the specific natural characteristics and resource value of the land to be preserved or developed.

ARTICLE XIII AQUIFER CONSERVATION DISTRICT

A. PURPOSE AND INTENT

The purpose of this article is to protect the public health, safety and general welfare by providing for the protection and preservation of existing and potential groundwater resources, know as aquifers, in the Town of Lee, New Hampshire.

Incidents of contamination and shortage, occurring locally as well as nationwide, have brought forth concerns regarding the necessity of planning for the protection of groundwater resources. Once considered an unlimited and unspoilable resource, the water supplied by aquifers in many New Hampshire towns has been made useless due to contamination. Some towns have been forced into expensive projects in order to meet the public's need for water.

It is therefore the intent of this article to protect our known aquifers by preventing adverse land use practices and by limiting the kinds of development which are inconsistent with the preservation of potable groundwater supply. This district will be managed in the interest of providing water of acceptable quality and adequate quantity for the use by present and future generations of Lee residents (and possibly of neighboring towns with whom we share aquifers and the desire to use them wisely).

B. DISTRICT BOUNDARIES

1. Aquifer Conservation District is identified as those areas depicted on the Lee Zoning Map which re designated as having the potential to yield groundwater. This designation is based on the U.S. Geological Survey Map entitled "Availability of Groundwater in the Piscataqua and other Coastal River Basins of Southern New Hampshire," (Water Resources Investigation 77-70, 1977) and on the U.S. Soil Conservation Service map entitled "Soil Survey of Strafford County," March 1973.

2. Aquifer District Incorrectly Delineated: Where it is alleged that an area has been incorrectly delineated as an aquifer, or that an area not so designated meets the criteria for aquifer designation, the Planning Board shall determine whether the regulations contained herein apply.

The Planning Board shall make their judgment under this section only upon the determination of a qualified hydrogeologist(s) on the basis of additional on-site investigation or other suitable research that the information contained on the Aquifer Map is incorrect. The evidence shall be acceptable only when presented in written form by said hydrogeologist to the Planning Board. Any necessary test well(s) or other investigation shall be conducted at the expense of the landowner or the developer.

C. RELATIONSHIP TO OTHER ZONES OR DISTRICTS

Where the Aquifer Conservation District is superimposed over another zoning district, the more restrictive regulations shall apply.

D. PERMITTED USES

1. Low Density, Residential Development is permitted in the Aquifer Conservation district provided it meets the standards of Zone A as defined in Article V herein. Multifamily dwelling units must meet the standards of Zone A.

²⁴Total impervious coverage of all or that portion of the lot or tract within the Aquifer Conservation District shall not exceed ten percent (10%).

2. Accessory Uses are permitted in Zone A, as defined in Article V herein, provided that they also meet the requirements listed in this article under industrial/commercial uses.

3. Farming, Gardening, Nursery, Forestry and Grazing are permitted provided that fertilizers, manure, pesticides, herbicides, and similar substances are used in accordance with applicable state and federal laws, including but not limited to New Hampshire RSA Chapters 149-D, 149-M and 222.

Commercial use and temporary storage of inorganic fertilizers, herbicides, and pesticides are also subject to performance standards as outlined by the New Hampshire Department of Agriculture. Outdoor unenclosed storage of these materials is not permitted.

4. Recreational Activities which pose no threat of contamination or pollution of groundwater and those which do not destroy the vegetative cover are permitted.

²⁵**5. Industrial/Commercial Uses** are permitted in Zone C provided that they do not store or dispose of hazardous or toxic materials on site and that they do not discharge process waters on site. Total impervious coverage of all or that portion of the lot or tract within the Aquifer Conservation District shall not exceed ten percent (10%). ²⁶Total impervious coverage may be increased where

²⁴ Amended March 1999.

²⁵ Amended March 1999.

²⁶ Amended March 2001.

applicant can scientifically develop mitigation measures that insure equal or greater permeability of the entire site after development with no diminution in water quality as approved by the Lee Planning Board.

E. PROHIBITED USES

1. Subsurface Storage of Petroleum or refined petroleum or refined petroleum products is prohibited in the Aquifer Conservation District. Existing underground tanks over eleven hundred (1,100) gallons are subject to New Hampshire Water Supply and Pollution Control Commission] regulations.

Existing underground tanks under eleven hundred (1,100) gallons shall be inventoried within six (6) months of the adoption of this ordinance. All existing underground tanks shall be registered with the Board of Selectmen. Registration of the tanks must be renewed every five (5) years. Testing for leaking of existing underground tanks shall begun within (6) months of the adoption of this ordinance; the oldest tanks shall be tested first. The cost of the testing shall be shared jointly by the landowner and by the Town. Any tanks that fail a test must be pumped out and replaced with an above ground tank. Testing shall be done at five (5) years intervals under guidelines established by the Board of Selectmen.

2. Outdoor Storage of Road Salts or de-icing chemicals is prohibited.

3. Dumping of Snow Containing Road Salts, or other de-icing chemicals brought from outside the district is prohibited.

4. Septage Disposal sites or waste lagoons are prohibited.

5. Solid Waste Disposal areas (landfill or dump) are prohibited; stump dumps may be permitted on a site approved by the Planning Board and by Special Exception from the Board of Adjustment.

6. Storage (Above or Below Ground), Discharge or Disposal of Hazardous or Toxic Materials is prohibited except as permitted for agricultural use.

7. Automotive Service and repair shops, and junk and salvage yards are prohibited.

8. Earth Removal where the excavation would substantially damage a known aquifer and/or the recharge area of an aquifer is prohibited.

