TOWN OF EAST KINGSTON, NEW HAMPSHIRE

ZONING ORDINANCE

Adopted: March 11, 1952
Amended: March 10, 1959
August 19, 1963
September 12, 1972
March 5, 1974
March 2, 1976
March 8, 1977
March 14, 1978
March 13, 1979
March 9, 1982
March 11, 1986
March 14, 1989
March 13, 1990
March 12, 1991
March 10, 1992
March 9, 1993
March 8, 1994
March 14, 1995
March 12, 1996
September 10, 1996
March 11, 1997
March 10, 1998
March 9, 1999
March 14, 2000
March 13, 2001
March 12, 2002
March 12, 2003
March 9, 2004
March 8, 2005
March 7, 2006
March 13, 2007
March 11, 2008
March 10, 2009
March 8, 2016
March 16, 2017

March ___, 2018
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INSERT ZONING MAP
Fee Schedule  
(Adopted November 13, 2008)

**Excavation fee**  
$50.00

**First review** of septic system plan  
Subsequent reviews  
$20.00 @ hour

**Septic construction permit fee**  
$25.00

**Home Occupation annual fees**  
Regular  
$50.00  
Invisible  
$25.00

**Lot Line Adjustment fees**  
Application Fee  
$200.00  
(abutter notifications, legal notice, and recording fees are inclusive in this amount)

**Home Occupation fees**  
Application Fee  
$200.00  
(abutter notifications and legal notice fees are inclusive in this amount)

**Site Plan Review Submission Requirement fees**  
Application Fee  
$200.00  
(abutter notifications, legal notice, and recording fees are inclusive in this amount)

There will be an additional fee of:  
The greater of –  
a. Each lot/parcel  
$40.00  
b. Each dwelling unit  
$40.00  
c. Each elderly housing development bedroom  
$20.00  
Non-residential site plan  
$100.00

**Subdivision Approval fees**  
Application Fee  
$200.00  
(abutter notifications, legal notice, and recording fees are inclusive in this amount)

In addition, there will be a $40.00 fee per newly created lot.

**Test pit fee** – (each)  
$25.00

Also, there will be an additional check due, made out to the Rockingham County Registry of Deeds, for $25.00 for the new L-Chip surcharge, due at the time of application submission for all Site Plans and Subdivisions.
EAST KINGSTON, NEW HAMPSHIRE

ZONING ORDINANCE

ARTICLE I - PURPOSE

This Ordinance is established in pursuance of authority conferred by Chapter 31 of the Revised Statutes Annotated of the State of New Hampshire, or any amendments thereto, in order to preserve and improve the attractiveness of the Town of East Kingston as a rural, residential and farming community and to continue its desirability as a place in which to live and do business and to promote the health, welfare, morals, convenience and safety of its citizens.

ARTICLE II - DEFINITIONS

Unless otherwise expressly stated, the following words shall, for the purpose of this Ordinance, have the meaning herein indicated. Words used in the present tense include the future. The singular number includes the plural and the plural the singular. The word "person" includes a partnership, corporation or other entity. “The word "building" as used throughout the body of East Kingston Zoning Ordinances and regulations is intended to mean a particular form of enclosed structure used as shelter. The word "shall" is mandatory, not directory. (Amended 3/06)

BUILDING: Any structure enclosed and isolated by exterior walls and roof intended for use as shelter, which is constructed or used for residence, dwelling, business, industry, other public or private purposes, or accessory thereto, excluding structures for storage of crops. (Amended 3/06)

COMMERCIAL PURPOSES: Any use of land or buildings for the purpose of manufacturing, repairing or selling at retail or wholesale a product, good or service.

DWELLING: A building or part of a building or a manufactured housing which contains living and sleeping accommodations for permanent occupancy including separate kitchen and toilet facilities.

FRONTAGE: Shall mean the length of a lot bordering on a town or state maintained highway or street (road) approved by and constructed in accordance with the standards established by the town, excepting limited access highways. (Amended 3/04, 3/16)

LIVING SPACE: Living space shall be defined as any space in the unit that could be used for sleeping, working, dressing, cooking, dining, or other normal life activities. Hallways, closets, storage space, bathrooms, lofts, bedrooms, and all other rooms or areas shall be included in living space. Unfinished basements and unfinished attics shall not be included as living space. (Adopted 3/09)

LOT: A parcel of land occupied or to be occupied by a building or manufactured housing together with such open spaces as are required by the provisions of this Ordinance.

MANUFACTURED HOUSING: Any structure, transportable in one or more sections, which in the traveling mode, is 8 body feet in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to
be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a. (Adopted 3/93)

NON-CONFORMING USE: Shall mean use of land, building or premises which is not a use permitted by the provisions of this Ordinance for the district in which such land, building or premise is situated.

PRE-SITE BUILT HOUSING: 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. For the purposes of this subdivision, presite built housing shall not include manufactured housing, as defined in RSA 674:31.

PROPERTY LINE: The line dividing adjacent lots.

RESIDENCE: A building other than a manufactured housing which is constructed at the site or may be erected from prefabricated parts or two or more modules permanently joined at the site, no one module of which itself meets the requirement of a dwelling.

RIGHT-OF-WAY: Means and includes all present and proposed town, state and federal highway or private ways open to public use and the land on either side of same as covered by statutes to determine the widths of ways.

SETBACK: Means the distance between the nearest portion of a building and a lot or right-of-way.

SIGN: A structure which advertises or which is used as an outdoor display for the advertising of a property, establishment, enterprise, or other matter.

STANDARD RESIDENTIAL DWELLING UNIT: All residential dwelling units in the Town excluding elderly housing dwelling units constructed under the Elderly Housing Section of the Zoning Ordinance. (Added 3/03)

STRUCTURE: All manner of buildings, constructions, or combinations of mutually connected and dependent parts or elements. The use of a structure includes, but is not limited to, any and all human activity such as animal husbandry, agriculture, industry and commerce, conservation, and the protection of property rights. (Amended 3/06)

UNIT: A structure, or part of a structure, intended to house a family group or similar body. (Amended 3/04)
ARTICLE III - DISTRICTING

For the purpose of regulating the use of land and the location and construction of buildings, the Town of East Kingston shall be considered as one district of residential, agricultural or forestry use only. Business, commercial and industrial uses are prohibited except as hereinafter provided.

ARTICLE III-A – TOWN CENTER DISTRICT (Adopted 3/07)

A. Authority. RSA 674:1, Duties of the Planning Board describes the Planning Board’s responsibility “…to recommend to the local legislative body amendments of the zoning ordinance…” Statutory authority for a municipal legislative body to establish a zoning district with particular and differential land use features is described in NH RSA 674:16 Grant of Power, 674:17 Purposes of Zoning Ordinances, 674:20 Districts, and 674:21 Innovative Land Use Controls.

B. Purpose. By establishing an East Kingston Town Center District, five planning goals are addressed:

1. To create the opportunity for a central district that permits a mix of uses, including civic, residential, commercial, and recreations use in the close proximity to one another.

2. To provide opportunity for a mix of housing types and sizes, to accommodate households of all ages, sizes, and incomes.

3. To encourage redevelopment as an alternative to growth from sprawl.

4. To preserve and enhance the unique quality of life and culture in East Kingston as a classic, New Hampshire community, thereby encouraging a planned concentration of growth to divert development from agricultural lands and open space.

5. To assure and increase the general welfare of the community by advancing the aesthetic value to be had from an attractive visual environment (RSA 674:16).

C. Background. East Kingston is a largely rural New Hampshire town of approximately 10 square miles. It is comprised to a great extent of land parcels still used for some agricultural, a growing number of residential dwellings, and only a little commercial and industrial activity. In the course of its history since 1938, East Kingston has had at least two centers which sprang up around railroad stops. A center on Powwow River Road, where today there is a railroad bridge overpass, has reverted entirely to residential use, but evidence of its presence is reflected in a number of small, compact, housing lots.

A center recognizable today on Depot Road includes a United Methodist Church, Town Offices, the Firehouse, the East Kingston Library, the Town Hall, the Town playground and ball field, a general store, a law office, a retail gift shop, and the Town-owned former railroad station. Residential properties include conventional dwellings, elderly housing, and dwellings on small, compact lots which reflect their historic origins near a railroad stop. There are several, sizable parcels of land which include wetlands, and one which is large enough to keep livestock.

Growth or redevelopment of any kind in this Town center is limited by zoning, and the restrictions on land uses which do not conform to present requirements. It is intended that the East Kingston Town Center District provide the means to pursue:
ARTICLE III-A – TOWN CENTER DISTRICT

1. focusing Town life around a traditional New England town center;

2. a safe, efficient, and pedestrian-oriented town center;

3. relief from so-called grandfathering restrictions on the kinds of commercial activities which draw residents to a Town center;

4. the provision of opportunity for affordable and work force housing; and

5. the encouragement of civic involvement by residents who are better able to identify themselves with the Town.

D. Cost/Benefit Analysis. A cost/benefit analysis for defining a Town Center District shows that a zoning provision brings Master Plan goals and recommendations into focus. A Town center can incur costs in the form of higher, localized population density, and local traffic congestion. A zoning ordinance such as this, in and of itself, does not relieve the pressures of growth, and prompts the need to continue the examination of how and why the Town might propose areas where other forms of zoning are appropriate for agriculture, open space, and conservation of natural resources.

Benefits to Town Center zoning include providing relief from suburban sprawl, the encouragement of pedestrian traffic, a focus for civic and municipal energies, a magnet for new commercials activity away from outlying parcels, and the possibility for differentiated taxation revenues from commercial properties.

In view of the obvious costs and benefits, the Town Center District will succeed in answering Master Plan goals and recommendations which call for conserving historic places, maintaining and improving the quality and quantity of Town services commensurate with growth, while still facilitating commercial development.

E. Definitions related to the Town Center District:

1. **Housing** -
   a. Affordable – units sold at initial sale for a price that can be afforded by a household with an income not more than 80% of the median family income earnable in the local area (see NH Housing Finance Authority guidelines).
   b. Workforce – units sold upon initial sale for a price that can be afforded by a household with an income not more than 120% of the median family income earnable in the local area (see NH Housing Finance Authority guidelines).

2. **Mixed-use land use** – example: housing may be included as upper storey units over an allowed commercial use.

3. **Multi-family dwelling** – an accommodation for 3 or more families.

4. **Redevelopment** – renovation and/or enlargement of existing buildings or structures to incorporate new uses, or new construction after demolition of a pre-existing building or structure.

F. **Permitted Uses:**

1. Conventional residential dwellings with, or without, accessory dwelling units.

2. Duplex and multi-family dwellings.
3. Mixed uses in a structure for residential and commercial activity.

4. Commercial uses defined by East Kingston Zoning Ordinance Article IV – COMMERCIAL DISTRICT, except that those businesses which display inventory in the open (e.g., vehicles, trailers, motorized operating equipment and machinery) are prohibited.

5. Manufactured housing is prohibited within the Town Center District.

G. Location: The Town Center District area shall be defined thusly (see Figure III-A.1):

1. All parcels in the District shall have frontage on Depot Road or Main Street.
2. The westerly boundary of the District shall be the easterly edge of Willow Road.
3. The easterly boundary of the District shall be the westerly edge of Freeman Street.
4. Parcels having a depth of less than 500 feet from the center of the road shall be considered in the District in their entirety.
5. On parcels deeper than 500 feet, the frontage portion of the lot to a depth of 500 feet shall be considered in the District. The remaining portion of the lot shall remain as originally zoned, or as subsequently amended.
6. Parcels developed for elderly housing in accordance with East Kingston Zoning Ordinance Article XII – ELDERLY HOUSING are not considered to be in the Town Center District. Permitted uses for elderly housing shall conform to applicable zoning requirements, or as subsequently amended.

There is overlap of the Town Center District with the northerly portion of the Commercial District on Haverhill Road; however, no functional conflicts are manifest. Where differences in permitted land use in the areas which overlap appear, the less restrictive provision shall apply.

H. General Standards: The following design factors shall apply within the Town Center District:

1. Architecture of new construction or renovation shall be of the recognizably traditional New England styles employing the appearance of clapboard, shingle, brick, or stone siding (see Appendix III-A.A). Roofs shall be pitched and covered with shingles, metal, or slate.

2. Windows and doors shall be of New England character, favoring the double-hung variety with panes defined by mullions. Storefront windows shall be detailed using mullions, or similar devices, to preserve the scale and aesthetics of a rural New England community.

3. Fenestration: Blank, windowless walls are prohibited. Building design shall employ techniques of fenestration which preclude flat, barren wall surfaces. Such designs shall be architecturally compatible with the style, materials, colors, and details of the building, and appropriate to a rural New England setting.

4. Windows: Twenty-five percent (25%) of all front and side building facades shall be windows. The distance between windows, and windows and doors, shall not be greater than twenty feet (20’), and the bottom sill of a first storey window shall not be more than

5. Amended March, 2018
three feet (3’) from ground level. Reflective, or highly tined, glass or faux windows are
prohibited.

5. Any new construction or renovation building footprint shall be no greater than 10,000
square feet in order to preserve the scale of a compact New Hampshire town center.

6. Detached garages to the rear of dwellings are encouraged. Where garages are
attached, they shall be placed so that the garage door(s) do not face the street.

7. Sidewalks within the Town Center District are encouraged to improve the district’s
“walkability”, and shall be required for all new construction and redevelopment.

8. Shade trees shall be planted along lot frontages as a part of redevelopment or new
construction plans.

9. Curb cuts for residential driveways shall be no wider than 12 feet.

10. General parking shall not be permitted on lot frontages for reasons of traffic and
pedestrian safety.

11. The use of permeable surfaces (such as gravel) for commercial activity parking areas,
particularly for overflow, is recommended and shall be strongly encouraged. Such
parking shall be placed at the rear of buildings.

12. Street lighting shall be appropriate to a New England village environment, of low
intensity, and shielded in such a manner as to avoid light pollution of the skies, or
spillover into adjacent residential/agricultural areas. Prohibited is lighting of the low-
pressure sodium, fluorescent, or mercury vapor varieties.

13. The maximum height of a building shall be two (2) stories, not including the basement,
to ensure timely and efficient delivery of emergency services.

14. Where fencing is proposed in a site plan, traditional fence styles (e.g., picket) are
preferred. No fence shall be permitted which has the effect of a visual barrier. Chain
link fencing is prohibited.

15. For purposes of these general standards, the Planning Board shall have interpretive
authority to establish whether a proposal meets them. Where this ordinance does not
address a zoning/land use factor directly, current ordinances and regulations shall
apply.

I. **Dimensional Requirements**: All provisions of Zoning Ordinance Article IX – LOT AND YARD
REQUIREMENTS apply except that:

1. Minimum lot size for purposes of watershed and sanitation requirements, and therefore
density, shall be that which may be allowed under New Hampshire Department of
Environmental Services (NHDES) Septic System Design Rules.
2. Dimensional requirements for frontage and lot boundary setbacks of buildings and structures shall be:

- Minimum lot frontage width: 40 feet
- Minimum building front yard: 20 feet
- Maximum building front yard: 40 feet
- Minimum building side yard: 10 feet
- Minimum building rear yard: 10 feet

J. **Multi-family Dwellings**: Duplex family dwellings which provide for two units are permitted in the Town Center District, and are distinct from two-family dwellings as described in East Kingston Zoning Ordinance Article IX – LOT AREA AND YARD REQUIREMENTS. When proposed for construction in the Town Center District, they shall conform to the provisions of this ordinance, and those multi-family dwelling provisions below which apply:

1. Multi-family dwellings shall provide for a maximum number of four (4) units. The buildings shall be no more than two stories tall, and their design shall conform to the architectural features as described in paragraph H. General Standards.

2. Each dwelling unit shall provide a minimum of 800 square feet of floor area, excluding open porches and garages.

3. Parking space for individual units shall provide for two (2) vehicles, and all parking spaces shall be placed behind the building, and hidden from view by passers-by.

4. Multi-family dwelling unit ownership and occupancy may employ such devices as condominium and rental properties.

K. **Procedure for Review**: All site plans and subdivisions within the Town Center District shall require the submission of a site plan application to the Planning Board. The Board shall determine whether the proposal will require a publicly heard site plan to ensure conformance with this ordinance. The review process shall determine whether the review is within the context of these provisions, the amount of information and materials needed, and if zoning ordinance standards and parameters are met. Where a proposal fails to do so, such remedies or devices shall be recommended which can fulfill the ordinance’s spirit and intent.
FIGURE III-A.1

Town Center District Map
FIGURE III a.2

Fenestration Measurement

Typical Cape Code style dwelling (1 ¾ storey) with dormers. Square footage measurement of façade interruptions (windows, former, door) reveals fenestration = 23% of visible surface area. Excluding the roof and dormers, fenestration = 37%.
APPENDIX III-A.A

ARCHITECTURAL STYLES SEEN IN EAST KINGSTON

So-called antique house styles seen in East Kingston include traditional Colonial, Cape Cod, Saltbox, Victorian, New Englander farmhouse, and their variants. New construction residential dwelling styles include modern renderings of the traditional styles, combinations thereof, and contemporary designs, as well as designs which incorporate the very early Garrison and Log cabin styles. Roof configurations vary widely, employing the typical gable, hip, pyramid, gambrel, mansard, and flat styles. One-storied ranch and bungalow house styles often reflect the traditional New England architectural features. So-called contemporary style examples are few.

