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MEMORANDUM

TO: Selectboard & Town Administrator
FROM: Alex Weinhagen, Director of Planning & Zoning
DATE: March 29, 2013
RE: Rural Area Zoning Proposal – Selectboard Questions for April 1 Meeting

Many thanks to Tom, Jon, and Phil for forwarding some questions and concerns about the Rural Area Zoning proposal ahead of the first Selectboard discussion at the April 1 meeting. I've listed these below, and attempted to provide some answers and/or background. I've paraphrased each question/concern, given the initials of the Selectboard member who posed each, and grouped them within the three regulation revision objectives and the Town Plan revisions. Some of these were simple questions, and may not require discussion. Others are broader policy concerns that need discussion and direction by the full Selectboard. I hope this material helps you better understand the proposal, and helps focus the Selectboard discussion. To help keep the discussion as efficient as possible, I recommend beginning the discussion with the Objective #1 regulation revisions (Expanding Uses), and then moving sequentially through Objective #2 (Design Standards), Objective #3 (Development Density), and finally the Town Plan revisions.

Objective #1 – Expanding Allowed Uses:

(TA) – Businesses on dirt roads. Do we need to reconsider some of the proposed uses given the annual posting of the dirt roads during the mud season?

The Planning Commission (PC) did discuss the overall issue of allowing more non-residential use of rural area roads. In a nutshell, they felt that the proposed expanded uses will not have an adverse impact on our rural roads, because: a) the nature of the uses, and b) the development review process. First of all, the nature of the expanded uses that have been added are felt to generally be low traffic generators. The Low Impact Agribusiness use in particular includes very clear language in the definition to prevent uses with adverse impacts. This definition also clearly states that growth and expansion of such uses will be limited. The PC also discussed the types of businesses and the reality of a commercial real estate market in which uses that require high visibility or high traffic volumes are unlikely to even consider a remote location in a rural area. Secondly, the proposal addresses this globally by adding tighter language to the conditional use review standard for traffic (see page 6 of Objective #1). Applicants will be required to demonstrate to the Development Review Board (DRB) that the use will not have an undue adverse effect on the "maintenance of public roads in the vicinity, including the cost to the Town to provide this maintenance." New businesses will be advised of the mud season restrictions, and will have to plan accordingly.

(PP) – Use definitions. How can we define all the potential permitted uses for the agricultural and rural zones. Is there a way for new uses to be added? Can we add a list of characteristics that define the use rather than name the use?

Quick answers in order: No, we can't define all the potential uses. Yes, there is a way for new uses to be added via future zoning revisions. Yes/no, we really do need to have a list of allowed uses for clarity; however, the proposal does use categories of use, and it does provide very clear definitions.

Traditionally, zoning attempts to allow types or categories of uses, so as not to have to list every conceivable specific use – e.g., medical facility instead of listing dentist office, primary care facility, physical therapist, etc. There is no bright line on this distinction, and often times our regulations will include both general use categories as well as some very specific uses. The key is to allow the uses that make sense, and to have a clear definition of each – either via the dictionary for commonly understood uses or via the definition section of our regulations for more nuanced uses. The PC agreed that they could NOT list and define all the potentially viable uses for the rural areas; hence categories of use like “Integrated Agriculture” or “Low Impact Agribusiness”. At the same time, the PC was concerned about opening up the rural areas too much, so they spent a lot of time crafting the use definitions that comprise the bulk of the Objective #1 document. Please note that they did not simply add new uses to our existing list of what is allowed. The PC reviewed and made changes to the entire suite of allowed uses.

(PP) – Permit Process for new uses. Define what the permitting process would be for some of these new uses. Clearly define when you need a permit and when you need to go through the DRB.

If the use is permitted, it would need to go through the DRB for site plan approval, and then it would need to get a building permit from the Zoning Administrator (ZA). Examples of permitted uses in the AG and RR2 district include: Farm Stand, Bed & Breakfast, Cemetery. Most of the new uses added are conditional rather than permitted. If the use is conditional, it would need to go through the DRB for a combined conditional use, site plan approval, and then it would need to get a building permit from the ZA. Examples of conditional uses include: Farm Café, Integrated Agriculture, Low Impact Agribusiness, etc. Also, remember that zoning in the rural areas generally specifies one principal use per lot (Integrated Agricultural and Farm Café being exceptions). Therefore, in the absence of an undeveloped lot, many of these uses (e.g., low impact agribusiness like farm equipment sales and repair) would also require the creation of a new lot via the subdivision review process with the DRB.