F. CONFLICTING PROVISIONS

Whenever the regulations made under the authority hereof differ from those described by any statute, ordinance, or other regulations, that provision which imposes the greater restriction or the higher standard shall govern.

**ARTICLE XIV
SHORELAND CONSERVATION DISTRICT**

A. PURPOSE

1. The intent of this district is to protect the water quality, visual character and the wildlife habitat of the Shoreland areas.
2. When applications regarding this article are made to the Lee Zoning Board of Adjustment, all applications shall also be referred to the Lee Conservation Commission and the Health Officer for review and comment prior to the Zoning Board hearing.²⁷

B. SHORELAND DISTRICT

The Shoreland Conservation District shall be all land located within one hundred (100) feet of the shores of the Lamprey River, Little River, North River, Oyster River, Dube Brook, Chesley Brook and Wheelwright Pond. For the purposes of this ordinance, shore shall be defined as the average high water line of the aforementioned bodies of water.

C. RESTRICTIONS

Within this district the following restrictions shall apply (except where otherwise permitted or required by state or federal regulations):

- a.** There shall be no roads, driveways or parking areas;
- b.** There shall be no permanent or temporary dwellings or other structures established with the exception of structures necessary for the housing of pumps. Existing structures may be replaced remodeled, but may not be expanded within the Shoreland Zone. Expansion shall mean; up, down or out from the existing footprint and structure, including attachments there-to such as, but not limited to, decks, open porches, enclosed porches, etc.
- c.** There shall be no waste water disposal systems;
- d.** There shall be no excavation or filling unless approved by the Planning Board. Review by the Conservation Commission will be requested.
- e.** Cutting/removing vegetation within the Shoreland Conservation District except where permitted under the provisions of this section shall be prohibited. No more than fifty percent (50%) of the basal area of trees shall be cut or otherwise felled, leaving a well distributed cover of healthy, growing trees or other vegetation within the Shoreline Conservation District, and according to RSA 483-B:9, Agriculture and Forestry, conducted according to Best Management Practices, as recommended by the Division of Forest and Lands and Department of Agriculture Markets and Food, are exempt under this RSA.

Unbroken vegetative cover for wildlife travel lanes is an important consideration for the Shoreland Conservation District. Basal area shall mean the cross-sectional area of the stem of the plants at a height of four and one half (4.5) feet above the ground, usually expressed in square feet per

²⁷ Amended March 10, 2009

unit of land area. Persons who wish to exceed the fifty percent (50%) limitation for some permitted use (such as water access) must secure prior written approval from the Conservation Commission. Requests must be accompanied by detailed landscaping plans. Evaluation of a request to exceed the fifty percent (50%) limit will be based on the premise that each two hundred (200) linear feet of shoreline in the Conservation District comprises a separate evaluation unit.

D. PERMITTED USES

Within the Shoreland Conservation District, the following uses are permitted:

1. Wells;
2. Unpaved footpaths;
3. Dry hydrant if necessary.

E. MINIMUM LOT SIZE

All land in the Shoreland Conservation District may be considered part of the minimum lot size as required under Articles V and VI herein. Any nonconforming structure may be continued, if that structure was lawfully existing before the passage of this ordinance. This nonconforming structure may be restored, if destroyed by fire or other natural causes, but if discontinued for more than twelve (12) months, subsequent use shall comply with the provisions of this ordinance.

ARTICLE XV WET SOILS CONSERVATION ZONE

A. PURPOSE AND INTENT

The purpose of this article is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which has been found to be subjected to high water tables for extended periods of time.

It is intended that this article shall:

1. Prevent the development of structures and land uses on or near Wet Soils which will contribute to pollution of surface and ground water by sewage or toxic substances;
2. Prevent the destruction of, or significant changes to, natural Wet Soils which provide flood protection;
3. Protect unique and unusual natural areas;
4. Protect wildlife habitats and maintain ecological balances;
5. Protect potential water supplies and existing aquifers (water bearing strata) and aquifer recharge areas;

6. Prevent expenditure of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of Wet Soils;
7. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in or near Wet Soils.
8. When applications regarding this article are made to the Lee Zoning Board of Adjustment, all applications shall also be referred to the Lee Conservation Commission and the Health Officer for review and comment prior to the Zoning Board hearing.²⁸

ZONE BOUNDARIES

1. Wet Soils Conservation Zone

Wet Soils: Shall mean those soils classified as poorly or very poorly drained as defined by the Soil Drainage Class Interpretive Limits section of Site-Specific Soil Mapping Standards for New Hampshire and Vermont, Version 2.0 January, 1999, published by the Society of Soil Scientist of Northern New England (SSSNNE Special Publication #3), or the current version of this publication. The Wet Soils Conservation Zone also includes those areas such as swamps, marshes, and bogs that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation for life in saturated soil conditions.

2. Establishment of a Zone

The limits of the Wet Soils Conservation Zone are hereby determined by the areas subjected to high water tables for extended periods of time and includes, but are not necessarily limited to all such areas delineated as Wet Soils on the current Town of Lee Wet Soils Map, which is on file in the Office of Planning and Zoning.

3. Wet Soils Incorrectly Delineated

Where it is alleged that an area has been incorrectly delineated as wet soils, or that an area not so designated meets the criteria for Wet Soils designation, the Planning Board shall determine whether the regulations contained herein have application.

The Planning Board shall make their judgment under this section only upon the determination by a certified soil scientist(s) on the basis of additional on-site investigation or other suitable research that the information contained on the Wet Soils Map is incorrect. This evidence shall be presented in written form by said scientist(s) to the Code Enforcement Officer. Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer.