Note: Materials and presentations herein are informational only, and may change from time to time. The Planning Board may informally update this appendix to preserve its currency without the need for a public hearing. Representations made with permission from the owner(s).

CLASSIC COLONIAL
Circa 1718
Circa 1689

CLASSIC CAPE COD
Circa 1990

VICTORIAN Shingle Style
Rufus Brown House (circa 1886)
NEW ENGLANDER FARMHOUSE
Tilton House (circa 1902)

CLASSIC SALTBOX with Linnay
Circa 1750
BROWN’S ACADEMY
1904

POUND SCHOOL (ca 1897)
(East Kingston Library)
ARTICLE IV - COMMERCIAL DISTRICT

A. Location: Commercial or business uses shall be allowed in the following areas:
   (Amended 3/96, 9/96, and 3/97)
ARTICLE VI – COMMERCIAL DISTRICT

ARTICLE V – LIGHT INDUSTRIAL/RESIDENTIAL DISTRICT

1. 500 feet on both the west and east sides of Route 108, south of the centerline of Route 107, to the south boundaries of lots 9-2-2 and 9-8-22.

2. Northerly from the centerline of Powwow River (Route 107A) and Burnt Swamp Road (107A) to a depth of 1,200 feet and within 340 feet westerly of the centerline of Haverhill Road (Route 108) and within 550 feet easterly of the centerline of Haverhill Road (Route 108).

3. Land parcel MBL# 10-3-9, located at 14 Powwow River Road. (Adopted 3/99)


C. Applications for Commercial structures and uses must be submitted to the Planning Board for approval and comply with the following regulations:

1. No use shall be permitted which could cause any undue hazard to health, safety or property values or which is offensive to the public because of noise, vibration, unsanitary conditions, noxious odor or similar reason.

2. Sufficient area shall be included in the site of such use to allow the following setbacks and related facilities:

   a) Front: Not less than twenty-five feet from any building or parking lot to a right-of-way, with both an exit and an entrance and with grass and/or other reasonable beautification in the buffer areas.

   b) Side and Rear: Not less than twenty-five feet from a building or parking lot to lot lines.

   c) Sufficient off-street parking space shall be provided on the property to accommodate all vehicles attracted to the business.

   d) The Planning Board shall hold a public hearing on the application first giving notice by publication, posting and by certified mail to abutters and as otherwise required by law.

ARTICLE V - LIGHT INDUSTRIAL/RESIDENTIAL DISTRICT (Adopted 3/89)

In this district, no building or structure or premises shall be erected or altered and no building, structure or premises shall be used for any purpose except the following:


B. Residential housing development in this district will be in accordance with the East Kingston Zoning Ordinance and Subdivision Regulations.

The Light Industrial District is intended for use and development of research laboratories, office buildings, selected light industries, warehousing, service or utility businesses.

Uses permitted subject to Site Plan Approval by the Planning Board.
ARTICLE V – LIGHT INDUSTRIAL/RESIDENTIAL DISTRICT

1. Any Commercial uses defined in Article IV of the East Kingston Zoning Ordinance;

2. Research laboratories with incidental processing or pilot manufacture, but excluding Biological or Chemical Laboratories;

3. Office buildings;

4. Any lawful warehousing excluding warehousing of biological chemical materials; service or utility business not in conflict with the public health, safety, convenience or welfare or substantially detrimental or offensive to adjacent zones or destructive of property values, when permitted by the Planning Board;

5. Light manufacturing enterprises, except biological and chemical manufacturing; provided that such activities will not be offensive, injurious, or noxious because of gas, dirt, sewerage and refuse, vibration, smoke, fumes, dust, odors, danger of fire, or explosion, or other characteristics detrimental or offensive that tend to reduce property values in the same or adjoining districts;

6. Any customary accessory uses incidental to above, including parking and parking structures, support and maintenance shops, concessions and services located within a principal building with no exterior evidence of such concessions and services, and recreational facilities for the use of employees in Industrial Districts;

7. Temporary structures provided the permit for such use shall be limited to a term not to exceed ninety (90) days and a bond is posted to ensure removal.

D. Before any building permit may be granted by the Building Inspector for any buildings, structures or uses in a Light Industrial/Commercial Zone for which approval has been granted by the Planning Board as hereinabove provided, there shall first be submitted to the Building Inspector such detailed plans as shall evidence that such buildings, structures, and uses conform to the following minimum standards for design, construction, use and operation, and such plans shall be certified as to compliance by the architects or engineers responsible for such plans.

E. The following items must be considered by the Site Plan Review process prior to Site Plan Approval.

1. Hazard or detrimental effect to adjacent property: No fire and explosion hazards shall exist as to produce dangerous exposure to adjacent property.

2. Odor: No objectionable odors shall be detectable beyond the property line.

3. Gases: No noxious, toxic or corrosive fumes or gases be emitted.

4. Dust and Smoke: No observable dust or smoke shall be exhausted into the air.

5. Heat and Glare: No heat and glare shall be evident beyond the property line.

6. Exterior Lighting: No exterior lighting; other than properly shielded street lighting, shall shine directly on adjacent properties or towards any street.

7. Noise: No inherent and recurrently generated noise shall be detectable beyond the property line in excess of the average level of street and traffic noise generally heard at
the time and point of observation, and no noise below such level shall be objectionable with respect to intermittence, beat frequency or shrillness. No external loud speakers shall be permitted.

8. Vibration: No inherent and recurrently generated vibration shall be perceptible at or beyond the property line.

9. Radiation: No dangerous radiation shall be detectable outside any structure.

10. Waste Disposal and Water Service: Water service and waste and refuse disposal methods shall comply with pertinent health regulations and shall be in accordance with the approved site plan.

11. Storage: Fuel, raw, partially processed, finished or other material, machinery, supplies and equipment, including company owned or operated vehicles, shall not be stored between the street line and the front line of structures on the subject lot or, if there be no structure, within forty (40) feet of the street line, and in no case shall be visible from the street.

G. Site plans shall be submitted to the Planning Board for review and approval prior to the commencement of any construction on the property. No building permit shall be issued until final Site Plan Approval has been granted by the Planning Board.

H. Building Setbacks. Side and rear setbacks shall be 200 feet from lot lines that abut any other District. Adequate off-street parking must be provided and used and is subject to approval by the Planning Board. No building shall be constructed within 75 feet of the street or within 30 feet of any lot line.

I. Maximum building height shall be sixty-five feet.

ARTICLE VI - WETLANDS CONSERVATION DISTRICT

A. Purpose:

In the interest of public health, convenience, safety and welfare, the regulation of wetland areas is intended to guide the use of areas of land, defined as wetlands in Part B of this article, for the following purposes: (Amended 3/97)

1. To maintain the quality and level of the groundwater table and water recharge areas for existing or potential water supplies.

2. To prevent the destruction of natural wetlands which provide flood protection, recharge and augmentation of stream flow during dry periods.

3. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which could arise because of unwise use of wetlands.

4. To control the development of structures and land use on or adjacent to (Amended 3/97) naturally occurring wetlands which would contribute to pollution of surface and ground water by sewage and toxic waste.

5. To encourage uses that can appropriately and safely be located in wetland areas.
ARTICLE VI – WETLANDS CONSERVATION DISTRICT

6. To preserve wetlands for other ecological reasons such as those cited in RSA 482-A:1. (Amended 3/91)

7. To encourage environmental diversity by protecting and maintaining existing wetland systems and the vegetation and wildlife supported by such systems.

B. Definition and Delineation: (Amended 3/97)

1. The Wetlands Conservation District of East Kingston is hereby defined to be those areas of the Town that meet the following conditions:

   a) **Wetlands** - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

   b) **Wetland soil** - A soil that has characteristics developed in a reducing atmosphere, which exists when periods of prolonged soil saturation result in anaerobic conditions. Hydric soils that are sufficiently wet to support hydrophytic vegetation are wetland soils.

   c) **Wetland vegetation** - The sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present. As used herein, hydrophytic vegetation occurring in areas that also have hydric soils and wetland hydrology may be properly referred to as wetland vegetation.

   d) **Wetland hydrology** - The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

   e) **Hydric soil** - A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation (US Department of Agriculture-Soil Conservation Service 1985). Hydric soils that occur in areas having positive indicators of hydrophytic vegetation and wetland hydrology are wetland soils. Hydric soils shall be classified as either very poorly drained; or poorly drained. By definition, the district is non-contiguous. (Amended 3/00)


   The hydric soils component of delineations produced above shall be determined in accordance with the manual, Field Indicators for Identifying Hydric Soils in New England Version 2 (1998), published by the New England Interstate Water Pollution Control Commission. (Amended 3/01)

3. Soils maps produced by the USDA Natural Resource Conservation Service (NRCS) are contained in the "Soil Survey for Rockingham County, NH, October 1994" and show location of all soil types in the Town. All referenced reports are on file with the East
ARTICLE VI – WETLANDS CONSERVATION DISTRICT

Kingston Conservation Commission. Site specific delineations shall be accomplished on a case by case basis by a certified soil scientist.

4. In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of East Kingston, that district whose regulations are more restrictive shall apply.

C. Permitted Uses:

1. For poorly drained soil areas: (Amended 3/97 and 3/00)
   a) Any use that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or by dredging except as a common treatment associated with a permitted use including road crossings in drainage ways. (Amended 3/91)
   b) Agriculture, including grazing, hay production, truck gardening, and silage production provided that such use is shown not to cause significant increases in surface or ground water pollution by heavy metals, pesticides, or toxic chemicals and that such use will not cause or contribute to soil erosion.
   c) Forestry and tree farming to include construction of access roads.
   d) Water impoundments and the construction of well water supplies.
   e) Drainage ways to include streams, creeks, or other paths or normal runoff water and common agricultural land drainage provided such use is otherwise permitted in the Use District which this District overlays.
   f) Wildlife habitat development and management.
   g) Parks and such recreation uses as are consistent with the purpose and intentions of Article VI, A.
   h) Conservation areas and nature trails.
   i) Open space as permitted by subdivision regulations and other sections of this Ordinance.

2. For very poorly drained soil areas, marshes, lakes, ponds, and perennial streams: (Amended 3/97 and 3/00)
   a) Such uses as specified under Article VI, C.1. (a - i), above for poorly drained soils shall be permitted except that no alteration of the surface configuration of the land by filling or dredging and no use which results in the erection of a structure will be allowed without a special exception per Article VI.G. (Amended 3/91)

D. Special Provisions:

1. Poorly drained soils may be used to fulfill all but 3/4 of an acre (32,670 sq. ft.) of any building lot required by the zoning ordinance provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities.
ARTICLE VI – WETLANDS CONSERVATION DISTRICT

2. No very poorly drained soils or bodies of water may be used to satisfy minimum lot sizes.

E. Procedure for Review:

1. Building Permits For Individual Lots:

   Upon receiving a request for a building permit, the Building Inspector will check the location of the proposed construction relative to the Wetlands Conservation District. If any part of the proposed building site falls within the Wetlands Conservation District, the building permit application must be reviewed by the Conservation Commission before the building permit is issued by the Building Inspector (Amended 3/97). An Appeal procedure is presented herein for those cases where the owner questions the validity of the boundaries of a wetland area, see Article VI.F.

2. Subdivision Requests:

   Any person who desires to subdivide land within the Wetlands Conservation District shall submit to the Planning Board, in addition to all other requirements stipulated in the Subdivision Regulations, five (5) copies (copies are given to the Board of Selectmen, Conservation Commission, Building Inspector, and two retained by the Planning Board) of a drainage report and calculations prepared by a Registered Professional Engineer describing the extent of impact on the wetlands. The topographic map should include soil typing according to Article VI.B.2 and 3 (Amended 3/97) of this Ordinance. The Board of Selectmen and the Conservation Commission may each submit a written report to the Planning Board for consideration.

3. Limitations on Development: (Amended 3/97)

   Septic system leach field boundaries shall be located no closer than 75 feet from very poorly drained soils, or 50 feet from poorly drained soils. Buildings, roads, driveways, etc. shall be located not closer than 30 feet to very poorly drained soil and 15 feet to poorly drained soil, with the exception of driveway or road crossings necessary to access the buildable land. (Amended 3/9, 3/00 and 3/01)

   Septic system replacements for septic systems in existence prior to March 1999 shall be required to meet the State’s minimum required setbacks. (Adopted 3/99)

F. Appeal Procedure:

   In the event that an area is alleged to be incorrectly designated as wetlands (Amended 3/97), any person may present adequate evidence of such to the Planning Board. Adequate evidence shall include a written report of an on-site soils investigation and analysis conducted by a certified soils scientist [a certified soils scientist is a person qualified in soil classification who is approved by the NH Board of Natural Scientists (RSA 310-A:81)]. The Planning Board upon receipt of supplementary information is charged with making a decision as to whether the limits of the Wetlands Conservation District should be modified to accommodate the supplement information.

G. Special Exceptions:

   Special exceptions may be granted by the Board of Adjustment for the following uses in areas of very poorly drained soils (Amended 3/91) within the Wetlands Conservation District if it can be shown that such proposed use will not conflict with the purpose and intent of Article VI, A.
Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and may be accomplished by the findings of a review of the Rockingham County Conservation District of the environmental effects of such proposed use upon the wetlands in question:

1. Streets, roads, and other access ways and utility right-of-way easements including power lines and pipe lines if such location is essential to the productive use of land not so zoned, and so constructed as to minimize any detrimental impact of such use upon the Wetlands Conservation District.

2. The construction of wharves, footbridges, catwalks, fences, water impoundments and beaches after review by the Planning Board for adherence to normal construction practices.

ARTICLE VII - GENERAL PROVISIONS

The following General Provisions shall apply:

A. Any use that may be obnoxious, injurious or in the nature of a nuisance by reasons of production, emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or similar conditions or that is dangerous to the comfort, peace, enjoyment, health or safety of the community or lending to its disturbance or annoyance, is prohibited.

B. All excavation operations shall be carried out in accordance with RSA 155-E. The regulator is the Planning Board and there shall be a permit fee. (see fee schedule) (Amended 3/96, 3/09)

C. No owner of a hazardous building as defined in Chapter 155B, New Hampshire RSA shall permit fire or other ruins to be left, but within one year shall remove or refill the same to clear ground level or shall repair, rebuild or replace the structure.

D. All dwellings and sanitary systems shall be constructed and maintained in accordance with standards set and enforced by the New Hampshire State Department of Health and the New Hampshire Department of Environmental Services Water Division, with the following local requirements:

1. Homes with four or fewer bedrooms shall have a minimum size septic tank of 1,250 gallons. Homes with five or greater bedrooms shall have a minimum size tank of 1,500 gallons.

2. Minimum size of leach field to accommodate a three (3) bedroom dwelling.

3. Percolation test and soils analysis pit for individual septic systems shall be conducted in the presence of the Building Inspector. The Building Inspector shall notify the Planning Board Chairman before the tests are conducted. (Amended 3/94)

4. All final plans for individual septic systems and subdivisions shall be returned to the Building Inspector for review prior to their submittal to New Hampshire Water Supply and Pollution Control Commission for approval.