(PP) – Road maintenance cost. Determination of the cost of road maintenance will be difficult. Can this be based on actual traffic numbers? Do we take into account the existing condition of roads even if they are the same class (some roads can take more traffic while others will always be “sinkholes”)? Do we take into account how far down the road the impact is or how steep the road is?

Very good point! We can based this determination on anticipated traffic that the new business will generate, as traffic generation is typically part of the DRB review process, and is relatively well understood. The analytical problem comes when we ask about the capacity of the road in question. We simply do not have good quantitative data on how much more traffic any given road can absorb. Qualitatively our Road Foreman (and to a lesser extent the rest of us) knows which road segments are in good or bad shape, and that's the best we have to work with now. With regard to expanded non-residential uses, we will absolutely consider the existing conditions of each road regardless of road class. The PC considered taking distance down a rural road into account, both with regard to expanded uses and with regard to residential development density (Objective #3). The PC felt such a metric would not be workable or fair. They really felt that the types of uses being added would be unlikely to create a significant burden, and if a particular use would, that it would be obvious to the DRB. The PC also considered road steepness. One suggestion from the public was to consider the limitations in the RR2 district because of the hill roads. For the reasons above, they felt that a greater distinction between

allowed uses in the AG and RR2 districts was not necessary, and could be counterproductive to maintaining Hinesburg's working landscape.

Objective #2 – Improving Design Standards:

(TA) – Rationale for parcel size link to Current Use program. Add language that clarifies that 25 acres is the minimum parcel size for enrollment in the Current Use program.

See page 2, General Standards #1. When a large parcel is subdivided for development, small to medium size lots (e.g., 1 acre – 15 acres) are often created. It pays to keep one or more lots larger than 25 acres so that the land remains eligible for the State tax abatement program, typically referred to as the Current Use program. The tax burden of a 20 acre lot is substantially higher than a 30 acre lot that has a significant area enrolled in Current Use. This program helps landowners keep agricultural lands open and farmed, and it helps keep forest lands wooded and working. Clarifying the parcel size enrollment minimum of 25 acres is a good idea.

(TA) – Trail network consideration. Add language that clarifies that this standard is really just a goal, and is voluntary at the discretion of the landowner rather than the DRB.

See page 3, General Standards #5. The terms used in this standard are “goal” and “encouraged”. It was the PC's intent to make this consideration advisory only and not obligatory. The trail network vision map in the Town Plan has not evolved to the point of designating specific trail segments. Clarifying language could be added, but the terms used were chosen carefully to address this concern.

(TA) – Solar access. How binding is the design standard about solar access?

See page 3, General Standards #6. Like the trail standard mentioned above, the solar access standard is advisory rather than obligatory. The key word is “should” in the first sentence. Using the word “shall” makes a provision required. Using the word “should” makes a provision advisory.

(PP) – Solar thermal panels. At the end of the sentence add “... and allow the use of active solar photovoltaic and thermal panels now or” Just want to note solar thermals get their due.

See page 3, General Standards #6. OK, but I'm not sure what a thermal panel is – solar hot water?

(PP) – Primary and secondary resource delineation. Primary and Secondary delineations will be done by existing GIS maps. Can we define for each delineation, where the maps or data comes from and how are they maintained? If they change, how does it get incorporated into our town maps? If another “expert” is brought in and we adjust the permit process do we then change the delineation, does the map get updated? What if the town disagrees with the map or the expert?

