

TOWN OF FITZWILLIAM
PLANNING BOARD
AGENDA

TUESDAY, MAY 1, 2018
7:00 PM

7:00 PM. Discussion with Road Agent, Gene Cuomo, about the concept of scenic roads.

Administration:

Scenic Road Update

Solar Conditional Use Permit Form

Innovative Land Use Controls - informational packet

Review of Planning Board goals/projects

Minutes from 4/17/18

INTERESTED IN ATTENDING OR CURIOUS ABOUT JOINING THE BOARD?
ALL ARE WELCOME!



Town of Fitzwilliam, New Hampshire

13 Templeton Turnpike, Fitzwilliam, NH 03447
(603) 585-9119 fitzlanduse@fitzwilliam_nh.gov

added info
Monday 4/23/18

SCENIC ROAD ORDINANCE

1. TITLE

This chapter shall be known as the "Scenic Road Ordinance of the Town of Fitzwilliam, New Hampshire."

2. STATUTORY OF AUTHORITY

This chapter is enacted pursuant to RSA 231:157, RSA 231:158, and RSA 47:17. As the procedure for scenic roads as contained in RSA 231:157 is for towns, it is necessary to set up a procedure for action by the Fitzwilliam Planning Board.

3. PURPOSE

The purpose of this chapter is to maintain and promote the visible natural and historic features along Fitzwilliam's roadways in order to help preserve the rural character.

4. DEFINITIONS

A. Applicant - The owner or his agent, of a residence or company who is proposing a change to the scenic road's current state.

B. Driveway - A public or private roadway providing primary access from either a public or private road for vehicles to a dwelling, business, parking area, or other structure or facility that is currently used on a regular basis but does not include access that is primarily used for service or maintenance (such as fuel oil delivery) or for agricultural purposes.

C. Tree - Any woody plant which normally grows to a mature height greater than twenty (20) feet and which had a diameter of 6 inches or more at a point of four and a half (4 ½) feet above the ground. A diameter of 6 inches equates to a total circumference of 18.34 inches.

5. HOW TO DESIGNATE A SCENIC ROAD

A

A. **Who Designates.** Upon petition of ten (10) persons who are either voters of the Town of Fitzwilliam or who own land which abuts the road described in the petition, pursuant to RSA 231:157. Those persons may petition to designate all or a portion thereof to be a scenic road.

B. **Filing Procedure.** The petitioners shall provide the Town Clerk with a list of known property owners whose land abuts any of the roads described in the petition. The names shall be taken from the Town tax records not more than five (5) days before filing of the petition. It shall be the responsibility of the petitioners to verify that such list contains all abutters along the road entitled to notice.

1. The Town Clerk shall notify by regular mail within ten (10) days of the filing of the petition with the Town Clerk, all abutters along the road as set forth in the petitioners list, within the Town of Fitzwilliam. The notice shall inform the abutter that a scenic road petition has been filed and that a public hearing date will be set by the Fitzwilliam Planning Board.

C. **Hearing.** The Fitzwilliam Planning Board shall hold a public hearing on the petition. Notice of the public hearing shall be duly advertised within a newspaper of general circulation providing the date, time, place, and purpose. The notice shall be published once each week for two (2) weeks on the same day of the week, with the last publication to occur at least seven (7) days prior to the public hearing. The abutters and any other person shall have the right to speak at such public hearing. After the public hearing is close, the Fitzwilliam Planning Board shall vote whether or not to designate all or part of each road described in the petition as a scenic road.

1. The Fitzwilliam Planning Board shall set a date for the public hearing and request a written report from the Fitzwilliam Conservation Commission and/or the Fitzwilliam Historic District Commission.

6. EFFECTS OF DESIGNATING A SCENIC ROAD

Upon a road being designated by the Fitzwilliam Planning Board as a scenic road, no tree or stone wall shall be cut or removed within the right-of-way except as permitted herein.

A. **Maintenance on the Scenic Road.** If any repair, maintenance, reconstruction, or paving work done with respect to the scenic road shall involve the cutting or removal of trees¹ and/or tearing down or deconstructing stone walls or portions thereof, the Applicant shall obtain the written consent of the Planning Board. A request shall be made by the Applicant to the Planning board for such work with sufficient description to indicate what trees or stone walls will be involved, with a copy sent to the Conservation Commission and Historic District Commission. The Planning Board shall hold a public hearing on the request. Notice of the public hearing shall be duly advertised within a newspaper of general circulation providing the date, time, place, and purpose. The notice shall be published once each week for two weeks on the same day of the week, with the last publication to occur at least seven (7) days prior to the public hearing. After the conclusion of the public hearing, the Planning Board shall vote whether or not to consent to such work. The decision of the Planning Board shall be in the form of a notice signed by the Chair and sent to the Applicant.

1. Prior to any change in the surface treatment, such as converting an unpaved road to a paved road, or prior to any change in vertical or horizontal profile other than pavement maintenance such as shims and overlays, the Applicant shall obtain approval by the Planning Board. The Planning Board will request recommendation by the Conservation Commission and the Historic District Commission. A public hearing will be scheduled by the Planning Board to solicit public comment prior to taking action. All abutters along the scenic road will be notified of the public hearing.

¹ Tree is defined as any woody plant which normally grows to a mature height greater than twenty (20) feet and which had a diameter of 6 inches or more at a point of four and a half (4 ½) feet above the ground. A diameter of 6 inches equates to a total circumference of 18.34 inches.

B. **Rights of the Highway Department.** The Highway Department may trim and prune trees; cut shrubs, vegetation, and other natural or man-made obstructions from within three (3) feet of the edge of the main traveled portion of the road, which would otherwise interfere with safe travel upon the road. The Highway Department is permitted to carry out these activities, without consent of the Fitzwilliam Planning Board, when deemed necessary for road safety.

1. In the event the Highway Department wants to remove or trim a tree(s), which are of 6 inches in diameter or larger, in any instance unrelated to maintaining the safety of the roadway, shall seek permission from the Planning Board and adhere to the noticing process for permission to remove/alter trees on that Scenic Road.

C. **Emergencies.** In an emergency situation where public safety is threatened, as determined by the Applicant, Highway Department Road Agent or designee, the Town of Fitzwilliam, or a utility company may cut and remove storm damaged trees that are creating an immediate hazard to public safety. Within seven (7) days of cutting or removal of a tree on a scenic road, the Town Administrator will submit a report to the Land Use Department describing the nature of the emergency and the action taken to resolve the emergency.