²⁸ Amended March 10, 2009

C. RELATION TO OTHER ZONES

Where the Wet Soils Conservation Zone is superimposed over another zoning district, the more restrictive regulations shall apply.

D. PERMITTED USES

Permitted uses are those which will not require the erection or construction of any structures or buildings, will not alter the natural surface configuration by the addition of fill or by dredging and uses that otherwise are permitted by the zoning ordinance. Such uses may include the following:

- 1. Forestry Tree Farming** - using the best management practices in order to protect streams from damage and to prevent sedimentation;
- 2. Agriculture**, including the cultivation, harvesting of crops and animal husbandry according to New Hampshire Department of Agriculture Markets and Food Best Management Practices.
- 3. Wildlife Refuges**;
- 4. Parks and Recreation** - uses consistent with the purpose and intent of this ordinance;
- 5. Conservation Areas** - and nature trails;
- 6. Open Space** - as permitted or required by the subdivision regulations or the zoning ordinance;

E. SPECIAL EXCEPTIONS

Special Exceptions may be granted by the Zoning Board of Adjustment, after due public notice and public hearing, for undertaking the following uses in the Wet Soils Conservation Zone, or within seventy-five (75) feet of any wetland area. Special Exceptions shall be required for the following uses:

- 1. Streets, roads and other access ways and utility right-of-way easements, including power lines and pipe lines**, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the Wet Soils.
- 2. Water Impoundment**, shall mean any water that is dammed, diked, dug out, and/or raised above the natural water level to include but not limited to multipurpose ponds, wildlife ponds, and farm ponds.
- 3. Fire Ponds** - as reviewed by the Lee Conservation Commission, the Lee Planning Board, and the Lee Fire Chief.
- 4. The undertaking of a use not otherwise permitted in the Wet Soils Conservation Zone**, if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in Section A of this Article.

F. SPECIAL PROVISIONS

- 1.** No septic tank or leach field may be constructed or enlarged closer than one hundred twenty-five (125) feet to any wetland.
- 2.** No structure with the exception of wells and wellhousing shall be constructed within seventy-five (75) feet of the Wet Soils zone.
- 3.** All land included in the Wet Soils Conservation Zone shall be appraised for tax purposes at its full and true value in money, based on its market value as undevelopable land required to remain in open space.

For the purpose of this section, a structure shall not include the uses allowed by Special Exception listed in Section E, 1 of this Article.

ARTICLE XVI DISPOSAL AND STORAGE OF WASTE MATERIAL

A. Depositing, storage, burial or disposal of waste matter is prohibited in all zones within the Town of Lee except as follows:

- 1.** Disposal pursuant to the operation of any municipal or regional waste facility duly authorized by the Town of Lee.
- 2.** Household waste originating on, or for use on, the property on which it is deposited or stored;
- 3.** Agricultural waste originating on, or for use on, the property on which it is deposited or stored.
- 4.** At any private disposal site approved by the Planning Board upon finding, after public hearing, that it does not constitute a nuisance or be injurious to the public health and the environment or be detrimental to adjacent properties, and providing it shall comply with all applicable rules and regulations promulgated by the State Bureau of Solid Waste Management, the State Division of Public Health Services, and the U.S. Environment Protection Agency.

B. Unless otherwise specified, the words and terms used in this article shall be defined by reference to the same words or terms in appropriate state statutes or regulations.

ARTICLE XVII SIGNS

I. INTENT

The purpose and intent of this article is to provide regulations for the erection, installation and maintenance of signs in a manner consistent with the rural and residential character of the Town of Lee in a manner which protects the environmental integrity of the Town in the interest of public safety.

II. GENERAL PROVISIONS

A. Application Process

Any sign, except legal signs grandfathered at the date of this ordinance, shall require a permit. Application for any sign permit shall be submitted in writing on appropriate forms to the Code Enforcement Officer for the Town of Lee. Such application shall contain the following information:

1. Names, addresses and telephone number of the applicant;
2. Location and position of sign or structure;
3. Plans or drawings with dimensional specifications'
4. Written consent of the property owners;
5. Such other information which the Town may require.

B. Exemptions

The following signs shall be exempt from the provisions of this ordinance and shall not require application:

1. Personal signs - This shall be a sign identifying a residence and shall be no larger than two (2) square feet. Examples: "John Smith", "Windy Hill" or "Patty's Impulse".
2. Mailboxes of standard government approved size.
3. Signs which are not visible from any adjacent roadway or from any property line.
4. Signs relating to open land such as: posting "No Hunting", "Tree Farm", "No Trespassing."
5. Signs warning hazards - "Underground Cables," "Road Hazards," "Men at Work."

C. Inspection

The owner of any sign shall periodically inspect each sign belonging to him and it shall be the duty of said owner to keep his sign(s) in good repair and in good appearance at all times.

D. Placement

All signs shall be prohibited within the public right-of-way except as provided herein except traffic control devices and directional signs deemed essential, by state or local highway or law officials, to the public welfare.

No signs shall be so designed or so placed as to endanger or otherwise create hazardous conditions to motor vehicles.

Signs shall not be placed or illuminated in such a manner that creates a hazard to street or highway driving by glare or otherwise.

E. Advertising Posters

Nothing in this ordinance shall be construed as restricting the placement of signs, placards, posters or advertising displays on the interior of display windows provided such signs do not violate any other portion of this article.