The proposal does provide definitions for several of the resource areas to be considered (i.e., the ones that lack definitions in our current regulations). See the definition revisions on page 3. All of these flow from natural resource discussion and map data included in the Town Plan. With that said, it would be tough to explain how each dataset is maintained. They are all publicly available GIS datasets, and the Planning & Zoning Office is here to provide more details on the originator of the data (e.g., FEMA, USDA, CCRPC, VT F&W, etc.) and its timeliness. The Planning & Zoning Office keeps abreast of updates to the various natural resource GIS datasets, and we use the most current data as long as the definitions in the regulations don't have a specific date/time stamp. Our Town Plan maps that depict these resources are

there for reference, but we only update the Town Plan every five years, so those maps are for reference, and are updated on that cycle. For day-to-day development review, we do our best to use the most up-to-date GIS data.

Good question about whether we update the resource maps when expert evidence is submitted! The process says that evidence from a qualified professional will be considered. If sound, it would “change” the resource delineation for the project area in question. However, it will be difficult to formally update the source dataset accordingly since we didn’t create the data. The proposed language doesn’t speak to what happens if the DRB disagrees with the expert. The implication is that the DRB will generally accept revisions from a qualified professional unless there is conflicting evidence. In such a scenario, the DRB would likely ask for help to “fact check” the expert testimony/data – either from State resource professionals or by hiring an independent consultant to review it. This is very similar to what the DRB does for traffic studies that don’t pass the straight face test.

(PP) – Core Wildlife Habitat. Explain this.

The PC received significant public feedback at and after the November 2009 rural zoning forum about the need to consider wildlife habitat in the development review process. After much research and consultation with the VT Fish and Wildlife Department and the Conservation Commission, the PC decided to focus on core habitat areas and the forested or wetland corridors that connect them. See the definition of Core Wildlife Habitat on page 3. It is really this work on wildlife considerations that prompted the PC to also suggest changes to the Town Plan to accompany the regulation revisions. The wildlife section of the Plan includes revisions, and a new map is proposed to better depict core wildlife habitat and the corridors. I’d be happy to explain more about the rationale for the specific definition.

Objective #3 – Defining Development Density:

(TA) – Density linkage to road classification. Objects to this approach, in part because it is prejudicial against landowners toward the outside of town.

See page 2, Determination of Allowed Density #1. The PC’s intent was merely to recognize that our paved roads (with the exception of Silver Street) can handle a bit more development than our dirt roads, and that the Class 4 roads (not even maintained by the Town) should see the least development. This is a policy issue, plain and simple, so Selectboard discussion is needed. The PC did discuss using a single density factor. The PC also considered a much more robust/complicated system (e.g., Town of Norwich model) with many more factors including distance from the village area, proximity to conserved lands, etc. In the end, they rejected most of the other density adjustment factors, and kept it tied simply to the road classification. The interior and the periphery of the AG and RR2 districts are actually pretty similar with regard to road classification – i.e., both class 2 and class 3 roads that extend out to the very edge of the Town.