5. Building Inspector must first inspect the leach field bed bottom and then inspect the septic tank and leach field before they are covered. (Amended 3/93)
6. Septic system leach field boundaries shall be located more than 20 feet from any property boundary, 75 feet from any surface water (Amended 3/97), 75 feet from existing or proposed private wells, and 125 feet from existing or proposed community wells. (Amended 3/98) Septic system replacements for septic systems in existence prior to March 1999 shall be required to meet the States minimum required setbacks. (Adopted 3/99, amended 3/15)

7. Every lot not served by Town sewer shall be subject to the following (ref: New Hampshire Code of Administrative rules PART Env-Ws1014 Effluent Disposal Areas -- General Requirements). (Amended 3/00)

a) Receiving Layer. The receiving layer for an effluent disposal system shall meet the following criteria before a site is considered suitable for modification, as needed, for system design and approval:

1) There shall be no wetlands that have very poorly drained soils, determined in accordance with Env-Ws 1002.76, 1014.02, and 1014.03, under or within 75 feet laterally of the proposed system;

2) If the proposed effluent disposal area is to be within 75 feet of a wetland boundary, then areas delineated as wetlands shall be further classified as having poorly drained or very poorly drained soils, in accordance with Env-Ws 1002.49, 1002.76, 1014.02, 1014.03;

3) There shall be no poorly drained jurisdictional wetlands, determined in accordance with Env-Ws 1002.49 and 1014.03, under or within 50 feet of the proposed system;

4) There shall be at least two feet of permeable soil above any impermeable subsoil;

5) There shall be at least three feet of soil above bedrock; and

6) The extent of receiving layer with respect to paragraph (4) and (5) shall be under and a minimum of 35 feet downgradient of the proposed effluent disposal area, but no less than the distance required for any side and downgradient fill extension.

b) The two feet of permeable soil above any impermeable subsoil required by paragraph (a)(4) above may be created by placing fill onto the subsoil, subject to the following conditions:

1) The fill shall meet the criteria of paragraph (d) below; and

2) Any state or local permits necessary to place the fill shall be obtained.

c) The three feet of soil above bedrock required by (a)(5) above may be created by placing fill onto the subsoil, subject to the following conditions:

1) There is an average of 18 inches of natural soil above the bedrock;

2) The fill shall meet the criteria of paragraph (d), below;
3) Any state or local permits necessary to place the fill shall be obtained; and

4) Fill shall be placed prior to the department issuing subdivision approval; d) Fill used to create a receiving layer in accordance with this section shall:

1) Contain no tree stumps, sawdust, wood chips, tree bark, bricks, asphalt, concrete, metal, wallboard, construction debris, or other such non-soil materials;

2) Contain no more than 25% by volume of cobbles larger than 6 inches in diameter or stones larger than 12 inches in diameter;

3) Have a percolation rate of not greater than 15 minutes per inch after placement and compaction; and

4) Be homogeneous, and if bedding planes or other discontinuities are present, detailed soil analysis from a person or laboratory qualified to perform the analysis shall be submitted with the application to establish that the fill meets the above criteria.

E. No land shall be used for a junk yard, dump, motor vehicle and/or machinery junk yard, or for the storage or deposit of abandoned or discarded materials. (Amended 3/05)

F. On-premise advertising signs in the Residential District shall be allowed under the following conditions: (Amended 3/99)

a) They shall not be more than four (4) square feet in size. Temporary signs for Agricultural/Farming purposes, as defined by RSA 21:34-a, shall be exempt from this size requirement. (Amended 3/00)

b) They shall be illuminated only by non-colored, non-rotating, non-flashing lights.

c) No sign shall be placed in such a position as to endanger traffic on a street or highway by obstructing a clear view or by confusion with official street signs or signals.

d) Every sign shall be constructed of durable materials and shall be maintained in good condition and repair at all times.

e) All signs must be located a minimum of 10 (ten) feet from any right-of-way or property line.

f) Prior to installation, a permit for each sign shall be obtained from the Board of Selectmen. (Amended 3/99)

G. Signs in the Commercial and Light Industrial districts shall comply with the Signs section of the Site and Building Design Requirements in the Site Plan Review Regulations. (Amended 3/99)

H. Pursuant to RSA 674:32, manufactured housing parks and subdivisions created for the placement of manufactured housing on individually owned lots shall not be allowed in East Kingston. (Adopted 3/91)
Pursuant to RSA 674:1,IV, the Planning Board and its members, officers, and employees, in the performance of their functions, may be authorized to enter upon any land and make such examinations and surveys as are reasonably necessary and place and maintain necessary monuments and marks and, in the event consent for such entry is denied or not reasonably attainable, to obtain an administrative inspections warrant under RSA 595-B. (Amended 3/00)

Temporary Manufactured Housing: Notwithstanding the provisions in IX.D, for the purposes of constructing a conventional dwelling, or in emergency situations where an existing dwelling has suffered damage, the Board of Selectmen may authorize the Building Inspector to grant a temporary building/occupancy permit for a single manufactured housing unit to be placed on a lot. The permit shall be valid for twelve months. The Board of Selectmen may authorize the renewal of the temporary occupancy permit for no more than twelve additional months if just cause can be shown by the applicant. Prior to issuing the permit, the Selectmen shall receive an acceptable security (including, but not limited to performance bond, letter of credit, passbook) in the amount of $5,000 to guarantee the removal of the temporary structure before the end of the twelve month period(s). Such temporary building permits shall not be affected by any local growth control ordinances. (Amended 3/99)

I. Pursuant to RSA 674:35.I., the Planning Board is authorized to require preliminary subdivision review. The subdivision regulations regarding the requirements of such review are to be prepared and adopted by the Planning Board. (Adopted 3/05)

J. Pursuant to RSA 674:21, II., the Planning Board is authorized to require the employment of innovative land use controls where the East Kingston Master Plan supports them, and where standards for the use are adopted.

Innovative land use controls the Planning Board is authorized to effect by ordinance include, but are not limited to:

- Timing incentives
- Phased development
- Transfer of density and development rights
- Cluster development
- Environmental characteristics zoning
- Inclusionary Zoning
- Accessory dwelling unit standards
- Impact fees

K. All newly constructed dwelling units, and additions or renovations to existing dwelling units in which a building permit is required, shall install heat detectors in unfinished attic spaces and in integral or attached garages in accordance with NHPA 72 National Fire Alarm Code and said heat detectors shall be interconnected with other heat and smoke detectors of the dwelling unit as a multiple station alarm system and said installation shall be approved by the Fire Chief. (Adopted 03/09)

ARTICLE VIII - USES PERMITTED

A. The Town of East Kingston shall be mainly a district of farms and residences.

B. Home produce and products may be bought and sold and exposed for sale.

C. A single manufactured house (Amended 3/91) may be located anywhere provided it meets all lot size, floor area and yard requirements and the sanitary protection requirements of this Ordinance.
D. The grouping together of manufactured or pre-site built housings in a manner which creates the type of development traditionally known as a "manufactured housing park" is specifically prohibited. (Adopted 3/91)

E. Places of worship are permitted in all zoning districts, but shall conform to all such ordinance and regulation requirements which address issues of safety, health, nuisances, environmental impacts, and the placement of structures on properties. (Adopted 3/05)

F. **Accessory Dwelling Units.** (Adopted 3/05) (Amended 3/17)

1. **Authority**
   This section is enacted in accordance with the provisions of RSA 674:71-73 and 674:21. An accessory dwelling unit may be approved on any legally existing parcel or legally approved building lot where single family dwellings are permitted.

2. **Purpose**
   The purposes of the accessory dwelling unit ordinance are to:
   
a) Increase the supply of affordable housing without the need for more infrastructure or further land development.
   b) Provide flexible housing options for residents and their families.
   c) Integrate affordable housing in the community with minimal negative impact.
   d) Provide elderly citizens with the opportunity to retain their homes and age in place.
   e) Maintain the rural agricultural character of neighborhoods and the town.

Such a second dwelling unit, attached to, and integral with, a primary dwelling unit, is distinguished from duplex dwellings in East Kingston by provisions which include definition, ownership, construction, living area configuration, and lot acreage requirements.

3. **Definition**
   An accessory dwelling unit means a residential living unit that is within or attached to a principal single family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

4. **Special Exception Criteria**
   Accessory dwelling units shall be permitted in East Kingston by Special Exception from the Zoning Board of Adjustment. If granted, the Notice of Decision shall be recorded at the Rockingham County Registry of Deeds. In approving such applications, the Zoning Board of Adjustment must determine that the application complies with the following criteria a-h and all other requirements of the East Kingston Zoning Ordinance are met.

   a. A single-family dwelling located in a zoning district that allows single-family dwellings may be permitted one accessory dwelling unit.

   b. **Ownership.** The owner of the property shall occupy one of the units as a primary residence and be owner of both the primary dwelling unit and the accessory dwelling unit. These ownership and residency provisions shall not change in the event the property is sold. Any kind of condominium ownership arrangement for the accessory dwelling unit and/or the principal dwelling unit is prohibited.

   c. **Living Area Configuration.** The total living area for an accessory dwelling unit shall not exceed 900 square feet. The accessory dwelling unit shall have no more than two (2) bedrooms. Dormitory-style facilities are expressly prohibited, whether seasonal or otherwise. (Amended 3/16)
d. **Construction.** Only one accessory dwelling unit is permitted per parcel or lot. The accessory dwelling unit shall be constructed within or attached to the principal dwelling to preserve the appearance of a single family dwelling and clearly secondary to the principal dwelling unit. Attached means having a shared wall or connected by a covered and enclosed structure. There shall be a connecting door between the primary dwelling and the accessory dwelling unit. An outside entry way to the accessory dwelling unit shall not be placed on the front/street side.

e. **Manufactured Housing.** The addition of an accessory dwelling unit to a manufactured home is prohibited in manufactured home parks or when a manufactured home is under condominium ownership.

f. **Parking.** Off-street parking shall be available for a minimum of two automobiles for the accessory dwelling unit. Room for vehicle ingress and egress on site shall be provided.

g. **Septic facilities and water.** An accessory dwelling unit shall conform to all applicable water and sanitary standards for residential structures. Prior to a dwelling renovation or accessory dwelling unit construction, the owner shall provide evidence to the East Kingston Building Inspector that septic facilities (whether separate or combined) are adequate to serve both the principal dwelling unit and the accessory dwelling unit, and obtain the necessary Town and State permits. Such evidence shall be in the form of a replacement septic system plan prepared by a State of New Hampshire licensed septic system designer and approved by the State and the Town. The property owner shall have an existing septic system inspected by a licensed septic system inspector and provide a report of the inspection results. If the existing septic system is found to be not fully functional, the property owner shall install a replacement septic system according to the approved plan. The property owner shall provide evidence that there is adequate potable water (whether separate or combined) to serve both the principal dwelling and the accessory dwelling unit, according to State standards.

h. **Certificate of Occupancy.** When renovation or construction is complete, and an accessory dwelling unit is ready for occupation, the owner shall request a Certificate of Occupancy from the Building Inspector. Occupancy of the accessory dwelling unit (or the primary residence if the entire dwelling is new construction) is prohibited until a Certificate of Occupancy is obtained.

**ARTICLE IX - LOT AREA AND YARD REQUIREMENTS**

A. 1. Every building lot shall have 200 feet of contiguous frontage on:

   a) A State highway;
   b) A Town accepted (and not discontinued) road; or
   c) A proposed road which has been approved pursuant to the Town’s land subdivision control regulations and complies with “Requirements for Construction of Roads and Streets in the Town of East Kingston” - East Kingston Subdivision Regulations.

   2. Every building lot shall contain a minimum area of 87,120 square feet.
B. A lot of record in any zoning district in existence before March 13, 1996 may be subdivided to allow one backlot under the following conditions: *(Adopted 3/96)*

1. Both lots must conform to the density, soil type, setbacks and other appropriate subdivision and zoning regulations, except with regard to frontage for the second lot.

2. The existing lot of record shall be five acres or more in size and have a contiguous frontage of at least two hundred forty feet (240').

3. Only one backlot shall be permitted per lot of record.

4. A backlot shall have a minimum frontage of 40 feet (40') and the remaining lot or any future lots shall have the minimum frontage required for the zoning district.

5. The backlot must have square footage 50% greater than that normally required for conventional lots by current zoning regulations. The backlot must meet the requirements of Article VI.D.1.

6. The width of the backlot shall not be less than forty feet (40') within two hundred feet of the front lot line.

7. The driveway must be located in the 40 foot area and must access the road on which the back lot has frontage. *(Adopted 3/00)*

C. Every building shall be set back from the front property line at least 30 feet or where existing buildings on adjacent lots are in reasonably close proximity to each other to the line of said existing buildings. Every residence shall be at least 25 feet from adjacent side and rear property lines. All other structures (detached garages, sheds, animal shelters, etc.) with the exception of fences, shall be at least 10 feet from adjacent side and rear property lines. *(Amended 3/06)*

D. A building lot shall have no more than one single family residence or one manufactured housing unit thereon. Multi-unit dwellings are prohibited except as provided in Section G below. *(Amended 3/04)*

E. All residences, including manufactured housing, shall have a minimum floor area of eight hundred (800) square feet, outside measurement of foundation and excluding open porches and garages.

F. Two family dwellings shall be permitted subject to the following: *(Amended 3/96)*

1. There shall be no more than one residential building per lot;
2. There shall be no more than two dwelling units per lot;
3. 300 feet of frontage;
4. Minimum lot size of three acres;
5. Septic system meets minimum standards of the N.H. Water Supply and Pollution Control Commission for six bedrooms;
6. Each dwelling or apartment shall have at least 800 feet of floor area;
7. All other provisions of this ordinance are satisfied. *(1986)*
## G. DIMENSIONAL, FRONTAGE, AND AREA REQUIREMENTS *(Amended 3/02)*

<table>
<thead>
<tr>
<th>District</th>
<th>Farms/Residences</th>
<th>Commercial</th>
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<tr>
<td>Min. Lot Area (Sq. Ft.)</td>
<td>87,120</td>
<td>87,120</td>
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<tr>
<td>Min. Lot Width Frontage (Ft.)</td>
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<td>200</td>
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<td>Min. Front Yard (Ft.)</td>
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<td>Min. Side Yard (Ft.)</td>
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<td>25</td>
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<td>Min. Rear Yard (Ft.)</td>
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<tr>
<td>Min. Ground Floor Area (Sq. Ft.)</td>
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</tr>
</tbody>
</table>

¹ - All other structures (detached garages, sheds, animal shelters, etc.) with the exception of fences, shall be at least 10 feet from adjacent side and rear property lines. *(Amended 3/06)*

² - Pertains to all residences, including mobile homes.

³ - From any building or parking lot to a right-of-way.

*Septic system leach field boundaries shall be located more than 20 feet from any property boundary, 75 feet from any surface water, (75 feet from existing or proposed private wells, and 125 feet from existing or proposed community wells). *(Amended 3/97, 3/98, 3/15)*
ARTICLE X - FLOODPLAIN DEVELOPMENT  (Adopted 3/90 and Amended 3/02 and 3/05)

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of East Kingston Floodplain Development Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision 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 Flood Insurance Study for the County of Rockingham, NH, dated May 17, 2005, or as amended, together with the associated Flood Insurance Rate Map Panels numbered 0383E, 0384E, 0395E, 0403E, 0413E, and 0415E, dated May 17, 2005, or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference. In addition, lands in the vicinity of Powwow Pond shall be subject to these regulations as special flood hazard areas where the Base (100-year) Flood Elevation (BFE) is 119.1 feet National Geodetic Vertical Datum of 1929 (NGVD) upstream of the Boston & Maine Railroad and 118.2 feet NGVD downstream of the railroad.  (Amended 3/05)

Definition 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 East Kingston.

1. "Area of Special Flood Hazard" is the land in the floodplain within the Town of East Kingston subject to a one-percent or greater possibility of flooding in any given year. The area is designated as zone A on the Flood Hazard Boundary Map (FHBМ) and is designated on the FIRM as Zone A.

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

3. "Basement" means any area of a building having its floor subgrade on all sides.

4. "Building" - see "structure".

5. "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.


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

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

10. "Flood proofing" means any combination of structural and non-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.

11. "Floodway" - see "Regulatory Floodway".

12. "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/repair facilities but does not include long-term storage or related manufacturing facilities.

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

14. "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 preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

   b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily 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.

15. "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.

16. "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.

17. "Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

18. "100-year flood" - see "base flood"

19. "Recreational vehicle" means a vehicle which is (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. (Amended 3/94)

20. "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.

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

22. "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.

23. "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 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.

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

25. "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
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".

26. "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.

B. All proposed development in any special flood hazard areas shall require a permit.

C. The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding.

If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

1. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

2. be constructed with materials resistant to flood damage,

3. be constructed by methods and practices that minimize flood damages,

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

D. 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 systems 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.

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

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

3. any certification of floodproofing.

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

F. 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.

G. 1. In riverain situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:1. (Amended 3/91) 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 Wetlands 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."

H. 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:

   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) 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:
1) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

3) 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 floatation, 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;

d) 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. (Amended 3/94)

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.

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:
ARTICLE X – FLOODPLAIN DEVELOPMENT

a) that the variance will not 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 XI - SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT  (Adopted 3/89)

A. Cluster Permitted. Single family structures in a cluster concept are permitted in any district within the Town of East Kingston. Cluster developments are exempt from the provisions of minimum required lot and yard regulations, but will be subject to the conditions which follow, and all other provisions of this ordinance.

B. Purpose. The purposes of cluster development, and to which any such development must adhere, are the following:

1. To preserve the natural beauty of existing rural roads within the Town.

2. To provide adequate setback and buffering requirements to protect existing, proposed, and future residential property values.