1. Upon receiving the report from the Town Administration, the Land Use Assistant has seven (7) days to disseminate the information to the Planning Board, Conservation Commission, and the Historic District Commission.

7. **PRESERVING THE RIGHTS OF THE LANDOWNER**

 A. **Maintenance.** The designation of all or a portion of a road as a scenic road shall not affect the rights of an abutting landowner as to planting trees in the right-of-way, pursuant to RSA 31:52, and the landowner's rights in those trees, as provided in RSA 231. Designation of a road as a scenic road shall not affect the landowner with respect to work on their own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to RSA 231:139-156, and except that RSA 471:6 limits the removal or alteration of boundary markers including stone walls.

B. **Driveways.** Any abutting landowner shall have the right to obtain a driveway permit and, if a permit is obtained, shall have the right to remove any tree or portion of stone wall as may be required for the construction of a driveways in conformity with such permit, provided that the intent of this chapter is met.

8. PUBLIC INFORMATION

The Town Clerk shall maintain and update annually the list of Scenic Roads in Town as required by RSA 231:157. A copy of said updates shall be forwarded to the Land Use Department in order for Land Use Boards to be notified.

Scenic Roads in Fitzwilliam, NH	Year of Designation

Last updated: ____

9. ENFORCEMENT AND PENALTIES

Enforcement and penalties shall be those allowed by NH RSA 158 related to scenic roads.

10. RESCISSION OF DESIGNATION OF SCENIC ROAD

Upon petition of ten (10) persons who are either voters of the Town of Fitzwilliam or who own land which abuts the road described in the petition to rescind shall be acted upon by the Fitzwilliam Planning Board in the same manner and procedure set for in Section 5, above. After the conclusion of the public hearing, the Fitzwilliam Planning board shall vote whether or not to rescind the designation of the scenic road.

11. EFFECTIVE DATE

This ordinance shall become effective upon passage.



Fitzwilliam Planning Board

13 Templeton Turnpike
PO Box 725
Fitzwilliam, NH 03447
(603) 585 - 9119
fitzlanduse@fitzwilliam-nh.gov

FOR OFFICE USE:

Date Received: _____

Filing Fee Amount: _____

Check Number: _____

Application for Conditional Use Approval - Solar Energy Systems

THIS APPLICATION IS ONLY FOR GROUND-MOUNTED UTILITY- AND COMMUNITY-SCALE APPLICANTS

Note: If you wish to apply for community-scale roof-mounted or small-scale energy systems, you do NOT need to fill out this application. Please refer to 127-12 and 127-14 of the Code of the Town of Fitzwilliam to check if you need a Site Plan Review. All applicants for any solar energy system MUST submit a Construction Permit.

1. Name of Applicant/Owner _____

2. Mailing Address _____

3. Phone _____

4. Name of Owner's Authorized Agent _____

5. Authorized Agent's Phone _____

6. Location of Subject Property _____

7. Tax Map # _____ Lot # _____ Land Use District _____

(Please use an additional sheet of paper if extra space is needed.)

8. Is the project within the Wetlands Protection Overlay District (within 75 feet of wetlands) or in wetlands?

Yes No

If yes, what is the setback from wetlands? _____

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PO Box 725
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11. Check all that apply:

a. I am applying for a:

Ground-Mounted Solar Energy System

Roof-Mounted Solar Energy System

b. The scale of the Solar Energy System will be:

Community Scale, with intent of benefiting the Town and its residents, generates between 15 kilowatts and 1 megawatt of electricity

Utility Scale, consisting typically of large arrays or farms with the purpose to sell power to the open market, generates 1 megawatt of electricity or greater

12. Are other town, state, or federal permits/approvals required? Yes No

If yes, describe _____

13. Estimated start date: _____

Estimated completion date: _____

This application must be accompanied by:

1) A complete site plan,

2) List of names and mailing addresses for all abutters within 200 feet of all boundary lines, and

3) All application fees and notice costs - checks payable to the Town of Fitzwilliam. Please reach out to the Land Use Department with any questions!

The undersigned hereby requests a Conditional Use Permit for the above referenced project from the Planning Board. I understand that prior to formal review, the Planning Board will first review this application and supporting materials for completeness and if found to be incomplete, the application will not be processed. In making this application, I also understand that any special engineering costs incurred as a result of the review of this plan must be paid by the applicant prior to final action by the Board. I further agree to grant the Town of Fitzwilliam and its agents, permission to enter upon the property for the purposes of inspection regarding this application.

Signature of Owner

Date

Signature of Owner's Agent

Date

given to PB for May 1, 2018

INNOVATIVE LAND USE CONTROLS

- a. *The following are "Innovative Land Use Controls" that may have applicability to Fitzwilliam. Please note that not all the Land Use Controls, as provided by the state, are listed here; after discussing all of them with Carol Ogilvie we decided it best to remove the ones that have no applicability at all, such as Urban Growth Boundary, and Service District and Density Transfer Credits.*
- b. *The language used to describe each concept comes directly from the text.*
- c. *ALL forms of the Innovative Land Use Controls require a Conditional Use Permit*
- d. *This informational packet is to give you an overview of these land use controls so that the Board may discuss together what, if any, should researched further.*

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1. Conservation Subdivision

A residential subdivision in which a substantial amount of the site remains as permanently protected open space while the homes are located on the remaining portion of the site. Ability to use a Conditional Use Permit in order for the Planning Board to waive or modify requirements*.