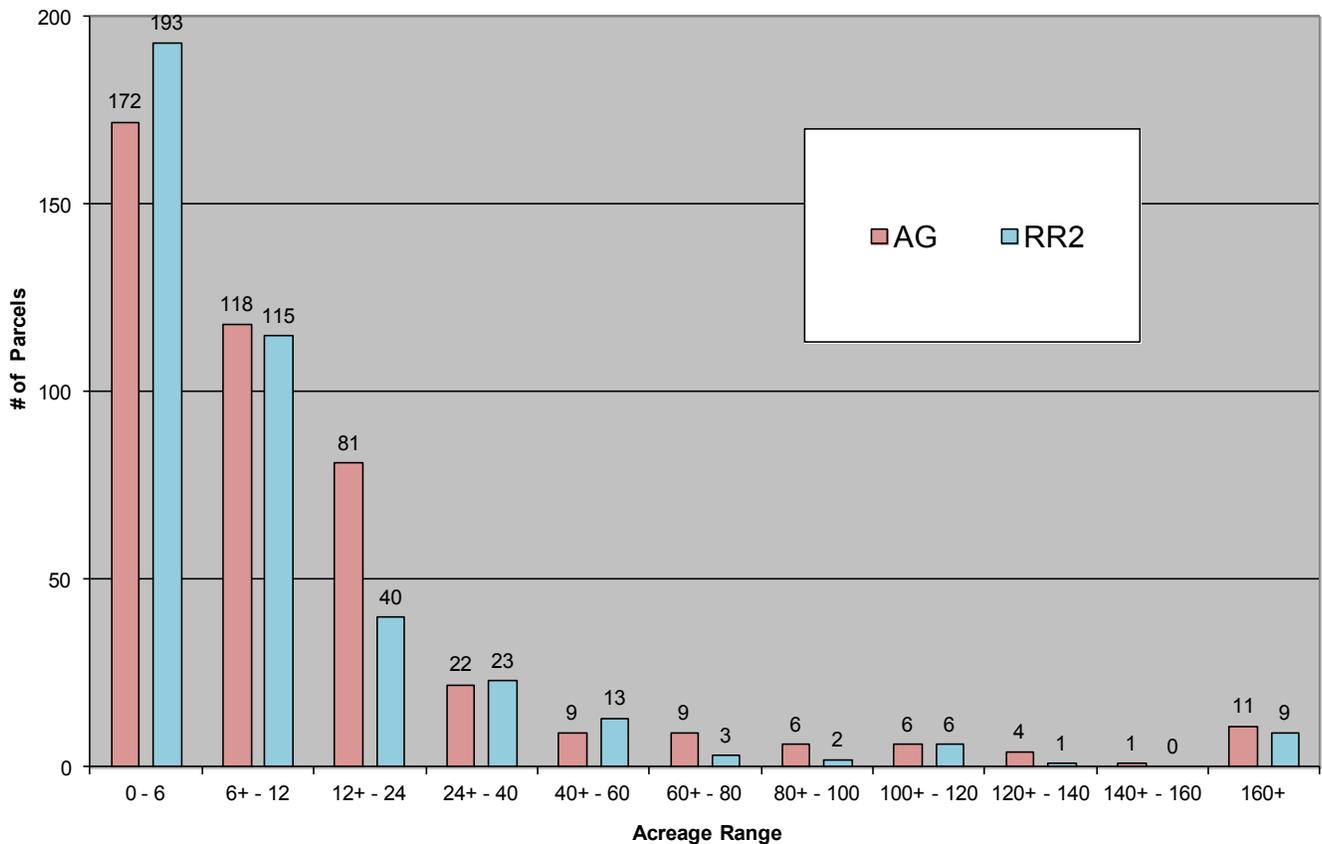
(TA) – Tracking development potential. Would like clarification on how development potential of parcels will be tracked. What will implications be if adjacent parcels come into common ownership?

See page 2, Determination of Allowed Density #3. We’ll need to discuss this, so I better understand the question. In a nutshell, the language requires that every subdivision decision clearly indicate the remaining development potential of the lots that are created.