3. To preserve the natural and scenic qualities of open space including setback areas, buffer zones, and environmentally sensitive lands.

4. To establish living areas within the Town of East Kingston that provide for a balance of community needs, such as a diversity of housing opportunities, adequate recreation and open space areas, easy accessibility to those and other community facilities, and pedestrian and vehicular safety.

5. To provide for an efficient use of land, streets, and utility systems.

6. To stimulate new approaches to land and community development.

C. Sewer and Water Restrictions. Cluster development shall be permitted in the districts cited in A above except in those areas where proposed or existing individual or common water and sewer systems cannot provide adequate services to additional housing development.
In such a case, cluster development shall be prohibited until such systems are improved, modified, or expanded to properly serve additional housing development. In no instance, shall the Town be required to provide public water or sewage systems for cluster development.

D. Manufactured Housing  (Deleted 3/05)

E. Minimum Tract Size. The tract, lot, or parcel of single or consolidated ownership at the time of application shall be at least 20 contiguous acres.

1. In accordance with Article VI, Part D of the East Kingston Zoning Ordinance, poorly drained soils may be used to fulfill all but 3/4 of an acre (32,670 sq. ft.) of any building lot, provided that the contiguous non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities. No portion of any ponds, lakes, fresh water marshes, alluvial soils, perennial streams, or very poorly drained soils may be used to calculate the density for any proposed cluster development.

2. Frontage is required on an existing Town approved road or a State highway. For the purpose of this ordinance, a Town road shall be defined as a road that has been accepted by the local legislative body at the annual Town Meeting. No housing units or other structures are to be built on land encompassed by the development within 200 feet of any development entrance as measured from the originally existing public or private road. The land precluded from any construction by virtue of this provision may be included, assuming it is otherwise eligible, in the development calculations for the required common land/open space. Two planning goals are thereby satisfied, i.e. 1) higher residential density offset by using common land/open space, and 2) privacy enhanced and traffic noise pollution abated in the neighborhood from adjacent highways.  (Amended 3/05)

F. Maximum Allowable Density.  (Amended 3/91) The maximum number of dwelling units permitted in any cluster development shall not exceed the number of units that would be allowed in a standard subdivision on the same parcel of land. To determine the number of units allowed, the applicant shall submit two conceptual plans for the development. One plan shall show a standard subdivision of the parcel that complies with all requirements of the East Kingston Zoning Ordinance; the other shall show the proposed cluster layout using no more than the number of units allowed by the standard subdivision.

1. Density Bonus. If the following criteria are met, the Planning Board may award the respective density bonuses to the initial total allowable units allowed in F, above. The total density bonus awarded to a particular development under this section (XI.F.1) shall not exceed 10%. If any of the criteria are met and any percentage achieved, the minimum density bonus awarded shall be one dwelling unit. Percentages greater than .5% may be rounded up to the next whole number.  (Adopted 3/99)

   a) Open Space Bonus: Where the proposed plan shows 50% or more of the total parcel as open space protected as such in perpetuity (e.g., with a conservation easement), the development may be awarded a density bonus of 5%.

   b) Public Access Bonus: Where the public is granted access to the open space, the development may be awarded a density bonus of 2.5%. The nature of public access required to trigger this bonus is pedestrian traffic. The agreement may reasonably restrict the use of motorized vehicles.

   c) Agricultural Lands and Use Bonus: Where the development protects agriculturally valuable lands and provides for permission to be used as such in perpetuity, the development may be awarded a density bonus of 5%. In
addition to being reasonably accessible, the agricultural land must meet at least two of the following criteria: *(Adopted 3/99)*

1) The portion of open space preserved for agricultural use must amount to a minimum of 33% of the minimum required open space;

2) The agricultural area must either have been historically farmed, or contain suitable soils for farming;

3) The agricultural area must be a valuable agricultural and/or visual resource as determined by the Planning Board.

d) Innovative Protection Bonus: Where the development can demonstrate that it protects unique and valuable characteristics, it may be awarded a total density bonus of 2.5%. Such characteristics include, but are not limited to the following: *(Adopted 3/99)*

1) Viewsheds, which include lands or corridors of land that contribute to the visual landscape of the town, including areas such as open fields, hillsides, stone walls, mature stands of trees, visible water bodies and their natural buffers.

2) Historically significant buildings and landscapes, identified as such in the Master Plan, that include buildings and associated uses that are maintained and visually separated from the housing portion of the development. Structures or landscapes not identified as such in the Master Plan may qualify for the bonus if sufficient evidence is presented to the Planning Board. Such evidence may include Heritage Commission comment, listing or eligibility for the National Register of Historic Landmarks, or other qualified statements of historic value.

3) Valuable wildlife and environmental areas that are otherwise buildable land, proven as such through an environmental resource inventory by a qualified wildlife biologist specializing in either flora or fauna.

4) Parcels or trail corridors linking open space through the site with existing trails or open space networks. The beginning of such a network or trailway may qualify where reasonable opportunity is present for establishing through corridors onto neighboring parcels and provided that Conservation Commission comment is in favor of this location.

2. **Additional Bonus for Protection of Frontage Lots:** Where an applicant can show that a buildable lot with the required legal area and frontage on an existing roadway within the Town of East Kingston will be preserved in its natural condition (and the dwelling unit located instead internally in the development at least 400’ from the existing roadway), the development may be awarded a density bonus of 0.5 lots (0.5 lot for each frontage lot preserved). In order to receive the frontage lots bonus, all dwelling units within the development must be located at least 400' from the existing roadway. This frontage lots bonus shall be in addition to any other bonus(es) awarded under XI.F.1 and shall not be included in or limited by the 10% maximum specified in XI.F.1. *(Adopted 3/99)*

3. **The Planning Board shall have the authority to evaluate the evidence presented by the applicant and to determine whether any of the abovementioned density bonuses will be awarded.** *(Adopted 3/99)*
ARTICLE XII – ELDERLY HOUSING

G. The residential density within the area being developed shall not exceed six (6) (Amended 3/91) dwelling units per acre.

1. No dwelling unit or accessory structure shall be located closer than 15 feet from poorly drained soils and 30 feet from very poorly drained soils. Septic system leach field boundaries shall be located no closer than 50 feet from poorly drained soils and 75 feet from very poorly drained soils. (Amended 3/05)

H. Cluster development shall not be required to conform to the minimum frontage standards required elsewhere in this ordinance but shall be designed and constructed to achieve the purposes of cluster development set forth in these regulations.

1. Front, side and rear setbacks shall be a minimum of 100 feet from all abutting property lines.

2. Interior lot lines are required; setbacks from lot lines shall conform to the requirements of IX.C. (Amended 3/92)

3. Restrictions: In no instance, shall any of the following be allowed within the front, side, and rear setbacks: structures of any type, additions to existing structures within the cluster including garages, decks, or porches; parking areas, walkways, driveways, or any privately owned road or street. (Town roads, or collector road may not pass through any side or rear setback, unless approved by the Planning Board, and may only pass through a front setback for purpose of access to an existing town or state road in existence at the time of submission of application); septic systems, leaching fields, and back-up areas for the same; wells, or back-up wells (protective radius for a well may extend into the setback, however, no vegetation within the setback shall be disturbed during the drilling of any well); any other improvements not specifically listed above that would disturb the natural condition of the setback. In the development of the cluster, the setbacks shall be left in their natural state with the following exceptions: Upon approval of the Planning Board, cutting of vegetation and excavation may be allowed to improve sight distance along an access from a town or state road in existence prior to submission of application; drainage and utility easements; required landscaping; entrance sign; and any other improvements deemed necessary by the Planning Board to ensure public health, safety and welfare. The Planning Board may require additional plantings in the buffer area to provide better screening, where necessary.

I. Uses Permitted. In addition to the uses outlined in XI.A., above, incidental private recreational uses shall be allowed.

J. Water and Septic Systems. The development may be served by common water and septic systems, the design and construction of which must be approved by the state and local authorities prior to final approval of any cluster site plan or subphase thereof by the East Kingston Planning Board. All common water systems shall require state approval under RSA 149:82, if applicable, and approval by the State of New Hampshire Department of Environmental Services Water Division. Additionally, NHDES Water Division subdivision approval for cluster development, if applicable, and individual sewage system approvals must be obtained prior to final approval of any cluster site plan or subphase thereof by the Board. All common wells within the cluster development, shall in no instance have a protective radius of
less than 125 feet, and when applicable, state requirements for a greater radius shall apply. In no instance shall any sewage system, road, parking area, or dwelling unit be allowed within the protective well radius of any common well. Private wells shall not have any roads, parking, or septic systems within a 75 foot radius. Whenever possible, the well(s) shall be located on an up-gradient from any sewage system, structure, roadway, driveway, parking area, or walkway, and any potentially harmful run-off shall be directed away from the protective radius.

K. **Landscape Buffer.** A cluster development shall have a one hundred (100) foot landscaped buffer around its entire perimeter to provide an adequate division of transition from abutting land uses and existing town roads. This landscaped buffer, which shall include the frontage setback from a development entrance, may consist in whole or in part of existing natural growth. The Planning Board shall determine whether the type of landscaping proposed is acceptable in light of local geographic and topographic features. *(Amended 3/05)*

L. **Parking.** Provisions for parking shall allow for not less than two (2) spaces per single dwelling unit, each at least 9 feet wide and 20 feet long exclusive of traffic and maneuvering space. Access driveway design and proposed parking locations shall be subject to Board approval. *(Amended 3/05)*

M. **Emergency Vehicle Access.** Emergency vehicle access shall be provided to all structures within the cluster development and shall be subject to Planning Board approval.

N. **Common Land/Open Space.** In every cluster development, Common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all cluster developments shall be calculated as follows: either

1. No less than 25% of the gross upland area of the development. Upland area is defined as all soils, excluding poorly and very poorly drained soils, alluvial soils (subject to flooding), waterbodies, and slopes greater than 25%; or
2. No less than 25% of the gross land area of the development. No more than 50% of the open space land shall contain poorly or very poorly drained soils.

In calculating common/open space area the following shall not be included: public right-of-way, very poorly drained soils, soils with slopes over 25%, and parking lots. For developments with interior lot lines, the areas inside the lot lines shall not be included in the open space calculations. *(Amended 3/92)*

O. **Use of Common Land.** Such common land shall be restricted to conservation and passive, non-motorized, recreational use. Setbacks, front, rear and sides, are considered part of the common land, and no use is permitted that would disturb the natural vegetation within these areas (see paragraph H.3. Restrictions: above). These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land. *(Amended 3/90, 3/05)*

P. **Access to Open Space/Common Land.** Such common land shall have suitable access to a road only within the development.

Q. **Protection of Common Land.** Open space, common areas, common facilities, private roadways, and other features within the cluster development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:
1. The continued use of land for the intended purposes.

2. Continuity of proper maintenance for those portions of the development requiring maintenance.

3. The availability of funds required for such maintenance.

4. Recovery for loss sustained as a result of casualty, condemnation or otherwise.

5. Creation of a homeowners association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the cluster development upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-in-common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

6. Layout. The cluster development plan shall show the layout of all roads and structures. (Amended 3/91)

   a) Unless approved by the Planning Board, no driveway shall access more than three dwelling units in a cluster development.

   b) Unless approved by the Planning Board, all roads shall be built to town requirements (Reference "Requirements for Construction of Roads and Streets in the Town of East Kingston" and Appendix C, East Kingston Subdivision Regulations).

   c) The Planning Board retains the right to approve the specific road and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.

R. Site Plan. A site plan for the entire tract at a scale of 1" = 100’ and the developed portion at 1" = 50’ shall be prepared by either a registered professional engineer or registered land surveyor. The site plan shall be submitted in accordance with the site plan and subdivision regulations for the Town of East Kingston, and the location of parks and open space shall be shown on the plan.

S. Planning Board Review. The review of any cluster development conducted by the Planning Board under these regulations shall ascertain that adequate provisions have been made by the owner or his authorized agent for the following, but not limited to the following:

1. Traffic circulation and access including adequacy of adjacent street, entrances and exits, traffic flow, sight distances, curb cuts, turning lanes, and existing or recommended traffic signalization.

2. Pedestrian safety and access.

3. Off-street parking and loading.

4. Emergency vehicle access.

5. Fire protection as it applies to the proximity of buildings to one another and to the existence of firefighting water sources.
6. Storm water drainage based upon a minimum of a 25-year storm frequency, utilizing on-site absorption and/or positive outfall.

7. Recreational facilities.

8. Water supply and wastewater disposal approved by a civil or sanitary engineer registered in New Hampshire.

9. Environmental factors such as protection against pollution, noise, odor, and the protection of natural features.

10. Landscaping in keeping with the general character of the surrounding areas.

11. Signing and exterior lighting.

12. Submission of proposal along with abutting property owners' names and addresses shall be in accordance with the Town of East Kingston Subdivision Regulations in order to provide for timely notification to abutters of public hearing to review said parcel.

13. In addition, the Planning Board shall review the plan to insure compliance with the provisions of the standards set forth in these regulations and other town regulations and ordinances. The Planning Board shall also ascertain that the plan minimizes the encroachment of the cluster development upon neighboring land uses.

14. The Planning Board may retain the services of a consultant and/or engineer qualified to review any specific aspects of the plan or to review any engineering or professional studies submitted by the developer as requested by the Board. The cost of said services shall be borne by the owner and/or developer as per RSA 676:4,I(g).

T. Performance Bond. A performance bond or other acceptable security and other legal data shall be submitted as required by the Planning Board to ensure the completion of streets, buffers, and amenities in accordance with the accepted plans and subdivision regulations of the Town of East Kingston as adopted or hereafter amended.

U. Amendments to an Approved Plan. The owner, his agent or his successors or assigns will make no alterations or additions or deletions from the approved Cluster Development Plan except as approved in advance by the Planning Board. All requests for changes to the approved plan shall be made in writing to the Board and shall be accompanied by such documents as the Planning Board shall deem necessary to explain the requested change.

V. Manufactured housing as defined by RSA 674:31 shall not be allowed in cluster developments proposed under Article XI. (Adopted 3/91)

W. The Planning Board shall adopt such procedures as part of the Site Plan and Subdivision Regulations as it may deem necessary in order to insure sufficient public review of any cluster proposal and to insure compliance with these and other Town ordinances and regulations.

X. Administration. The Planning Board shall be responsible for the review and approval of all applications for cluster development. To minimize the period of time required for the review, the Board may conduct its Site Plan Review in concert with the cluster provisions contained in the East Kingston Zoning Ordinance.
ARTICLE XII – ELDERLY HOUSING

Y. All other land use requirements in the Town of East Kingston Zoning Ordinance must be met including all general requirements of the issuance of a special exception.

ARTICLE XII - ELDERLY HOUSING (Adopted 3/00)

A. Purpose. The regulations in this section have been established for the purpose of encouraging the construction of elderly housing developments (or the conversion of existing structures into elderly housing facilities), which are designed and constructed to meet the unique needs to elderly citizens, while ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health, safety and general welfare of the inhabitants of East Kingston. Such developments shall not include assisted living and/or extended care facilities.

