

Attachment A - Impact Fee Proportionality Analysis

Project: Two-Unit Residential Duplex – 3 Palm Street Concord, NH

I. Applicable Legal Authority

Authority	Provision	Relevance
RSA 674:21, V(e)	Requires waiver/reduction when actual impacts are less than those assumed by the fee schedule.	Statutory authority for proportional adjustments.
Concord Code §29.2-2(b)	Authorizes the Planning Board/Code Administrator to grant fee waivers when impacts are less than the adopted schedule.	Local ordinance basis for adjustment.
Banfield v. Town of Sanbornton (1992)	Fees must relate to actual impacts; disproportionate fees are impermissible exactions.	NH Supreme Court precedent.
Home Builders Association of N.H. v. Town of Milton (2010)	Affirms proportionality standard and limits on municipal impact fees.	NH Supreme Court precedent.

II. Fee Assessment vs. Actual Project Impact

Category	City Assumption (Fee Schedule)	Actual Project Impact	Variance
Transportation Impact Fee	Assumes avg. weekday trips for general residential; future capital demand.	Two units in a built-out area; no road extensions, signals, or capital upgrades needed.	Actual demand, negligible
Recreation Impact Fee	Per-unit share of city-wide recreation facility expansion.	No measurable increase in demand; nearby facilities have available capacity.	No proportional need
Total Assessed Fees	\$3,000+ (combined categories)	Actual proportional cost is near \$0 in new capital facilities.	>90% over-assessment

III. Demonstrated Disproportionality

- Scale of project: Only two units; far below baseline assumptions used in the fee schedule.
- Location context: Infill lot within an existing infrastructure network.
- Policy conflict: Non-residential uses are exempt despite higher impacts.

IV. Requested Adjustment

In accordance with RSA 674:21, V(e) and Concord Code §29.2-2(b):

- 1) Full waiver of both transportation and recreation impact fees; or
- 2) Reduction proportionate to actual impact (suggested reduction $\geq 90\%$).

Independent Impact Fee Calculation – 3 Palm Street.

Prepared for: City of Concord, NH

Date: August 13, 2025

1. Purpose

This independent fee calculation is submitted under Section 29.2-1-2(b)(5) – (9) to demonstrate that the proposed duplex will generate no measurable new demand on Concord’s municipal infrastructure, public facilities, or recreation resources. Under RSA 674:21, V, the lawful and proportional impact fee is \$0.00. Any fee imposed would be inconsistent with both state law and applicable case law, including *Holloway v. Town of Chester*, 155 N.H. 124 (2007).

2. Methodology – Net Additional Demand Test

The Net Additional Demand Test measures only the incremental burden caused by a development compared to existing capacity and usage of municipal services. If no measurable additional capital facility need is created, the proportional impact fee is \$0.

Key steps:

1. Baseline Capacity Check: Confirm whether infrastructure already accommodates the proposed use without expansion.
2. Demand Attribution: Determine if the project will add measurable wear, usage, or costs beyond current baseline.
3. Comparative Impact Analysis: Contrast the project’s impact with other developments that are not charged impact fees.

3. Project Description

Type: Duplex (two dwelling units).

Location: In an existing, fully developed Concord neighborhood.

Infrastructure Status: Fully connected to municipal water, sewer, roadway, and emergency service systems, no upgrades required.

Expected Occupancy: Standard long-term residential, consistent with surrounding properties.

4. Demand Analysis by Category

Category	Town Fee Assumption	Actual Project Impact	Conclusion
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Roads/Transportation	Assumes additional households require new roads or create excess wear.	Project uses existing paved road built to current standards. Two households add negligible daily trips; traffic remains within existing neighborhood capacity.	\$0 - No expansion or accelerated wear.
Water	Assumes new connections or treatment capacity.	Property already has service connection. System capacity adequate without modification.	\$0 - No new capital need.
Sewer	Assumes new connections or plant expansion.	Existing sewer mains and treatment plant have ample surplus capacity. No extension or upgrade required.	\$0 - No incremental capacity cost.
Schools	Assumes new units increase enrollment.	NH DOE data shows Concord enrollment is declining. Duplex occupancy unlikely to increase student population in any measurable way.	\$0 - No new facility demand.
Public Safety	Assumes increased police/fire service needs.	Duplex will meet current code, including fire suppression. Expected calls mirror neighborhood averages; no	\$0 - No public safety expansion required.

		staffing or facility increases needed.	
Recreation	Assumes increased use of parks and facilities.	Town parks have ample capacity; residents will not cause facility expansion.	\$0 - No new recreation capital need.

