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A Summary of Adopted Growth Management Ordinances

for the

Southern NH Planning
Commission Region



SNHPC

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438 Dubuque Street
Manchester, NH

Prepared by the
Southern New Hampshire Planning Commission



A Summary of Adopted Growth Management Ordinances

Southern New Hampshire Planning Commission
438 Dubuque Street, Manchester, New Hampshire 03102-3546

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BACKGROUND

The purpose of this summary is to identify and discuss the various forms of growth management regulations and Growth Management Ordinances (GMO) that have been adopted by municipalities within the Southern New Hampshire Planning Region.

The issue of growth management has been an ongoing consideration since the early 1970s. Municipalities have used their zoning powers to regulate and control the impact, timing or phasing of development either by delaying it, creating incentives for a particular or less intensive type of development that minimizes impacts or requiring developers to share in the infrastructure expansion costs attributable to the development. The first two forms of growth control are generally referred to as timing incentives and phased development. These forms of control are permitted under RSA 674:21, Innovative Land Use Controls, RSA 674:22, Growth Management; Timing of Development and RSA 674:23, Growth Management; Interim Regulations. The later form of growth control is commonly referred to as impact fees. Impact fees are not addressed in this summary, except with regard to their relationship to GMOs.

To date, a total of eight municipalities within the Southern New Hampshire Planning Region have adopted various forms of growth management ordinances (GMO) at one time or another. To a large extent, the majority of these ordinances have been adopted pursuant to the authority granted municipalities under RSA 674:21, 674:22 or 674:23. These eight municipalities are as follows:

Town of Auburn	Town of Hooksett
Town of Candia	Town of Londonderry
Town of Chester	Town of Raymond
Town of Derry	Town of Weare

The review of these ordinances has been broken down for the purpose of this report as follows:

- Those ordinances that may be considered complete GMOs adopted under RSA 674:22;
- Ordinances that were initially adopted as an Interim Ordinance under RSA 674:23, but were later replaced by petition and adopted at town meeting;
- Those ordinances that have been in place for sometime, and act as an innovation land use control regulating the timing and phasing of development under RSA 674:21.

It should be noted that the Town of Londonderry's Planning Board recently adopted new residential development phasing standards under RSA 674:21, which are applied in conjunction with the Londonderry subdivision regulations. A copy of these regulations are included with the Town's GMO.

Copies of each municipality's ordinances are attached to this report, except for the Town of Raymond's Ordinance, which is no longer in effect. Also included is a spreadsheet that provides an overall comparison of each ordinance.



Review of Ordinances

Growth Management Ordinances

RSA 674:22 expressly authorizes municipalities to use their zoning power to regulate and control the timing of development.

RSA 674:22. Growth Management; Timing of Development.

'...The local legislative body may further exercise the powers granted under this subdivision to regulate and control the timing of development. Any ordinance imposing such a control may be adopted only after preparation and adoption by the planning board of a master plan and a capital improvement program and shall be based upon a growth management process intended to assess and balance community development needs and consider regional development needs...'

It is important to stress that a municipality may adopt a Growth Management Ordinance (GMO) only after the planning board has adopted a master plan and a capital improvement program (CIP). Furthermore, as stated under RSA 674:22, a GMO must *'...be based upon a growth management process intended to assess and balance community development needs and consider regional development needs...'* This requirement suggests that in the process of developing a GMO, a comprehensive growth management study of the community must be undertaken using the tools contained in the master plan and CIP, and that the GMO must also consider the region's needs as it regulates its own.

Towns with adopted GMOs include:

Town of Derry

The Town of Derry's GMO was adopted on April 2, 1999 after two public hearings. It creates a new Article XIV, Growth Management within the Town's Zoning Ordinance. The effect of the GMO is a comprehensive regulation that limits the number of new residential units that can be permitted within any year. The GMO regulates the timing of all residential development and applies to any and all lots where residential use is proposed or permitted, except for residences for the elderly as defined by the ordinance. The GMO also includes a temporary residential building permit limitation and allocation system of no more than 50 residential units in any year until expiration and contains a long-term residential development special permit system, which relates development rights through a point system based upon the availability of Town services,

facilities and schools. The temporary building permit limitation provision in the GMO expires in four years, unless the Planning Board re-imposes the limitation for a period not to exceed one year.

Town of Londonderry

The Town of Londonderry's GMO was adopted in 2004. It expires on January 1, 2010, unless it is re-adopted prior to that date. The ordinance creates a new Section XV, Growth Management and Innovative Land Use Control within the Town's Zoning Ordinance. The effect of the GMO is that no later than March 1 of each year, the Planning Board shall determine the maximum sustainable rate of residential development for Londonderry for the 12 months beginning March 1 of that year. This rate of growth cannot exceed a maximum two percent increase in Londonderry's housing stock over the preceding calendar year. In addition, it cannot exceed more than two of three additional measures. The measures include the average rate of dwelling unit authorization in Londonderry over the preceding six months, a percentage increase in housing units over the preceding calendar year equal to the rate of increase in housing units for that year summed across the six municipalities which abut the Town of Londonderry, and a maximum rate of dwelling unit authorization based upon the provision of adequate services and facilities. The provision of adequate services and facilities is determined by student/school enrollment capacity, studies of Town service/facility capacity, and a limitation on combined school and municipal appropriations tied to the current Capital Improvement Program. The issuance of building permits is determined through a priority point system administered by the Building Inspector. The Planning Board is responsible for monitoring the growth in the Town and making the determination of whether sustainable growth conditions exist or not and if so, determining the annual rate of development which, at maximum, could be sustained.

Town of Auburn

The Town of Auburn's GMO was adopted in 1986 and established under RSA 674:22. It replaces previous Interim Growth Regulations within the Town's Zoning Ordinance under Section 3.09 Growth Management. The proposed growth limitation is designed to create a reasonable rate of growth to occur in line with the ability of the Town to accommodate such growth without imposing unacceptable burdens on current and future taxpayers. The growth limit represents Auburn's share of the projected regional growth. To be eligible for a building permit in Auburn, there must be the existence of a plan or lot of record recorded in the Rockingham County Register of Deeds. The number



of building permits issued in any building year for new dwellings is limited to four percent (rounded to the nearest whole number) of the number of dwelling units known to exist in Auburn in the previous year. The Planning Board prior to the March Town Meeting with the advice of the Selectmen establishes the number of dwelling units known to exist. The building year runs from March Town Meeting to the next March Town Meeting. No more than seven of the annual permits shall be issued to any one individual, business group or entity and not more than seven of the annual permits are issued in any one subdivision. Unused permits are returned to the pool of available permits. Permits for elderly, handicapped, economically disadvantaged, non-dwelling construction, alteration or replacement of existing buildings are exempt for the regulations. These regulations are reviewed by the Planning Board at least every two years or sooner based upon regional and local growth trends.

Interim Growth Management Ordinances

RSA 674:23 authorizes municipalities to adopt interim growth management ordinances as a temporary measure to control growth. This can be accomplished prior to the adoption of a master plan or capital improvement plan in any given year or prior to the adoption of a growth management ordinance under RSA 674:22. The critical feature, however, is that the planning board must make findings of fact that 'unusual circumstances' requiring prompt attention must exist which necessitate or justify the need for the ordinance. In addition, an interim growth management regulation must expire at the earliest

- One year after its adoption; or
- Such earlier time as specified in the ordinance; or
- Upon the effective date of the ordinance adopted under RSA 674:22

RSA 674:23. Growth Management; Interim Regulations.

I. In unusual circumstances requiring prompt attention and for the purpose of developing or altering a growth management process under RSA 674:22, or a master plan or capital improvement program, a city, town, or county in which there are located unincorporated towns or unorganized places may adopt an ordinance imposing interim regulations upon development as provided in this section.

II. An interim regulation may be proposed by the planning board if it determines that the requirements of paragraph I exist and makes findings of fact so indicating. Any such proposal shall be submitted to the local legislative body as a zoning ordinance and shall be subject to all procedures and provisions relative to enactment of zoning

ordinances except that:

(a) *There shall be at least one hearing on the interim regulation held by the planning board at which parties in interest and citizens shall have an opportunity to be heard. At least 10 days' notice of the time and place of the hearing shall be published in a paper of general circulation in the municipality, and a legal notice of the hearing shall also be given in accordance with RSA 675:7. The notice shall include either the text or an adequate statement of the proposed regulation. After the hearing, the planning board, by vote, shall determine the final form of the regulation to be submitted to the local legislative body, which form of regulation shall conform, in substance, to the initial proposal and may include editorial revisions and textual modifications resulting from the public hearing which the planning board votes to adopt.*

(b) *The local legislative body shall act upon the proposed interim regulation not later than 90 days after the posting of the notice for the public hearing under subparagraph (a).*

III. *An interim regulation adopted under this section shall expire at the earliest of the following occurrences: one year after its adoption by the local legislative body; such earlier time as specified in the ordinance; or upon the effective date of an ordinance adopted under RSA 674:22 which addresses the unusual circumstances.*

In the past, there have been questions as to whether an interim growth management ordinance can be submitted and adopted as a petition amendment to the zoning ordinance at town meeting. Peter Loughlin, who comments in his New Hampshire Practice Series zoning law treatise, *Land Use Planning and Zoning* at section 15.06 as follows, addressed this issue:

'...While the planning board does not need to spend time preparing a master plan before adopting an interim regulation, it is absolutely critical that the board make specific findings of fact substantiating that "unusual circumstances requiring prompt attention" exist in the community... There are no court cases to date to give guidance on the subject of just what are "unusual circumstances." Because the planning board must make certain findings, an interim growth ordinance could probably not be the subject of a citizen's petition pursuant to RSA 675:4, 54, although at least arguably the planning board might be able to make those findings after the public hearing on the ordinance. Of course, if the planning board does not make such findings, the ordinance would definitely fall...' (Emphasis supplied).

The planning board must make certain findings of fact with respect to an interim growth management ordinance developed under RSA 674:23. However, this does not preclude the adoption of a growth management ordinance as a



petition amendment to the zoning ordinance that has been developed under RSA 674:22. Recently this has occurred in the following towns:

Town of Weare

At the March 2005 Town Meeting, voters in the Town of Weare adopted two GMOs. The first one (Article 15-A) was developed by the Planning Board and the second one (Article 33) is an ordinance by petition. While both ordinances passed at Town Meeting, the Weare Town Counsel believes that the stricter ordinance prevails, which is Article 33. Copies of both GMOs are attached. Article 33 is enacted under the authority of RSA 674:22 and is intended to manage the timing of development in accordance with the objectives of the both the Master Plan and the Capital Improvement Program adopted by the Planning Board. The ordinance makes findings regarding Weare's population and building growth and identifies the exact number of vacant housing lots in existence in the Town. The ordinance also identifies the total capacity of the local school facilities in relation to existing and projected enrollment projections. Weare's new GMO applies to building permits for new residential dwelling units on all existing and new lots. The GMO does not apply to lots in subdivisions approved before the effective date of the ordinance or lots approved by the Planning Board in accordance with prior approved phasing plans. The GMO also does not apply to non-residential building permits and for the expansion or alteration of existing structures as long as there is no increase in the number of dwelling units other than accessory attached apartments by special exception.