B. General Standards: All elderly housing developments shall conform to the following standards:

1. Elderly housing developments shall be permitted only in the Residential/Agricultural zoning district. All elderly housing developments shall contain a minimum of twenty (20) acres and shall have at least fifty feet (50') of frontage on a public road. (Amended 3/05)

2. No elderly housing unit(s) are to be built on land encompassed by the development within 200 feet of any development entrance as measured from the originally existing public or private road. The land precluded from any construction by virtue of this provision may be included, assuming it is otherwise eligible, in the development calculations for the required common land/open space. Two planning goals are thereby satisfied, i.e. 1) higher residential density offset by using common land/open space, and 2) privacy enhanced and traffic noise pollution abated in the neighborhood from adjacent highways. (Amended 3/04)

3. The total number of elderly housing units contained in any elderly housing development in the Town of East Kingston shall not exceed four percent of the total number of standard residential dwelling units then existing in the Town. (The number of existing elderly housing dwelling units shall not be included in calculating this four percent.) This provision shall be reviewed not later than October each year by the Planning Board to ascertain whether the balance between the number of standard dwelling units and elderly housing units continues to reflect the stated goals of the East Kingston Master Plan and the community’s long-term planning intentions. (Amended 3/04). The total number of elderly housing units shall not exceed fifteen (15) percent of the total number of standard dwelling units in the Town of East Kingston. (Added 3/04, Amended 3/05; 3/06; 3/08; 3/09)

4. The maximum allowable number of units allowed on a site is two (2) per acre of contiguous upland, and shall be calculated as follows: (Amended 3/04)

   a) Subtract very poorly drained soils from the total parcel acreage.

   b) From the remaining total, subtract any poorly drained soils that exceed 60% of the total. [Poorly drained soils may not exceed 60% of the remaining total.]
c) Multiply the resultant acreage by four bedrooms to get the maximum number of bedrooms allowed on the site. *(Amended 3/01)*

5. All elderly housing units are to be constructed only as single or duplex buildings. *(Amended 3/04)*

6. Dwelling units shall be specifically designed to provide housing for elderly residents. Individual units shall have a maximum of two bedrooms, and may not exceed one and one-half (1½) stories. Buildings shall be separated by a minimum distance of thirty-five feet. *(Amended 3/01, 3/04, 3/07)*

7. No individual unit shall exceed 1,500 square feet of living space. Living space shall be defined as any space in the unit which could be used for sleeping, working, dressing, cooking, dining, or other normal life activities, and shall include unfinished as well as finished space. Hallways, closets, storage space, bathrooms, lofts, bedrooms, and all other rooms or areas shall be included in living space. Attic storage spaces with a ceiling height lower than five (5) feet as measured from floor to ceiling shall not be included as living space. One-storey garages shall not be included as living space. Second floor areas above garages or garage lofts that may be converted to living space shall be considered living space. *(Amended 3/07)*

8. Elderly housing developments shall include a non-residential structure dedicated to use as a development community center. Any such building shall provide for space to hold activities such as periodically required homeowner association meetings, and formal and informal community functions. No building in the development shall be of more than two stories in height, nor shall it exceed 10,000 square feet in footprint. *(Amended 3/04)*

9. Adequate on-site space shall be provided for off-street parking for two vehicles per dwelling unit.

10. Building massing and style shall be distinctly residential in character, drawing on historical design elements that are consistent with rural New England architecture and which feature characteristics such as pitched roofs, clapboard or shingle siding, raised panel exterior doors and divided light windows. All such elderly housing developments shall be designed and constructed to compliment and harmonize with the surrounding areas, particularly with regard to the size and scale of the development and its prominence and visibility to the community generally and to surrounding neighborhoods in particular.

11. Except as noted in the proviso contained in this sub-paragraph, all such elderly housing developments shall comply in all respects with the Town of East Kingston’s Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations; provided, however, that the provisions of Articles XIII and XI of the Zoning Ordinance (Growth Control and Single Family Cluster Residential Development) shall not apply to any such elderly housing developments.

12. Dwelling units may be owner-occupied or rented. However, all permanent residents of all elderly housing units shall be at least 55 years of age.

13. The design and site layout of all such elderly housing developments shall compliment
and harmonize with the rural character of the Town of East Kingston, shall maximize the privacy of dwelling units and preserve the natural character of the land.

14. All such elderly housing development shall make provision for pedestrian access within the development by use of paved sidewalks, and to the extent possible, to off-site community facilities.  (Amended 3/04)

15. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible.

16. The perimeter of all such elderly housing developments shall be treated with a landscaped buffer zone of a minimum of one hundred feet (100') which may consist in whole or in part of existing natural growth.  The Planning Board shall determine whether the type of landscaping proposed is acceptable in light of local geographic and topographic features.  (Amended 3/05)

17. The Planning Board may require that all roads within the development -- whether owned privately or not -- be built according to Town standards.

18. The Planning Board retains the right to approve the specific road and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.

C. Common Land/Open Space.  In every Elderly Housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space.  The required amount of open space for all elderly housing developments shall be calculated as follows: either

1. No less than 25% of the gross upland area of the development.  Upland area is defined as all soils, excluding poorly and very poorly drained soils, alluvial soils (subject to flooding), water bodies, and slopes greater than 25%; or

2. No less than 25% of the gross land area of the development.  No more than 50% of the open space land shall contain poorly or very poorly drained soils.

In calculating common/open space area the following shall not be included: public right-of-way, very poorly drained soils, soils with slopes over 25%, and parking lots.  For developments with interior lot lines, the areas inside the lot lines shall not be included in the open space calculations.

Use of Common Land.  Such common land shall be restricted to conservation and passive, non-motorized, recreational use.  Setbacks, front, rear, and sides, are considered part of the common land, and no use is permitted that would disturb the natural vegetation within these areas.  These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land.  (Amended 3/05)

3. Access to open/common land.  Such common land shall have suitable access to a road within the development by use of a network of cleared and demarcated walking paths.  (Amended 3/04)
ARTICLE XI

V – GROWTH MANAGEMENT

4. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the Elderly Housing development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:

a) The continued use of land for the intended purposes.

b) Continuity of proper maintenance for those portions of the development requiring maintenance.

c) The availability of funds required for such maintenance.

d) Recovery for loss sustained as a result of casualty, condemnation or otherwise.

e) Creation of a homeowners association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the Elderly Housing development upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-in-common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

D. It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Homeowner’s Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Homeowner’s Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be borne by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants, that the Association will at all times be in compliance with current East Kingston ordinances governing elderly housing.

E. The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed elderly housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of East Kingston; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; whether the Articles and By-Laws operate to serve the unique needs of elderly residents; the burdens created by additional demands on Town services; and whether the proposed development complies with the requirements of this Elderly Housing Amendment, as well as, with the requirement of East Kingston’s Zoning Ordinance and Subdivision and Site Plan Regulations.

F. Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injunctive relief or otherwise. Covenants shall be signed by the Planning Board and shall contain language specifying that Board approval is required for any subsequent changes to the covenants.
ARTICLE XI – V - GROWTH MANAGEMENT

Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted thereunder, without the prior written approval of the Planning Board.  *(Adopted 3/02)*

G. The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing ordinance provisions:

1. Elderly Housing Development: Housing contained in a development featuring predominantly small single family units, apartments and/or condominiums.

2. Bedroom: A room with an interior door and a closet.

3. Unit: A structure, or part of a structure, in the elderly housing development intended to house a family group or similar body, all members of whom are at least 55 years of age, and for which there is a single and separate deed.  *(Amended 3/04)*

ARTICLE XIII - GROWTH MANAGEMENT  *(Adopted 3/07)*

A. Authority

This Growth Management Ordinance article is enacted in accordance with RSA 674:22 and replaces the Growth Control Ordinance article adopted at Town Meeting 1998.

B. Purpose

From before 1738, East Kingston has been a rural community of farms, and in the late 20th century the Town began to experience rapid residential growth primarily at the cost of agricultural lands and open space.  New Hampshire statute permits municipalities to control the rate of land use development, and to that end, East Kingston first adopted a Master Plan in 1982, and a Capital Improvements Program (CIP) in 1997.  Both instruments of planning have been periodically updated.

Growth control in some form has been a planning tool for the Town since before 1979 to smooth the effects of increased demand on municipal services and infrastructure, and their associated costs.  The intent has been, and remains, to allow for a "normal" rate of growth, while attending to the capacity of the Town’s residents to absorb the financial shocks from increased taxation in order to support the expanded services.

Since the 1980s, East Kingston has experienced unprecedented growth, even with control measures in place.  The Town is amongst the fastest growing communities locally, and in the region, and the impact on its taxpayers has been traumatic.  The impact on the natural environment is observable in the steady loss of wetlands and wildlife natural habitat, increased impervious surfaces, and the draw-down of ground water aquifers.  By applying growth management controls, these adverse impacts can be ameliorated at the same time the following goals pursued:

1. To manage growth to ensure its compatibility with the East Kingston Master Plan and CIP.

2. To enable the execution of Master Plan goals at a rational, absorbable pace that is in concert with regional development, and state and federal statute.

3. To ensure that all East Kingston municipal services and resources, including but not limited to, police, fire and rescue, infrastructure, secondary education schooling, library, recreation, historical sites and structures, will have sufficient capacity and quality to accommodate new development.
C. **Findings of Fact**

**Populations**
1. Increases in population from 2000-2010 were: East Kingston 32.1%; East Kingston together with abutting and SAU-16 towns 12.8%; Rockingham County 20.1%; State of New Hampshire 18.7%. (1990 and 2010 U.S. Census)
2. Compared to abutting and SAU-16 towns, East Kingston’s rate of growth in population grew at a rate significantly greater than the region in the periods of 1990-2010 and 2000-2010. (1990 and 2010 U.S. Census)

**Housing**
3. The percent increase in housing units from 2000 to 2010 was: East Kingston - 40.0 percent; East Kingston and abutting towns - 10.4 percent; Rockingham County - 10.05 percent; and New Hampshire – 12.5 percent (1990, 2000 and 2010 U.S. Census).
4. East Kingston’s share of housing units in the six-town region (East Kingston and five abutting towns): increased from 4.9 percent in 1990 to 5.6 percent in 2000 and 7.1 percent in 2010 (1990, 2000 and 2010 U.S. Census)
5. The total housing stock increased from 1990 to 2010: East Kingston – 83.6 percent; East Kingston and abutting towns – 26.8 percent; Rockingham County – 24.5 percent; and New Hampshire – 22.1 percent. (1990 and 2010 U.S. Census)

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<td>699</td>
<td>751</td>
<td>755</td>
<td>758</td>
<td>758</td>
<td>759</td>
<td>767</td>
<td>769</td>
<td>770</td>
<td>770</td>
</tr>
<tr>
<td>% change in total year-to-year</td>
<td>1.5</td>
<td>7.4</td>
<td>0.5</td>
<td>0.4</td>
<td>0</td>
<td>0</td>
<td>0.7</td>
<td>1.2</td>
<td>0</td>
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</tr>
<tr>
<td>Elderly Housing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>XI</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cricket Hill Rd</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
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<td>40</td>
</tr>
<tr>
<td>Maplevalle Farms</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>&amp; Woods</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Autumn Ln</td>
<td>20</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Cornerstone</td>
<td>0</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>126</td>
<td>153</td>
<td>153</td>
<td>153</td>
<td>153</td>
<td>153</td>
<td>153</td>
<td>153</td>
<td>153</td>
<td>153</td>
</tr>
</tbody>
</table>
Municipal Services:

6. Present capacity of the 11-classroom Elementary School (Grades K-5) is 250 students (using class size and space requirements as determined by the State of New Hampshire). The Elementary School Board considers a school population of 220-225 student to be a realistic number, with Kindergarten classes of 18 or less, 1st through 3rd grades of 20 or less, and 4th and 5th grades of 22 or less.

The middle and high school populations have remained more or less steady, except for a jump in the middle school that appears to have started in 2003/2004. This increase in high school enrollment is holding steady through to today, with the middle school population returning to former average levels. Enrollment in all schools has fallen short of official and unofficial projection expectations:

Table 2. Actual Student population for East Kingston

<table>
<thead>
<tr>
<th>School Year</th>
<th>(K-5) Elementary</th>
<th>(6-8) Middle</th>
<th>(9-12) High</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-2001</td>
<td>174</td>
<td>90</td>
<td>93</td>
<td>357</td>
</tr>
<tr>
<td>2001-2002</td>
<td>163</td>
<td>98</td>
<td>99</td>
<td>360</td>
</tr>
<tr>
<td>2002-2003</td>
<td>168</td>
<td>105</td>
<td>98</td>
<td>371</td>
</tr>
<tr>
<td>2003-2004</td>
<td>169</td>
<td>95</td>
<td>108</td>
<td>372</td>
</tr>
<tr>
<td>2004-2005</td>
<td>174</td>
<td>93</td>
<td>136</td>
<td>403</td>
</tr>
<tr>
<td>2005-2006</td>
<td>187</td>
<td>88</td>
<td>137</td>
<td>412</td>
</tr>
<tr>
<td>2006-2007</td>
<td>178</td>
<td>92</td>
<td>135</td>
<td>405</td>
</tr>
<tr>
<td>2007-2008</td>
<td>199</td>
<td>109</td>
<td>98</td>
<td>406</td>
</tr>
<tr>
<td>2008-Nov 2009</td>
<td>203</td>
<td>95</td>
<td>127</td>
<td>425</td>
</tr>
<tr>
<td>2009-Nov 2010</td>
<td>204</td>
<td>95</td>
<td>133</td>
<td>424</td>
</tr>
<tr>
<td>2010-Nov 2011</td>
<td>204</td>
<td>87</td>
<td>128</td>
<td>424</td>
</tr>
<tr>
<td>2011-Dec 2012</td>
<td>182</td>
<td>104</td>
<td>130</td>
<td>416</td>
</tr>
<tr>
<td>2012-Dec 2013</td>
<td>170</td>
<td>110</td>
<td>113</td>
<td>393</td>
</tr>
<tr>
<td>2013-Dec 2014</td>
<td>148</td>
<td>107</td>
<td>118</td>
<td>373</td>
</tr>
<tr>
<td>2014-Dec 2015</td>
<td>147</td>
<td>94</td>
<td>130</td>
<td>371</td>
</tr>
<tr>
<td>2015-Dec 2016</td>
<td>159</td>
<td>102</td>
<td>135</td>
<td>396</td>
</tr>
</tbody>
</table>

One consequence of a student population growing more slowly than anticipated is the Elementary School Board’s decision to delay construction of a second storey onto the elementary school’s new classroom addition until 2009 (2006-2011 CIP). That said, however, the SAU-16 built a new high school, and plans for capital improvements to and expansion of the middle school is on apace. SAU-16 did build a new high school, but the addition to the elementary school has been delayed until a change in student population warrants the addition.

7. (PB) East Kingston conducted Town-wide property revaluations in 1992 and 2003. In that time, the price of a $100,000 house increased to approximately $212,000, reflecting increased real estate values and inflation (see Taxation History Table). The tax bill during the inclusive period 1992-1995 for such a house increased from $2,205 to $4,070; an overall increase of 63%. If the Consumer Price Index as measured by the Bureau of Labor for the Boston area is applied to the 1992 tax bill from 1993 to today, the 1992 purchasing power of $2,502 requires $3,127 in 2005. Actual tax spending in real dollars has increased over 30% in those thirteen years.

CIP’s and the Road Agent’s 2005 budget proposal). In addition, the Road Agent identified a new capital investment requirement in the form of a Town salt shed for winter road maintenance. The salt shed and land was noted in the 2006-2011 CIP to cost $290,000. A new salt shed was built on Town-owned property in 2008 for a cost of $31,000.

9. (PB) The 2006-2001 CIP, revised and adopted by the Planning Board on 17 November 2005, identified the need for a new Police Station, a new Library, and Fire Department emergency vehicles and equipment, as well as other needed capital expenditures necessary to accommodate growth in the Town. A new Police Station was built in 2006, and the new Library was completed in 2008. The total tax rate for all requested capital improvement projects for 2006 was $3.74/$1,000 assessed valuation. The CIP share in 2002 was 18%, whereas in 2005 it was 22.3%.

10. (PB) East Kingston residential dwelling building permit history:

<table>
<thead>
<tr>
<th>Table 3. Residential dwelling building permit history</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Elderly housing</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

* As of November 2016 records of the East Kingston Building Department.

D. Findings Analysis

Study of the Findings of Fact and its data indicates:

1. Residential construction is outpacing the abutting towns and the region by almost twice the rate of growth.

2. East Kingston’s population has grown dramatically since 1990, at more than double the growth rate of abutting towns and the region.

3. The rate of (tax) spending in real dollars since 1992, i.e., adjusted for inflation, has increased by over 30%. The increase reflects the two school districts’ propensity to expand capital assets and services, and the Town’s need to expand its other municipal services to accommodate a higher population density. The increased spending can be explained in part by the high cost to support residential development when compared to that for open space or agricultural land use (ref. NH OEP study).

4. Unmanaged growth in 2006 poses the threat of a spike in new construction in 2007 amounting to more than double (120%) the formerly planned, managed growth. At the least, such growth is likely to require the elementary school board reassess the need to build additional classrooms as described in the CIP.

5. The doubling of land and property market values since 1992 has encouraged subdivision development, discouraged agriculture for economic reasons, and placed those residents on fixed incomes in jeopardy of losing their homes.
6. Unrecoverable open space and agricultural lands are being consumed by development with the concomitant suburbanization of a diminishingly rural community.

Conclusion: East Kingston continues to experience the adverse impacts of growth out of proportion to its ability to integrate new residents, and defray the increased costs of municipal services. Analysis suggests that growth management remains a necessary tool for planning until such time as the impacts of a high rate of growth and its costs are matched by the Town’s long-term ability to support them.

E. Building Permits

1. Growth management provisions herein apply only to building permits for new dwellings. Building permits for non-dwelling construction, or for expansion, alteration, or replacement of existing dwellings, will not be affected by these provisions. Elderly housing new construction shall be governed by ordinance provisions applying thereto.

2. Issuance of a building permit for the replacement of an existing dwelling after damage, destruction, or demolition will not be affected by these provisions providing such permit is issued within two (2) years of the damage, destruction, or demolition. After two years, the issuance of a building permit will be subject to growth management restrictions unless waived by the Board of Selectmen in consideration of extenuating circumstances.