- State recommends: a minimum of 50% of the parcel is designated as buildable while 80% of the non-buildable area be conserved as a part of the conservation subdivision.
- Deciding allowed uses and what it's protecting. It should be decided by community input what conservation subdivision should help accomplish
 - Example resources: wildlife corridors, floodplains, historic sites, wetlands
 - Example uses: wildlife habitat or working farmland as less-intensive uses while more intensive uses are suggested to be located in higher-density areas
- Incentives. may be used to encourage applicants to provide certain amenities within the development, such as full public access to the open space or a percentage of affordable units, or to encourage improved subdivision design plans for protecting natural resources/cultural features
 - "Incentives, which typically take the form of additional dwelling units, should be used sparingly."
 - Example: Conservation greater than 50% of the buildable area of the parcel within the designated open space shall receive a 5% increase in the number of dwelling units allowed for every additional 10% of open space protected, up to a maximum increase of 15% over the base number of dwelling units allowed. (THEREFORE:) a 20-unit development with 72% of the buildable area of the parcel retained as designated open space would receive 2 additional bonus units, for a total of 22 units.
- Determining the number of units allowed to be built: Formula-based approach for determining the number of units that can be built within a conservation subdivision. "The intent of a conservation subdivision approach is to allow at least as many units as could be built under a conventional approach."
 - Instead of formula-based approach, communities may use Yield Plan Approach: "an applicant creates a conventional subdivision plan to determine the number of allowable units." Most commonly used in the state, however, the approach can be expensive and time-consuming
- Ensuring preservation of open space. The open space/conservation may remain in private ownership by one or more landowners, be owned in common, or be conveyed to the municipality or to a third-party organization.
 - Ensure long-term conservation through easement or deed restriction

Examples from other towns:

- **Wolfeboro**
 - Provisions for shorefront development which may limit the number of beaches, shorefront access, and/or docks
- **Rochester**
 - A conservation subdivision may be developed for any parcel of at least 5 gross acres or where the total number of buildable lots is 5 or more and which involves the creation of a new road
 - Buildable area does not include steep slopes, wetlands, or above ground utility easements
 - "Density Bonus Enhancements" such as a 5% enhancement bonus for incorporating trails in the open space plan, among other incentive ideas
- **Hooksett**
 - Geared towards encouraging conservation and open space in housing developments:
 - Minimum acreage allowable for a Conservation Subdivision development is 20 acres
- **Swansey**
 - Called "Conservation Residential Subdivisions (CRS)"
 - Provisions for primary & secondary conservation values;
 - Primary: historic sites, archaeological sites, water protection, wildlife corridors, forest diversity, views, farms, prime farmland soils
 - Secondary: unique natural features, unusual trees, habitat for endemic plants/animals, natural/historical trails, public access, tree farms

2. Open Space, Cluster Subdivision

Open space and cluster-style subdivisions can be an important tool in promoting land and open space conservation while fostering more efficient use of land for development. This type of development preserves a large amount of undeveloped land in exchange for developing more intensely on a smaller area. A number of recent models have been developed over the past several years that attempt to make this form of development more attractive. In addition, some municipalities are now mandating this form of development in areas with critical habitat or other high natural resource value. (NOT in 2008 State Land Use Techniques book)

- Geared more for preservation in urban or more-developed communities, but may be applicable to Fitzwilliam by helping to conserve open spaces, scenic areas, and natural resources.

Example:

- Bedford (just Cluster Residential Development)
 - Minimum tract of 15 acres
 - Provisions to include workforce housing and incentives
 - Provisions for 2 non-contiguous tracts
- Wakefield (combines Open Space, Cluster, & Conservation)
 - "encouraged for all major subdivisions and minor subdivisions, if a road is required" and has no minimum parcel size
 - Provisions for Phased Subdivision Applications
 - Focuses on encouraging concept to applicants with agricultural land, habitat for rare/threatened/endangered species, frontage to a waterbody, portion of a watershed, portion of aquifer protection area, portion of snowmobile trail network, steep slope covering more than 20% of property, and historic/cultural/archaeological sites/structures
 - Provisions for landscaping, lighting in consideration to Dark Skies, & pedestrian and bike paths
 - Regulations for the ownership, design, and location of open space area (minimum of 50% of the buildable area of the parcel lot)
 - Development must follow provisions for one of several forms of a conservation easement on the property
 - Incentive: "frontage distance, rear, front and side yard setbacks may be reduced to 50% of the requirements in the zoning district subject to the following:"
 - "The parcel lot front yard setback shall be 30 feet"
 - "The required setbacks from Dwelling Unit Lot lines and from street rights-of-way within the Open Space Conservation/Cluster

3. Infill Development

Infill development in its simplest form is the development or redevelopment of land that has been bypassed, remained vacant, and/or is underutilized as a result of the continuing development process.

- Main goals include housing, transportation, and growth management
 - Housing: increase affordable housing that accommodates key demographics and strengthens neighborhoods
 - Transportation: increase walkability, reduce reliance on cars
 - Growth Management: to improve tax base for elderly; reduce demand to develop farmland and open space

- Best applied for municipalities with unused structures or spaces with potential value; mix-used; ex: Newmarket, Manchester using old mills
 - Handbook cites the success in Portsmouth and Concord

4. Agricultural Incentive Zoning

Preserving rural character is a top priority for most small towns in New Hampshire, and the zoning statutes specifically state that "agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers..." Helps to retain rural character through preservation of landscape and viewsheds.

- In order to understand if Agricultural Incentive Zoning should be implemented, and what needs should be met, Towns should:
 - Participate in local agriculture community
 - Identify key farmland soils in Town
 - Create a comprehensive agricultural profile for the town
 - Form a public outreach program educating community members on local agriculture and agricultural zoning
 - Ex: highlighting benefits of zoning a 100-year floodplain as "agricultural use" to decrease development and potential future flooding within the zone
- Enforces that any agriculture operation must follow the most recent BMPs
- Authority derived from RSA 21-34a; RSA 432:33; RSA 672:1 (III-b) and RSA 672:1 (III-d); RSA 674:21; RSA 674:26; 674:32a through c
- Potential to be successful; may address agriculture in cluster development goal from Master Plan 2012; main component of Agricultural Incentive Zoning is right-to-farm which Fitzwilliam has essentially accomplished
- Handbook identifies success in Concord and Wakefield
 - Wakefield uses Agricultural Incentive Zoning in their Cluster / Open Space ordinance
 - Wakefield Planning Board is required to look at the applicant's open space and prime farmland soils

Example:

- Hancock
 - Requires a Conditional Use Permit for animal husbandry operations or other agricultural operations on lots under a certain size or if wholly or partly in a certain district
- Sandown
 - Integrated RSA 672:1, III-d into Town Zoning
 - Provisions to aid in traffic and parking issues by increased farm operations through use of 674:32-b
 - Adopted 674:32-c which includes allowing tilling of soil for agriculture to be allowed in any district

5. Environmental Characteristics Zoning

Environmental characteristics zoning allows municipalities to protect natural resources or features based on scientific evidence and community input. Types of resources that can be protected include aquifers, wetlands, floodplains, wildlife habitat, groundwater, and other environmental characteristics

- Best research about adopting this zoning strategy came from NRPC who suggests zoning to protect key wildlife habitat
 - Encourages that Towns should start at the largest possible scale as small segments of land may not contain enough resources to sustain a species
 - Emphasizes that boundaries of zoning, such as political borders, may be negotiated at regional level
 - Example: Beaver Brook Association contains over 2,000 acres of protected land in Brookline, Hollis, and Milford

Example:

- Moultonborough
 - Integrated into their Wildlife Protection and Open Space Plan

See Page 15 for NRPC informational handout

6. Inclusionary Zoning

Inclusionary housing programs are a means of encouraging or requiring private developers to provide housing for moderate, low-income, and very low-income households. Ideally generates housing for low to moderate income households, elderly households, and disabled persons.