The number of new building permits issued in a calendar year is limited to an amount that is 1.7 percent of the total dwelling units (TDU) existent in Weare as of December 31 of the prior year, rounded to the nearest whole number. The December 31 base of dwelling units is determined from the 2000 US Census, updated with Weare's building permit data. For the year 2005, the December 31, 2004 base of dwelling units is 3,124 and the annual 1.7 percent limitation is 53 permits. By January 15 of each year the ordinance is in effect, the Planning Board must post the annual limitation to be effective in that year. Permits are issued on a 'first come, first-serve' basis and only the lot owner of record, or his/her representative, may apply for a permit. 30 percent of the available permits shall be reserved for those who request only one permit in a calendar year for structure to be their home residence. The Planning Board on or before September 1 of each year must consult with the Weare School Board on the capacity of both the Weare elementary and middle schools. If after such consultation, the Planning Board determines that pupil enrollment in each school is less than 90 percent capacity, it shall certify to the Board of Selectmen, and the GMO shall expire at the end of the town meeting, occurring

after the date of certification. Otherwise, the GMO expires at the end of 2012 annual town meeting.

Town of Hooksett

At the May 10, 2005 Town Meeting, Amendment #9 was submitted by petition and approved by the community. Amendment #9 is a Growth Management Ordinance that allows the Town of Hooksett to control the rate of development so it does not exceed the ability of the Town to provide necessary services. The GMO applies only to residential development and it establishes an annual building permit limitation in a calendar year to no more than amount that is equal to or less than two percent of total dwelling units in the Town of Hooksett as of December 31 of the prior year. The number of dwelling units in Town is determined from the 2000 Census, updated with annual building permit data reported to the New Hampshire Office of Energy and Planning. For the year 2005, the December 31, 2004 basis of dwelling units is 4,529 and the annual 2 percent limitation is 91 units. The GMO provides that the Town shall issue building permits for new dwellings on a “first come-first serve” basis and no more than five permits per year shall be issued to any one individual, corporation, partnership, or entity. A total of 25 percent of all permits issued each year must be reserved for landowners building their own homes. The GMO also provides that no single subdivision shall receive final plat approval for more than five lots or dwelling units in any 12-month period. The GMO expires at 11:59 pm on May 31, 2010, unless readopted prior to that date.

Innovative Land Use Controls; Timing Incentives and Phased Development

RSA 674: 21 specifically authorizes municipalities to adopt timing incentives and phased development innovative land use control methods which can be used for growth control.

RSA 674:21 Innovative Land Use Controls.

I. Innovative land use controls may include, but are not limited to:

- (a) Timing incentives.*
- (b) Phased development...*

II. An innovative land use control adopted under RSA 674:21 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the



ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional use or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments...

In considering how to address the use of these controls, one of the first considerations is whether to apply the control to the planning/subdivision process, or to address it at the zoning level. The significant issue is that a growth control mechanism that attempts to deal with growth as new subdivisions are proposed will only address the issue of the creation of new lots and the building that will occur on those lots. If a municipality has a large 'inventory' of existing buildable house lots, limiting growth control to new subdivisions will not necessarily accomplish the intended goal, since the build out of the existing lots will be unregulated. Thus, the more effective means is to address growth by addressing all construction. This requires the limitation of building permits. On the other hand, if all the municipality simply intends to do is to control growth by phasing or spreading the impact of the number of approved housing lots on the community within a certain time period, phasing development controls can be applied in both the subdivision and zoning regulations of the community.

There are several towns in the region that utilize phased development regulations under RSA 674:21 to control growth. These towns include:

Town of Chester

The of Town of Chester's growth control regulations are found in Article 8, Phasing in the Town's Zoning Ordinance. It was adopted in 1986 and was amended to what it is currently. At the same time, Article 14 - Fair Share Contribution was added to the ordinance. These two articles complement each other. The effect of this ordinance is that every applicant must demonstrate that a proposed development will not adversely affect public health, safety or welfare due to a sudden demand on service(s) that cannot be provided for by a reasonable expenditure or public funds. If the Planning Board determines that a sudden demand exists, then the proposed development must be phased over such a period of time to allow the Town to manage and meet the demands

created for such services. This ordinance applies to all development and phasing must occur over a period of at least two years. Services include, but are not limited to, police and fire protection, schools, water supply, drainage, transportation, highway maintenance, or other public services. The Town's Phasing Ordinance also includes a waiver provision to encourage and provide opportunities for the development of low/moderate income housing in Town. There is no expiration date attached to this ordinance.

Town of Candia

The Town of Candia's GMO creates a new Article XI, Land Use Regulation in the Town's Zoning Ordinance. It was originally adopted in 1979. At that time, only three or less contiguous lots could be developed in any one subdivision per year. This requirement was later changed to five or less lots in 1981. The ordinance was changed once again in 1993. The current regulation now limits building permits per year to each approved subdivision. There is no limit on the number of lots in the subdivision. The effect of this regulation is that in any given building year (which is defined as commencing March 14 and ending March 13th), the Candia Planning Board has the authority to review and approve a subdivision in its entirety, but there is a limitation on development of lots, which are currently nine per year. The number of building permits issued is administered by the Building Inspector. Under this ordinance, lot means lot, plat, site, or other division of land for the purpose of sale, rent, lease, or condominium conveyance or building development. There is no expiration date.

Town of Raymond

In 1977, the Town of Raymond enacted a "slow growth" ordinance as part of the Town's Zoning Ordinance. This ordinance basically provided a ceiling on the number of building permits that could be issued in the "building year," defined as the period from April 1 to March 31. The limit allowed four permits per year for those who own 50 or more acres of land; three permits per year for those who own between 25 and 50 acres; two permits per year for those who own between 10 and 25 acres; and one permit per year for those who own 10 or fewer acres of land. Under this ordinance land was fully transferable as were the building permit rights. However, the conveyance of land did not require the grantor to convey the building rights. Thus, if one did not obtain such a right from the grantor, no construction permit could be issued until the completion of the following building cycle. The Town also passed the identical ordinance by means of a traditional ordinance (non-zoning), pursuant to the town by-law provision, RSA 31:39. In 1978, a lawsuit was filed by a developer



who applied for five building permits but only received four and appealed the Town's denial of the fifth permit in court. The trial court upheld the Town's denial in an opinion that cited that the ordinance was justifiable response to growth issues in the Town. The case was appealed to the NH Supreme Court (*Beck v. Town of Raymond*, 118 N.H. 793, 394 a2 D. 847) and the court upheld Raymond's zoning ordinance only as a "...temporary emergency measure to allow the town two years at most to develop a master or comprehensive plan for phasing in growth and providing therefore." Subsequently, the Town removed the ordinance and it is no longer in effect.

and other regulatory policies has created artificial barriers to the private market's ability to create new housing."¹



Summary

As can be seen from this summary, growth management has been a local concern for many communities in our region as early as 1979. The focus was first on phasing in the number of lots that could be developed in an approved subdivision. Today, that focus has shifted to sophisticated timing and phasing controls and point systems. Some of the key aspects and lessons that can be learned, particularly in light of *Beck v. Town of Raymond* is that the issue of growth management can not be taken lightly. Careful study and documentation of the impacts of growth need to be clearly identified and supported in a Town's Master Plan and Capital Improvements Program. Without these planning tools, growth controls can not be adopted. Furthermore, it is also important that communities consider regional development needs as well as their own. It is clear from a review of many of the existing GMOs summarized in this report, that consideration of regional growth impacts has been lacking. Finally, while the New Hampshire Supreme Court has recently been silent since *Beck v. Town of Raymond* in providing us further guidance, there have been a few noteworthy cases that should be mentioned here. First is *Torromeo v. Town of Freemont* (148 NH 640), in which the New Hampshire Supreme Court reversed a New Hampshire Superior Court ruling holding the town liable for damages caused by the town's denial of building permits pursuant to an invalid growth control ordinance. The trial court ruled that a valid CIP was never adopted by the town, as stated in a warrant article at town meeting, and thus the Town's GMO was unconstitutional.

The second is *Monohan - Fortin Properties LLC v. Town of Hudson* (148 NH 769). In this case, the New Hampshire Supreme Court also reversed a trial court's ruling that barred the town from applying its GMO to the plaintiff's condominium project on the basis that the project was also subject to the town's impact fee ordinances. In this case, the New Hampshire Supreme Court reviewed the trial court's interpretation of the statute de novo. *Crowley v. Frazier*, 147 NH 387.389 (2001), RSA 674:21, V (h) states:

The adoption of a growth management limitation or moratorium by a municipality shall not affect any development with regard to which an impact fee has been paid or assessed as part of the approval of that development.

The court found that the meaning of this statutory language was clear. When a developer has paid an impact fee or the municipality has assessed such a fee

as part of the approval for that development, a subsequently adopted growth management ordinance will not apply to the project. The operative language of RSA 674:21, V(h) provides grandfathering protection to a development from a newly-adopted GMO only if an impact fee has been paid or assessed prior to the ordinance's enactment. In this case, the town had calculated the fee, but never assessed it. The lesson to be learned here is while a municipality may adopt and enforce both impact fees and a GMO to control growth, the timing and application of these limitations needs to be carefully considered.



Comparison of Ordinances for the Southern New Hampshire Planning Commission Region

Municipality	Type of Ordinance	Original Adoption Date	Expiration Date	Purpose Statements & Growth Findings	Overall Approach	Maximum Cap	Application	Exceptions	Permit Allocation	Was a Growth Study or Build Out Analysis Done?	Were Regional Considerations Included?	Who Administers the GMO?
Derry	Zoning	3/15/1999	Temporary Building Permit Limitation. Expires in 4 Years unless Planning Board re-adopts annually. 1/1/2010	Yes	50 Building Permits Per Year - First Come First Serve basis. Special Permit System - Based on Development Points. Based on Planning Board of determination of sustainable rate of residential growth	Residential growth did not exceed 5% over previous year for 2 years in a row and 7% in any year.	Residential Housing Units Only	Vested lots, lots existing as of date of public hearing notice, housing for older persons under RSA 354-A:15 and supportive residential care facilities. None	Permits issued quarterly 1st day of July, October, January and April March 1 - March 21 Requires permit scoring sheet	Yes	No	Planning Board
Londonderry	Zoning	2004		Yes	Based on Planning Board of determination of sustainable rate of residential growth	Not to exceed 2% increase in housing stock previous year	Residential Dwelling Units Only	None	March 1 - March 21 Requires permit scoring sheet	Yes	Yes	Planning Board
Auburn	Zoning	1986	Reviewed every 2 yrs.	No	Limitation on number of building permits	7 per year in total	Residential Dwelling Units Only	Non-residential lots, alteration and replacement	March Town Meeting to next Town Meeting	No - Master Plan only	No	Planning Board
Candia	Zoning	1979	None	Yes	Limitation on number of lots that can be built in a subdivision	9 per year in total	Subdivision lots	No	March 14th ending	No	No	Planning Board

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Chester	Zoning	1986	None	No	Burden is on applicant to prove there is not a sudden demand on Town services	No Cap. Phasing over 2 year period minimum required	All Development	Waiver provision provides for low/moderate income housing	None. Phasing plan developed for each project	No	No	Planning Board
Raymond	Zoning	Adopted 1977	No Longer in Effect	Yes	Provided a ceiling on issuance of building permits during a building year	4 permits per year for lot owners 50 > acres; 3 permits for lot owners 25 to 50 acres; 2 permits for lot owners 10 to 25 acres and 1 for lot owners < 10 acres	All Development	Unknown	April 1 to March 31	No	No	Building Inspector
Weare	Citizen Petition	Adopted 2005	2012 or sooner based on school enrollment/c apacity	Yes	Establishes a building permit basis and then limits new permits to 1.7% of total units	No cap	New Residential Dwelling Units	Lots in prior approved subdivisions, phasing plans, alterations or expansions of existing structures so long as there is not an increase in number of dwelling units	Calendar Year First Come First Serve basis	Yes	No	Planning Board & Building Inspector
Hooksett	Citizen Petition	5/10/2005	5/31/2010 at 11:59 pm	Yes	Establishes a building permit basis and then limits new permits to 2% of total units	Not to exceed 2% of total dwelling units in Town as of 12/31	New Residential Dwelling Units	25% of permits reserved for landowners building homes	First Come First Serve basis	No	No	Planning Board

Town of Derry, New Hampshire

Growth Management Ordinance

ARTICLE XIV GROWTH MANAGEMENT (Effective 4/2/99)

Section 165-111 Short Title

This article shall be known and may be cited as the "Growth Management Ordinance (GMO) of the Town of Derry, New Hampshire."

