



City of Keene, N.H.
Transmittal Form

April 26, 2021

TO: Mayor and Keene City Council

FROM: Donald R. Lussier, P.E., City Engineer

THROUGH: Elizabeth A. Dragon, City Manager

ITEM: K.3.

SUBJECT: Petition to Acquire Property by Eminent Domain for Highway Purposes

COUNCIL ACTION:

In City Council May 6, 2021.

Referred the Resolution to the Finance, Organization and Personnel Committee.

Site Visit set for June 17, 2021 at 5:30 PM.

Public Hearing set for June 17, 2021 at 7:00 PM.

RECOMMENDATION:

Move that the City Council accept a Petition to Acquire Property by Eminent Domain for Highway Purposes, submitted by the Public Works Director and refer said Petition to the Finance, Organization and Personnel Committee, and;

That the Mayor schedule a public hearing for June 17, 2021 and that the City Clerk cause written notice of the time and place of such public hearing to be given to the Petitioner and affected property owners no fewer than thirty (30) days prior to such public hearing, and;

That Resolution R-2021-19, Authorizing the Condemnation of Land for the Winchester Street Reconstruction Project, be tabled until such time as a public hearing on the matter has been conducted.

ATTACHMENTS:

Description

Petition

Resolution R-2021-19

ROW Plans

BACKGROUND:

In 2012, the Keene City Council adopted the FY13-FY19 Capital Improvement Program, which contemplated improvements to Winchester Street corridor, between Rt. 101 and the Pearl St. / Island St. intersection as part of the State Bypass Improvement Program. Additional funds were appropriated to this project through the FY14, FY19 and FY20 Capital Improvement Programs.

On October 2, 2014, the City Council voted to approve a contract with McFarland Johnson for the design of these improvements. On July 7, 2016, Mayor Kendall Lane appointed an ad-hoc steering committee to provide

planning, guidance and general direction for the Winchester Street Reconstruction Project, in partnership with affected residents, local business interests, the city staff and the New Hampshire Department of Transportation. The committee held several meetings between August 2, 2016 and December 13, 2016. The Committee's work culminated with a presentation and recommendations to the Municipal Services, Facilities and Infrastructure Committee (MSFI).

On January 25, 2017, MSFI reviewed alternatives for the reconstruction of the corridor, including rebuilding the Key Road and Pearl/Island intersections with traffic signals or creating roundabouts. MSFI voted to recommend that the City Council select the roundabout option. The committee also recommended that the City Manager be authorized to do all things necessary to implement this design. The City Council voted to approve the recommendations on February 2, 2017.

Pursuant to this authority the City Manager, acting through the City's consultant and staff, entered into negotiations with the owners of twelve (12) parcels of land impacted by the project. The parcels and impacts are more particularly described in a plan prepared by GM2 Associates, Inc., dated 7/8/2020, and certified 8/11/2020, entitled "Right of Way Plan of a portion of Winchester St. in Keene, NH" (copy attached). Negotiation prior to beginning the formal condemnation process is required in accordance with RSA 498-A:4, II(c).

Six of the above-listed acquisitions were deemed to be "simple and un-complicated" and proceeded using a simplified acquisition process approved by the Federal Highway Administration. The remaining six parcels were evaluated using the more detailed "Before and After" appraisal method. To date, the owners of eight parcels have either provided or indicated their intention to voluntarily provide the necessary property rights to the City. Three parcels were acquired through eminent domain following passage of Resolution R-2020-36-A.

Despite the City Manager's reasonable efforts to negotiate, the owner of the final parcel has indicated that they are unable to voluntarily provide the necessary property rights due to mortgage and lease restrictions.

In order for the project to be advertised for construction, it is necessary to begin the condemnation process at this time.

In compliance with state law (RSA 498-A:4, III(a)), the governmental entity with authority to condemn must vote to acquire the property in question. The City Council's authority to take land required for public use is found in RSA 31:92. In exercising the authority to condemn property for public use, the City follows procedures described in RSA 231 for the layout of highways, including receipt of a petition, providing notice, conducting a site visit and holding a public hearing.