III. PERMITTED SIGNS

A. Signs within the Town of Lee shall refer only to use conducted upon the lot on which they are located, except for approved directional signs and temporary signs. Development signs shall be placed somewhere on the original subdivided parcel of land.

B. The following types of signs SHALL NOT BE PERMITTED:

1. Directional or advertising signs for business outside the Town of Lee.
2. Signs which advertise a business which is no longer in operation or an event which has transpired;
3. Flashing or animated signs.

C. The following types of signs shall be permitted as follows:

1. Grandfathered Signs: Any nonconforming sign in any zone legally in existence prior to the adoption of this ordinance may be replaced within one (1) year of its discontinuance with a sign which does not exceed in size that which it replaces. A sign larger or less conforming in any other aspect shall require a variance from the Zoning Board of Adjustment.

Any nonconforming sign shall be allowed to continue in a nonconforming status until its use has been discontinued for a period of one year. At that time, it shall be removed promptly by the owner.

When replacing several signs, the total square footage of the new sign(s) shall not exceed the aggregate square footage of the sign(s) to be replaced. The number of replacement signs shall not exceed that of the grandfathered status and shall not be less conforming in any way.

2. Directional Signs: Directional signs relating to business within the Town of Lee may be permitted provided that said signs for any one enterprise do not exceed one (1) in any two mile length of road and shall not exceed two (2) square feet in area. Exception to this may be directional signs which are approved or supplied by the State of New Hampshire. Site directional signs may be only permitted for business operating within the Town of Lee and only along Route 4 and 125.

Directional signs shall require written approval from the property owner to be submitted and maintained with the permit. Directional signs shall be prohibited within the public right-of-way except as traffic control devices and those deemed essential to the public welfare.

No sign shall be placed to endanger, or otherwise create hazardous conditions to motor vehicles.

No sign shall be placed within ten feet of the public right-of-way.

3. Temporary Signs: Temporary signs such as those used by real estate agents, contractors, or other artisans advertising work in progress, or signs promoting political candidates or special events and may be permitted in any zone provided:

- a. It is unlighted;
- b. It does not exceed six (6) square feet in area;
- c. It shall be removed upon completion of work, transaction or election (a temporary sign may not be in place for over six months without a permit);
- d. A sign advertising sale or lease or development of property shall be located on the parcel to which it pertains;
- e. There shall be permitted only one non-political temporary sign per lot;
- f. It shall be set back at least twenty (20) feet from the edge of the traveled way.

4. Commercial Signs: Commercial signs shall be permitted in the commercial zone according to the following criteria:

- a. Illumination shall be only of soft white lights;
- b. It shall not exceed thirty-two (32) square feet in size;
- c. It shall not have more than two (2) sides;
- d. It shall not exceed eight (8) feet in height measured from the crown of the road;
- e. It shall be set back a minimum of twenty (20) feet from the edge of the traveled way; a lesser setback shall be permitted by Special Exception from the Zoning Board of Adjustment;
- f. A pole sign shall be permitted only by Special Exception where applicable;
- g. A roof sign shall be permitted in the Commercial Zone under the same specifications as all other commercial signs; (exception: a roof sign shall not extend more than five (5) feet over the ridge of the building);
- h. No more than two (2) signs shall be permitted on any property. The aggregate square footage of both signs shall not exceed the permitted thirty-two (32) square feet total area. Sites which contain more than one business use shall only be permitted two (2) signs but shall be permitted to increase the square footage of the sign(s) to accommodate identification for each business use by allowing six (6) square feet per business enterprise - not to exceed a total square footage for any property of more than forty-eight (48) square feet for each of two sides for any one lot. In addition, building signs affixed onto the sidewalls or roof shall be permitted for each business use not to exceed eight (8) square feet each.

5. Special Exception Signs: Shall be permitted in the Residential Zone for any business authorized by Special Exception or by Variance or Grandfathered in that zone. The following criteria shall apply:

- a. Illumination shall be only by exterior white light and shall be only during normal business hours not to exceed 7:00 a.m. to 6:00 p.m. six (6) days per week.
- b. Such sign shall be placed at least twenty (20) feet from the edge of the traveled way.

- c. Such sign shall not exceed eight (8) square feet on each of two (2) sides;
- d. Such sign shall be constructed of natural materials (such as wood, masonry, granite);
- e. The top of such sign shall not be greater than eight (8) feet in height measured from the crown of the road.
- f. Only one (1) such sign shall be permitted per lot.

6. Residential Accessory Signs: shall be permitted in any zone for a permitted home occupation under the following conditions:

- a. There shall be only one (1) permitted sign on each lot;
- b. Such sign shall not be illuminated;
- c. Such sign shall be set back at least one half the yard depth to building or 15 feet; or attached to the building;
- d. Such sign shall not exceed four (4) square feet in area;
- e. Such sign shall be constructed of natural materials;
- f. Such sign shall be free standing and shall not exceed eight (8) feet in height measured from the crown of the road.