Section 165-112 Statutory Authority

The Growth Management Ordinance (GMO) is enacted pursuant to the authority granted under RSA 674:16, 674:17, 674:21, 674:21-a and 674:22.

Section 165-113 General Considerations; Policy Objectives And Purposes

A. The Town of Derry has been experiencing unprecedented and rapid growth with respect to its population, housing, land development and utilization of resources since the mid 1980's. In real terms, Derry's population growth has far exceeded other communities in Rockingham County, especially since 1980. Derry's population grew by 10,700 persons from 1980 to 1990, an increase of over 50% during this period. Londonderry, its neighbor, grew by 6200 persons in the same period. However, towns in the remainder of the County experienced significantly lower growth in real terms. Housing starts in a similar period show that from 1980 to 1993 Derry constructed over 6,000 housing units, where Londonderry constructed less than 3,000 and other surrounding towns far fewer.

B. This period of rapid growth threatens to continue unabated with its attendant demands on public services and facilities. Transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities and requirements have been and are being constructed to meet the needs of the town's growing population; but the town has been unable to provide these services and facilities at a pace which will keep abreast of the ever-growing public need. Derry has taxed itself to the very limit, having one of the highest property tax rates in the State of New Hampshire and certainly the highest among its neighbors. Derry's property tax rate in 1995 was \$41.41 per \$1,000.00, an increase of almost 39% percent from 1990. In 1997, Derry's tax rate was the highest of the surrounding communities. Derry is faced with a continuing additional demand for services, including a requirement to build additional school facilities so as to accommodate its existing student population in accordance with State of New Hampshire mandates. Future residential growth will increase the demands on Derry's crowded schools and overtaxed population.

C. Derry's major transportation arteries are at full capacity and, in most cases, at levels of service indicative of a failure condition. Some of these arteries are state highways and their improvement is not prioritized in the state's ten year transportation plan. All of Derry's major arteries, including compact roads and town arterial streets are severely impacted by the growth of surrounding communities in addition to Derry's own astounding growth. Route 102, Derry's main street, crosses Interstate 93 at one of its major junctions, also crossing Route 28 and the Route 28 By-pass at major intersections, one of which is a rotary located in a Historic District. These roads form a north-south and east-west transportation corridor providing access for most of the surrounding communities to Interstate 93 and to the Boston commuter market. Accordingly, Derry is faced with extremely expensive highway improvements resulting

from impacts both within and without the community. These must be funded almost exclusively out of Derry's already extremely high tax rate.

D. Faced with the physical, social and fiscal problems caused by the rapid and unprecedented growth, the Town of Derry has adopted an updated comprehensive Master Plan to guide its future development; and it has adopted a revised zoning map and a Capital Improvement Program so as to provide for a balance of the orderly, adequate, and economical development of the community. In doing so, Derry has considered and sought to balance its future residential, commercial, industrial, and public land uses with the availability of community facilities, including transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities.

E. In adopting these policies, Derry has considered local and regional development needs, recognizing in the process that over 50% of its housing units are multi-family or mobile home units. These provide low and moderate income housing opportunities far in excess of its surrounding communities. At least 1700 of these low and moderate income units have been constructed since 1980. Derry has also made elderly housing one of the preferred uses in its downtown redevelopment plan so as to provide additional, properly located elderly housing.

F. This Growth Management Ordinance is adopted to promote and ensure the orderly development of land within the Town of Derry, to promote public health, safety, and welfare of its residents, and for the following specific purposes:

1. To manage growth to ensure its compatibility with the revised Master Plan for the Town of Derry. The Master Plan has taken a long-term view of Derry's future and its land use patterns. In doing so the Planning Board has determined a long term usage pattern for all remaining developable land in Derry, anticipating a full build-out population of 45,000 residents, as compared to the current Derry population of approximately 32,000 people.
2. To regulate and control the timing of development consistent with the Master Plan and Capital Improvements Program and provide a means to temporarily regulate the number of building permits issued during periods of excessive development pressure.
3. To assess and balance community development needs. The Planning Board has considered the necessity to immediately address the imbalance of Derry's tax base, exacerbated by the State mandated 1993 revaluation which reduced Derry's net valuation by approximately one-third (1/3). The Planning Board finds that the resulting increase in an already heavy burden imposed on Derry's residential taxpayers requires immediate redress. To meet this imbalance, the Planning Board has recommended adoption of a 30-year Capital Improvement Plan upon which the growth management features of this article are based.
4. To consider past and future regional development conditions.

5. To ensure that essential municipal services, such as schools, transportation/roads, sewerage and water services, are available and will have sufficient capacity and quantity to accommodate new development. Derry's Planning Board has considered, in view of its findings as to the desirable land usage in Derry and its ultimate population estimate of 45,000 people, the minimum long-term capital needs of Derry in the form of a Capital Improvement Program. The resultant Capital Improvement Plan balances Derry's ability to pay with the needs anticipated for essential public facilities to service the build-out population.
6. To balance Derry's long-term capital needs, the impact of future development and Derry's ability to pay for the essential services this development requires. The Planning Board considers that Derry taxpayers are simply unable to support the rate of residential growth that Derry has sustained in the past. It has also considered the impact imposed upon Derry by development in surrounding communities and its already strained ability to absorb ever increasing educational costs with its limited tax base.
7. To implement a residential unit allocation system to regulate the rate of residential growth commensurate with the Town's ability to provide adequate public facilities and services, based upon the goals, policies and objectives set forth in the Capital Improvement and Master Plans.
8. To prevent deterioration of public facility service levels, environmental degradation, and potential land use conflicts.

Section 165-114 Temporary Residential Building Permit Limitation

The Planning Board hereby finds that Derry's short-term fiscal situation requires that a temporary building permit limitation be established. Derry's schools have been found to be overcrowded and inadequate for its existing student population. Seven hundred students are now being educated in temporary or portable facilities. The state has required Derry to construct new school facilities anticipated to cost \$15,000,000.00. These facilities are required in spite of the fact that Derry has recently constructed a new middle school, and in spite of the fact that Derry has one of the highest property tax rates in the State of New Hampshire and the highest rate in Rockingham County. The Planning Board also recognizes the uncertainty now attending New Hampshire's system of funding public education. Derry currently has approximately 120 outstanding and un-issued single-family residential building permits which, if used, will exacerbate an already overcrowded school situation. Additionally, Derry's short-term capital needs must consider the design and implementation of a viable transportation infrastructure for Derry's core community and industrial/commercial development needs. The Planning Board finds that these needs must be met as a priority among Derry's capital improvement requirements and has prepared a Capital Improvement Plan reflecting this priority. Accordingly, and in anticipation of additional submissions of residential plans and permit applications, the Planning Board hereby establishes this temporary building permit limitation and permit allocation system pursuant to RSA 674:22.

A. No more than 50 building permits for residential housing units shall be issued in any year until the expiration of this temporary building permit limitation.

1. Building permits shall be allocated based upon the following classes of priority:
 - a. Building permits for subdivisions or developments approved and otherwise eligible for the Basic Development Right pursuant to Section 165-116A below.
 - b. Other building permit applications, if any.
2. Lots which are exempted pursuant to RSA 674:39 and 676:12V, or which are covered under legal settlement agreements with the Town pertaining to their status as vested lots, shall not be affected by this provision, nor shall building lots legally existing as of the date of first posting of this article for public hearing, June 5, 1998, which otherwise conform to this chapter and as to which a single residential unit building permit is applied for. The provisions of this section shall not apply to housing for older persons under RSA 354-A:15, and supported residential care facilities under RSA 151 and New Hampshire Code of Administrative Rules He-P 805.
3. For purposes of establishing allocation priorities, permits shall be issued quarterly, commencing on the 1st days of July, October, January and April in each fiscal year on the basis of a pro rata allocation of then-available permits, on a first-come-first-served basis until exhausted. All permits available in any quarter shall be available for issuance as of the first day of such quarter. Any unused building permits in any quarter shall be included in the next quarter's allocation. Authorized but unissued building permits in any year shall be carried forward and be additional to the next fiscal year's building permit allocation.
4. Permits shall be allocated pro rata based upon the number of applicants in each class, as defined in Sub-section A.1 above, up to the maximum allowable permits in any quarter. Each eligible applicant shall receive at least one building permit until the respective allocation is exhausted. If the relevant allocation would be exhausted, the available permits shall be allocated within each class, based upon the date and time of application filing, until exhausted. Eligible applicants who applied for building permits and were unable to receive at least one permit in each allocation, shall receive priority over other applicants in the class for the next occurring allocation.

B. This permit limitation provision shall expire in four years; provided, however, that the Planning Board shall annually review and act upon this limitation as described in Sub-section C below; and further provided that the Planning Board may re-impose such building permit limitation for a period(s) not to exceed one year, if it determines that conditions are such that prospective growth, based upon the number of approved but un-built residential lots that are then available to be built, and/or the anticipated applications for additional residential building lots will cause conditions which threaten a short-term and significant disruption of

the Town's Growth Management Plan. Conditions which the Planning Board may consider are:

1. Availability of excess school capacity of 10% or less.
2. Projected residential growth, based on building permits issued, which would exceed 5% percent over the previous year for two years in a row or 7% percent in any year.
3. Conditions of failure as determined by the Public Works Director or the State of New Hampshire Department of Transportation (NHDOT) of the Town's major arterial intersections:

Ross' Corner	Crystal Avenue and Broadway
Shutes Corner	Route 93 Exit 4 Interchange
Webster's Corner	Intersection of Fordway Extension and Route 102
Route 102 Rotary	Intersection of Route 28 By-Pass and Tsienneto Rd
	Intersection of Tsienneto Road and Route 102

C. Review

1. Any permit limitation imposed shall be reviewed annually in April of each year starting with April of the year following the adoption of this article by the Planning Board which shall consider whether:

- a. Based on a report of the Derry School District that sufficient school capacity is available with reserve or excess capacity sufficient to meet the projected three year growth in student population, considering building permits eligible to be issued pursuant to exemptions contained herein plus the number equal to the maximum number of permits allowed under this section;
- b. Based upon a report of the Town's Public Works Director the conditions of failure specified in sub-section B.3 above have been alleviated or will be alleviated within the ensuing 12 months; and
- c. Residential growth for the previous two years did not exceed 5% over the previous year for 2 years in a row or 7% in any year.

2. In the event the Planning Board shall find as provided in sub-section C.2.a or b below, the Planning Board shall, in the case of sub-section C.2.a or may, in the case of a finding under sub-section C.2.b suspend the permit limitation effective on the first day of the month following the finding or increase the number of permits to be issued for the next succeeding twelve month period, as conditions warrant. Annual periods described in this section shall run from July 1 to June 30.

- a. Sub-section C.1.a above and either sub-section C.1.b or c above have been met; or
- b. The Planning Board is satisfied that the improvements specified in the Capital Improvement Program for the next ensuing three years will

be adequate to satisfy sub-section C.1.a above and provide reasonable relief from the conditions set forth in sub-section C.1.b and c above so as to avoid dangers to the health, safety or welfare of the community.