Should the City Council ultimately vote to acquire the property by condemnation, the affected property owners will be given a formal "Notice of Offer" per RSA 498-A:4, III. The notice of offer describes the public purpose for the acquisition, a description of the property to be taken as well as the basis for and amount of compensation. The owner has 30 days from the service of notice to consider and accept the City's offer. Only after the 30 days have elapsed can the city file a Declaration of Taking with the Board of Tax and Land Appeals and record the condemnation with the Cheshire County Registry of deeds. These filings will result in the title to the property in question passing to the City. After the declaration has been filed, the affected owner has an additional 30 days to raise objections. Preliminary objections may relate to the amount of the offer, the procedures used or the necessity and public use of the acquisition.

April 26, 2021

The Honorable Mayor and City Council
City of Keene
3 Washington
Keene, NH 03431

***Re: Petition to Acquire Property by Eminent Domain for Highway Purposes
Winchester Streets Reconstruction Project***

Dear Honorable Mayor and City Council:

Now comes the City of Keene Public Works Director, Kiirt Blomquist, to petition the Keene City Council to find that there is public necessity to take land for a public purpose, said purpose being the reconstruction of Winchester Street, between State Route 101 and the Winchester Street bridge over the Ashuelot River, including the Winchester St / Island Street / Pearl Str et intersection and replaceipent of the Island Street btldge, in order to improve vehicular and pedestrian safety and !to allow for a more efficient flow of traffic through the corridor. In support of this Petition to Acquire Property by Eminent Domain for Highway Purposes, the undersigned states as follows:

In 2012, the Keene City Council adopted the FY13-FY19 Capital Improvement Program, which contemplated improvements to Winchester Street corridor, between Rt. 101 and the Pearl St. / Island St. intersection as part of the State Bypass Improvement Program. Additional funds were appropriated to this project through the FY14, FY19 and FY20 Capital Improvement Programs.

On October 2, 2014, the City Council voted to approve a contract with McFarland Johnson for the design of these improvements. On July 7, 2016, Mayor Kendall Lane appointed an ad-hoc steering committee to provide planning, guidance and general direction for the Winchester Street Reconstruction Project, in partnership with affected residents, local business interests, the city staff and the New Hampshire Department of Transportation. The committee held several meetings between August 2, 2016 and December 13, 2016. The Committee's work culminated with a presentation and recommendations to the Municipal Services, Facilities and Infrastructure Committee (MSFI).

On January 25, 2017, MSFI reviewed alternatives for the reconstruction of the corridor, including rebuilding the Key Road and Pearl/Island intersections with traffic signals or creating roundabouts. MSFI voted to recommend that the City Council select the roundabout option. The committee also recommended that the City Manager be authorized to do all things necessary to implement this design. The City Council voted to approve the recommendations on February 2, 2017.

Pursuant to this authority the City Manager, acting through the City's consultant; and City staff entered into negotiations with the owners of twelve (12) parcels of land impacted by the project. The parcels and impacts are more particularly described in a plan

prepared by GM2 Associates, Inc., dated 7/8/2020, and certified 8/11/2020, entitled "Right of Way Plan of a portion of Winchester St. in Keene, NH". A copy of these plans is enclosed for your reference and a summary of affected parcels is as follows:

Map/Block No.	Address	Owner	Permanent Acquisition Size(l)(SF)	Temporary Easement Size (SF)
111/001	332 Winchester St.	University System of NH	12,360	6,810
111/002	0 Winchester St.	Granite Bank	3,049	
111/004	346-354 Winchester St.	Riverside Improvements, LLC	740	14,605
111/026	345 Winchester St.	A.R. Sandri Trust, LLC	55	605
111/027	345 Winchester St.	A.R. Sandri Trust, LLC	1,005	3,155
111/028	333 Winchester St	Keene Retail, LLC	605	735
111/029	329 Winchester St.	256 Investment Assoc., LLC	0	435
592/0018	0 Winchester St.	Public Services of NH	2,700	3,440
592/022	199 Island St.	Timothy J. Carbone, Rev. Trust	120	0
592/024	169 Island St.	Robert J. Bass	0	655
592/029	158 Island St.	158 Island St. Invest., LLC	340	380
593/001	311 Winchester St.	McDonalds Corp.	0	230
			18,635	31,075

Six of the above-listed acquisitions were deemed to be " simple and un-complicated" and proceeded using a simplified acquisition process approved by the Federal Highway Administration. The remaining six parcels were evaluated using the more detailed appraisal method.