- Often applied in urban, population-dense areas
- Helps to establish a workforce housing area
- Functions by granting zoning exemptions and density bonuses to developers that permit building at a higher density if a portion of the proposed development is reserved for elderly, handicapped, or targeted lower-income households.
- Provisions are only applicable in municipalities willing to use density bonuses as a housing development incentive for a recognized community need.
- Provides voluntary incentives; least risk of a constitutional challenge as a “taking”
- Ordinance should include state community goals that have been identified and supported by the Master Plan.
- Most effective in communities with a growing housing stock
- Typically use other initiatives as incentives, such as:
 - Smaller permitted lot sizes; increased density; open space or cluster development; mixed use development; village plan alternative development; tax increment financing; public/private partnerships; manufactured housing; smaller dwelling units; housing for the elderly and disabled; accessory dwelling units
- Example: Boston Inclusionary Zoning mandates that 13% of the units in new buildings must be offered at rent affordable to a household earning 70% of the area median income

Example:

- Amherst
 - Defines affordability as dwelling units available for sale or rent to households earning at or below 100% of the median area income. In exchange, the town provides flexible lot sizes, setbacks, and density standards which are reduced from those for traditional subdivision.
- Chester
 - Definitions for 4 different income levels, which are each permitted different density bonuses dependent on whether the proposed units will be owner or renter occupied
 - Applicants can combine types of housing for a mix of income groups and add up density bonuses until they have achieved a maximum permissible density for that site based on on-site well and septic standards of the NH DES
- Nashua
 - Uses a series of 12 different potential exchange rates- affordable units for density- based on the type of housing offered.
 - The ordinance also allows developers to pay a fee, equal to the dwelling unit construction cost, into a housing trust fund as means of compliance.

- Exeter
 - Grants a 15% density bonus in exchange for 20% of the total number of proposed units provided as affordable (15% for households with incomes between 80 and 120% of the area median income and 5% for households with income below 80% of the area median income.)
- Wolfeboro
 - Incentive of 15% bonus units for:
 - 15% designated for low-income rental housing
 - 20% designated as low- to moderate-income rental housing
 - 5% designated as low-income owner-occupied housing
 - 10% designated as low- to moderate-income owner-occupied housing
 - 15% designated as moderate-income owner-occupied housing

See Page 17 for NRPC informational handout on Inclusionary Zoning

7. Planned Unit Development

Planned unit developments (PUD) are good options for municipalities to use to promote the efficient use of land and utilities by providing a pattern of development different from a "conventional" one in which there is a division of separate lots for each structure.

- Can be used for residential, commercial, or industrial developments.
- Developments are designed so that the developer has flexibility in placing units and accessory buildings, roadways and other utilities while allowing the site to have usable open space and preserve important natural features.
- The site development is based upon a comprehensive, integrated and detailed plan rather than the specific constraints applicable to piecemeal lot-by-lot development under conventional zoning.
- Important to have identified PUD in Master Plan for support
- A PUD should improve the quality of new development by encouraging aesthetically attractive features and promoting quality site and architectural design.

Examples:

- Londonderry
 - Minimum tract size is 100 contiguous acres
 - Allowed in all districts
 - Max density of 6 residential units
- Marlborough
 - Planning Board reviews the plan and gives feedback; Zoning Board of Adjustment receives and deliberates on application

8. Accessory Dwelling Unit Standards

Accessory Dwelling Units (ADU) can address a number of housing needs within a community. ADUs are one way that a municipality can provide for more affordable housing or elderly housing. ADUs can provide flexibility in household arrangements to accommodate family members or nonrelated people in a permitted, owner-occupied, single-family dwelling, while maintaining aesthetics and residential use compatible with homes in a neighborhood. Until June 1, 2017, municipalities were entitled to regulate ADUs through innovative land use controls under RSA 674:21. However, as of that date, new ADU state laws took effect requiring all municipalities to allow internal or attached ADUs in all zoning districts where single-family dwellings are permitted. The new ADU requirements can be found in RSA 674:71 through RSA 674:73. The new laws give municipalities several options in how they regulate ADUs, so it is strongly recommended that planning boards amend their municipality's current ADU regulations. If ADUs are not currently addressed in the zoning ordinance, adoption of a new ADU ordinance is recommended.

9. Ridgeline and Steep Slope Development

Preserving rural character is a top priority for most small towns in New Hampshire and undeveloped hillsides are an essential component of a town's local identity. The steep slopes ordinance can identify regulatory and voluntary approaches that control or manage development on steep slopes. Typical issues such as ridge-line visibility, aesthetics, and erosion and flooding that would potentially damage water quality may be explored, as well as any other related issues.

- Regulations can come in three categories:
 - Slope/density provisions: reduce allowable densities on hillsides; the steeper the slope, the less the allowed density
 - Soil overlays
 - The guiding principles approach: creates hillside overlay districts to cover all hillside lands in a jurisdiction.
- Wakefield, NH ordinance gives some regulation to steep slope development

Example:

- Lyme
 - Uses Special Exception within Site Plan Review to permit activities within a "Ridgeline and Hillside Conservation District."

§674:21 (i) – Flexible and Discretionary Zoning Research

Email response from Carol Ogilvie:

Hi Danica,

Sorry to take so long to get back to you. Anyway, to answer your/the Board's questions about 674:21, the short answer is that under the current ordinance, the Board could not offer the kind of relief this person* is looking for without him going for a variance. The alternative to that is, as we have discussed, is to use 674:21 and authorize the Planning Board to grant a conditional, or special use permit to approve a reduced frontage. In order to do that, that means an amendment to the zoning ordinance that sets up the dimensional requirements as being subject to modification and/or waiver through a CUP by the Planning Board.