Section 165-115 Residential Development Special Permit System

A. General Provisions The following section describes the procedure by which special permits for residential development shall be applied for and may be granted by the Planning Board. The special permit application and issuance system described in this section shall determine if and when special permits so issued may be exercisable, based on the availability of adequate public facilities.

1. A residential developer shall be required to obtain a special permit from the Planning Board prior to the issuance of any building permit for a new residential unit in any subdivision or site plan proposed before the Planning Board.
2. The provisions of this section shall not be applicable to residential lots, site plans or subdivision plans which are exempted pursuant to RSA 674:39 or 676:12V or which are covered under legal settlement agreements with the Town pertaining to their status as vested lots; nor shall building lots legally existing on the date of first posting of this article for public hearing, June 5, 1998, which otherwise conform to this chapter, and as to which a single residential unit building permit is applied for, be subject to the provisions of this section. The provisions of this section shall not apply to Housing for Older Persons under RSA 354-A:15, and Supported Residential Care Facilities under RSA 151 and New Hampshire Code of Administrative Rules He-P 805.

B. Procedure for special permit

1. Application. Residential subdivision or development applicants shall be required to submit an application for special permit to the Town's Planning Director in such detail as shall be set forth in regulations established by the Planning Board, including a map showing the location of all abutting land holdings of the applicant or by entities owned or controlled by the applicant and the extent of the land proposed for development. The Planning Director shall review the application with respect to all of the standards set forth in Sub-section C, as to the availability of municipal services and facilities and as to projected improvements scheduled to be completed in the Capital Improvement Plan of the Town. The Planning Director may request reports from appropriate Town, or regional agencies, boards or officials, as may be desirable or as required by Planning Board regulations in force and applicable to the application. Within 20 days of the submission of an application otherwise meeting the application requirements of Chapter 170, Land Development Control Regulations, the Planning Director shall notify the Planning Board and the applicant as to his finding as to the acceptability of the application under this section and as to whether and how many of the development points the proposal is presently eligible to claim.

2. The Planning Director shall also proceed to notice the application for public hearing at the first regular meeting of the Planning Board not less than 10 days after the submission of the written report referred to in subsection B.1. Such public hearing shall be conducted after notice in accordance with RSA 676:4 I.(d). Applications shall be deemed completed applications within the meaning of RSA 676:4 I.(b) only when they have conformed to all the requirements of this section and the application procedure in Chapter 170, Land Development Control Regulation.
3. The Planning Board shall, within 30 days after the report is submitted by the Planning Director, determine whether to accept jurisdiction of the plan pursuant to RSA 676:4 I.(b). The number and designation of any lots approved in such special permit(s) to be issued shall be determined by the Planning Board in conjunction with of its subdivision/site plan review conducted pursuant to RSA 676:4, et seq.

C. Qualification for special permit through development points

1. Except as otherwise set forth in Section 165-116A, no special permits granted by the Planning Board under this section shall be exercisable unless a proposed residential development receives the following number of development points: LDR- 8 points, LMDR- 8 points, MDR-11 points and all other districts-12 points; provided that the proposed development in any district must receive at least one development point in each of the following categories: transportation, school facilities, police protection and fire protection facilities. For the definitions of zoning districts (LDR, LMDR and MDR, etc.), see Article V of this chapter.
2. Development points shall be awarded according to the following categories. No application shall receive points in more than one sub-category of each part of this sub-section C.2
 - a. Sewer facilities.
 - i. Municipal sewer system available and municipal sewer treatment facility has 21% or greater reserve capacity: 2 points
 - ii. Approved septic system available with alternate location on premises: 1 point.
 - iii. All others: zero points
 - b. Water supply facilities
 - i. Municipal water supply system connection available: 2 points
 - ii. Public utility water system preexisting this article is available: 1 point
 - iii. Existing or proposed approved well on lot: 1 point
 - iv. All others: zero points.

- c. Drainage facilities. Percentage of required drainage capacity available. All calculations based upon historic one-hundred-year storm event.

Ninety percent to 100% on-site storm water detention no adverse downstream impact: 1 point.

Less than 90% on-site storm water detention or adverse downstream impact: zero points.

- d. Transportation facilities.
 - i. Highway infrastructure improvements for roads or intersections impacted by this project installed or to be installed within 1 year: one point. Impacted roads are those roads which form one of the following intersections:

Ross' Corner
Crystal Avenue and Broadway
Shutes Corner
Route 93 - Exit 4 Interchange
Webster's Corner
Intersection of Fordway Extension and Route 102
Route 102 Rotary
Intersection of Route 28 By-Pass and Tsienneto Rd
Intersection of Tsienneto Road and Route 102

- ii. Any negative impact to either the intersections listed in sub-section C.2.d.1 or intersections with arterial or collector streets identified by the Planning Board and/or its consultants as in failure and not mitigated by improvements set forth in Capital Improvement Plan or by the applicant. Arterial or collector streets are those designated as such in the Derry Master Plan: zero points.

- iii. All other: zero points.

- e. School Facilities.

Adequate school facilities available and having capacity for additional students: one point.

All other: zero points.

Adequate school facilities are deemed to be those facilities defined by the New Hampshire Legislature or other authority designated to do so, and approved, if required, by the New Hampshire court of competent jurisdiction, which meet the minimum standards of adequacy established by such definition. No school facilities within the jurisdiction of the Derry School Board shall be deemed adequate unless conforming to such standard without the use of temporary or portable facilities.

Notwithstanding the foregoing, school facilities are not adequate if the available student capacity of any such facility, which otherwise meets the standard set forth in the preceding two sentences, is not sufficient to meet or exceed the student enrollment projected for the applicant's development when combined with student enrollment growth projected from available statistical data for existing and approved and unbuilt residential housing, including those units eligible for building permits under Section 165-116A.

- f. Recreation Facilities. Improved park, playground or play field, including public school site or conservation easement and/or dedicated open space land of one acre or more, suitable for recreational use (to include a playground or play field) for adults and children, dedicated to and accessible from the subdivision or development to which it is appurtenant or which it abuts; provided, however, that private facilities are owned and maintained by Associations of lot or unit owners whose responsibilities are set forth in documentation deemed adequate by the Planning Board.

Within or abutting the subdivision or development: 2 points

Within 1/2 mile of the intersection of the subdivision or development street with an existing Town road: 1 point.

Farther than 1/2 mile: zero points

- g. Fire protection facilities:

1. Within 4 minutes response time from the closest municipal fire station:
 - a. For high hazard occupancies: 1 point
 - b. For medium and low hazard occupancies: 2 points.
2. Within 5 minutes' response time from the closest municipal fire station:
 - a. For high-hazard occupancies: zero points.
 - b. For medium hazard and low hazard occupancies: 1 point
3. Within 6 minutes' response time from the closest municipal fire station:
 - a. For high hazard occupancies: zero points
 - b. For medium hazard occupancies: zero points.
 - c. For low hazard occupancies: 1 point.
4. For any occupancy within 1,000 feet of a Fire Department approved hydrant connected to the municipal water supply system or of an approved Fire suppression storage facility: 1 point

5. For any occupancy with access to appropriate fire suppression water storage and with installation of Residential sprinklers compliant with NFPA 13 R and 13 D or within 1,000 feet of a fire suppression storage cistern compliant with NFPA 1231: 1 point.
6. The following definitions pertain to this fire protection facilities sub-section:

HIGH HAZARD OCCUPANCY — An occupancy with any of the following characteristics:

- a. Occupant load of 10 or more persons who may be physically impaired.
- b. Buildings with more than 10,000 square feet on any floor.
- c. Buildings with 3 or more stories in height.

LOW HAZARD OCCUPANCY — An occupancy with any of the following characteristics:

- a. Occupant load of less than 10 persons.
- b. Buildings with less than 2,500 square feet on any floor.

MEDIUM HAZARD OCCUPANCY — An occupancy with any of the following characteristics:

- a. Occupant load of 10 or more persons who are not physically impaired
- b. Buildings with more than 2,500 square feet but less than 10,000 square feet on any floor.

- h. Police protection. Minimum of one point is required.

<u>Number of Police Officers Per 1,000 Residents</u>	<u>Points</u>
1. 1.75 or greater	2 points
2. 1.50 to 1.74	1 point
3. 1.49 or less	0 points

3. Based upon the density of development allowed pursuant to Chapter 170, Land Development Control Regulations and this chapter, the Planning Board shall determine whether to approve each application for special permit under its subdivision or site plan regulations. In connection with any such application, the Planning Board shall issue a finding specifying the number of dwelling units which it has approved in issuing the special permit. If any subdivision or site plan application does not attain the required number of development points at the time of such approval, however, no building permits may be issued on account of such approval except as allocable to the applicant's Basic Development Right described in Section 165-116A below, subject to the limitations otherwise set forth as to the timing and number of such building permit issuance in Sections 165-114 and 165-116A below.

Section 165-116 Basic Development Rights and Additional Development Rights

Special permits shall be exercised in accordance with the following:

A. Thirty (30%) percent of the residential lots or units approved in the special permit pursuant to Section 165-115C.2 (but not to exceed 21 lots or units) shall be deemed to be units for which the Applicant shall be entitled to basic development right. The Planning Board may designate which lot/s shall be allocated to the basic development right so as to provide for orderly development of the project and to minimize its impact upon municipal facilities or services. In case computations hereunder result in fractional units, the number of units shall be rounded to the next lowest whole number.

1. Such basic development right shall entitle the applicant to building permits for up to $\frac{1}{3}$ of the units covered by such basic development right in the year of plan approval or five units, whichever is greater. The remainder of such basic development right building permits shall be issued in equal installments in each of the next two succeeding years until the basic development right is exhausted (based upon the Town's fiscal year). Such basic development right may only be exercised if the subdivision or site plan meets all conditions of approval, including the posting of performance bond or other security as required by law or under Chapter 170, Land Development Control Regulations. The Planning Board, in establishing the performance bond or other security, may provide for phasing of such security in conjunction with the timing of the issuance of building permits under either this basic development right or the additional development right set forth in Sub-section B basic development right building permits not applied for during such period may be subsequently issued in any year thereafter unless the provisions of Section 165-114 are applicable.

2. The applicant's basic development right shall be subject to and further limited by the provisions of any temporary permit limitation set forth in Section 165-114 herein and the right to exercise such basic development right shall be extended in such case until exhausted or until any temporary permit limitation has expired.

B. The balance of the applicant's special permit shall be allocated to the applicant's additional development right. Such right shall entitle the applicant to a building permit for each such residential unit only at such time as the development shall have the required number of points under Section 165-115C.2

1. As part of such Planning Board approval of the special permit, the Planning Board shall determine the year in which such additional development right shall be exercisable, based upon its finding as to that year the development would attain the required number of points under Section 165-115C.2. In making such determination the Planning Board shall consider the scheduled completion date of those capital improvements which it determines would be required in order to attain the requisite number of points as set forth in the Capital Improvement Plan then in effect. In the event any such capital improvements are completed in advance of the time schedule set forth in such Capital Improvement Plan, the Planning Board shall, upon request, review its finding and, if the requisite points are then available, advance the date when the additional development right shall be exercisable. Such additional development rights shall

be vested at the time of Planning Board approval pursuant to Section 165-115C.2 herein but shall not be exercisable until the time set forth above.