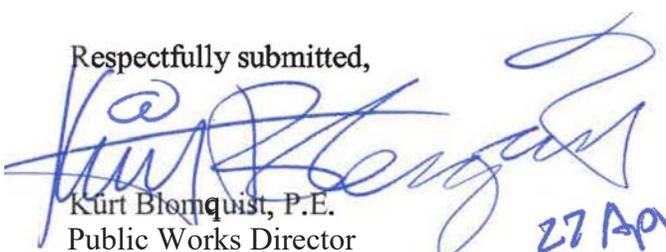
To date, the owners of eight parcels have either provided or indicated their intention to voluntarily provide the necessary property rights to the City. Three parcels were acquired through eminent domain following passage of Resolution R-2020-36-A. Despite the City

Manager's reasonable efforts to negotiate, the owner of the final parcel (indicated with **bold** font in the table above) has indicated that they are unable to voluntarily provide the necessary property rights due to mortgage and lease restrictions.

Based on the foregoing, I respectfully request as follows:

1. That the Mayor schedule a public hearing of the Keene City Council on June 17, 2021, in order to hear testimony :from interested parties· relative to whether there exists the necessity to acquire the aforementioned property rights by condemnation for highway purposes, pursuant to the authority granted by RSA 31:92, and in accordance with the procedures set forth in RSA 231; and
2. That, pursuant to RSA 231:9, the City Clerk's office cause notice in writing of the time and place of such public hearing to be given to the petitioner and affected property owners not less than thirty (30) days prior to the June 17, 2021, hearing; and
3. Should the Council find that a necessity exists to acquire the aforementioned property rights by condemnation for highway purposes, that the City Manager be authorized to do all things necessary to carry out the eminent domain proceedings in accordance with RSA 498-A, et seq.

Respectfully submitted,


Kurt Blomquist, P.E.
Public Works Director

27 Apr 2021

Encl.



CITY OF KEENE

R-2021-19

In the Year of Our Lord Two Thousand andNineteen.....

A RESOLUTIONAuthorizing the Condemnation of Land for the Winchester Street
.....Reconstruction Project.....

Resolved by the City Council of the City of Keene, as follows:

WHEREAS, the Keene City Council has determined that Winchester Street, between New Hampshire Route 10/12/101 and the Winchester Street bridge over the Ashuelot River, including the intersection with Pearl Street and Island Street and the Island Street bridge over the Ashuelot River, is in need of improvement; and

WHEREAS, Mayor Kendall Lane nominated, and the Council accepted, an ad-hoc steering committee on July 7, 2016 to provide planning, guidance and general direction for the Winchester Street Reconstruction Project, in partnership with affected residents, local business interests, the city staff and the New Hampshire Department of Transportation; and

WHEREAS, the Winchester Street Reconstruction Project Ad-Hoc Steering Committee conducted several public meetings between August 2, 2016 and December 13, 2016 to obtain public input, review the design consultant’s work product and develop a recommendation to the City Council; and

WHEREAS, on December 13, 2016, the Winchester Street Reconstruction Project Ad-Hoc Steering Committee voted unanimously to recommend a roundabout alternative as the preferred method of reconstructing the Key Road and Island Street / Pearl Street intersections; and

WHEREAS, the Keene City Council and the Council Standing Committees known as the Municipal Service, Facilities and Infrastructure Committee, met on several occasions between January 19, 2017 and February 2, 2017 in order to review and hold public discussion on the reconstruction of the Winchester Street; and

WHEREAS, as a result of such review and discussion on February 2, 2017, the Keene City Council voted to select roundabouts as the appropriate design to provide the necessary improvement to Winchester Street, and authorized the City Manager to do all things necessary for the implementation of that design; and

Whereas, a necessity exists to acquire land for the reconstruction of Winchester Street, as designed; and

WHEREAS, pursuant to such authority the City Manager, acting through the City’s consultant, entered into negotiations with the owners of twelve (12) parcels of land impacted by the project, said parcels and impacts being more particularly described in a plan prepared by GM2 Associates, Inc., dated 7/8/2020, and certified 8/11/2020, entitled “Right of Way Plan of a portion of Winchester St. in Keene, NH”, a copy of which is attached hereto; and

PASSED

WHEREAS, as a result of said negotiations, the City Manager has acquired, or has been informed of the property owner's intent to provide, the necessary property rights from the owners of eight (8) of the twelve impacted parcels; and

WHEREAS, the required property rights over portions of the following properties were acquired through the Eminent Domain procedure pursuant to Resolution R-2020-36:

Owner	Parcel No	Required Property Rights
A.R. Sandri Trust, LLC	111/026	55 square feet (permanent) 605 square feet (temporary)
A.R. Sandri Trust, LLC	111/027	1,005 square feet (permanent) 3,155 square feet (temporary)
Keene Retail, LLC	111/028	605 square feet (permanent) 735 square feet (temporary)

and;

WHEREAS, the City Manager made every reasonable effort to negotiate with the remaining property owner; however, the owner of the final parcel has indicated that they are unable to voluntarily sell the required property rights due to lease and mortgage restrictions; and

WHEREAS, the design of the reconstruction project makes it necessary to acquire said property rights from the remaining property in order to complete the project without increasing the overall impacts on adjacent property owners; and

WHEREAS, on May 6, 2021, the Keene City Council, at its regularly scheduled meeting, received a Petition to Acquire Property by Eminent Domain for Highway Purposes; and

WHEREAS, on May 6, 2021, the Mayor scheduled a public hearing of the Keene City Council to be held on June 17, 2021, in order to hear testimony of interested parties relative to whether the Keene City Council shall exercise its authority to acquire the necessary property rights by condemnation for highway purposes, pursuant to RSA 498-A, and the authority granted by RSA 31:92, and in accordance with the procedures set forth in RSA 231.

WHEREAS, the Keene City Council held a duly noticed public hearing on June 17, 2021, at the site of the proposed condemnation and at City Hall, 3 Washington Street, Keene, New Hampshire, in order to hear testimony from interested parties relative to whether there exists the necessity to acquire property rights by condemnation, if necessary, for highway purposes, pursuant to the authority granted by RSA 31:92, and in accordance with the procedures set forth in RSA 231; and

WHEREAS, the Keene City Council heard testimony from interested parties at the public hearing; and

WHEREAS, based upon the testimony received at the June 17, 2021 public hearing, the Petition to Acquire Property by Eminent Domain for Highway Purposes, and the prior and subsequent review and public discussion regarding the reconstruction of the Winchester Street, the Keene City Council has voted to find that necessity exists to acquire land by condemnation,

for the above-stated purpose, pursuant to RSA 498-A, and the authority granted by RSA 31:92, and in accordance with the procedures set forth in RSA 231; and

WHEREAS, based upon the testimony received at the June 17, 2021 public hearing, the aforementioned Petition, and the prior and subsequent review and public discussion regarding the reconstruction of Winchester Street, the Keene City Council has also voted to find that the property rights to be so acquired, and the improvements to be constructed thereon, constitute a public use and provide a net public benefit;

NOW, THEREFORE, BE IT RESOLVED by the Keene City Council:

- a. That there is a necessity to take portions of the above-referenced land for a public purpose; and
- b. That the taking of portions of the above referenced land will provide a net-public benefit; and
- c. That the City Manager has made reasonable efforts to negotiate with owners of said parcels for the voluntary acquisition of said property rights; and
- d. That the City Manager is hereby authorized to initiate eminent domain proceedings pursuant to RSA 498-A, and under the authority granted by RSA 31:92, and in accordance with the procedures set forth in RSA 231, in order to condemn portions of the above-listed parcels for the reconstruction of Winchester Street; and
- e. That, in exercising the authority herein granted, the City Manager is directed to:
 1. Follow the procedure defined in RSA 498-A:4 thru 7, effecting the acquisition of land, including, but not limited to, RSA 498-A:4, III(b); and
 2. Cause a Declaration of Taking to be filed with the New Hampshire Board of Tax and Land Appeals and a Notice of Condemnation to be filed in the Cheshire County Registry of Deeds; and
 3. Do all things necessary in accordance with RSA 498-A in order to perfect the acquisition of the aforementioned property by eminent domain, unless the Condemnees shall, prior to such filings, consent to the voluntary transfer of said property rights by suitable conveyance to the City of Keene.

In City Council May 6, 2021.

Referred to the Finance, Organization and Personnel Committee. Site Visit set for June 17, 2021 at 5:30 PM. Public Hearing set for June 17, 2021 at 7:00 PM.