7. Farm Signs: This ordinance pertains to signs which identify agricultural operations (Agricultural Signs) and signs which advertise farm products and/or services (Agricultural Product Signs). The scope of this ordinance is to regulate only those signs which are designed to be legible from the public traveled way. Farm Signs shall meet all relevant existing Town of Lee, NH Ordinances, and other existing applicable performance standards, including setbacks, illumination restrictions or standards, and others. Farm signs shall also conform to the criteria for such signs as listed in Section 7 a-d.

a. General Provisions:

1. The sign or signs shall not be placed within the State or Town rights of way or overhanging into the same.
2. The top of the sign shall not be greater than eight (8) feet in height above the crown of the road directly in front of said sign location.
3. The sign may be illuminated from the top area of the sign shining downward on the sign and only during open business hours and only by exterior light directly illuminating the sign from a light source(s) mounted on the sign or on a pole for housing said light within five (5) feet of said sign and no higher than two(2) feet above the sign structure without directing the light source as to create a potential hazard to traffic, pedestrians and others using the public traveled way to minimize "Light Trespass".
4. Directional and Informational signs for pedestrian and vehicular traffic into and throughout the property shall be permitted. Signs of this type which are designed to be clearly legible from any adjacent public traveled way or from any property line not in the same ownership as the parent parcel shall not display any farm names, logos, designs or diagrams advertising products for sale. These types of signs may be illuminated only during times necessary for the safety of patrons.
5. In cases where the product stand or activity is subordinate to the main farm property by being located on a separate parcel, whether under the same ownership or not, an Agricultural Product Sign as described in Section 7c below shall be permitted provided it is removed at the end of such activity. In this circumstance, signs may not be illuminated.
6. A sign permit shall be required from the Office of Code Enforcement for permanent farm signs as defined below.

b. Agricultural Sign (or Farmstead Sign): An Agricultural Sign is defined for the purposes of this ordinance as a permanent free-standing or attached sign on the premises of a farm, farm stand or other agricultural operation which primarily identifies an agricultural property. Agricultural Signs are restricted to a size no larger than twelve (12) square feet per side, limited to two sides, and only one Agricultural Sign per farm, farm stand, or other agricultural operation is allowed. Farm, Road Side Farm Stand, Farm Market, and related terms are defined in the Lee, NH Zoning Ordinance.

c. Agricultural Product Sign: An Agricultural Product Sign is defined for the purposes of this ordinance as a free standing or attached sign on the premises of a farm, and which is associated with a seasonal roadside farm stand, farm market, or other agricultural operation as defined in the Town of Lee, NH Zoning Ordinance. The content of Agricultural Product Signs may change per available goods, services or activities, and such signs shall not have an aggregate size larger than eight (8) square feet per side, limited to two (2) sides. A combination of one (1) A- frame type sign and (1) one placard type sign display is allowed so long as the total aggregate area of both types of sign displays does not exceed (16) sixteen square feet total area.

i. Placard Type Signs: Goods, services, or activities may be displayed on Placard Type Signs not to exceed an aggregate total area (size) of eight (8) square feet per side, limited to two (2) sides.

ii. A-Frame Type Signs: Goods, services, or activities may be displayed on A-Frame Type Signs not to exceed an aggregate total area (size) of eight (8) square feet per side, limited to two (2) sides.

d. Exceptions: This ordinance excludes signs including but not limited to third party recognition or designation such as : American Tree Farm System, Conservation Easement property identification , Certified Organic Farm, Farm of Distinction, Heritage Farms and Barns Historic Structures, and others to be determined by the Code Enforcement Officer on a case by case basis.²⁹

8. Development Signs: Signs of a permanent nature which identify a subdivision of ten (10) lots or more. These shall conform to the same criteria as agricultural signs above. Only one such sign shall be permitted per subdivided tract.

ARTICLE XVIII SEXUALLY ORIENTED BUSINESSES

SECTION 1 - The Purpose & Intent of this article is:

A - to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses;

B - to protect public health, safety and general welfare; and

²⁹ Amended March 10, 2009

C - to prevent adverse impact which may occur and is brought about by the concentration of sexually oriented businesses.

It is not the intent of this article to restrict or deny access by adults to sexually oriented materials protected by the first Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, nor is it the intent of this article to condone or legitimize the distribution of obscene material.

SECTION 2 - Zoning District: Sexually oriented businesses shall only be permitted in the Commercial Zone. All proposed development must comply with both the provisions of this article and zoning requirements of the Commercial Zone, and any other applicable Ordinances, and State Laws to include in that limitation: RSA 571-B-1.

SECTION 3 - 1,000' Buffers: Sexually oriented businesses shall not be permitted in: a church, a school, a daycare center, a residence or within 1,000 feet of:

- A** - a church,
- B** - a school,
- C** - a daycare center,
- D** - a residence,
- E** - another sexually oriented business, or
- F** - a sexually oriented business for which a building permit application has been made.

SECTION 4 - 300' Buffers: Sexually oriented businesses shall not be permitted within 300 feet of buildings or facilities used for commercial purposes.

SECTION 5 - The Measure of Distance between any sexually oriented business and other named point of reference shall be measured in a straight line.

SECTION 6 - Free-Standing Structures: Sexually oriented businesses shall only be permitted in single use, free-standing structures. In no instance shall sexually oriented business share premises, facilities or buildings with businesses which are not sexually oriented.

SECTION 7 - Site Plan Review by the Planning Board, will be required.

SECTION 8 - Limiting Clause: Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation or maintenance of any business, building or use which violates any Town of Lee ordinance or statute of the State of New Hampshire relative to public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

SECTION 9 - Severability: If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portion of this ordinance. The legislative body of the Town of Lee hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or

more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

ARTICLE XIX
Town of Lee, New Hampshire Model Floodplain Development Ordinance
Meets the Minimum Requirements of Section 60.3(b)
of the National Flood Insurance Program Regulations

This Ordinance adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Lee Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Lee Zoning Ordinance and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provisions of this ordinance differs or appears to conflict with any provisions of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Food Insurance Study for the County of Strafford, NH" dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps dated May 17, 2005 or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference

Item I Definitions of Terms: The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of Lee.