3. The calendar year for approving building permits shall be 1 January 2XXX to 31 December 2XXX.

4. The rate of growth in conventional, residential housing units in any given year shall not exceed the average rate of growth in housing stock for abutting towns and the region, as defined and determined by the Rockingham Planning Commission (RPC) and the New Hampshire Office of Energy and Planning (NH OEP).

The Building Inspector shall issue permits for new conventional dwelling units to total no more than that percentage which is equal to the rate of growth for abutting towns and the region applied to the entire residential housing stock in East Kingston, excluding elderly housing, on 1 January of each year. That is:

\[
\frac{(\text{Abutting Towns growth rate/Regional growth rate})}{100} \times \left(\text{residential building stock}\right) = \text{maximum number of building permits for conventional residential housing}
\]

Example: Calculation for 2014: \( 0.83\% / 0.54\% \) / 100 = 0.0153703% x (752 units) = 11.6 permits

Note: a) For the above calculation, abutting towns include Kingston, Newton, South Hampton, Kensington, and Exeter, together with towns which regionally impact East Kingston by virtue of inclusion in the SAU-16, to wit, Stratham, 'Brentwood, and Newfields.

b) Abutting/SAU-16 Towns = 0.83\%  Regional (Rockingham County) = 0.54\%

c) Round down to the nearest whole integer.
ARTICLE XI

5. One building permit shall be required for each dwelling unit (e.g., one permit for a single family home; two permits for a duplex; etc.)

6. Building permits for new dwellings shall be issued on the basis of those completed applications first received by the Building Inspector until the available number of permits has been issued.

7. To be complete, building permit applications must be for lots approved by the East Kingston Planning Board, and registered in the Rockingham County Register of Deeds. Lots must meet all applicable state and local ordinances/regulations. Applications must include:
   a) a copy of the deed of the land on which the proposed dwelling will be located;
   b) a subdivision approval number where applicable;
   c) NHDES Water Division septic design approval;
   d) a set of plans for the proposed dwelling;
   e) a driveway permit from either NHDOT (State Highway) or the Town (Town road); and
   f) for manufactured housing, a notarized bill of sale.

8. In order to ensure equitable distribution of available permits, 1) no individual, relatives thereof, persons associated in business with such individuals, or entities owned or controlled by such individual, his/her relatives or persons associated in business with that individual, and 2) no business entity, or any other entity owned or affiliated with such business entity, in whole or in part, may apply for, or receive, more than 20% of the available permits in any given year.

9. Building permits which are void as a result of the failure to complete required construction within the required timeframes (ref. Article XVII – BUILDING INSPECTOR AND PERMITS) shall be deemed available for issue in the current year by the Building Inspector. As described in Article XVII above, “work started” shall mean footings and foundation must be poured. When permits are voided under this provision, fees paid for the permits shall not be refundable.

10. Applications shall only be accepted for permits available in the current year. Applications received after all available building permits have been issued will be placed first on a list for the following year.

F. Monitoring and Review

The Planning Board shall track annual growth in the number of residential dwellings in Town, applicable regional growth patterns, town property valuation and tax impacts, and other data pertinent to findings of fact. It shall compare these data with original findings of fact to assess the growth management ordinance article’s continued utility.

This ordinance article shall expire on January 1 of each year unless the Planning Board conducts a review, and an annual review thereafter, including a public hearing to establish the need to retain or revise it. The review and public hearing shall be concluded after the necessary data are gathered, and in time to propose any correctives to the legislative body. If there are no proposed changes, and the ordinance article is found to still have utility, it shall remain in effect for another year, but to be subject to subsequent annual reviews.
ARTICLE XIV - SEPTAGE/SLUDGE DISPOSAL FACILITIES  (Adopted 3/91)

A. Definitions

1. Incorporation: the physical mixing of sludge with the upper soil horizon by means of injection, discing, chisel plowing, mold-board plowing, rototilling, or similar means.

2. Land application: the application of septage or sludge directly to the soil and/or incorporation into the surface soil.

3. Lagoon: a lined or unlined pit or excavation designed to receive septage and/or sludge.

4. Reclamation: the improvement of soils by addition of organic materials which allows establishment of vegetation.

5. Septage: septage as defined by RSA 485-A:2,IX-a, namely material from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial wastes.

6. Septage/sludge disposal site: a land area on which septage and/or sludge is placed for final disposal.

7. Sludge: sludge as defined by RSA 485-A:2, XI-a, namely the solid or semisolid material produced by water and wastewater treatment processes.

8. Wastewater treatment facility: a plant or group of devices provided for the treatment of wastewater, either domestic sewage or a combination of domestic and industrial wastes, and for the dewatering and handling of sludge removed from such wastewater.

B. Permit Required

In order to operate a septage/sludge disposal site, a five (5) year permit must be obtained from the Board of Selectmen which shall run concurrently with the required State of New Hampshire permit. The Selectmen shall issue a septage/sludge disposal site permit after a public hearing (with notice as per RSA 675:7) provided the provisions of this section (and other applicable Town, State, and Federal regulations) are met. Application for a permit renewal must be submitted to the Selectmen's Office at least 60-days before the expiration of an existing permit.  (Amended 3/94)

C. Performance Standards

The owner/operator of any septage/sludge disposal site must demonstrate that the following standards are met. Where necessary, the Selectmen may require the owner/operator to submit test pit and monitoring well data and other data (at his expense) to adequately demonstrate compliance with this section and other applicable ordinances and regulations.

1. The site must comply with NH Department of Environmental Services Water Division "Chapter Env-Ws 800 SEPTAGE AND SLUDGE DISPOSAL" and any amendments thereto.

2. The site must comply with the Bureau of Solid Waste Management (BSWM) and NHDES Water Division rules promulgated under RSA 149:8,III(a) entitled "Protection of Groundwaters of the State" and any amendments thereto.
3. The site must comply with federal regulations as specified in 40 CFR 257.3-5 and 40 CFR 257.3-6(b) and any amendments thereto.

4. Unless specifically authorized by the Selectmen and so stated on the local permit, no septage/sludge disposal site shall accept industrial septage.

5. The owner/operator must demonstrate continued efforts to control and reduce odors using current available technology.

6. Septage and sludge shall not be applied to the land within 100 feet from any surface water.

7. Septage and sludge shall not be applied to the land within 300 feet of any private well, 500 feet of any community well, or 1000 feet of any municipal water supply well.

8. Septage and sludge shall not be applied to the land within 300 feet from a dwelling, 50 feet from property lines, or 100 feet from any public road. No stockpiling of sludge shall be allowed within 500 feet from a dwelling or 250 feet from a public road.

9. Landscaping of the setbacks may be required by the Board of Selectmen. Type and extent of landscaping is subject to Board approval.

10. Lagoons shall be required to meet the setbacks and buffer requirements in Article XIV, Section C.6 to C.9 above.

11. The extent and boundaries of the septage and/or sludge application, and areas where land application are prohibited shall be clearly marked with stakes every 50 feet.

12. There must be at least 2 feet of unsaturated soil at the time of septage or sludge application (i.e., depth to seasonal high water table from the bottom of the receiving soil shall be at least 2 feet). If the septage or sludge is to be incorporated, there must be a minimum of 2 feet to seasonal high water table from the depth of incorporation, not from the soil surface.

13. Unless lined with a suitable material, there shall be a minimum of 6 feet between the bottom of a sludge lagoon or sludge stockpile and the seasonal high water table.

14. There shall be at least 4 feet between the bottom of the receiving soil layer and bedrock or relatively impermeable subsoil layer for agricultural land and for reclaimed lands receiving sludge.

15. There shall be at least six feet between the bottom of unlined sludge stockpiles and bedrock.

16. Runoff shall be controlled to prevent contamination of surface water and groundwater. Groundwater and surface water quality shall not exceed Environmental Protection Agency Drinking Water Standards beyond parcel boundaries.

17. Land application shall not be allowed on Saturdays, Sundays, or State and Federal holidays April 1 through November 30.

18. The owner/operator shall keep accurate traceable records for all wastes received, which clearly show origination, quantity, and type of waste. These records shall be
made available to the Selectmen upon request.

19. The facility shall accept any residential septage from within the Town of East Kingston (to ensure compliance with RSA 149-M:13) for as long as the facility operates.

D. Enforcement

The Selectmen shall enforce the provisions of this section. The Selectmen or their agent may access and inspect a septage/sludge disposal site and any pertinent records (reference Article XIV, Section C.18) in order to insure conformance with local permit requirements and any other applicable local, State, or federal regulations. If any permit violations or health and safety hazards are found, the Selectmen shall have the authority to notify the owner/operator and revoke the local permit, at which time the facility shall cease operation at once until the violations and/or hazards are rectified to the Board's satisfaction.

ARTICLE XV - TELECOMMUNICATIONS FACILITIES  (Adopted 3/97)

A. Authority

This ordinance is adopted by the Town of East Kingston on March 11, 1997 in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II.

B. Purpose and Goals

This Ordinance is enacted in order to establish general guidelines for the siting of telecommunications towers and antennas and to enhance and fulfill the following goals:

1. Preserve the authority of East Kingston to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.

3. Reduce adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.

3. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.

4. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.

5. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon East Kingston.

6. Provide constant maintenance and safety inspections for any and all facilities.
7. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for East Kingston to remove these abandoned towers to protect the citizens from imminent harm and danger.

8. Provide for the removal or upgrade of facilities that are technologically outdated.

C. Definitions

1. "Alternative tower structure". Innovative siting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

2. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

3. "FAA". An acronym that shall mean the Federal Aviation Administration.

4. "FCC". An acronym that shall mean the Federal Communications Commission.

5. "Height". Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

6. "Planning Board or Board". Shall mean the Town of East Kingston Planning Board and the regulator of this ordinance.

7. "Pre-existing towers and antennas". Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.

8. "Telecommunications Facilities". Shall mean any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services.

9. "Tower". Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

D. Siting Standards

1. General. The uses listed in this section are deemed to be permitted uses that may require further review under this ordinance in accordance with Section G. Conditional Use Permits. However, all such uses must comply with other applicable ordinances and regulations of East Kingston (including Site Plan Review). The following tables represent the siting standards for the listed uses as delineated by the districts in which they are located in East Kingston.
a) Principal or Secondary Use. Subject to this Ordinance, an applicant who successfully obtains permission to site under this ordinance a second and permitted use may construct telecommunications facilities in addition to the existing permitted use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an exiting structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance, shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an "accessory use".

2. Use Districts

<table>
<thead>
<tr>
<th>Use District</th>
<th>New Tower Construction</th>
<th>Co-location on Preexisting Tower</th>
<th>Co-location on Existing Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Industrial District</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Commercial District</td>
<td>PCU</td>
<td>P</td>
<td>PCU</td>
</tr>
<tr>
<td>Residential District</td>
<td>X</td>
<td>P</td>
<td>PCU</td>
</tr>
</tbody>
</table>

P = Permitted Use without Conditional Use Permit
PCU = Permitted Use with Conditional Use Permit
X = Prohibited

1 An antenna may be located on a tower, newly constructed, under this Ordinance.
2 An antenna may be located on a preexisting tower, constructed prior to the adoption of this ordinance.
3 An antenna may be located on other existing structures with certain limitations (See D.3 below).

3. Height Requirements. These requirements and limitations shall preempt all other height limitations as required by the East Kingston Zoning Ordinance and shall apply only to telecommunications facilities. These height requirements may be waived through the Conditional Use Permit process only if the intent of the Ordinance is preserved (e.g., where a 200’ tower would not increase adverse impacts but provide a greater opportunity for co-location) in accordance with Paragraph H Waivers.

<table>
<thead>
<tr>
<th>Use District</th>
<th>New Tower Construction</th>
<th>Co-location on Preexisting Tower</th>
<th>Co-location on Existing Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Industrial District</td>
<td>180’</td>
<td>Current Height + 15%</td>
<td>Current Height + 30’</td>
</tr>
<tr>
<td>Commercial District</td>
<td>180’</td>
<td>Current Height</td>
<td>Current Height + 30’</td>
</tr>
<tr>
<td>Residential District</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
ARTICLE XV – TELECOMMUNICATIONS FACILITIES

E. Applicability

1. Public Property. Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance, except that uses are only permitted in the zones and areas as delineated in D.2. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects subject to state law and local ordinance, to seek the partial exemption from this Ordinance.

2. Amateur Radio; Receive-Only Antennas. This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

3. Essential Services & Public Utilities. Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town’s ordinances and regulations. Siting for telecommunication facilities is a use of land, and is addressed by this Article.

F. Construction Performance Requirements

Aesthetic and Lighting. The guidelines in this subsection (1), shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements, in accordance with Section H Waivers, only if it determines that the goals of this ordinance are served thereby.

a) Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.

b) At a tower site, the design of the 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. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.

c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

*d) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

e) Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

2. Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are
changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with § J, of the tower or antenna, as abandoned, at the owner’s expense through the execution of the posted security.

3. Building Codes-Safety Standards. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with § J, of the tower or antenna, as abandoned, at the owner’s expense through execution of the posted security.

4. Additional Requirements for Telecommunications Facilities. These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

a) Setbacks and Separation.
   1) Towers must be set back a distance equal to 125% of the height of the tower from all lot lines.
   2) Tower, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
   3) Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.

b) Security Fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

c) Landscaping.
   1) Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.
   2) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

G. Conditional Use Permits

1. General. All applications under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulations. In addition, applications under this ordinance shall also be required to submit the information provided for in this Section.

2. Issuance of Conditional Use Permits. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

   a) Procedure on application. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

   b) Decisions. Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

   c) Factors Considered in Granting Decisions.

      1) Height of proposed tower or other structure.

      2) Proximity of tower to residential development or zones.

      3) Nature of uses on adjacent and nearby properties.

      4) Surrounding topography.

      5) Surrounding tree coverage and foliage.

      6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

      7) Proposed ingress and egress to the site.

      8) Availability of suitable existing towers and other structures as discussed in G.3.c.

      9) Visual impacts on viewsheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
10) Availability of alternative tower structures and alternative siting locations.

3. Information Required. Each applicant requesting a Conditional Use Permit under this ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200’ away), and any other information deemed necessary by the Planning Board to assess compliance with this ordinance. Furthermore, the applicant shall submit the following prior to any approval by the Board:

a) The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.

b) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.

c) Each applicant for an antenna and or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence can consist of substantial evidence that:

1) no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.

2) existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.

3) the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

4) applicant's proposed antenna would cause electromagnetic interference.
with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

5) the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

6) the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

d) The applicant proposing to build a new tower, shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of East Kingston, and grounds for a Denial.

e) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with 676:4(g).

H. Waivers

1. General. Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations.

The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

a) The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.

b) The waiver will not, in any manner, vary the provisions of the East Kingston Zoning Ordinance, Master Plan, or Official Maps.

c) Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.

d) A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
ARTICLE XV – TELECOMMUNICATIONS FACILITIES

1) Topography and other Site features
2) Availability of alternative site locations
3) Geographic location of property
4) Size/magnitude of project being evaluated and availability of co-location.

2. Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

3. Procedures. A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial.

I. Bonding, Security And Insurance

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with J. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

J. Removal of Abandoned Antennas And Towers

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure 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 tower. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower. The Town may require that the applicant and/or owner provide annual proof of operation (including but not limited to safety inspections, insurance binders, etc.).

ARTICLE XVI - HOME OCCUPATIONS (Adopted 3/89) (Amended 3/17) (Amended 3/18)

A. Definitions:

A Home Occupation is a professional occupation, service business or the production or selling of a product that is carried out from the primary dwelling which is clearly accessory and subordinate to the residential use of the property. A Home Occupation may not be conducted in an Accessory Dwelling Unit. (Amended 3/18)

An Invisible Home Occupation is one with no visible activity conducted outside the home.
A Visible Home Occupation is a home-based business with a sign and/or customers visiting the business for the purchase of services or products. (Amended 3/96; Amended 3/17)

A grandfathered nonconforming use is a use not permitted in the zoning district where it operates and that existed prior to adoption of the Home Occupation ordinance on January 6, 1989. The baseline of the nature and scale of the Grandfathered Non-Conforming Use shall be determined by the record established by the Grandfathered Non-Conforming Use Survey over the most recent 5 years. (Amended 3/18)

B. Where Permitted: Home occupations are allowed in a residential dwelling unit by permit only. The Board of Selectmen may issue a Home Occupation Permit after the Planning Board holds a public hearing on the application with public notice- per RSA 675:7 paid for by the applicant (Amended 3/91) and provided the provisions of this section are met. (Amended 3/96)

C. Standards: All Visible Home Occupations shall comply fully with the following standards to protect public health and safety and shall have no impact to the character of residential neighborhoods and the town.

1. The Home Occupation must be located within a dwelling unit, or in a building or structure accessory to a dwelling unit.