City Clerk

George Hansel, Mayor

WINCHESTER STREET

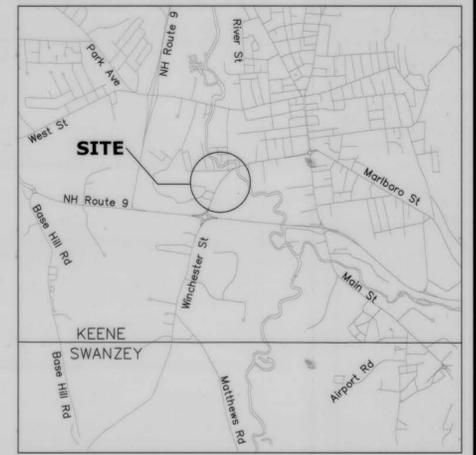
CITY OF KEENE STATE OF NEW HAMPSHIRE COUNTY OF CHESHIRE RIGHT-OF-WAY PLANS

PLAN INTENT:

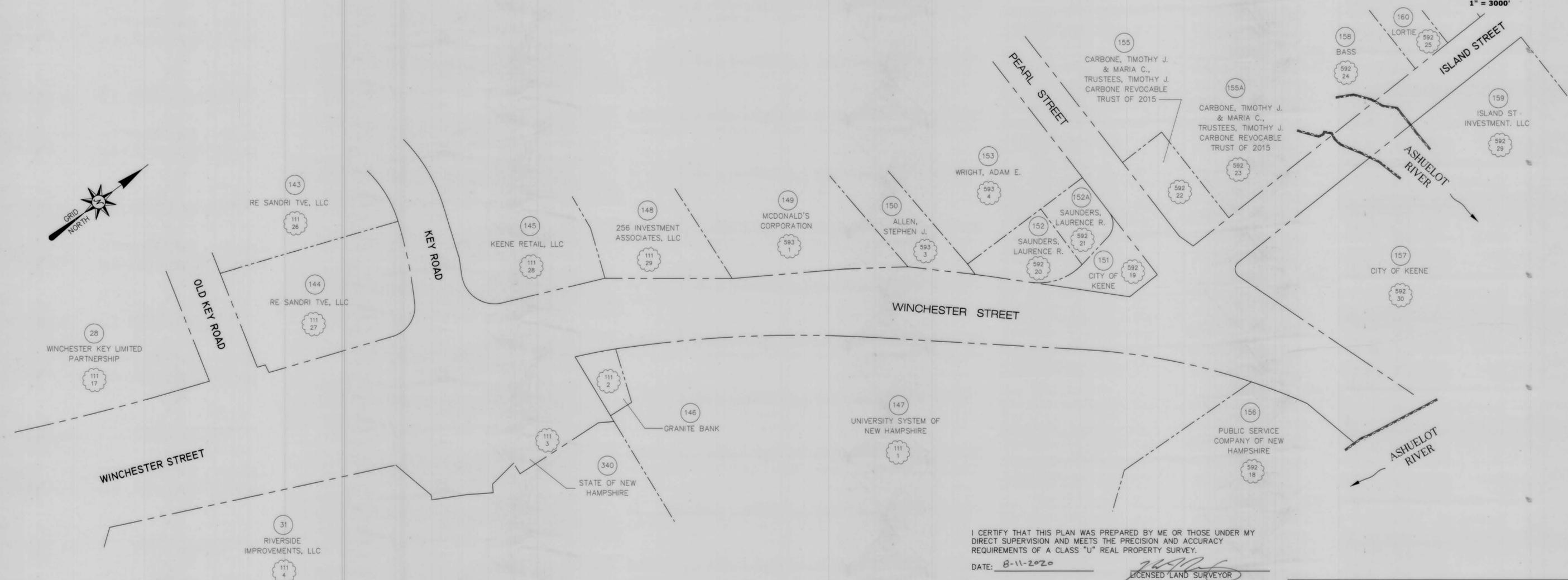
THE PURPOSE AND INTENT OF THESE PLANS IS TO DOCUMENT THE ACQUISITIONS AND EASEMENTS NECESSARY FOR THE PROPOSED IMPROVEMENTS WITHIN THE PROJECT LIMITS.