As for the Board's concern that someone could come in now and ask for that, the answer is no, they could not, because the ordinance does not allow it. Like special exceptions, a CUP cannot be applied for unless the ordinance authorizes the Board and spells out the uses and any conditions under which it might be granted.

I hope this provides some clarity, but I am happy to continue to help work this through. I think that 674:21 can be confusing - it is not a great piece of legislation, and has been tacked onto so many times it can be hard to fathom. But it does provide opportunity for flexibility that is not possible otherwise. And even though it does appear to single out a few things, such as impact fees and village alternative subdivision, it also allows the kind of process we are talking about here (under subparagraph i, flexible and discretionary zoning).

Also, re the DHR letter - yes, that is just information at this point. The Board does not need to do anything with it, but it gives you a heads up if the activity will need board approval.

Best,

Carol

*referencing our discussion with the Moran's

Using 674:21 i with Conditional Use Permits

CUPs are similar to special exceptions, however, may be issued by any board – so long as the zoning ordinance gives authority.

- Restricted to zoning matters
- Ordinance must:
 - Clearly explain what is covered by CUPs
 - Detail the requisite process for applicants
 - Guidelines for grant or denial
- The Planning Board is required to comment on applicant's proposal under CUP, regardless of the board reviewing the application
- Administer CUPs as part of site plan & subdivision review process
 - Efficient, cost effective
 - Single process before one board
- PB decisions on CUPs appealed to the Superior Court, not the ZBA

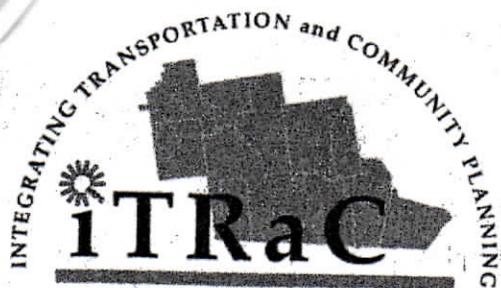
§674:21 (i) – Flexible and Discretionary Zoning Research

Legal Challenges (as laid out by City of Dover and Drummond Woodsum):

- Procedural due process
 - Ordinance must contain sufficient “notice reasonably calculated” to alert affected parties of the process and what is required. *Kelsey v. Town of Hanover*, 157 N.H. 632 (2008).
 - Avoid vague terms
- Substantive due process
 - “questions the fundamental fairness of an ordinance” *Dow v. Town of Effingham*, 148 N.H. 121 (2002)
 - Looks at whether the restriction on property rights is “rationally related” to “legitimate goals” of the municipality. *Boulders at Strafford v. Town of Strafford*, 153 N.H. 633 (2006)

Integrating 674:21(i) into Fitzwilliam Zoning

- No current statute in the Zoning Ordinance which discusses the purview and application of a Conditional Use Permit other than where it is mentioned in §127-16.1 D 4 (Wetlands)
- Could be integrated into Article 55 in the Code of the Town of Fitzwilliam, regarding purview of Planning Board, or,
- Integrated into the Administration section (Article IX) following §127-38 (see page 69)



Helping Communities face the challenge and impacts of growth while maintaining community character and a sense of place.

FACT SHEET: 11

iTRaC is the Nashua Regional Planning Commission's new approach to community planning that focuses on integrating transportation, land use and environmental planning. The program was developed to assist communities in dealing with the challenges of growth in a coordinated way that sustains community character and a sense of place.

Innovative Zoning: Habitat Protection

Ecological Functions ~ Wildlife habitat provides public benefits and performs a variety of important ecological functions including stream buffering, flood retention, carbon sequestration, and contaminant filtering. Preserving wildlife habitat also protects endangered species and biodiversity, which in turn support the health and vitality of natural processes, allowing them to perform important ecological services in our communities and region.



Rural Character ~ Protecting wildlife and habitat also helps maintain the rural character of New Hampshire. Fishing, hunting and bird-watching are cherished past-times of our culture. Access to protected natural and scenic views are long-standing icons of the state, drawing tourists and delighting residents within and outside New Hampshire.

Making it Happen ~ Successful habitat protection occurs at three levels in the community's planning process: regional, town, and site. For each level there are three methods of protection: regulatory, market-based, and voluntary. This fact sheet focuses on regulatory protection.



Successful Habitat Protection - Start BIG

Size Matters ~ Because many animals require a large territory to find food and adequate breeding grounds, wildlife habitat protection usually begins at the largest scale possible. Small, isolated segments of a habitat may not contain enough resources to sustain a species and may result in its decline. Planning to maintain unfragmented habitat blocks as development occurs will protect existing wildlife and create a network of viable habitats.

Crossing Borders ~ Although it is difficult to coordinate across political boundaries, some governments have taken a more regional approach to habitat protection. For instance, in NH habitats like the Merrimack and Souhegan Rivers, which cross many political boundaries, are protected by the Rivers Management and Protection Act (RSA 482:6).

NH Wildlife Action Plan ~ This valuable tool helps communities define & implement strategies that identify, restore, & maintain critical habitats as well as safeguard animal behavior and lifecycle activities.



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Municipal Scale Habitat Protection

Regulating across town lines *and* ecological boundaries makes large scale conservation more difficult, since most land use decisions take place at the municipal level. Using guidance from state programs, town protection starts during the master planning process when critical habitat areas should be identified and prioritized. Strong citizen support and involvement is a driving force for habitat preservation at the town level, where residents can directly benefit from access to conservation lands.

Communities can use several strategies to regulate habitat protection:

- Adopt statements of purpose in the master plan to guide the creation of ordinances and regulations that protect wildlife. These statements often suggest conducting a Natural Resources Inventory, Open Space Plan, or Wildlife Habitat Protection Plan.
- Utilize innovative zoning techniques found in RSA 674:21, including the Village Plan Alternative and Environmental Characteristic Zoning, to provide a basis for growth while preserving wildlife habitat through more efficient and cost-effective land use.
- Participate in a regional open space team or coordinate with a land trust. Important local decisions can be reprioritized when they are part of a larger vision.