5. Comparative Fairness & Consistency

This duplex infill project is being assessed an impact fee despite producing negligible infrastructure demand. In contrast, high-intensity commercial projects in Concord, such as the recently approved Raising Cane's drive-thru restaurant currently being constructed, will generate far greater measurable impacts, including but not limited to hundreds of daily vehicle trips, increased traffic control needs, higher public safety call volumes, higher demand on recreational facilities and significant water/sewer usage volume increase, yet are not subject to any impact fees. This disparity is inconsistent with RSA 674:21, V, which requires uniform and proportional application of impact fees.

6. Legal Basis for \$0 Fee

- RSA 674:21, V: Fees must be proportional to the capital facility needs created by a development. Zero measurable need equals zero lawful fee.
- Holloway v. Town of Chester, 155 N.H. 124 (2007): Impact fees cannot be used as general revenue; they must directly relate to the impact of the project.
- Procedural fairness requires consistent application of fees to developments creating comparable or greater impact.

7. Conclusion & Request

The proposed duplex will not create any new measurable demand for municipal infrastructure or facilities. Existing systems and capacity fully accommodate the project without capital expansion. Under state law and the Town's own ordinance, the proportional fee is \$0. We request approval of a full waiver consistent with the evidence provided herein and equitable treatment compared to other approved developments.

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August 12, 2025

Director of Planning
City of Concord – Planning Division
41 Green Street
Concord, NH 03301

Re: Formal Request for Waiver or Reduction of Transportation and Recreation Impact Fees

Project Type and Location: Two-Unit Residential Duplex, 3 Palm Street Concord, NH

To Whom It May Concern,

I respectfully request a waiver or substantial reduction of the transportation and recreation impact fees for the proposed duplex noted above. This request is made under RSA 674:21, V(e) and Chapter 29.2 of the Concord Code of Ordinances, both of which provide for relief when a project's actual impacts are less than those assumed by the adopted fee schedule.

1. Legal Basis

- RSA 674:21, V(e) requires a waiver or reduction where a development “will not have an impact proportional to that which is typically assessed.”
- Concord Code §29.2-2(b) authorizes the Planning Board or Code Administrator to grant such relief.
- In *Banfield v. Town of Sanbornton*, 136 N.H. 517 (1992), the NH Supreme Court held that municipal fees must have a rational relationship to the actual demand generated; disproportionate or arbitrary fees are impermissible exactions.
- In *Home Builders Association of N.H. v. Town of Milton*, 161 N.H. 61 (2010), the Court reaffirmed that impact fees must meet the proportionality standard.

2. Disproportionate Effect on This Project

- Total fees exceed \$3,000, a significant cost relative to this small-scale infill project.
- The lot is fully served by existing streets, sidewalks, and utilities; no additional capital facilities are required.

- Actual transportation and recreation demand from two dwelling units is negligible compared to the baseline assumptions used in the fee schedule.

3. Policy Inconsistency

- Concord exempts non-residential development from these fees, even where such uses generate far greater traffic and infrastructure demand.
- A small duplex is fully assessed despite producing minimal measurable impact. This disparity lacks a rational basis and conflicts with Concord's Master Plan goals for infill housing and affordability.

4. Local Context

- Chapter 29.2 expressly permits waivers when impacts are demonstrably less than standard rates.
- In recent Planning Board discussions (2025), members have recognized that the current fee structure burdens small-scale housing while exempting high-impact commercial projects.
- Granting this request would be consistent with Concord's stated housing objectives and equitable fee administration.

5. Relief Requested

Pursuant to RSA 674:21, V(e) and Chapter 29.2, I request that the Planning Division:

1. Waive the transportation and recreation impact fees in full; or
2. Reduce the fees proportionally to reflect the minimal actual impact of this project.

Please confirm receipt and advise if any additional documentation is required to proceed.

Thank you for your consideration.

Sincerely,

Ryan Taber
Eastern Development