NOTES:

- 1.) THIS SURVEY IS A RESULT OF AN ACTUAL ON-THE-GROUND SURVEY COMPLETED BY THIS OFFICE BETWEEN DECEMBER 2015 AND OCTOBER OF 2018.
- 2.) THE HORIZONTAL AND VERTICAL DATUMS REFERENCED ARE NAD83(2011) (RTN RTK DERIVED) AND NAVD88 (NHOPW DISK 237 0340 HELD FOR VERTICAL).
- 3.) THE PLANIMETRIC FEATURES SHOWN ON THIS SURVEY ARE FEATURES EXISTING AT THE TIME OF THE SURVEY. NO PROPOSED IMPROVEMENTS ARE SHOWN.
- 4.) NO MONUMENTATION HAS BEEN SET AS PART OF THIS SURVEY. THE MONUMENTATION SHOWN HEREON IS EXISTING AND SET BY OTHERS.
- 5.) CONTROL TRAVERSE WAS RUN WITH A CLOSURE BETTER THAN 1:15,000.
- 6.) ALL UNDERGROUND UTILITIES AND FACILITIES SHOWN ARE APPROXIMATE AND NOT NECESSARILY COMPLETE. CALL DIGSAFE BEFORE ANY EXCAVATION.
- 7.) UNWRITTEN RIGHTS IN LAND, THOUGH THEY MAY EXIST, ARE NOT SHOWN ON THIS SURVEY.



LOCUS
1" = 3000'



LEGEND:

#	PROJECT SPECIFIC PARCEL DESIGNATION	---	EXISTING PUBLIC RIGHT-OF-WAY
⊕	TAX MAP AND BLOCK NUMBER	---	EXISTING PRIVATE BOUNDARY LINE
⊙	UTILITY POLE	---	FENCE
⊙	GUY WIRE ANCHOR	+	PROPOSED TEMPORARY EASEMENT
⊙	TRAFFIC SIGNAL	⊗	PROPOSED ACQUISITION

I CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND MEETS THE PRECISION AND ACCURACY REQUIREMENTS OF A CLASS "U" REAL PROPERTY SURVEY.
DATE: 8-11-2020
[Signature]
LICENSED LAND SURVEYOR

RSA 676.18 III "I" CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN"
DATE: 8-11-2020
[Signature]
LICENSED LAND SURVEYOR

NO.	REVISIONS

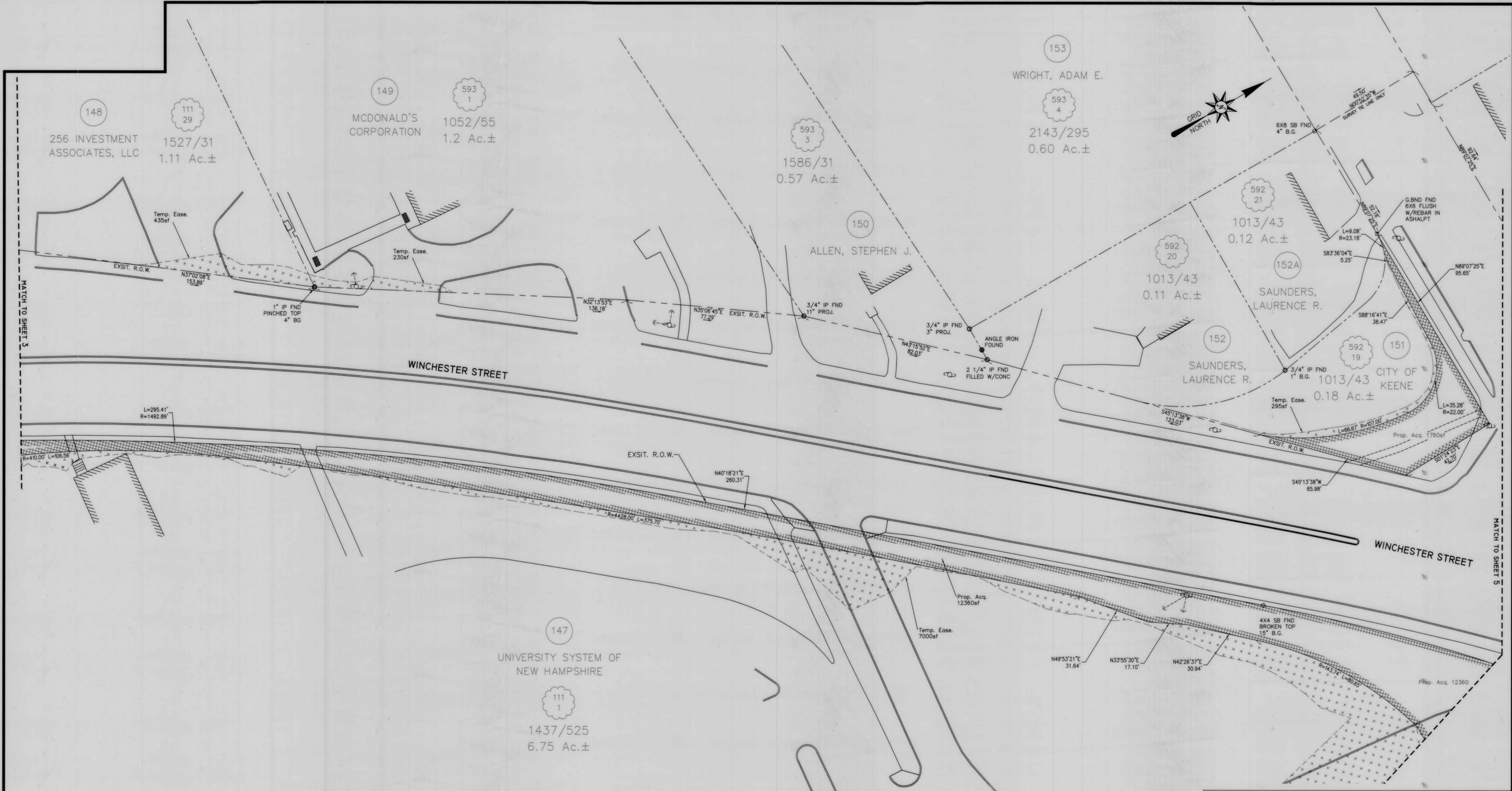
NOT VALID UNLESS SIGNED
GRAPHIC SCALE 1" = 60'
0' 60' 120' 180' 240'