"Area of Special Flood Hazard"- is the land in the floodplain within the Town of Lee subject to a one-percent or greater possibility of flooding in any given year. The area is designated as zone A on the FHBM and is designated on the FIRM as Zone A.

"Base Flood"- means the flood having a one-percent possibility of being equaled or exceeded in any given year.

"Basement"- means any area of a building having its floor sub-grade on all sides.

"Building" - see "structure".

"Development"- means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.

"FEMA"- means the Federal Emergency Management Agency.

"Flood" or "Flooding"- means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters, and (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM)- means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Lee.

"Floodplain" or "Flood-prone area"- means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Flood proofing"- means any combination of structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

"Floodway" - see "Regulatory Floodway".

"Functionally dependent use"- means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repairs facilities but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade"- means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure"- means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.
- (b) Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district.
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1) By an approved state program as determined by the Secretary of the Interior, or
 - 2) Directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor"- means 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 building's lowest floor; provided, that such an

enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home"- means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days.

"Mean Sea Level"- means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.

"100-Year Flood"- see "base flood".

"Recreational Vehicle"- is defined as:

- A. built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. designed to be self-propelled or permanently towable by a light duty truck; and
- D. designed primarily **not** for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

"Regulatory Floodway"- means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.

"Special Flood Hazard Area"- means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FFBM or FIRM as zone A, A0, A1-30, AE, A99, AH, V0, VI-30, VE, V, M, or E. (See- "Area of Special Flood Hazard").

"Structure"- means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Start of Construction"- includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

"Substantial Damage"- means damage or any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement"- means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Water Surface Elevation"- means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

Item II

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

Item IV

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the building inspector:

- (i) the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- (ii) if the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.
- (iii) any certification of floodproofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

Item V

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by

federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

Item VI

- 1.** In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wet Soils Board of New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wet Soils Board.
- 2.** The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- 3.** The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located Zone A meet the following floodway requirement:

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

Item VII

- 1.** In unnumbered A zones the Building Inspector shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).
- 2.** The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in zone A that:
 - a.** All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
 - b.** That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
 - (i)** be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - (ii)** have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the 100-year flood elevation; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not 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;

(THE ABOVE MANUFACTURED HOME REQUIREMENT EXCEEDS THE MINIMUM NFIP REQUIREMENTS - THE COMMUNITY MAY CHOOSE A LESS RESTRICTIVE REQUIREMENT THAT ALLOWS MANUFACTURED HOMES LOCATED IN EXISTING, UNIMPROVED, UNDAMAGED PORTIONS OF NH PARKS TO BE ELEVATED ONLY 3 FEET ABOVE GRADE, SEE SEPTEMBER 29, 1989 FEDERAL REGISTER FOR REGULATION CHANGE.)

d. All recreational vehicles placed on sites within Zones A1-30, AH, and AE shall either:

- (i) be on the site for fewer than 180 consecutive days;
- (ii) be fully licensed and ready for highway use; or
- (iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.

e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be 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 registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

Item VIII, Variances and Appeals:

1. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33,I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

(a) that the variance will no result in increased flood heights, additional threats to public safety, or extraordinary public expense.

(b) that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

(c) that the variance is the minimum necessary, considering the flood hazard, to afford relief.

3. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

4. The community shall (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE XX PERSONAL WIRELESS COMMUNICATIONS FACILITIES ORDINANCE

³⁰**Note:** This ordinance has been completely re-worded for clarification and to better define a personal wireless communication facility.

The purpose of this ordinance is to regulate the construction and siting of personal wireless communication facilities, according to the provisions of the Federal Telecommunications Act of 1996, to ensure that such facilities have the least adverse impact on residential neighborhoods, scenic vistas, historic sites, and the general safety and appearance of the community.

Personal wireless communication facilities are permitted in the Commercial Zone provided the following conditions are met:

1. Site plan review by the Planning Board.
2. Shall not be constructed within 100 feet of Wet Soils (measured from the Wet Soils boundaries to the outermost footprint of said facility).
3. Shall be located on a commercial site and the design of the facility should have the least adverse impact on scenic vistas, residential neighborhoods, historic sites, and the general safety and appearance of the community.
4. The maximum height of antenna mount(s), including antennas and other appurtenances from ground level shall be 70 feet.

5. Setbacks for antenna mount(s), including antennas and other appurtenances shall be twice the total height from abutting property lines, or antenna mount(s), including antennas and other appurtenances height plus 10 feet, but not less than 125 feet from street or road rights-of-way.

6. Personal wireless facilities shall be placed on an existing antenna mount if it is physically and legally possible.

7. Personal wireless service facilities shall not be artificially lighted, nor shall they contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind except for safety lighting.

8. Antenna mount(s) or antenna mounting structures shall be a “mono pole type” only, and shall maintain a galvanized steel finisher, or be painted a neutral color, so as to reduce visual obtrusiveness.

9. At a wireless communication facility site, the design of any buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

10. Bonding: Recognizing the extremely hazardous situation presented by abandoned and unmonitored personal wireless communication facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of any personal wireless communication facility in the event that the facility is abandoned and the facility owner is incapable or unwilling to remove the facility in accordance with paragraph 11. Bonding shall be reviewed annually by the Planning Board to assure adequate security in the event the Town removes a personal wireless communication facility in accordance with paragraph 11. Failure of facility owner to provide adequate security shall result in the loss of the right to maintain the facility and the Town shall have the right to remove the tower using any available security and, otherwise, such removal shall be at the owner’s sole cost and expense. Removal of any wireless communication facility shall bring the site as close as possible to its original status prior to construction of the facility and plantings and landscaping shall be approved by the Planning Board.