2. The Planning Board may, as part of such approval, require the phasing of such additional development rights at the time of exercise, depending upon the scope of the project and other off-site impacts or improvements required to accommodate the project. Such phasing may be required over a maximum three – year period in the discretion of the Planning Board.

3. Nothing herein shall limit the authority of the Planning Board contained in Section 165-114 to limit the issuance of building permits available under this sub-section B in times where temporary residential permit limitations under Section 165-114 above are in force.

Section 165-117 Capital Improvements Program

A. Preparation and function.

1. The Planning Board has prepared a long-term Capital Improvements Program of municipal capital improvements based on recommendations submitted by the departments and agencies of the Town, taking into account public facility needs indicated by the prospective development shown in the Master Plan of the Town and its Land Development Control Regulations in force and applicable. Such Capital Improvement Program has been based upon community facilities projected to meet the needs of Derry's build-out population as set forth in its Master Plan and will be submitted to the Town Council contemporaneously with this article.

2. To the extent that the Planning Board is required to make findings as to the adequacy of municipal facilities pursuant to Sections 165-114 and 165-115 herein, the Planning Board is hereby authorized to make such findings based upon the long-term Capital Improvement Plan adopted with this Growth Management article. Such long-term Capital Improvement Plan is a good-faith estimate of Derry's present and future capital needs and it has been adopted with due regard for Derry's projected ability to pay for such capital improvements.

B. Authority. The Planning Board is hereby empowered to prepare and amend such Capital Improvement Plan on an on-going basis pursuant to RSA 674:5 to 674:7. Such authority shall, and it hereby does include, all powers necessary to perform such function.

C. Review and report. The Planning Board shall review the long-term Capital Improvement Plan described in Sub-section A on an annual basis and make such amendment or update and report thereon as shall be appropriate. Such amendment or update and report shall be communicated to the Town Council and Town Administrator on or before January 1 of each year so as to enable the Town Administrator and the Town Council to consider the Planning Board's recommendations, if any, in the Town's annual budget-setting proceedings.

D. Effect on article. This article is enacted pursuant to the revised Master Plan and Capital Improvements Program that have been prepared by the Planning Board. This article is subject to ongoing implementation, modification and amendment of the Capital Improvement Program, as well as any amendments to the Master Plan, and shall be reviewed at least each fourth year after its inception to determine whether changed conditions require its alteration. If the Capital Improvement Program is modified or altered, such modification shall apply to any applications for site plan or subdivision approval submitted after the date such modification is adopted by the Planning Board, but shall not affect plans which the Planning Board has approved or accepted jurisdiction of pursuant to RSA 676:4, (I)(b) as of the date of the adoption of such modification.

Section 165-118 Effect of Approval of Special Permit by Planning Board

A. Vested Approval of Special Permit(s). If the Planning Board shall issue an approval of the application for residential subdivisionsite plan approval, the approval shall vest a present right for the residential developer to proceed with residential development of the land to the extent of the applicant's Basic Development Right in the year of subdivision approval, subject to the time limitations contained in Sections 165-114 and 165-116. Such approval shall also vest a right for the residential developer to proceed with residential development as to the additional development right in such year as the proposed development meets or is projected to meet the required development point value set forth in Section 165-115C.1 and 2 above, as determined by the finding required in Section 165-116B above.

B. Developer options. For earlier or immediate development, a developer may advance the date of exercise of the additional development right by providing such public improvements as will bring the development within the required number of points required under Section 165-115C.1 and 2 above. Such improvements shall be secured by surety sufficient to cover the cost of the proposed improvement, the form, sufficiency and amount of which surety shall be determined by the Planning Board after recommendation from the Planning Director, the Public Works Director and approval as to form by the Town's legal counsel. The required improvements shall be in such form and done in such time and manner as the Planning Board shall approve.

C. Special permits assignable. All approved special permits vesting a present right to future development shall be fully assignable (as an appurtenance to the property to which they pertain) without restriction, except the right so assigned shall be subject to the conditions of the approval and of this article; provided also that any previously posted security for any required improvements is adequate and maintained by the assignee to the satisfaction of the Planning Board.

D. Alternative uses permitted. Nothing herein contained shall prevent any land from being immediately used for non- residential purposes if authorized by this chapter.

Section 165-119 Appeals

Appeal of decisions of the Planning Board under this article shall be made to Superior Court pursuant to RSA 677:15.

Section 165-120 Special Permit Application Fee

The fee ofr each special permit application pursuant to this article to the Planning Board shall be as set forth in Chapter 170 Land Development Control Regulations, payable at the time of said application, and is not refundable.

Section 165-121 Implementing Regulations

To the extent deemed appropriate, the Planning Board may adopt regulations implementing this article pursuant to RSA 674:36, RSA 674:44, RSA 676:4, I(a) and (b), and RSA 676:4, II and III.

Town of Londonderry, New Hampshire

Growth Management Ordinance

1.3 RESIDENTIAL DEVELOPMENT PHASING

1.3.1 Authority

Pursuant to the provisions of the New Hampshire RSA 674:21, the Town of Londonderry adopts the following phasing standards for residential development, to be administered by the Planning Board in conjunction with the Londonderry Subdivision Regulations.

1.3.2 Purposes

The purposes of this section of the Zoning Ordinance are as follows:

- 1.3.2.1. To guide efforts by the Town to monitor, evaluate, plan for and guide residential growth in Londonderry that is consistent with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such development without establishing absolute limits on the overall growth rate of the community;
- 1.3.2.2. To provide for the current and future housing need of existing residents and their families;
- 1.3.2.3. To phase in or control the implementation and development of tracts of land and future subdivisions thereon, at a rate which will be compatible with the orderly and gradual expansion of community services, including but not limited to education, fire protection, road maintenance, waste disposal, police protection and recreation; and
- 1.3.2.4. To provide a mechanism to allow for phased development of residential projects to manage the impact on municipal services.

1.3.3 Phasing of Developments

A phasing plan shall be submitted for Planning Board approval for all residential developments of more than fifteen (15) lots or dwelling units (unless exempted under §1.3.4), and at the applicant's option may be submitted for smaller developments. Such plans shall comply with the following phasing requirements:

- 1.3.3.1. For development proposed under the provisions of Section 3.3 Planned Residential Development: twenty five (25) dwelling units per year from the date of final approval;
- 1.3.3.2. For development located in the R-III district: Two (2) multi-family buildings, the total number of dwelling units not to exceed forty eight (48) per year from the date of final approval;
- 1.3.3.3. For other residential development proposed to be serviced with public water and public sewerage, and proposing no dwelling structures within 200 feet of a street other than one created by that development: twenty (20) dwelling units per year from the date of final approval;
- 1.3.3.4. For all other residential developments: fifteen (15) dwelling units per year from the date of final approval.

1.3.4 Exemptions from Phasing

The Planning Board shall grant exemption to the phasing requirements of section 1.3.3 under the following condition: The proposed project is for Elderly Housing as defined in Section 4.7 The owner of record shall enter an agreement, to be filed in the Rockingham County Registry of Deeds, certifying that the project will be utilized and restricted to 100% elderly occupants (age 55 and older).

1.4 GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL

1.4.1 Authority

The section is enacted in pursuant to RSA 674:21 and 674:22.

1.4.2 Purposes

The purposes of this section of the Zoning Ordinance are as follows:

- 1.4.2.1. Promote the development of an economically sound and environmentally stable community which considers and balances regional development needs.
- 1.4.2.2. Guide efforts by the Town to monitor, evaluate, and establish a rate of residential growth in Londonderry that is consistent with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such growth.
- 1.4.2.3. Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth to allow the Town time to correct any deficiencies that have developed.
- 1.4.2.4. Protect the health, safety, convenience, and general welfare of the Town's residents.
- 1.4.2.5. This ordinance is grounded upon its correlation with the Master Plan and Capital Improvements Plans of the Town of Londonderry.

1.4.3 Findings - The Town hereby finds that:

- 1.4.3.1. Londonderry's developable land resources are still sufficient to support extensive growth. The 1997 Master Plan for the Town of Londonderry indicates there were 5,884 acres of available developable land in 1996.
- 1.4.3.2. Housing demand has been and is projected to be large. The number of housing units in Londonderry increased 47% between 1980 and 1990, and grew another 14.53% from 1990 to 2000. Studies made for the 1997 Master Plan project another 22.98% increase from 2000 to 2010.
- 1.4.3.3. Londonderry population growth reflects housing growth that has been and is projected to be large. Londonderry population increased at an average annual rate of 3.15% over a twenty-year period from 1980-2000. Total population grew 46% between 1980 and 1990, and another 17.5% from 1990 to 2000. Projections of population growth to 2020 indicate average annual growth rates between 2000 and 2020 ranging from a low of 2.07% (Office of State Planning, 1997) to a high of 2.14% (Master Plan, 1997). The rate of growth is predicted to accelerate based on a study of the Secondary Impacts of the I-93 Widening project prepared by Parsons Brinckerhoff Quade & Douglas, Inc. for the New Hampshire Department of Transportation.
- 1.4.3.4. The Town is straining to meet projected service and facility demands. For example, the 1997 Master Plan projects a continuing 2% per year pupil enrollment growth through 2010. The most recent Capital Improvements program (CIP) includes a new \$12 million School Building Program in fiscal year 2002-2003. The Master Plan projects a 2.4% annual growth in local auto trip generation, certain to demand road

improvements. Police and fire facilities, for which improvements are already sought, will be further strained by continuing rapid growth.

1.4.4 Determining Maximum Sustainable Growth.

Not later than March 1 of each year, the Planning Board shall determine Londonderry's maximum sustainable rate of residential development for the twelve months beginning March 1 of that year. The maximum annual sustainable rate of growth shall be the highest figure that does not exceed a 2.0% increase in Londonderry's housing stock over the preceding calendar year and also does not exceed more than two of the following three measures:

- 1.4.4.1. The average rate of dwelling unit authorizations in Londonderry over the six preceding calendar years;
- 1.4.4.2. A percentage increase in housing units over the preceding calendar year equal to the rate of increase in housing units for that preceding year summed across the six municipalities which abut Londonderry (Auburn, Derry, Hudson, Litchfield, Manchester, and Windham);
- 1.4.4.3. The maximum rate of dwelling unit authorizations whose projected demands can be adequately serviced and provided with facilities at a prudent level of fiscal strain, based upon the following:
 - 1.4.4.3.1. The rate of residential development at which the number of pupils projected by the Londonderry School Board to be enrolled in the Londonderry School System would not in any year exceed the stated capacity of the Londonderry School System in that year, based upon facilities development as contained in the Capital Improvement Program most recently approved by the Planning Board, and/or
 - 1.4.4.3.2. The rate of residential development determined by the Planning Board based upon careful studies and consultation with the agencies involved to be the highest which would not exceed the Town's capacity to service growth with public facilities other than schools, as planned in the six-year Capital Improvement Program most recently approved by the Planning Board, together with facilities anticipated to be provided by developers and others, and/or
 - 1.4.4.3.3. The combined municipal and school appropriations for capital expenditures, including debt service and capital outlay, will on average exceed 15% of the total municipal and school department appropriations combined over the period covered in the current Capital Improvements Program.

1.4.5 Planning Board Monitoring and Notification -

It shall be the responsibility of the Planning Board to monitor growth in the Town and region, assembling as soon as practicable following the end of the calendar year such information as is necessary for making the determination of whether

unsustainable growth conditions exist, and if they do, determining the annual rate of development which, at maximum, could be sustained. The Planning Board shall also monitor the progress of the Town and School District in providing services and facilities on the schedules called for in the Capital Improvement Program.