On Site Habitat Protection

- Create design guidelines for all new development that provide specific criteria for protecting wildlife habitat and assure visual amenities for the town. Design guidelines must be approved by the Planning Board.
- Develop performance standards within the subdivision or site plan ordinances to assure that the town's habitat and natural resource priorities are not jeopardized as growth occurs.
- Provide attractive incentives to encourage voluntary preservation; they will be repaid by a higher quality of life enjoyed by residents.
- Take individual action! The NH branch of the Natural Resources Conservation Service developed the Wildlife Habitat Incentive Program, which provides considerable technical and financial support for conservation efforts on private land that contains certain rare habitats. For more information visit: www.nh.nrcs.usda.gov/programs/Farm_Bill/wildlife.html.



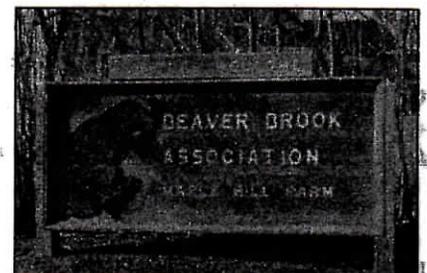
Success Stories

Critical habitat protection efforts have been accomplished along Purgatory Brook because of the coordination and communication between the Towns of Lyndeborough and Mont Vernon, the Regional Open Space Team, and the Souhegan Valley Land Trust.

www.svlt.org

The Beaver Brook Association assists communities with local open space and habitat protection. To date, they have protected over 2,000 acres in Brookline, Hollis and Milford, providing valuable wildlife habitat and recreation opportunities.

www.beaverbrook.org



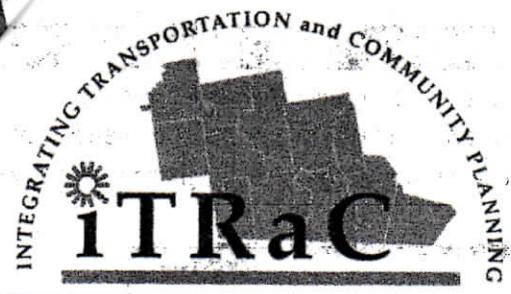
Want to learn more about Habitat Protection?

For more details on this topic or an overview of the entire iTRaC program, visit

www.nashuarpc.org/itrac

or contact Camille Patisori, iTRaC Program Manager, at camillep@nashuarpc.org or 603-883-0366 x14.





Helping Communities face the challenge and impacts of growth while maintaining community character and a sense of place.

FACT SHEET: 13

Inclusionary Zoning

iTRaC is the Nashua Regional Planning Commission's approach to community planning that focuses on integrating transportation, land use and environmental planning. The program was developed to assist communities in dealing with the challenges of growth in a coordinated way that sustains community character and a sense of place.

Inclusionary Zoning (IZ) is a method for providing affordable housing where it may otherwise be unavailable. Municipalities adopt a local ordinance that requires or provides incentives to developers to construct a percentage of affordable dwelling units in market rate developments for those who earn below the area median income. Historically, mandatory ordinances produce significantly more affordable units than voluntary ordinances, however, mandatory standards carry greater risk of a constitutional challenge as a "taking." New Hampshire's IZ provides voluntary incentives. Any IZ ordinance should include stated community goals that have been identified and supported in the master plan, such as meeting local and/or regional housing needs or creating a wider range of housing opportunities.

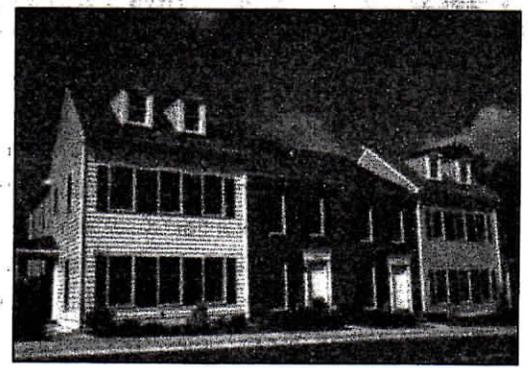
In New Hampshire ~ Inclusionary Zoning (IZ) is one of a number of innovative land use controls under RSA 674:21. Section IV defines IZ as: "...land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions and a streamlined application process."

The NH Housing Finance Authority (NHHFA) created the Inclusionary Zoning Implementation Program (IZIP) in 2007, to provide communities with ordinance development and support.



Inclusionary Zoning ~ weighing all sides

- Positives**
- Provides affordable housing integrated into market rate developments
 - Shifts cost of implementation from local government to the private sector
 - Promotes economic diversity by providing "Workforce Housing" opportunities
 - Less sprawl with density bonuses
 - Little or no effect on home prices
- Negatives**
- Cost shifted to one segment of society—fairness issues
 - May speed up the rate of development
 - Constitutional "takings" issue, particularly with mandatory participation



These are four Montgomery County townhouses, but only the two in the middle are Moderately Priced Dwelling Units.