11. Removal of Abandoned Antennas and Appurtenances: Any personal wireless communication facility that is not operated twenty-four (24) hours a day unless there is unmitigated circumstances, (i.e. blackout; power failure, etc.) for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said antenna mount(s), including antennas and other appurtenances provides proof of quarterly inspections. The owner shall remove the abandoned facility within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the antenna mount(s), including antennas and other appurtenances.. If the abandoned antenna mount(s), including antennas and other appurtenances is not removed within 90 days the Town may execute the security and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

**ARTICLE XXI
AIRPORTS AND HELIPORTS, PRIVATE OR COMMERCIAL**

A. DEFINITIONS OF GENERAL TERMS:

Airport, Commercial: A facility used for landings and takeoffs by commercial and private fixed wing or rotary wing aircraft. Such a facility typically includes aircraft parking and service facilities.

Airport, Private: A tract of land used for landings and takeoffs by fixed winged or rotary wing aircraft belonging to the owner or lessor of the land or to a third party using the tract of land with the permission of the owner or lessor of the land.

A. Airports and Heliports: Private and commercial airports and heliports shall be prohibited in all Zoning districts or Zones within the Town of Lee.

³¹**ARTICLE XXI:A
SMALL WIND ENERGY SYSTEMS**

A. Purpose:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

B. Definitions:

Meteorological tower (met tower). Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

Modification. Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

Net metering. The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

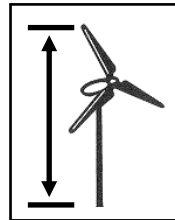
³¹ Added March 8, 2011

Power grid. The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Shadow flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

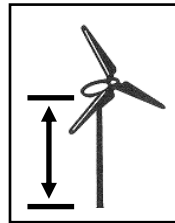
Small wind energy system. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

System height. The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



Tower. The monopole, guyed monopole or lattice structure that supports a wind generator.

Tower height. The height above grade of the fixed portion of the tower, excluding the wind generator.



Wind generator. The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

C. Procedure for Review:

1. **Building Permit:** Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. **Application:** Applications submitted to the building inspector shall contain a site plan with the following information:
 - i) Property lines and physical dimensions of the applicant's property.

- ii) Location, dimensions, and types of existing major structures on the property.
- iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
- iv) Tower foundation blueprints or drawings.
- v) Tower blueprints or drawings.
- vi) Setback requirements as outlined in this ordinance.
- vii) The right-of-way of any public road that is contiguous with the property.
- viii) Any overhead utility lines.
- ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
- x) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
- xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
- xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
- xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
- xiv) List of abutters to the applicant's property.

3. Abutter and Regional Notification:

In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

D. Standards:

1. The building inspector shall evaluate the application for compliance with the following standards;

- a. Setbacks:** The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
 - ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- b. Tower:** The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
- c. Sound Level:** The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d. Shadow Flicker:** Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e. Signs:** All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
- f. Code Compliance:** The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation:** The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

- h.** Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

 - i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
 - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
 - iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i) Approved Wind Generators:** The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- j) Utility Connection:** If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- k) Access:** The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- l) Clearing:** Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

E. Abandonment:

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. “Physically remove” shall include, but not be limited to:
 - a. Removal of the wind generator and tower and related above-grade structures.
 - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner’s sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner’s expense.

F. Violation:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

G. Penalties:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17

**ARTICLE XXII
ZONING BOARD OF ADJUSTMENT**

Pursuant to New Hampshire RSA Chapter 673: Local Land Use Boards, the Zoning Board of Adjustment shall consist of five (5) members and three (3) alternates appointed by the Board of Selectmen to serve for three (3) year terms. The Zoning Board of Adjustment shall have the following powers:

1. Hear and Decide Appeal: If it is alleged there is error in any order, requirement, decision, or determination made by an administrative official of the Town of Lee in the enforcement thereof or any ordinance adopted pursuant thereto:

2. Authorize Upon Appeal Such Variance: from the terms of the zoning ordinance if all the following criteria can be satisfied:

- a. That in granting the variance, no diminution in value of surrounding property will be suffered;
- b. That the granting of the variance will be of benefit to the public interest;
- c. That denial of the permit would result in unnecessary hardship to the owner seeking it;
- d. That in granting the variance, substantial justice would be done;
- e. That the use must not be contrary to the spirit and intent of the ordinance.

3. Authorize Upon Appeal Such Special Exception: as may be permitted under the terms of this ordinance if the following criteria can be satisfied:

- a. That the use will not be detrimental to the character or enjoyment of the neighborhood or to future development by reasons of undue variation from the kind and nature of the other uses in the vicinity, or by reasons of obvious and adverse violation of the character or appearance of the neighborhood or cause diminution in the value of surrounding properties;
- b. That the use will not be injurious, noxious or offensive and thus detrimental to the neighborhood;
- c. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk of life and property unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions.

Special Exceptions which are granted for non-residential or multifamily residential use shall be subject to the granting of Site Approval by the Planning Board.

Each application to the Zoning Board of Adjustment must be accompanied by an application and fees sufficient to cover actual costs in connection with the required public hearing, as well as costs for any special studies or expenses which may be incurred by the Town for these hearings.

The Zoning Board of Adjustment shall conduct public hearings in accordance with New Hampshire RSA:676 and the bylaws of the Board of Adjustment for the Town of Lee.