- 1.4.5.1. Hearing - Prior to making a final determination of the maximum sustainable annual rate of residential development, the Planning Board shall hold a public hearing with ten days notice to seek input from the public.
- 1.4.5.2. Notification - The Planning Board shall notify the Town Council, the Building Inspector, the Town Clerk, and the general public of its determination of the maximum sustainable rate of residential growth by, among other things, posting a notice to that effect in Town Offices. That determination shall apply for a period of one year from the date of notice to the Town Council or, if sooner, until notification of a subsequent determination by the Planning Board under the provisions of Section 1.4.5.

1.4.6 Limiting the Issuance of Permits

The Planning Board's notice of unsustainable growth conditions shall include notice that limitations on the issuance of permits will be required during the period of such conditions, and notice of what the sustainable annual rate of development has been determined to be, and notice of how many building permits for new dwelling units will be allocated during said period.

1.4.7 Procedures for Permit Limitations

- 1.4.7.1. Available building permits shall be allocated according to the following procedure. The number of dwelling units that may be authorized shall not exceed the smaller of (a) the number of units allowed to be authorized that calendar year under Section 1.4.4 but not yet authorized in the current calendar year, or (b) the number of dwelling units comprising a 2% increase in Londonderry housing stock at the beginning of the calendar year minus the number of housing units authorized in the eleven months preceding this determination.
 - 1.4.7.1.1. Except as otherwise provided in this section no building permit may be issued without a permit scoring sheet application (henceforth "application") issued by the Planning Board. For purposes of this section, each proposed dwelling unit in a mobile home, single-family dwelling, two-family dwelling or multifamily dwelling, shall require a separate application sheet.
 - 1.4.7.1.2. From March 1 through March 21, the Planning Board shall, on a form prepared by the Board, review and score each application for allocation of building permits for the period.
 - 1.4.7.1.3. Prior to April 1, applications will be scored according to the following priority system:
 - 1.4.7.1.3.1. First priority shall be given to dwelling units which are exempt from the provisions of Section 1.4 under RSA 674:39 or RSA 676:12.
 - 1.4.7.1.3.2. Second priority shall be given to dwelling units in proposed two-lot subdivisions; provided that no more than 10% of the number of available dwelling unit authorizations may be allocated on this basis, and no more than one per subdivision.

- 1.4.7.1.3.3. Priority for any remaining dwelling unit authorizations shall be based upon the number of points earned from the point system described in Section 1.4.7.2.
- 1.4.7.1.3.4. In the event of a tie at the lowest priority or score for which authorizations will be made, the remaining number of unit authorizations shall be divided among all the projects having earned that priority or score. Division shall be in proportion to the number of units each applicant has applied for or, to the extent proportionate permit allocation is impossible, by lottery.
- 1.4.7.2. For purposes of determining priority in the system of permit allocation, development shall be assigned points or point debits according to the following:
 - 1.4.7.2.1. For development authorized under either Section 3.3 Planned Residential Development or Section 2.3.2 Multi-Family Residential: one (1) point;
 - 1.4.7.2.2. For development proposed to be serviced with Town sewerage, and proposing no dwelling structures within 200 feet of a street other than one created by that development: one (1) point;
 - 1.4.7.2.3. For development proposing no construction within lands mapped as recommended open space by the Open Space Task Force and also not assessed under RSA 79-A Current Use Taxation at any time within the preceding three years: one (1) point;
 - 1.4.7.2.4. For development documented to increase traffic at build-out by no more than 10% on any existing street: one (1) point;
 - 1.4.7.2.5. For Elderly Housing (age 55 and older) as defined in Section 4.7 Definitions, provided that the owner of record shall enter an agreement, to be filed in the Rockingham County Registry of Deeds, certifying that the project will be utilized and restricted to 100 % elderly occupants as such for a period of no less than twenty years. One (1) point;
 - 1.4.7.2.6. For development in which at least 25% of the dwelling units proposed will be “affordable:” one (1) point. For these purposes, “affordable” shall mean subject to restrictions limiting sale or lease to households with incomes no higher than 80% of the regional median at rates affordable to them, under administrative guidelines to be adopted and from time to time amended by the Planning Board;
 - 1.4.7.2.7. For development within a sub area of the Town determined by the Planning Board to have a localized facility capacity shortfall: a two (2) point debit if further growth would seriously inconvenience or disadvantage others already in the neighborhood, such as through school overcrowding; or a one (1) point debit if further growth would constitute a demonstrated threat to health (such as incapacity of waste management facilities) or safety (such as a severe road hazard), provided in such cases that actions have been committed by the Town to address the capacity shortfall.
 - 1.4.7.2.8 One point for each year the project has been denied a Building Permit Allocation Certificate.
- 1.4.7.3. If by April 1, the surplus permits have not been issued for the year, a second allocation process using the procedure set forth in §1.4.7.1 and 2 shall take place. The Planning Board shall score applications submitted from May 1 through May 21. All applications shall be completed prior to June 1. If

necessary a third allocation process shall be held with applications received from August 1 through August 21 and certificates issued by September first (September 1)

1.4.7.4. The owners of the lots scoring enough points to be awarded a building permit for a given period may apply for building permits from the Building Department from April 1 through December 31. Any application scoring enough points to be awarded a building permit that is not applied for by December 31 shall lapse.

1.4.7.5. Building permits, which are not used within one year of issuance, shall lapse.

1.4.7.6. Lapsed building permits may not be renewed if a notice of unsustainable growth remains in effect. In the case of such a lapsed permit, the number of permits available for the following year shall be increased by one.

1.4.7.7. An application earning enough points may be used for a building permit on any lot within the subdivision for which it was awarded but may not be used for lots outside that subdivision.

1.4.7.8. Building permits for non-residential construction, or for expansion, alteration, renovation or replacement of existing dwelling units, are not limited by Section 1.4.

1.4.7.9. Nothing in Section 1.4 shall be construed to authorize or require issuance of a building permit that is not eligible for issuance under any other provision of law.

1.4.8 Applicability

Nothing herein is intended to repeal the former Section XIII (numbered as passed by Article 98-01 by the Town Council), as amended, as it applies to subdivisions and site plans approved subject to the permit limitations of such ordinance. Said ordinance shall continue to apply to such subdivisions and site plans.

1.4.9 Sunset

This Ordinance shall expire on January 1, 2010 unless re-adopted prior to that date

Town of Auburn, New Hampshire
Growth Management Ordinance

Town of Auburn, New Hampshire Zoning Ordinance

3.09 Growth Management

A. Findings:

Auburn has recently updated (2002) and reaffirms its Master Plan. The Town has also prepared and adopted (1992) a Capital Improvements Plan. These documents constitute careful study and assessment of community development needs.

These documents describe regional and local growth trends and project future growth trends. Presented therein are the findings relative to the significant development pressure that the Town is projected to experience and the steps the Town should pursue to manage future growth. In accordance with those plans, facility expansion (school enlargement) and facility upgrade (road improvements) are planned and/or underway in Town.

B. Purpose

To meet the goals of the Master plan and to meet the proposed schedule for capital improvements contained in the CIP, the Town proposes to revise the existing Interim Growth Regulation as described herein. This revised Zoning Article is intended to balance local service expansion needs with consequent fiscal demands, protect public health and general welfare and foster environmental protection. It is intended to promote planned, orderly growth. The proposed growth limitation will permit a reasonable rate of growth to occur in line with the ability of the Town to accommodate such growth without imposing unacceptable burdens on current or future taxpayers. The growth limit represents Auburn's share of the projected regional growth.

C. Authority:

This Ordinance is established pursuant to RSA 674:22.

D. Eligibility:

Eligibility for building permits, but not a right to the issuance of a building permit shall require, in addition to other provisions of this Ordinance and subdivision regulations of the Town of Auburn, either:

1. The recording of a plan in the Rockingham County Registry of Deeds.
2. The existence of a lot of record recorded in the Rockingham County Registry of Deeds.

E. Issuance:

Building permits shall be issued only upon proper completion of the building permit application, payment of the application fee, acceptance of application

by the office of the Building Inspector, payment of the permit fee, and in accordance with the following:

1. The number of building permits to be issued in any building year for the construction of new dwelling units shall be limited to 4% (rounded to the nearest whole number) of the number of dwelling units known to exist in Auburn in the previous year.
2. The Planning Board, with the advice of the Selectmen, shall establish, prior to March Town Meeting of each year, the number of dwelling units known to exist, using the best available information. The permit year or building year will run from March Town Meeting to March Town Meeting.
3. One building permit shall be required for the construction of each dwelling unit, with a duplex requiring two permits, etc. Conversion of a single family dwelling to a two family dwelling shall require one permit for the additional dwelling unit. The only exception to this one unit-one permit rule shall apply to units containing only two or fewer bedrooms built in clustered or multi-unit developments. Said units shall be non-expandable. Two or fewer bedroom units shall be treated as two-thirds ($2/3$) of a unit for the purposes of the permit limit system. Permit amounts resulting in $1/3$ remainders shall be rounded down and $2/3$ remainders rounded up. For the purpose of determining the number of bedrooms in a unit, any room that could reasonably be used as a bedroom shall be counted as such whether or not it is so designated under current plans. This two-thirds treatment shall not apply to density determination or any other elements of the Town's regulations.
4. No more than seven (7) of the annual permits shall be issued to any one individual, business entity or group of related individuals and/or business entities in any one year.
5. Not more than seven (7) of the annual permits shall be issued in any one subdivision or re-subdivision of the land.
6. One fifth ($1/5$) of the annual permit quota shall be reserved for owners of single lots, that are not part of a subdivision of three lots or more or not created within one (1) year from the date of building permit application, for development of single family homes.
7. Permits issued shall lapse and be returned to the pool if construction on the building has not begun within three (3) months. Site preparation work shall not be considered building construction. If building construction has not been completed within twelve (12) months of issuance, a renewal of the permit shall be necessary, including all fees. This renewal shall not be subtracted from the available building permits for the year.
8. Unused total annual allocations shall lapse at the close of the year and may not be carried over to a subsequent year.
9. In the event more permits are requested than are available, the earlier application shall prevail based on the date and time of receipt of the

application in the Building Inspector's office. The Building Inspector may maintain a waiting list in the event that another permit comes available during that building year or to apply to the next building year. The waiting list shall not extend beyond the next building year.

F. Exceptions:

1. Permits for non-dwelling construction or permits for alteration or replacement of existing buildings will not be affected by this Ordinance.
2. Proposals for housing for the elderly, handicapped, or economically disadvantaged may be excluded from Section E of this Article upon a finding by the Board of Adjustment that the proposed project does provide such housing and provided said proposed housing complies in all other regards to the Town Zoning Ordinance, Subdivision Regulations and with the intent of the Master Plan.
3. Every September and every December, the Planning Board shall review the number of permits issued to date, determine the outstanding number of permits that remains to be issued within the quota, and consider issuance of additional permits (within the annual quota) to developers or developments which had previously received their annual quota of permits.

G. Administration:

1. All applications shall first be reviewed for compliance with other regulations. Each application shall then be assigned a date and time of receipt by the Building Inspector.
2. This Article of the Zoning Ordinance shall be reviewed by the Planning Board at least every two (2) years or sooner, if necessary, to determine whether the building permit limitation should be revised or ended and whether the limit represents a fair and equitable method of growth management. Regional and local growth trends, the Auburn Capital Improvements Plan, land use and housing need shall all be factors considered during this review.
3. If the Town does not accept the recommended limits, then the growth limitations will be abolished.

Town of Weare, New Hampshire
Growth Management Ordinance

ARTICLE 15-A

15-A.1 **GROWTH MANAGEMENT ORDINANCE**

15-A.2 **AUTHORITY:** This Growth Management Ordinance is enacted pursuant to the authority granted under RSA 674:22.