WINCHESTER STREET
Right of Way Plan
of a portion of
WINCHESTER ST. in KEENE, NH
prepared for **McFarland Johnson, Inc.**
Owner of Record: **State of N.H.**

JOB NO.: 40289.00
SCALE: 1"=60'
DATE: 7/8/2020
SHEET: 1 OF 5

GM2 Associates, Inc.
197 Loudon Road, Suite 310
Concord, NH 03301
Tel: 603-856-7854
Fax: 603-856-7855



WINCHESTER STREET
Right of Way Plan
 of a portion of
WINCHESTER ST. in KEENE, NH
 prepared for McFarland Johnson, Inc.
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DATE: 8-11-2020

[Signature]
 LICENSED LAND SURVEYOR

NO.	DATE	DESCRIPTION

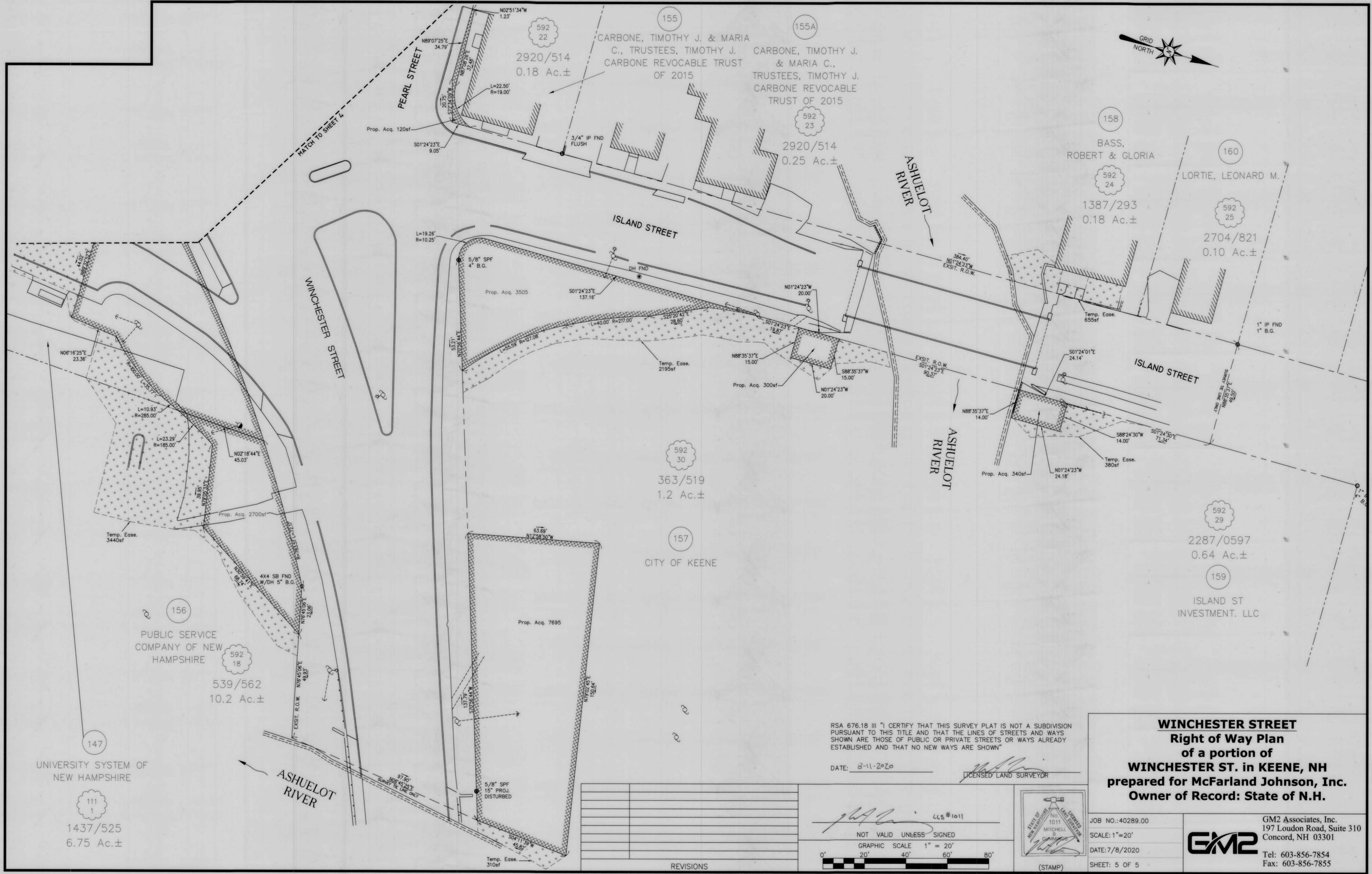
[Signature] LL5#1011
 NOT VALID UNLESS SIGNED
 GRAPHIC SCALE 1" = 20'
 0' 20' 40' 60' 80'



JOB NO.: 40289.00
 SCALE: 1"=20'
 DATE: 7/8/2020
 SHEET: 4 OF 5



GM2 Associates, Inc.
 197 Loudon Road, Suite 310
 Concord, NH 03301
 Tel: 603-856-7854
 Fax: 603-856-7855



147
UNIVERSITY SYSTEM OF
NEW HAMPSHIRE
111
1
1437/525
6.75 Ac.±

156
PUBLIC SERVICE
COMPANY OF NEW
HAMPSHIRE
592
18
539/562
10.2 Ac.±

592
22