**ARTICLE XXIII
NONCONFORMING USES**

Any nonconforming use may continue in its present use except that any nonconforming use or building may not be:

1. Changed to another nonconforming use;
2. Re-established after discontinuance for one (1) year except to a use conforming to the district in which it is located;
3. Extended in area. Area in addition to actual dimension, shall include facilities, sites or the addition of another nonconforming use.

**ARTICLE XXIV
ENFORCEMENT**

It shall be the duty of the Board of Selectmen or the Code Enforcement Officer and they are hereby given the power and authority, to enforce the provisions of this ordinance.

Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking injunction in the Superior Court or by any other legal action.

**ARTICLE XXV
PENALTY**

Any violation of this ordinance may be made punishable as set forth in New Hampshire Revised Statutes Annotated 676:17 and as amended.

**ARTICLE XXVI
AMENDMENTS**

This ordinance may be amended by a vote of any legal Town Meeting in accordance with Chapter 31, Section 63a, New Hampshire Revised Statutes Annotated. All such amendments shall be recorded with the Strafford County Register of Deeds.

**ARTICLE XXVII
CONFLICTING PROVISIONS**

Whenever the regulations made under the authority hereof differ from those described by any statute, ordinance, or other regulations, that provision which imposes the greater restriction or the higher standard shall govern.

**ARTICLE XXVIII
SAVING CLAUSE**

The invalidity of any provisions of the Ordinance shall not affect the validity of any other provisions.

AQUIFER CONSERVATION DISTRICT



COMMERCIAL ZONE



WETLAND CONSERVATION ZONE



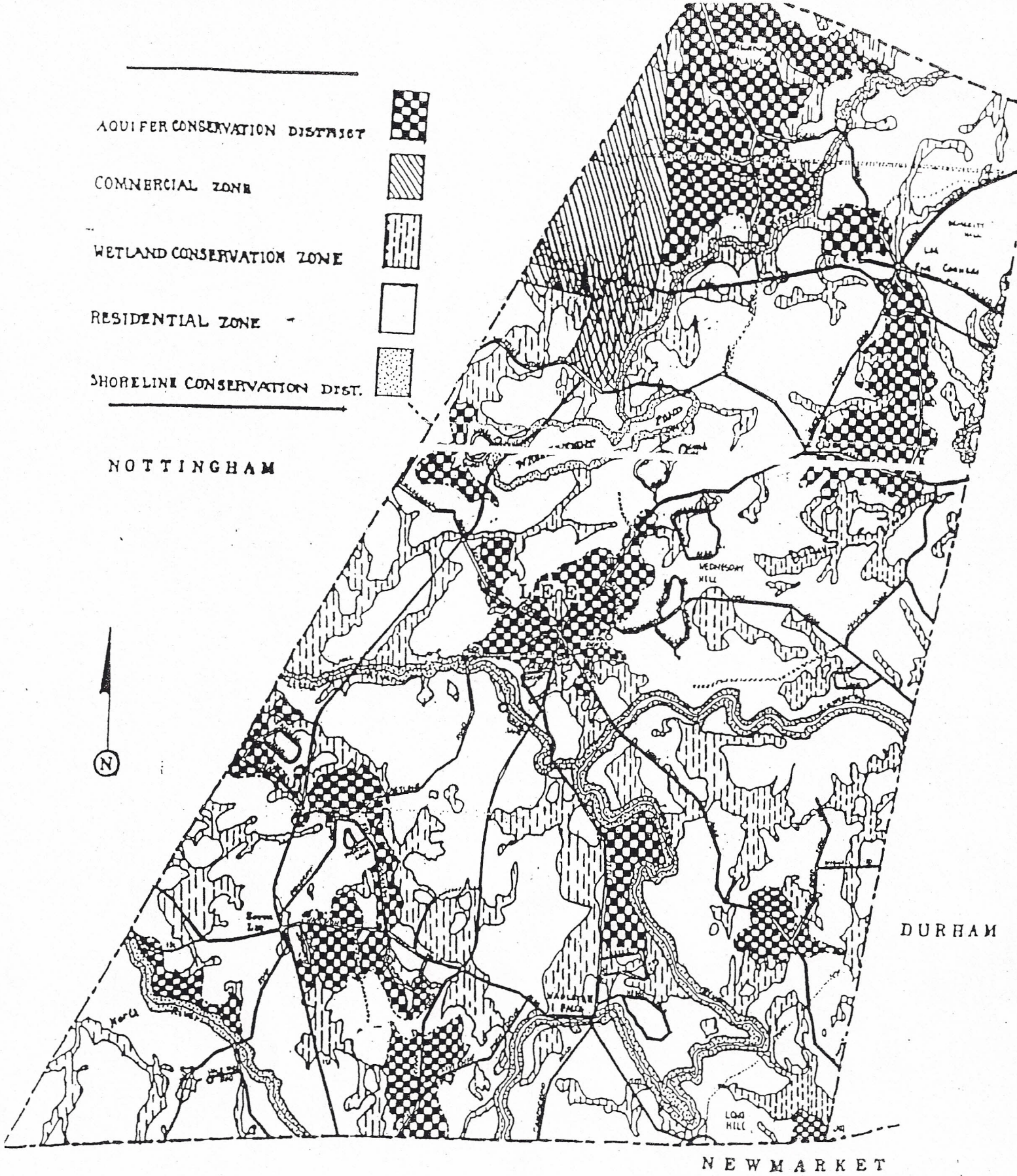
RESIDENTIAL ZONE



SHORELINE CONSERVATION DIST.



NOTTINGHAM



DURHAM

NEW MARKET



ZONING MAP

HUGHSON, 1986