2. The exterior of the building must not create or display any evidence of the home occupation, except a permitted sign and parking for customers and delivery vehicles. Variation from the residential character is prohibited.

3. Adequate off-street parking must be provided for customers and deliveries. All businesses must provide adequate turnaround, drop-off, and pick-up areas in order to prevent cars from waiting in the street right-of-way and to prevent cars from backing up into the public right-of-way. The Home Occupation shall not require regular need for delivery of materials to and from the premises by commercial vehicles over twelve-thousand (12,000) pounds GVWR (e.g. tractor trailers and heavy commercial vehicles). (Amended 3/90)

4. The Home Occupation must be conducted by a resident or owner of the property.

5. The home occupation must not offend by emitting smoke, dust, odor, noise, gas, fumes, lights, or refuse matter.

6. Home occupation must not cause excessive vibrations, store or handle combustible or explosive materials, or negatively impact the physical condition, safety, access or traffic volume of existing roads.

7. The Home Occupation must not utilize more than 25% of the gross floor area including dwelling, basement and accessory structures.

8. Not more than two non-residents (of the premises) may be employed by the Home Occupation. For the purposes of this section, the Planning Board shall determine whether sales or other personnel, who conduct the majority of their business away from the property, shall be included in the count of those employed at the premises. (Amended 3/96)

9. Disposal of all solid waste generated by the business must be at the business owner's expense, and shall not be provided by the Town of East Kingston. (Adopted 3/07)
D. Exceptions:
1) If a property is located on a State Road (NH Routes 107, 107A, 108), no more than four non-residents (of the premises) may be employed, and the home occupation use of the dwelling shall not utilize more than 50% of the gross floor area (including dwelling, basement and accessory structures).

2) Administrative support for businesses or services that are conducted on or off-site of the residential premises are exempt from the formal application and approval process but must complete an Invisible Home Occupation application for the purposes of municipal record keeping, pay the annual Invisible Home Occupation Permit Fee, and meet with the Planning Board to present the application and receive a favorable recommendation from the Planning Board. (Amended 3/97) (Amended 3/18)

E. Permitted Uses: The following uses (including but not limited to) may be permitted and must be secondary to the residential use of the dwelling unit. (Amended 3/2012)

1. Medical, health and dental offices, fitness training, exercise, health counseling;
2. Other professional offices and instructional services (i.e. cooking, crafts, arts);
3. Tailor, seamstress;
4. Artisan, writer or musician;
5. Day care for up to twelve preschool plus five school-age children; any day care use shall be in compliance with the State Department of Health and Welfare's "He-C400 2.N.H. Child-Care Facility (Day Care) Licensing and Operating Standards". Twelve preschool plus five school-age children shall be the maximum number allowed to be cared for in the Residential District. (Amended 3/90)
6. Bookkeepers, accountants, secretarial services;
7. Real estate and insurance offices;
8. Beauticians and barbers;
9. Art, craft, hobby, and antique shops;
10. Vehicle light repair and maintenance services for not more than three vehicles at any given time and not more than two vehicles parked outside. (Adopted 3/06)
11. Animal care and training (number of animals to be determined by the Planning Board) (Amended 3/2012);
12. Occupations not listed above that are of a similar nature, scale and impact with review by the Planning Board, and only if the Board of Selectmen finds that the occupation meets the provisions of this section. (Amended 3/96)

F. Uses Not Permitted: The following uses are not permitted as a Home Occupation: adult oriented business; fireworks storage, manufacture and sales; industrial and commercial manufacturing or activity; vehicle restoration and auto body shops; storage, handling or sales or regulated substances. (Adopted 3/13; Amended 3/17)

G. Permit Required: An annual permit to operate each home occupation must be obtained from the Board of Selectmen during the second quarter of the calendar year beginning in 1989.
Agricultural/Farm home occupations and Family Day Care operations (up to six preschoolers plus up to three school-age children (Section E.5)) shall be exempt from these permitting procedures. (Amended 3/91, 3/90, 3/96 and 3/06)

There shall be an annual permit fee (see fee schedule) charged to cover the costs for Board of Selectmen review, administration and enforcement of the ordinance. (Amended 3/06, 3/09)

Businesses whose owners can demonstrate that they do not create any traffic, visual, or other impacts on the neighborhood may be deemed by the Selectmen as being an “invisible business with a reduced permit fee. An invisible status does not relieve these businesses from compliance with the provisions of this and all other sections of the zoning ordinance. (Adopted 3/97, Amended 3/06; Amended 3/17)

A minimum annual fee (see fee schedule) shall be charged to those home occupations identified as “invisible” to defray the administrative costs of annual review and Board of Selectmen oversight. (Adopted 3/97, Amended 3/09)

H. Grandfathered Nonconforming Uses: Any pre-existing grandfathered nonconforming use of a commercial business nature in operation at the date of the public posting of this ordinance (January 6, 1989) are required to submit an annual Home Occupation Application and fee and complete a Grandfathered Non-Conforming Use Survey. Annual Home Occupation permits shall not be issued without a completed Grandfathered Non-Conforming Use Annual Survey. Any Grandfathered Nonconforming Use in effect as of January 6, 1989 shall not increase in scale or nature of the business. The baseline of the nature and scale of the Grandfathered Non-Conforming Use will be determined by the record established by the Grandfathered Non-Conforming Use Survey for the most recent year up to a 5-year period. In addition, such Grandfathered Nonconforming Uses shall not be relieved from compliance with other state and local regulations. Amended 3/18)

I. Signs for Visible Home Occupations: Signs for Home Occupations may be erected and maintained only when in compliance with Article VII - General Provisions and the following provisions. (Amended 3/91; Amended 3/13)

1. No sign shall be internally illuminated, or have flashing or moving parts;
2. No sign may have more than two sides.
3. No sign shall be allowed for invisible businesses.

J. Procedure: Application shall be made to the Selectmen’s office, including public hearing fees paid in accordance with the Town of East Kingston Subdivision Regulations. Abutters will be notified and the applicant will be scheduled for a public hearing with the Planning Board. After the public hearing, the Planning Board will make a recommendation to the Selectmen as to whether the Home Occupation Permit should be granted. The application will then be forwarded to the Selectmen who will issue their final decision. (Adopted 3/96)

K. Application: The Home Occupation Permit Application and Home Occupation Permit Worksheet must be filled out in full detail to be accepted for processing. The Planning Board shall hold a public hearing and make a recommendation on the application to the Board of Selectmen. If the property is part of a Homeowners Association or Condominium Association, the applicant shall provide a letter from the Homeowners Association that the Home Occupation is allowed. If a tenant of a rental property, the applicant shall provide a letter from the property owner that the Home Occupation is allowed. (Amended 3/01)

L. Enforcement: This section shall be administered and enforced by the Board of Selectmen. Any person who violates the provisions of this section shall be fined $100 for each offense.
Each day that a violation is continued shall constitute a separate offense. No action may be brought about under this provision unless the alleged offender has been given at least a 7-day notice from the Selectmen by certified mail, return receipt requested, that a violation exists.

In addition, such Home Occupations shall not be relieved from compliance with other state and local regulations.

**ARTICLE XVII - BUILDING INSPECTOR AND PERMITS**

A Building Inspector may be appointed annually by the Board of Selectmen and he shall be the administrative officer under this Article; if the Selectmen do not appoint a Building Inspector, his administrative powers and duties shall be vested in the Board of Selectmen. “Date of Issuance” shall be defined as the date of the letter sent to the applicant by certified mail notifying the applicant that the building permit is complete and can be obtained at the Selectmen’s Office. The applicant shall within 14 days of the date of such letter, pick-up the completed building permit and pay any necessary fees associated with the building permit. If such building permit is not picked-up within 14 days, the applicant shall forfeit his/her right to said building permit and the building permit application process shall be offered to the next applicant on the list. *(Adopted 3/03)*

A. Any person, before commencing work under any of the following conditions, must first obtain a permit from the Building Inspector. This permit is not transferable and any such permit shall be void unless the work is started within six (6) months *(Amended 3/94)* of the date of issuance. The outside of the structure must be completed within twelve (12) months of issuance of permit.

**CONDITIONS ARE AS FOLLOWS:**

1. Any person commencing work on the erection of any building or structure to be used for dwelling or any other lawful purposes.

2. Any person commencing work on the alteration of any building or structure to be used for dwelling or any other lawful purpose where the project involved exceeds $1,000.00 in value.

3. Any person commencing work to develop an existing building or structure for commercial purposes where such building or structure was not previously used for commercial purposes, or to reopen a building or structure previously used for commercial purposes but which has been closed for more than one year, or to change the commercial purposes of a building or structure from one business to another.

4. Any person commencing work to locate or relocate a manufactured housing.

5. Any person constructing or reconstructing a sanitary system must obtain a permit from the Building Inspector. A minimum fee (see fee schedule) shall be charged for the initial review of each septic system plan, and subsequent reviews by the Building Inspector or Board of Selectmen for revisions or modifications to the original plan shall incur the standard hourly administrative charge. *(Amended 3/99, 3/06, 3/09)*

A minimum fee (see fee schedule) shall be charged for the permit. *(Amended 3/06, 3/09)*

6. Replacement septic systems must comply with State and local regulations for new septic systems.

B. All dwellings except manufactured housings shall be placed on a permanent foundation to be
constructed of suitable masonry work and which shall have proper footings. All outside walls shall be finished with shingles or clapboards, brick, cement or cinder blocks, or any other approved siding. Manufactured housings shall be supported in one of the following manners:

1. By cement pilings or blocks upon a full size concrete pad with the full perimeter enclosed by a permanent skirting material.

2. By a regular permanent foundation upon a permanent footing, both constructed of suitable masonry work.

C. Roofs shall be of fire resistant material.

D. Chimneys shall contain fire proof flues and shall be constructed of brick, stone, cinder or cement blocks and any other approved materials; all chimneys shall extend to the ground and rest on a permanent foundation with footings or shall be erected in any other approved manner. Chimneys shall extend two feet above the roof ridge or be capped with approved draft control, and shall have eight inches of solid wall between wood structure and flue line from base to top.

E. Applicants for a building permit shall present a subdivision plan to the Building Inspector with the application when the requested permit is for a new dwelling.

F. An applicant for a manufactured housing permit shall submit an executed purchase and sales agreement, copy of property deed, and plot plan.

ARTICLE XVIII - IMPACT FEES FOR PUBLIC CAPITAL FACILITIES  (Adopted 3/02)

A. Authority

1. This Impact Fees Ordinance is enacted in accordance with RSA 674:21 (Innovative Land Use Controls). The East Kingston Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards set forth herein. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance.

2. The Planning Board may, as a condition of approval of any subdivision (or site plan), and when consistent with applicable Board regulations, require an applicant bear the costs for the applicant’s fair share of off-site improvements to public facilities affected by the development.

B. Purpose

New development in the Town of East Kingston shall be assessed impact fees in proportion to its demand for the Town’s capital facilities and its school district(s). By doing so, East Kingston will:

1. Promote the public health, safety, welfare, and prosperity of all residents.

2. Ensure that adequate and appropriate facilities are available to all who come to reside in East Kingston.

3. Assess an equitable proportion of growth-related capital facility costs of school capacity to new residential development in proportion to the demands created by new development.
ARTICLE XVIII – IMPACT FEES FOR PUBLIC CAPITAL FACILITIES

4. Ensure the proper arrangement and coordination of streets, ensuring sufficient capacity to accommodate existing and prospective traffic.

5. Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services.

6. Reduce debt service costs.

7. Provide for the harmonious development of the municipality and its environs.

C. Definitions

1. Impact Fee. A fee or assessment imposed by East Kingston upon development, including subdivision, building construction or other land-use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by East Kingston and its school district, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and right-of-ways; Town office facilities; public school facilities; the Town’s proportional share of capital facilities of the Exeter Region Cooperative School District; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library; and public recreation facilities, not including public open space.

2. Fee-payer. The applicant for the issuance of a building permit which creates new development.

3. New development. Any activity which results in:

   a) the creation of a new dwelling unit or units, or;

   b) the conversion of a lawfully existing use which would result in a net increase in the number of dwelling units, or; and

   c) a non-residential development or conversion of property that results in a net increase in the gross floor area of a non-residential use.

4. Proportionality. As applied to the intent of this ordinance, impact fees charged on new development are restricted to the funding of anticipated expansion of a service facility and existing excess facility capacity. They are not intended to fund current deficiencies. Proportionality is satisfied when fees charged reflect a per unit/per capita calculation.


6. Public Recreation Facilities. Land and facilities owned or operated by the Town of East Kingston or its school district(s), other than public open space, which are designed for
ARTICLE XVIII – IMPACT FEES FOR PUBLIC CAPITAL FACILITIES

the conduct of recreational sports or other active uses of an organized nature, and which include equipment or improvements to the land to support indoor or outdoor public recreation programs and activities.

7. **Public Open Space.** An unimproved, or minimally improved, parcel of land or water available to the public for passive recreational uses such as walking, sitting, or picnicking, which does not include “public recreation facilities”.

D. **Principles of Application**

The formulation of an impact fees methodology and schedule shall incorporate the following:

1. Assessments limited to proportionate shares of capital costs for accommodating new development;
2. Assessments to fund capacity-related improvements only;
3. The distinction between funding current facility deficiencies and future growth demand;
4. The determination of the capital investment required or consumed by new development;
5. Provision for credits to avoid double payments.

E. **Findings of Need**

In review of the impact of growth relative to the existing and planned capital facility capacity available to East Kingston for municipal and school needs, East Kingston finds that;

1. This ordinance is consistent with both the Master Plan (1995-2000) and the Capital Improvements Program (2002-2007) (CIP), as adopted and revised by the East Kingston Planning Board.
2. As documented by East Kingston’s Master Plan and CIP, recent and anticipated growth rates in public school enrollment and associated improvements and costs therewith are likely to necessitate an excessive expenditure of public funds in order to maintain adequate municipal and school facility standards and to promote and protect the public health, safety and welfare.
3. The imposition of impact fees is one of the methods available to ensure that public expenditures are not excessive, and that new development will bear a proportionate share of the capital costs necessary to accommodate such development.
4. Recent and projected growth rates necessitate an excessive expenditure of public funds in order to maintain adequate facility standards and to promote and protect the public health, safety and welfare.
5. Each type of residential development described in the Methodology and Fees Schedule and supporting studies will create a need for construction, equipping, or expansion of public capital facilities for education.
6. The impact fees adopted are derived from, and do not exceed, the costs of:
   a) providing additional public capital facilities as necessitated by, or benefiting,
new development on which the fees are levied;

b) compensating East Kingston for expenditures made for excess capacity in existing facilities that were constructed or financed in anticipation of future growth.

7. Impact fees collected for recoupments meet the legal requirements for collection, are supported by the Methodology and Fees Schedule and supporting studies and the amounts are reasonable.

8. It is reasonable, equitable, and consistent with the supporting Methodology and Fees Schedule that the ordinance apply to all yet-to-be built units in previously approved subdivisions.

9. An impact fee ordinance for public capital facilities is consistent with the goals and objectives of East Kingston’s Master Plan and CIP, and is specifically recommended in the former.

F. Fee Assessment and Imposition Process

1. The East Kingston Planning Board will develop and adopt The Town of East Kingston Methodology and Schedule for the Calculation of Impact Fees (a/k/a the Methodology and Fees Schedule) which will represent a reasonable, rational, and proportional method for the assessment of growth-related facility costs to new development.

2. Impact fees shall be assessed to new development to compensate the Town of East Kingston and its school district(s) for the proportional share of capital facilities demanded by new development in East Kingston, including municipal and public school facilities to be constructed in anticipation of new development.

3. Any person who seeks a building permit for new development is required to pay impact fees upon adoption of this article in the manner set forth herein, except where all or part of the fees are waived or exempted in accordance with the applicable criteria by the Planning Board, or, in the case of the Building Inspector, as directed by the Board of Selectmen.

4. In accordance with RSA 674:21,V.(h), growth management limitations or moratoria adopted by the Town shall not affect any development with respect to which an impact fee has been paid or assessed as part of the approval of that development.

G. Exemptions

Construction of non-residential, agricultural building and structures (e.g. barns, feed cribs, wood sheds, chicken coops and the like) are specifically exempted from impact fee assessment. In the event there is ever a change of use for such a building or structure to other than non-residential or agricultural, such change must be proposed to the Planning Board for site plan review, and the provisions of this ordinance and all other zoning requirements applied accordingly.
H. **Waivers**

The Planning Board or Building Inspector may grant full or partial waivers of impact fees where they find that one or more of the following criteria are met with respect to the particular capital facilities for which impact fees are normally assessed:

1. One may request a full or partial waiver of school capital facilities impact fees for that number of dwelling units which will exclude school age children within developments in which all, or a portion of, the units will be lawfully restricted to person age 55 and over, and where such restriction will be maintained, through deed restrictions, for a period of at least twenty (20) years. School capital facilities impact fees may, at the discretion of the Planning Board or Building Inspector, as applicable, be waived for those units within a development that are otherwise restricted in a lawful manner to occupancy by older residents without school-aged children.