2920/514
0.18 Ac.±
CARBONE, TIMOTHY J. & MARIA
C., TRUSTEES, TIMOTHY J.
CARBONE REVOCABLE TRUST
OF 2015

155
155A
592
23
2920/514
0.25 Ac.±
CARBONE, TIMOTHY J.
& MARIA C.,
TRUSTEES, TIMOTHY J.
CARBONE REVOCABLE
TRUST OF 2015

158
BASS,
ROBERT & GLORIA
592
24
1387/293
0.18 Ac.±

160
LORTIE, LEONARD M.
592
25
2704/821
0.10 Ac.±

592
30
363/519
1.2 Ac.±
CITY OF KEENE

157
CITY OF KEENE
Prop. Acq. 7695

ASHUELOT RIVER

592
29
2287/0597
0.64 Ac.±
159
ISLAND ST
INVESTMENT, LLC

RSA 676.18 III "I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN"

DATE: 8-11-2020

LICENSED LAND SURVEYOR

NO.	DATE	REVISIONS

NOT VALID UNLESS SIGNED
GRAPHIC SCALE 1" = 20'
0' 20' 40' 60' 80'



WINCHESTER STREET
Right of Way Plan
of a portion of
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prepared for **McFarland Johnson, Inc.**
Owner of Record: **State of N.H.**

JOB NO.: 40289.00
SCALE: 1"=20'
DATE: 7/8/2020
SHEET: 5 OF 5

G2M2
GM2 Associates, Inc.
197 Loudon Road, Suite 310
Concord, NH 03301
Tel: 603-856-7854
Fax: 603-856-7855