15-A.3 **PURPOSE AND INTENT:** The Growth Management Ordinance is adopted to promote and ensure the orderly development of land within the Town of Weare; to promote public health, safety and welfare for its residents; and for the following specific purposes:

- A. To provide the Town of Weare adequate time to develop new zoning ordinances that reflects the Master Plan and Capital Improvements Program.
- B. To manage the timing of new residential development in a reasonable and responsible manner.
- C. To allow the Town adequate time to provide the school capacity and municipal services made necessary by residential development.
- D. To allow the Town to conduct a cost of community services study as a guide to future land use policy.
- E. To ensure that the Town continues to enjoy the high quality of life provided by its clean water, clean air, rural character and sense of community.

15-A.4 **FINDINGS OF FACT:** Since 1990, the Town of Weare has grown at a faster rate in both population and number of dwelling units than the average of the seven abutting communities of Hopkinton, Henniker, Francestown, New Boston, Deering, Goffstown and Dunbarton. This consistent “outpacing” of regional development puts an undue burden upon the Town to provide adequate services for its population.

Town	1990 Dwellings	2002 Dwellings	% increase
New Boston	1,138	1,605	41.0%
Deering	757	966	27.6%
Dunbarton	685	908	32.6%
Weare	2,417	2,992	23.8%
Goffstown	5,022	5,902	17.5%
Francestown	580	681	17.4%
Hopkinton	1,924	2,257	17.3%
Henniker	1,558	1,735	11.4%
Totals:	12,943	15,441	19.3%

Town	1990 Population	2003 Population	% increase
New Boston	3,214	4,643	44.5%
Dunbarton	1,759	2,442	38.8%
Weare	6,193	8,314	34.2%
Francestown	1,217	1,553	27.6%
Goffstown	14,621	17,354	18.7%
Hopkinton	4,806	5,579	16.1%
Deering	1,707	1,966	15.2%
Henniker	4,151	4,762	14.7%
Totals:	34,454	41,970	21.8%

15-A.5 ENACTMENT: As of the adoption of this ordinance, the Town of Weare shall

limit the number of building permits for year round homes available on newly created lots in major subdivisions or in condominium and multifamily developments of 4 dwelling units or greater. For the purpose of this article, major subdivisions shall be defined as the creation of more than three lots, including the parent parcel, as of the adoption of this ordinance (March 8, 2005). The total number of permits available for homes in phased developments in any calendar year shall not exceed 2% of the total number of dwelling units in existence in the Town as of December 31st of the preceding year. The Planning Board shall adopt rules governing the calculation and notification of available permits for each year.

15-A.6 APPLICABILITY: All residential development applications of 4 dwelling units or

greater, including single family homes, duplexes, condominiums and multifamily housing, accepted after March 14, 2005 shall be subject to the permit limitations. This ordinance shall not apply to minor subdivisions, subdivision applications that have been formally accepted as complete prior to the adoption of this ordinance (March 8, 2005), non-residential subdivisions or existing lots of record.

15-A.7 EXPIRATION: This Growth Management Ordinance shall be annually reviewed

by the Planning Board to determine its effectiveness and suitability. The Planning Board shall hold at least one public hearing between September 1 and November 30 and shall vote to reinstate or repeal this ordinance on the next anniversary of its adoption. In any case, this ordinance shall expire in 2010 on the anniversary of its adoption unless re-enacted by the voters.

15-A.8

CONFLICTS: Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinances of the Town of Weare or any other rule or regulation or other provision of the law, whichever provision is more restrictive or imposes higher standards shall control.

ARTICLE 33

Section 33.1: AUTHORITY AND PURPOSE

This article of the zoning ordinance is enacted under the authority of RSA 674:22. It is intended to manage the timing of development in accordance with the objectives of both the Master Plan and the Capital Improvements Program adopted by the Planning Board. The two documents assess and balance the community development needs of the town and consider regional development needs. More specifically, the purposes of this are as follows:

- (a) Promote the development of an economically sound and environmentally stable community, which considers and balances regional development needs.
- (b) Determine, monitor, evaluate, and establish a rate of residential growth in Weare that does not unreasonably interfere with Weare's capacity for planned, orderly, and reasonable expansion of its services to accommodate such growth.
- (c) Prove a temporary mechanism to allow for phased development of residential projects to manage the impact on municipal services.
- (d) Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth and thereby allow Weare time to correct any deficiencies that have developed.
- (e) Protect the health, safety, convenience, and general welfare of the Town's residents.
- (f) Manage orderly growth in Weare in coordination with the Weare Master Plan and Weare Capital Improvements Program.
- (g) Provide that property owners, in developing their property, have the schools, roads, police and fire protection and other public services such development requires.
- (h) And, overall, establish a maximum growth rate for new residential construction similar to that of the surrounding region to allow Weare time to plan for and implement capital facility expansions to support such growth in an orderly fashion.

Section 33.2 FINDINGS

Population Figures

Weare's population has been growing at a rate faster than its abutting towns.

- A. Weare's average population growth rate from 1990 to 2000, the last census period, was 25.56% or an average population growth rate of 2.56% per year. [Data source: U.S. Census]. During the same period, our region (abutting towns) had an average population growth rate of 17.38% or an annual average population growth rate of 17.4%. This compares to an overall growth rate of 13.4% for Hillsborough County and 14.9% for the Southern NH Planning Commission (SNHPC) region. Therefore, Weare grew 47% faster than the

average of our abutting towns, 91% faster than Hillsborough County and 72% faster than SNHPC region.

- B. Between 1950 and 1960 Weare's population grew at a relatively modest rate of 5.6% per decade. Between 1960 and 1970, Weare's population increased 30.4%. Between 1970 and 1980, Weare's population increased nearly 75%. Between 1980 and 1990, the Town's population increased 91.6%. Between 1990 and 2000, Weare's population increased 25.6%, and additional 1,583 people. Weare's population has grown as follows: in 1950, it was 1,345; in 1960, it was 1,420; in 1970 it was 1,851; in 1980 it was 3,232; in 1990 it was 6,193; in 2000, it was 7,776.
- C. According to the US Census Bureau, the Town of Weare is ranked 44th highest among all the 234 municipalities within New Hampshire in terms of total population size of 7,776.
- D. Using the 2000 census data, the SNHPC population projection to the year 2020 for Weare is estimated at 10,440 people. Using the 2000 census data (based on traffic zones), the estimated population for Weare in 2020 could be 11,828 people. Using census data showing the growth rate from between 1990 and 2000 (2.56%), the estimated population in 2020 could be 11,757 people. Using the average of 2001 and 2002 growth rate (2.8%), the estimated population in 2020 could be 12,130 people.
- E. Weare has been growing at a rate of between 2.6% and 2.9% per year between 2000 and 2002. Applying this rate of growth forward, it can be estimated that Weare's population would equal approximately 10,200 people by the year 2010, which is a 31% increase in population for the ten year period.

Potential new dwelling units

Existing housing lots, in any given year, are available for permits, possibly creating an unpredictable spike in growth.

- F. As of November 2003, the Town of Weare had an inventory of 998 vacant housing lots.

Building growth

Weare's recent building growth, as measured by the issuance of building permits for residential dwelling units, is greater than it was in the previous decade. It is also greater than its region's recent growth (abutting towns).

- G. In Weare, between 1990 and 2000 the construction of new year-round housing units increased by 411 units from a total of 2,417 units in 1990, to a total of

2,828 units in 2000 (US Census). This represents a building growth increase of 17% or an average building growth rate of 1.7% per year.

- H. During the 1990 and 2000 census period, our region (abutting towns) had an average building growth rate of 17% or an annual average building growth rate of 1.7%.
- I. During 2001 Weare's building growth rate increased to 2.8% (based on 80 permits), in 2002 to 2.3% (66 permits), and in 2003 up to 2.9% (90 permits). That's an average of 79 permits per year (2001-2003); up from an average of 41 permits (1990-2000), and represents a 93% increase in the number of permits per year.
- J. During 2001-2003 Weare's average annual building growth rate was 2.7%, while our region's average building growth rate was 2.1% during the same period. That means Weare was growing 30% faster than our region.

Schools

Weare's schools needs time to catch up with our population, subdivision and building growth.

(Data from SAU #24 reflects grades 1 – 12, including kindergarten and preschool.)

- K. The total capacity of the Center Woods Elementary School ("CWES") at 90% Utilization Rate is 581 students, and a Gross Capacity Rate of 639 students (this includes Grades 1-4, kindergarten and preschool); the total school enrollment for the 2003 school year was 677 students. At 90% Utilization Rate, CWES exceeds capacity by 96 students and at a Gross Capacity Rate by 38 students. CWES school enrollment for 2004 is 646 students, at 90% Utilization Capacity Rate, CWES exceeds capacity by 65 students and at Gross Capacity Rate by 7 students. CWES has been over 90% Utilization Capacity Rate for seven plus years (7+yrs) and over Gross Capacity Rate for three plus years (3+yrs).
- L. The total capacity of the Weare Middle School ("WMS") (Grades 5-8) at 85% Utilization Rate is 477 students and a Gross Capacity Rate of 548 students; the total school enrollment for 2003 and 2004 school years is 606 students. At 85% Utilization Rate WMS exceeds capacity by 129 students and at Gross Capacity Rate by 58 students. WMS has been over 85% Utilization Capacity Rate for eight plus years (8+yrs) and over Gross Capacity Rate for six plus years (6+yrs).
- M. The total capacity of the John Stark Regional High School ("JSRHS") (Grades 9-12) at 80% Utilization Rate is 1,269 students and a Gross Capacity Rate of 1,586 students; the total school enrollment for 2002 school year was 827

students, 2003 enrollment was 872 students and 2004 enrollment of 909 students (of which approximately one third of the students are from Henniker enrolled at JSRHS).

- N. The Weare School Board commissioned a study of the Weare Middle School in 2003, which concluded that the school is deficient in many capacities, most notably in overcrowding and providing a healthy environment. The board is currently planning for a new 800 – 1,000 student middle school. At the earliest time frame the new school would not be opened before the fall of 2006 and based on other town's experiences might not be open before fall 2009. If annual growth in dwelling units is limited to the 1.7% average of the last decade, a new middle school may meet school district needs through the 20-year life of its bond; if unlimited, and it increases at the 2.7% average of the past three years, a second middle school is more likely to be required before the town has finished paying off the bond on the first school. This would impose an unreasonable tax burden on the town. The problem is compounded by the limited capacity and need for expansion of the elementary school in the near future and the high schools in the not too distant future.
- O. In addition to a new middle school now, the town must soon increase the capacity of its elementary school. From enrollment 2001 through enrollment 2004, CWES at 90% Utilization Capacity Rate has been an average of 79 students over capacity and at Gross Capacity Rate has been an average of 21 students over capacity.
- P. Weare has struggled to meet the growing demand placed on its schools by the rapid increase in population. Improvements to the Weare School System buildings in the last 10 years include construction of a 10,000 square foot addition to the John Stark Regional High School. Many other improvements and expansions have taken place at all three schools to address issues of health and overcrowding.

Section 33.3: APPLICABILITY

- A. This article applies to building permits for new residential dwelling units on all existing or new lots except as follows:
 - A.1 Lots in subdivisions approved prior to the effective date of this article that meet the requirements of RSA 674:39 are exempt from the provisions of this article for the statutory period.
 - A.2 Lots approved by the Planning Board in accordance with phasing plans in effect for subdivisions approved prior to the effective date of this article are, subject to article 15.1.2 and the other articles of this ordinance, exempt from the provisions of this article.