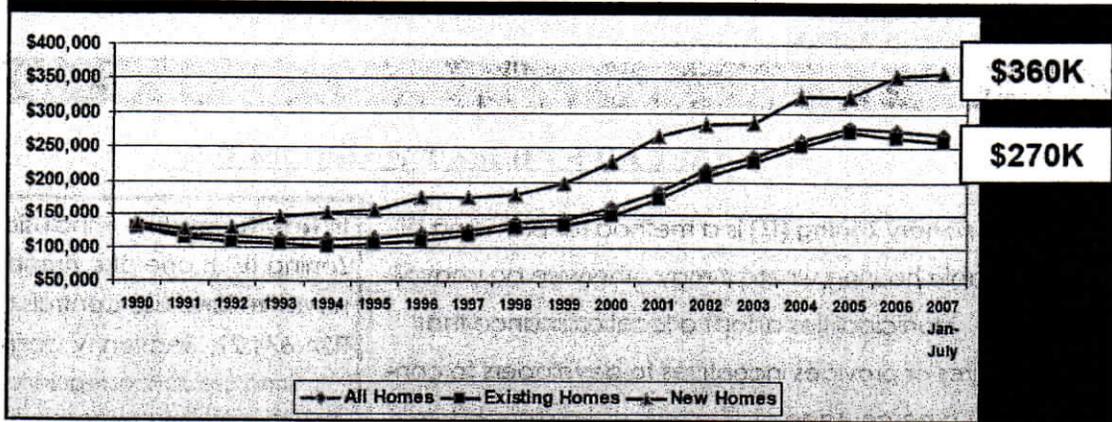


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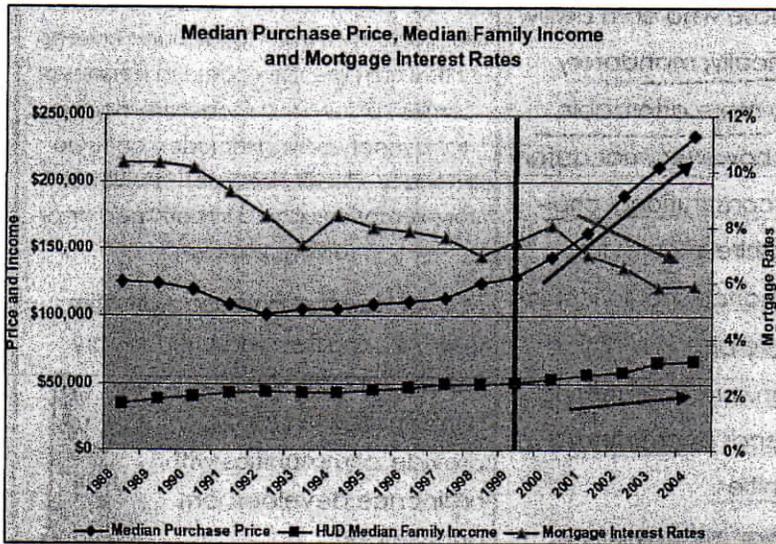
Updated March 4, 2008

FACT SHEET: 13

A Need for Affordable Housing ~ The top graph depicts Median Purchase Price of primary homes in the Nashua region over time. This trend is consistent statewide. A drop in 2006 and 2007 may reflect the effect of the "sub-prime" mortgage collapse in 2007. The graph below shows low interest rates and rising family income being outpaced by rapidly increasing purchase prices.



Source: Inclusionary Housing In New Hampshire, NHHFA /WHC / Ben Frost, January 23, 2008 / [Link to document](#)



Source: Setting The Stage: Affordability and Inclusionary Zoning, NHHFA/Ben Frost, 4/06 - [Link to document](#)



This house holds two Moderately Priced Dwelling Units. Note the front entrance (left) & side entrance (right).

Achieving Community Acceptance and Voluntary Participation

The Community

- No reduction in taxes to encourage participation
- Compatibility, indistinguishable from other units
- Units interspersed throughout development
- Project affordability verified & sustained over time
- Certification of financial need—income & assets
- Phasing must include approved ratios in all phases
- Assure project completion
- No density bonuses—Compromise can be a WIN/WIN

The Developer

- Project has to be profitable and marketable
- Participation in developing an ordinance that works
- Expedited application/permit process to lower costs
- Exemption from some fees, financial assistance
- Relaxation of Growth Mgmt. & phasing requirements
- Reduced lot size and/or other dimension standards
- Flexibility—utilize both zoning & regulations
- Density Bonuses—Compromise can be a WIN/WIN



For more details on this topic or an overview of the entire iTRaC program, visit www.nashuarpc.org/itrac or contact Camille Pattison, iTRaC Program Manager, at camillep@nashuarpc.org or 603-883-0366 x14. Nashua Regional Planning Commission in partnership with the NH Department of Transportation & the NH Office of Energy and Planning.

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DRAFT
Town of Fitzwilliam
Planning Board
Meeting Minutes
April 17, 2018

Member's Present: Terry Silverman; Paul Haynes, Vice Chair; Suzanne Gray; Robin Peard Blais, Secretary; Charles Kenison, Selectman's Rep; Ross Tourigny, Chairman

Member's Absent: Matt Buonomano; Rob Young, Alternate

CTO: 7:03 pm

Solar Update. 7:04 pm.

Tourigny discussed the article provided by Kenison regarding NextEras newest solar project in Ontario. The Board reviewed the article together.

The Board then discussed their thoughts and concerns about the current Chinook Solar proposal (owned by NextEra) for a solar utility facility in the Town. Blais asked if Kenison knew how much square footage was proposed to be cut at the site. Kenison responded he was unsure of the total square footage allowed by the intent to cut permit however, thus far, it seems to be nearly completely cut.

Silverman asked about the right-of-way on the proposed property. Kenison responded he does not have a deeded right-of-way to the property and is accessing the proposed property through a separate lot. Kenison clarified that they are accessing it to haul away firewood.

Gray discussed the upcoming informational meetings with Chinook Solar and when they would be held. The LUA announced that they will be holding two sessions; Wednesday, May 16 & Thursday, May 17. The LUA also clarified that the intent of the first meeting was to focus on abutters to the project, who would be invited via notices from Chinook Solar, while the second meeting is open to the public. The Board expressed concerns about the informational session just for abutters and asked if it could include Board members or other people from the public. The LUA responded that she would follow-up and confirm whether or not it would be okay for others to attend that session. Silverman added that there should be two fully public informational sessions, as opposed to one fully open and another that is closed off only for abutters.

The Board then discussed the estimated life span of the solar panel array installation. The Board recalled Chinook Solar reporting that the lifespan is to be 30 years. Silverman discussed that he has been reaching out to several tech experts to come out and speak with the Board. Silverman clarified that the techs were from the region, and he could invite them to attend a meeting if the Board would like that. Tourigny asked if they are selling the product and Silverman responded

44 that their backgrounds are more about legislating solar energy systems. The Board agreed they
45 would like to speak with them.

46

47 Tourigny expressed that he was concerned the only reason making Fitzwilliam attractive for
48 solar energy power plants was because it could be easily connected to the power lines. Tourigny
49 and Blais discussed how other solar energy power plants have been sited in the region;
50 discussing Orange, Athol, and Peterborough. Blais discussed with the Board how “ugly” the
51 substation looks since being developed; particularly in terms of loss of vegetation and impacts to
52 the viewshed. The Board discussed their concern about whether or not the solar plant is to only
53 be put in for the subsidies providing the company a tax break.

54

55 Tourigny added that he had recently heard from a homeowner that one strategy for keeping
56 solar panels clean is to use a Rain-X-like substance on the panels which would help debris easily
57 run off the surface. Blais discussed that she had spoken to Phil Bryce from the Division of Parks
58 and Recreation and that he is interested in attending those informational sessions, mainly on
59 behalf of researching what the potential impacts could be to Mount Monadnock.