2. One may request from the Planning Board, or Building Inspector, as applicable, a full or partial waiver of impact fees for any residential units or non-residential development that was approved for construction, and for which a building permit was issued (as shown on a plat or site plan), prior to the effective date of this article.

3. The Planning Board or Building Inspector, as applicable, may agree to waive all or part of an impact fee assessment, and accept, in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board of Building Inspector shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers may not be based on the value of exactions for on-site or off-site improvements required by the Planning Board as a result of
subdivision or site plan review, and which would be required of the developer, regardless of the impact fee assessments herein authorized.

4. The Planning Board or Building Inspector, as applicable, may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fee(s) waived.

5. The Planning Board or Building Inspector, as applicable, may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the capital facility or system for which the impact fee is being assessed.

6. A fee-payer may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on capital facility capacity and related costs attributable to that development. In support of such a request, the fee-payer shall prepare and submit to the Planning Board or Building Inspector, as applicable, an independent fee calculation or other relevant study and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the Methodology and Fees Schedule adopted by the Town. The Planning Board or Building Inspector shall review such study and render a decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the fee-payer.

I. Computation of Impact Fees

1. The amount of each impact fee shall be as set forth in an Impact Fees Schedule, prepared and updated in accordance with the Methodology and Fees Schedule.

2. In case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessed for the new use as compared to the highest impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this ordinance.

J. Payment of Impact Fees

No building permit shall be issued for new development until the impact fee has been assessed by the Building Inspector, and paid to the Town of East Kingston, or until the fee-payer has established a mutually acceptable schedule for payment with the Town, or has deposited an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of East Kingston. Impact fees shall ordinarily be paid in full prior to the issuance of a Certificate of Occupancy for the new development for which the fee was assessed.
K. **Appeals**

If a fee-payer believes the Planning Board, Building Inspector, of Board of Selectmen acted improperly in imposing or calculating the impact fee, that administrative decision may be appealed to the Superior Court as provided by RSA 677:15.

L. **Administration of Funds Collected**

1. All funds collected shall be properly identified and promptly transferred for deposit into separate impact fee accounts for each of the capital facility categories for which impact fees have been assessed. This impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues accrue to the General Fund.

2. The Town Treasurer shall record all fees paid by date of payment and the name of the person making it. The record shall be maintained for a period of at least nine (9) years from the date of the impact fee payment receipt associated with the issuance of each building permit. An updated record shall be kept of the current ownership, tax map, and lot reference number of properties for which fees have been paid under this Article, for each building permit so affected.

3. Impact fees collected may be spent from time to time by order of the Board of Selectmen, and shall be used solely for the reimbursement of the Town and its school district(s) for the cost of public capital improvements for which they were collected, or to recoup the cost of capital improvement made by the Town or its school district in anticipation of the needs for which the impact fee was collected.

4. In the event that bonds or similar debt instruments have been, or will be, issued by the Town or its school district(s) for the funding of capacity-related facility improvements, impact fees may be transferred to pay debt service on such bonds or similar debt instruments.

5. At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen, giving particular account of all impact fee transactions during the year.

M. **Refund of Fees Paid**

1. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest, where:
   a. the impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
   b. the Town or, in the case of school facilities, its school district(s), has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate any of the non-impact fee share of related capital improvement costs which would permit the capital improvement or capital improvement plan for which the fee was collected, to commence. If any capital improvement or capital improvement program for which an impact fee is
collected has commenced either prior to, or within six (6) years from, the date of final collection of the fee, that impact fee payment shall be deemed to be encumbered, and legally bound to be spent for said capital improvement or capital improvement program. It shall not be refunded, even if it is not fully expended with the six-year period.

2. The Board of Selectmen shall provide all owners or record due a refund with a written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

N. Additional Assessments

Payment of the impact fee under this Article does not restrict the Town or its Planning Board from requiring other payments from the fee-payer, including such payments relating to the cost of the extensions of water and sewer mains, the construction of roads, streets, or other infrastructure and public capital facilities specifically benefiting the development as required by Subdivision or Site Plan Review regulations, or as otherwise authorized by law.

O. Scattered and Premature Development

Nothing in this Article shall be construed so as to limit the existing authority of the Planning Board to deny new, proposed development which is deemed scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of East Kingston zoning ordinances, the Planning Board subdivision or site plan review regulations, or which may otherwise be lawfully denied.

P. Review

The Impact Fees Schedule shall be reviewed annually by the Planning Board, according to the methodologies described in the Methodology and Fees Schedule. Such review may result in recommended adjustments in one or more of the fees based on the most recent data as may be available including, but not limited to, current construction cost information or capital improvement plans or programs, property assessment data, demographic data, U.S. Census information, and other sources. Based on its review, the Board may consider the adoption of an updated or amended impact fee methodology, or may modify the schedule to correct errors or inconsistencies identified in the review process. Failure to conduct an annual review in accordance with the Methodology shall not, in and of itself, invalidate any fee imposed. No change in the methodology or in the impact fee schedules shall become effective until it shall have been the subject of a public hearing before the Planning Board, noticed in accordance with RSA 675:7.

ARTICLE XIX - WORKFORCE HOUSING  (Adopted 3/09)

A. Purpose. The purpose of this Article are as follows:

1. To encourage and provide for the development of affordable workforce housing;

2. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households;

3. To meet the goals related to affordable housing provisions set forth in the town’s Master Plan; and
ARTICLE XIX – WORKFORCE HOUSING

4. To comply with the requirements of SB 342, An Act establishing a mechanism for expending relief from municipal action which deny, impede, or delay qualified proposals for workforce housing (RSA 674:58-61).

In the course of implementing this Article, the Town of East Kingston has considered the region’s affordable housing needs as described in the Rockingham Planning Commission’s Housing Needs Assessment and the Rockingham Planning Commission’s Regional Fair Share Analysis.

B. Authority. This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an “Inclusionary Zoning” provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-E, effective July 2009, which states:

“All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.”

C. Applicability

1. Development in accordance with the provisions of this Article is permitted as a conditions use in all residential districts.

2. Permitted Uses: Single family workforce housing shall be allowed in all areas zoned residential. Duplex, multi-family and manufactured housing, shall be allowed in all districts where such housing is currently permitted and in the Town Center District.

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

D. Procedural Requirements/ Applicant

1. Notice of Intent to Build Workforce Housing. Any person who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this subdivision shall file a written statement of such intent as part of the application.

2. Waiver. Failure to file such a statement shall constitute a waiver of the applicant’s rights under RSA 674:61 (the abutter’s remedy), but shall not preclude an appeal under other applicable laws.

3. In any appeal where the applicant has failed to file the statement required by this section, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality’s ordinances or regulations.
E. Procedural Requirements/Planning Board

1. **Notice of conditions.** If the Planning Board approved an application to develop workforce housing subject to conditions or restrictions, it shall:
   a. Notify the applicant in writing of such conditions and restrictions.
   b. Give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development.
   c. The board’s notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4 (i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

2. **Submission of evidence to establish cost of complying with conditions.** Upon receiving notice of conditions and restrictions as described above, the applicant may:
   a. Submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic vitality within the period directed by the board, which shall not be less than 30 days.
   b. Upon receipt of such evidence, the Board shall allow the applicant to present and review the evidence at the board’s next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance.
   c. At such meeting, the board may also receive and consider evidence from other sources. The Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.

3. **Final decision.**
   a. The board shall not issue its final decision on the application before such meeting. If the applicant fails to submit the required evidence within the period designated by the board, then the Board may issue its final decision any time after the expiration of the period.
   b. If an applicant notifies the board in writing at any time that the applicant accepts the conditions and restrictions of approval, the board may issue its final decision without further action under this paragraph.

4. **Appeals.** Any person who has filed the written notice and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing.

**NOTE:** *The above procedural steps are required by SB 342.*
F. **Definitions**

1. **Affordable**: affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

2. **Multi-family housing**: multi-family housing for the purpose of workforce housing, means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household. Where this definition conflicts with the definition found in any other section of the zoning ordinance, this definition shall apply by any application for a development including workforce housing.

   **NOTE**: The above definition means that for the purpose of meeting its workforce housing obligation, a municipality may not restrict multi-family structures to 3 or 4 units.

3. **Reasonable and realistic opportunities for the development of workforce housing**: opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e.

4. **Workforce housing/owner occupied**: housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development.

5. **Workforce housing/renter occupied**: rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

6. **Area Median Income (AMI)**: the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rate Area to which the community belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.

7. **Market Rate Housing**: any units within a development, whether the unit is to be owner or renter occupied, that is intended to be available for sale or occupancy at the prevailing market value for the area similar to comparable real estate transactions.
G. Density Bonus

1. A site plan or subdivision plan that will guarantee a designated percentage of units no lower than 20 percent, reserved as workforce housing, will be granted a 10 percent density bonus of market rate units on the site. The Planning Board may allow a reduction on the minimum lot size by 15 percent to accommodate the increased site density as long as soil conditions permit the siting of septic and wells within the decreased lot size.

2. The applicant shall submit a yield plan with sufficient detail including soil types and slope as well as any natural resource constraints zoning such as wetland/lot size or percentage restrictions to determine the achievable density on the parcel that would meet the standards of the underlying zoning district.

NOTE: The Planning Board may choose to specify additional bonuses to incentivize affordable housing at a greater percentage but the incentive should be economically viable. The Board may also need to relax certain dimensional requirements, such as front, side, and rear setbacks as would be done in a conservation subdivision to accommodate additional density.

<table>
<thead>
<tr>
<th>Housing development</th>
<th>20 percent of units</th>
<th>Maximum 10 percent market rate units</th>
<th>15 percent</th>
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NOTE: For example, if a developer proposes to build 100 units, with 20 percent of those units affordable, the developer would be able to build 10 additional market rate units on the same parcel, and will also be allowed a reduction of 15 percent in the required minimum lot size to accommodate the increased density.

H. General Requirements of Workforce Housing Units

1. Architectural compatibility of all units. The dwelling qualifying as workforce housing shall be compatible in architectural style and exterior appearance with the market rate dwellings of similar type (i.e., affordable and market rate multifamily units, affordable and market rate single family homes) in the proposed development. The workforce housing units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from market rate units.

2. Phasing. The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units.

H. Affordability

1. Certification of Income Levels.

   a. To ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of a workforce housing unit must submit copies of their last three years federal income tax returns and written certification, verifying that their annual income level, combined with household assets, does not exceed the maximum level as established by this ordinance.
b. The tax returns and written certification of income and assets must be submitted to the developer of the housing units, or the developer’s agent, prior to the transfer of title.

c. A copy of the tax return and written certification of income and assets must be submitted to all parties charged with administering and monitoring this ordinance, prior to the transfer of title.

2. **Assurance of continued affordability.**

   a. Workforce housing units offered for sale shall require a lien, granted to the Town of East Kingston, be placed on each workforce housing unit.

   b. The value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards.

   c. The municipality’s lien is inflated over time at a rate equal to the Consumer Price Index (CPI).

   d. Future maximum resale values shall be calculated as the fair market value minus the CPI adjusted lien value.

   e. Subsequent sales are not limited based on income targets, but the combination of maintenance of the municipality’s lien and adherence to this Article’s definition of affordable housing for a period of 30 years.

The provisions above are established to be consistent with NHHFA’s Value Retention Model, which is required if the community wishes to have NHHFA administer their inclusionary housing ordinance.

3. **Annual Rent Increases.** Workforce housing rental units shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions.

4. **Documentation of restrictions.** Deed restrictions, restrictive covenants, or contractual arrangement related to dwelling units established under this Article must be documented on all plans filed with the town’s Planning Board and with the Registry of Deeds.
3. **Monitoring.** Ongoing responsibility for monitoring the compliance with resale and rental restrictions on workforce housing units shall be the responsibility of the New Hampshire Housing Finance Authority.

4. **Annual report.** The owner of a project containing workforce housing units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of workforce housing units have been maintained in accordance with this Article. Such reports shall be submitted to the monitoring agent or their designee and shall list the contract rent and occupant household incomes of all workforce housing units for the calendar year.

J. **Relationship to other ordinances and regulations**

1. **Other town ordinances.** No portion of this ordinance shall nullify the provisions of any other town ordinance provisions which relate to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

2. **Site plan and subdivision regulations.** Where workforce housing applicants propose a development of single family homes or mixed single family and multi-family homes, all provisions of the subdivision and site plan regulations shall apply unless waived by the Planning Board. Where workforce housing applicants propose a development of multi-family units or mixed commercial and multi-family units, the site plan regulations shall apply unless waived by the Planning Board.

K. **Conflict**

If any provision of this ordinance is in conflict with the provisions of other ordinances, the more restrictive provision shall apply, except for any provision relating to lot size, setbacks, or density, in which case the provisions of this ordinance shall apply.

**ARTICLE XX - BOARD OF ADJUSTMENT**

The Board of Selectmen shall appoint a Board of Adjustment consisting of five (5) members, conforming in duties, membership and term of office to the provisions of Chapter 31 of the New Hampshire Revised Statutes Annotated and amended. Thereafter, as terms expire or vacancies occur, the Board of Selectmen shall be responsible for filling vacancies and maintaining a full membership of the Board of Adjustment.

**ARTICLE XXI - NON-CONFORMING LOTS, STRUCTURES AND USES**  (Amended 3/02, 3/16)

A. **Non-Conforming Lots**

A lot which was legally created prior to the enactment of this Article or which at the time of its creation was in conformance with the terms of this Zoning Ordinance, may be used for the purposes for which a lot may be used in the zoning district in which it is located, subject to the following requirements:
1. The lot was a legal lot of record, described in a deed, or plan, or subdivision plat approved by the Planning Board, and remaining in conformance with RSA 674:39;
2. The lot is capable of supporting a well and septic system, designed in compliance with all applicable N.H. Department of Environmental Services regulations;
3. The lot has sufficient frontage to accommodate a private driveway intersecting with a highway (except Class I and VI highways) or an approved subdivision road, located in the Town of East Kingston;
4. The building, structure, well and septic system to be constructed on the lot shall comply with all setback requirements of the Zoning Ordinance.

B. Non-Conforming Structures

Where a lawful building or structure exists on the effective date of this Article, or applicable amendment that could not be built under the terms of the Zoning Ordinance by reason of restrictions on area, lot coverage, height, yard, setbacks, or other dimensional requirements, the building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming building or structure may be extended in a way such that it becomes more non-conforming, but any building or structure may be altered in such a manner to decrease its non-conformity;
2. non-conforming building or structure which is destroyed by fire or other hazard may be restored to its former footprint and square footage, provided that it was not destroyed voluntarily and restoration has begun within 12 months after the casualty;
3. Should a non-conforming building or structure be intentionally relocated or removed for any reason and for any distance whatsoever, it shall thereafter conform to the regulations for the district within which it is located after it is relocated or replaced.

C. Non-Conforming Uses

Where on the effective date of the adoption of this Article or applicable amendment, a lawful use of land exists which would not be permitted by regulations imposed by the Zoning Ordinance, the use may be continued so long as it remains otherwise lawful, provided that:

1. The use may not be enlarged or increased, nor extended to occupy a greater area of the building or land that was occupied at the effective date of adoption of the Ordinance or amendment which would have prohibited the use;
2. No such non-conforming use shall be moved, in whole or in part, to any portion of the lot or building other than that occupied by such use at the effective date of the adoption of the Ordinance or amendment which would have prohibited same;
3. If any non-conforming use ceases for any reasons for a period or more than one years, any subsequent use of such land shall conform to the regulations specified by the Zoning Ordinance for the district in which the use is located.
4. The marketing and physical maintenance of a building for the continuation of an existing non-conforming use shall be deemed as evidence of intent to continue the use.

**ARTICLE XXII - ORDINANCE VIOLATION PENALTY** (Amended 3/02)

Every person, persons, firm or corporation violating any of the provisions of this ordinance upon conviction shall be fined not more than one hundred dollars ($100.00) for each day such violation exists following conviction. The Board of Selectmen may institute in the name of the Town any appropriate action or proceeding to prevent, restrain, correct, or abate violations of the Ordinance.

**ARTICLE XXIII - ORDINANCE VALIDITY** (Amended 3/02)

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

**ARTICLE XXIV - ORDINANCE APPLICATION AUTHORITY** (Amended 3/02)

This Ordinance shall take effect immediately upon its passage.
INSERT FLOOD HAZARD MAP