- B. This article does not apply to non-residential building permits or permits for expansion or the alteration of existing structures as long as there is no increase in the number of dwelling units other than accessory attached apartments by special exception pursuant to article 19.1.10 of this Zoning Ordinance.

Section 33.4: BUILDING PERMIT ANNUAL LIMITATION

- A. Based on the findings in section 33.2, and in particular sections 33.2.G, H, and N, the number of building permits for new dwelling units that are issued in a calendar year by the Town of Weare shall be limited to an amount that is one and seven tenths percent (1.7%) of the total dwelling units (TDU) existent in Weare as of December 31 of the prior year, rounded to the nearest whole number. This limitation is based on Weare's dwelling unit growth rate over the last decade and is intended to allow time for Weare to plan, finance and construct, among other things, the larger school capacity necessary to serve its growing student population.
- B. For the purposes of this ordinance, the December 31 base of dwelling units shall be determined from the 2000 United States Census, updated with Weare's building permit data. For the year 2005, the December 31, 2004, base of dwelling units is 3,124 and the annual 1.7% limitation is 53 permits. Annually, thereafter, this number shall be increased based on such building permit data.
- C. By January 15 of each year this ordinance is in effect, the Planning Board shall post the annual limitation to be effective in that year.

Section 33.5: ISSUANCE OF BUILDING PERMITS

- A. The town shall issue building permits for new dwelling units on a "first-come, first-serve" basis, subject to the limitations set forth herein, which are designed to promote fairness.
- B. Application: The lot owner of record, or his or her representative, may apply for a building permit for a dwelling unit at any time. The town shall maintain a waiting list of all applications, and applicants shall be placed on a waiting list in chronological order, based on the date and time of filing of the completed application with the Building Inspector. Lots must meet all applicable state and local regulations.
- C. Issuance Dates: The Town shall begin issuing building permits for new dwelling units as soon after January 15 as possible.
- D. Reserved for Homeowner and Developers: Notwithstanding the "first-come, first-serve" policy, 30% percent of the available permits, rounded to the nearest whole number, shall be reserved for those who request only one building permit in a calendar year for a structure to be their residence

(“homeowner permits”). The balance of the available permits shall be reserved for those who request more than one building permit in a calendar year for single family housing, for multi-family housing and for bona fide permanent affordable housing.

- D.1 Building permits issued for lots in subdivisions that are exempt from this article under section 33.3.A.1 and 33.3.A.2 (“exempt lots”) shall be deducted from the available building permits in the respective homeowner or developer category. If such a deduction reduces the remaining permits to zero or less, no further building permits in that category may be issued in that calendar year for non-exempt lots, and the negative number shall be subtracted from the number of permits available in that category in the following year. This shall not affect the continued issuance of building permits for exempt lots.
- D.2 The Planning Board may, at any time during the calendar year for the remainder of the calendar year, reduce or increase the percentage of available permits reserved for homeowners or developers if, after a public hearing, it determines that such change would maximize the number of permits issued within the limitation imposed by section 33.4B.
- D.3 For purposes of this article, “subdivision” means a subdivision approved by the Planning Board.
- D.4 Notwithstanding the provisions of this section 33.5, up to five (5) building permits issued in any calendar year for lots in each subdivision approved after the effective date of this article and restricted to persons over 60 years of age (“elderly housing”) shall not be deducted from the available building permits.
- E. Equitable Distribution: In order to assure equitable distribution of available developer permits, no single individual, whether he or she applies as an individual and/or as or through a partnership, corporation or other entity, shall be issued building permits for more than five (5) new dwelling units during a calendar year. However, after December 1 of each year, any unissued developer permits may be issued to such individual, partnership, corporation or other entity on an equitable basis if there are no applicants on the developer permit waiting list.
- F. Transferability: A residential building permit issued under this ordinance shall be valid only for the site specified on the permit application and may not be transferred to another lot. Should the property be conveyed, the permit shall be transferred to the new owner, but the expiration date shall remain unchanged.

- G. For the purposes of this ordinance, 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.).

Section 33.6: CARRY FORWARD OF UNISSUED PERMITS

If on December 31 of any year there remain unissued homeowner permits or there remain unissued developer permits, those unissued permits shall be added to the number of permits in their respective category as calculated under sections 33.4 and 33.5 for the following calendar year and issued only after that year's permits have been exhausted.

Section 33.7: UNUSED PERMITS

Permits issued shall expire and be returned to the pool of available permits if substantial construction on the dwelling has not begun within one (1) year of issue unless renewed. Site preparation work shall not be considered substantial construction.

Section 33.8: SUBDIVISIONS

- A. The Planning Board may approve revisions to a subdivision plan approved prior to the effective date of this article, and such approval shall not affect the status of such subdivision under the provisions of RSA 674:39, provided that any such approval does not result in an increase in the number of dwelling units.
- B. Notwithstanding the provisions of article 15: Phasing of Development, the number of lots in a subdivision approved hereafter by the Planning Board, other than in an elderly housing subdivision described in Section 33.3.A.3, shall not receive final plat approval for more than five (5) lots in any twelve-month period.

Section 33.9: ADMINISTRATIVE PROCEDURES

The Planning Board, after consultation with the Building Inspector and the Board of Selectmen, is hereby authorized to establish administrative procedures necessary to implement this article.

Section 33.10: EXCEPTIONS

In the event of damage, destruction, or demolition of any dwelling, the dwelling may be rebuilt, and as long as there is no increase in dwelling units, any building permit required for such rebuilding shall be exempt from this article.

Section 33.11: CONFLICTS

In matters governed by this ordinance, this ordinance shall supersede conflicting local ordinances and regulations.

Section 33.12: SEVERABILITY

Should any part of this ordinance be held invalid or unconstitutional by a court, such holding shall not affect, impair or invalidate any other part of this ordinance, and to such end, all articles, sections and provisions of this ordinance are declared to be severable.

Section 33.13: SUNSET

The Planning Board shall on or before September 1 of each year consult with the Weare School Board on the capacity of both the Weare elementary school and Weare middle school. If after such consultation, the Planning Board determines that pupil enrollment in each school is less than 90% capacity, it shall so certify to the Board of Selectmen, and this article shall expire at the end of the town meeting occurring after the date of such certification. In any event, this article shall expire at the end of the 2012 annual town meeting.

The Planning Board shall also monitor growth in the schools, the town and the region on a regular basis and notify the town of its findings.

Town of Hooksett, New Hampshire
Growth Management Ordinance

ARTICLE 31

GROWTH MANAGEMENT ORDINANCE

I. Authority and Purpose

This ordinance is enacted pursuant to the authority granted by NH RSA 674:22. It is intended to regulate and control the timing of development in accordance with the objectives of both the Master Plan and the Capital Improvements Program adopted by the Hooksett Planning Board. These two documents assess and balance the community development needs of Town of Hooksett and consider regional development needs.

II. Annual Building Permit Limitation

- A. **The number of building permits issued in a calendar year for new residential dwelling units is limited to an amount that is 2.0% of total dwelling units in the Town of Hooksett as of December 31 of the prior year.**
- B. **For the purpose of the ordinance, the December 31 base of dwelling units shall be determined from the 2000 US Census, updated with annual building permit data reported to the New Hampshire Office of Energy and Planning.**
- C. **For the year 2005, the December 31, 2004 basis of dwelling units is 4,529 and the annual two (2%) limitation is 91 units.**

III. Equitable Distribution of Building Permits

- A. **The Town shall issue building permits for new dwellings on a “first come-first serve” basis.**
- B. **No more than five (5) permits per year will be issued to any one individual, corporation, partnership, or entity.**
- C. **Twenty-five percent (25%) of all permits issued each year will be reserved for landowners building their own home.**

IV. Subdivisions

No single subdivision shall receive final plat approval for more than five (5) lots or dwelling units in any 12-month period.

V. Effective Dates

This ordinance becomes effective upon adoption and shall remain in effect until 11:59 p.m., May 31, 2010, unless readopted prior to that date.

This is a growth management ordinance to allow the town to control the rate of development so it does not exceed the ability of town services. The orderly growth of population and development will reduce the undue straining of existing and planned town services, schools, and roads. It will apply only to residential development. The average number of new residential permits issued 2000-2004 has been 142 each year.

(Adopted 5/10/05)

Town of Chester, New Hampshire
Residential Development Phasing Regulations

Town of Chester, New Hampshire

ARTICLE 8

PHASING

8.1 Phasing, In General

8.1.1 General Requirement

Every applicant shall demonstrate that a proposed development will not adversely affect public health, safety or welfare due to a sudden demand on service(s) which cannot be provided for by a reasonable expenditure of public funds. In the event that the Planning Board determines after review of all the facts that such a sudden demand will exist, then the proposed development shall be phased over such a period of time to allow the Town to manage and meet the demands created for such services.

Piecemeal development of a Lot of Record to avoid phasing is prohibited. Any Subdivision Application submitted on a portion of a Lot of Record which has been approved or conditionally approved within the previous twelve (12) months will be considered part of the original Application for purposes of evaluating the demand on services and phasing on the new Application may be imposed as if it were part of the original Application.

8.1.2 Services

Such services shall include, but not be limited to, police and fire protection, schools, water supply, drainage, transportation, highway maintenance, or other public services.

8.2 Phasing of Developments Pursuant to Article 6

8.2.1 Minimum Phasing Requirement

Pursuant to RSA 674:21 I(b), (e), (f), any development under Article 6 shall be phased over a period of at least two years.

8.2.2 General Requirement

Every applicant shall demonstrate that a proposed development under Article 6 will not adversely affect public health, safety or welfare, due to a sudden demand on service(s) which cannot be provided for by a reasonable expenditure of public funds. In the event that the Administrator determines after a review of all the facts that such a sudden demand will exist, then the proposed development shall be phased over such a period of time which may be in excess of that specified in Subsection 8.2.1, to allow the Town to manage and meet the demands created for such services.

Piecemeal development of a Lot of Record to avoid phasing is prohibited. Any Subdivision Application submitted on a portion of a Lot of Record which has been approved or conditionally approved within the previous twelve (12) months will be considered part of the original Application for purposes of evaluating the demand on services and phasing on the new Application may be imposed as if it were part of the original Application.

8.2.3 Services

Such services shall include, but not be limited to, police and fire protection, schools, water supply, drainage, transportation, highway maintenance, or other public services.

8.3 Waiver Provisions

8.3.1 Additional Incentives

If necessary to provide a realistic opportunity for development of low/moderate income housing in the Town of Chester pursuant to Article 6 and Article 7, the Administrator, after public hearing, may modify or waive the phasing requirement in Subsection 8.2.1.

Town of Candia, New Hampshire
Residential Development Phasing Regulations

ARTICLE XI: LAND USE REGULATION

Section 11.01: Purpose

The Land Use Regulation herein is based on the Master Plan of the Town of Candia. The purpose and intent is to regulate the pace of growth of the Town so as to insure orderly growth at a rate consistent with the goals and objectives of, and the physical and financial constraints and limitations upon, the Town identified by the Master Plan.

Section 11.02: Building Year

As used herein, "Building Year" shall mean a year commencing March 14th and ending March 13th.

Section 11.03: Regulation

The Candia Planning Board has the authority to review and approve a subdivision in its entirety. Limitations on development of lots, currently 9 per year, shall be administered through the building permit process by the Building Inspector. For the purpose of this regulation, lot shall mean lot, plat, site, or other division of land for the purpose of sale, rent, lease, or condominium conveyance or building development.