60

61 Gray discussed maybe there should be an informational sheet for the community which would
62 outline the timeline and process for the hearings. Gray added that they could include Town &
63 SEC information about the matter, as well as how the public can be involved with the input
64 process. The Board talked about how they could increase the community’s involvement in this
65 matter.

66

67 Tourigny discussed potentially using the Fitzwilliam Facebook page to post about these events.
68 Silverman responded that so far there hasn’t been an application submitted so there isn’t much
69 concrete information about the project that can be passed along. Gray and the Board discussed
70 trying to get the community involved with SEC meetings so they are able to give input. Tourigny
71 suggested putting something in the newsletter with information about the SEC meetings and
72 how interested people may be involved, and that the newsletter clarify that there has been no
73 formal application submitted.

74

75 Tourigny asked if there was any further discussion on the matter, there was none.

76

77

78 **Solar Conditional Use Permit.** 7:29 pm.

79 The Board reviewed the draft of the CUP application form. The Board discussed the details
80 within the CUP and Gray noted that the wording was a bit confusing beneath the title of the
81 document. The Board asked that the sentence be re-worded for clarity, reflecting that applicants
82 for community-scale roof-mounted and small-scale systems did not need to fill out a Conditional
83 Use Permit application.

84

85 Blais noted that there should be more lines for writing under 7, or a note for the applicant that
86 they may use a separate sheet of paper.

87

88

89 **Scenic Road Update.** 7:42 pm.

90 Gray discussed the confusion regarding the size of the trees which may be cut and read the
91 provided definition. Gray clarified that the total circumference of such trees involved in Scenic
92 Roads would be 19 inches in circumference or larger, as defined by the State.

93
94 Gray reflected back to the 2012 Master Plan and identified where it discussed scenic roads and
95 goals related to it. Gray added that the Board was reviewing the concept of Scenic Roads purely
96 because it's a goal in the Master Plan and it's the job of the Board to review those goals. Gray
97 then noted that some of the goals within the Master Plan discuss preserving rural character and
98 stonewalls, and that those goals may be accomplished through Scenic Roads. The Board
99 discussed landowner's rights of removing trees in the right-of-way to which Silverman &
100 Tourigny responded that they were allowed to cut down those trees in their properties right-of-
101 way.

102
103 Blais asked if the Planning Board would be suggesting roads for designation and Gray responded
104 that no, the purpose of Scenic Roads would be to create a vehicle to allow people living on a road
105 to petition together to designate that road as scenic.

106
107 The Board discussed removing the section of the state's Scenic Road template which gives the
108 Planning Board and Conservation Commission the ability to designate roads. The Board
109 discussed that the purpose of the ordinance should be to solely allow community members the
110 ability to designate their road, if they want to, through a petition of 10 voters who must be living
111 on that road.

112
113 Haynes asked about reaching out to the Highway Department to get their input. Kenison added
114 that he felt the language needed to be much clearer because when the Board first reviewed it,
115 most everyone aside from the Board had misinterpreted the document. Gray and Blais discussed
116 that at its core, Scenic Roads would should simply help to preserve rural character, like
117 stonewalls, on roads where those residents wanted those features preserved.

118
119 Kenison asked if it was possible to designate portions of a road as scenic. The LUA noted that
120 designating portions of a road is possible. The Board questioned how a road may be designated
121 if it does not have 10 voters to petition. The LUA responded that she will research if there is legal
122 authority for a quorum of residents on a road to petition the designation in the event that there
123 are not 10 voters living on that road.

124
125 Gray discussed that the template draft of Scenic Roads should include language about the
126 possibility of designating portions of roads and the process of designation should be made
127 significantly clearer to whomever is reading it.

128
129 The Board agreed to revise the template draft and discussed inviting the Town's Road Agent for
130 a discussion. The Board agreed to invite the Road Agent to the next meeting.

131
132
133

134 **Review of Planning Board Projects in the Land Use Department. 8:08 pm.**
135 The Board discussed how they should prioritize the projects which are based off goals from the
136 2012 Master Plan.

137
138 Silverman addressed the research being done on Innovative Land Use Controls, of RSA 674:21.
139 Silverman noted that, specifically with the Flexible and Discretionary Zoning, which he felt it
140 was something more for the Zoning Board of Adjustment to handle because it's important for
141 the Planning Board to be objective with how they review cases. Silverman discussed a related
142 past case that had triggered the Board to discuss these innovative land use controls, specifically
143 the Flexible & Discretionary Zoning. Silverman explained that he felt if the Planning Board was
144 to allow that type of zoning, such as making case-by-case exceptions, then it would open the
145 Board up to a lot of lawsuits and issues.

146
147 Haynes and Tourigny agreed with Silverman, in that the Planning Board should not become
148 subjective with how they handle cases. Gray responded that she also feels that the RSA 674:21
149 could become a slippery slope, legal-wise.

150
151 Blais commented on the research for Complete Streets and noted that she felt utilizing the
152 concept had potential to negatively impact the rural character and would be a taking of land.

153
154 Silverman discussed that the LUA should not be working for the Economic Development
155 Committee on developing a brochure for new businesses. Tourigny and Gray responded that
156 they are in the process of meeting with the Selectmen to see if they may contract the LUA to
157 work on it.

158
159 Blais discussed adding the Prime Wetlands to the project list so that they may begin working
160 towards designation of Prime Wetlands at the next Town Meeting.

161
162 Tourigny asked if there was any further discussion and there was not.

163
164

165 **Minutes of April 3, 2018. 8:31 pm.**

166 Gray and Silverman discussed clarifying, on Page 9, Line 382, when Silverman discusses town
167 legislature and agreed to change it to "town legislature or at Town Meeting."

168
169 Gray noted Page 10, where Buonomano spoke on Line 438, that it should clarify that the Board
170 had the opportunity to utilize the two most senior member's knowledge.

171
172 Silverman discussed that the minutes were beginning to sound a lot like a transcript and in
173 doing so can be confusing for the Town to follow along and that it takes a fair amount of time to
174 edit the minutes to ensure that they be interpreted exactly as they should. Tourigny discussed
175 that the past minutes didn't always include all subject matter discussed. The Board agreed,
176 going forward, the minutes should be less like a transcript.

177

178 Gray made a motion to accept the minutes as amended, Haynes seconded, and the Board agreed
179 unanimously.
180

181 Tourigny made a motion for the meeting to adjourn, Haynes seconded, and the Board adjourned
182 at 8:38 PM.
183

184

185

186