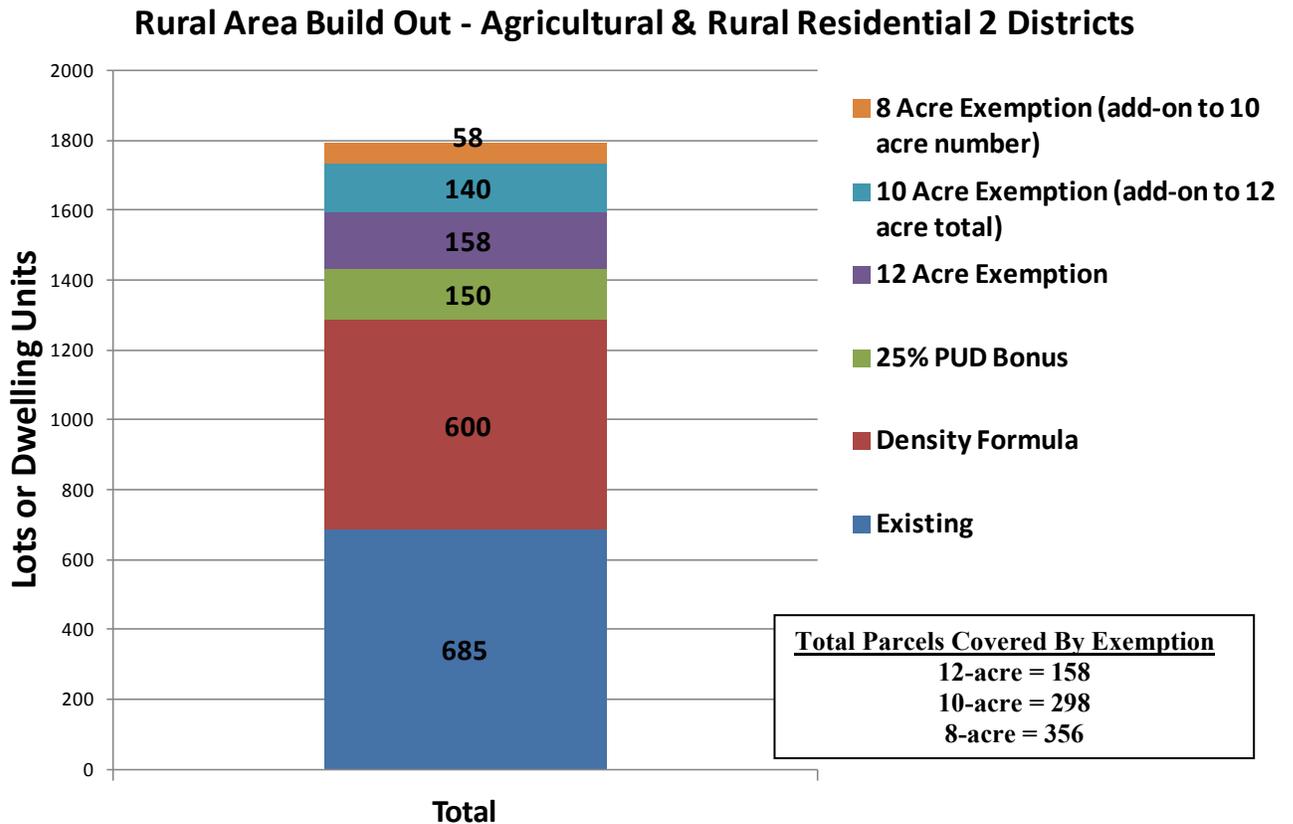
(TA) – Lot density exemption for existing 12+ acre lots. Have heard some concerns about using 12 acres as the cutoff for this density exemption. Have been told there are a lot of parcels below 12 acres.

See page 2, Pre-existing lot density exemption. This density exemption provision was included so that landowners with medium size parcels would have the opportunity to create one more new lot even if the density formula said the parcel had no build out potential. The PC felt it was important to hold harmless landowners who may have had a reasonable expectation to someday subdivide off a lot for a family member, for income, etc. With that said, they also didn't want a density exemption to completely undermine the existing rural development pattern or result in an excessive future build out. They didn't want an exemption that became the tail wagging the dog, especially given all the time and consideration they put into arriving at a reasonable rural area development density. The vast majority of parcels in Hinesburg are small to medium in size. See the parcel size distribution chart below. The PC ran the numbers and determined that they had to limit the number of parcels that would qualify for the exemption. They also recognized that many if not most of the small to medium size lots were never created or planned with future subdivision in mind. The many 10.1 acre lots in town are not the result of careful planning but rather the State's 10-acre septic permit loophole that was closed in 2004, and most were developed with a single-family home as the expected and only use.

Buildable Parcel Distribution



The PC looked at different parcel size cutoffs for the exemption – e.g., 8, 10, 12 acres. See the Rural Area Build Out chart below for the comparison. They also used GIS maps to look at the geographic distribution of these exempt parcels. In the end, they felt that the additional build out of dropping the exemption to 10 acres or 8 acres was too large, and would undermine the whole purpose of establishing a rural area development density consistent with what we see in existing neighborhoods, what we have seen in actual subdivision approvals by the DRB over the last 15+ years, and what comparable towns zone for in their most rural areas.



(JT) – Density, build out, and 12-acre exemption.

- What's maximum build out with the plan as presented (not including the exception)?
- What is maximum build out with the 12 acre exception?
- What is maximum build out if the exception is a different number? 10, 8, and 6 acres

The 12 acre exception has no road limitations. Was there any discussion in the PC about different size exceptions for different class roads?

The 12 acre exception has the same primary and secondary considerations as larger parcels. Was there any discussion at the PC about reducing the acreage for exceptions, while increasing the primary considerations? For example, perhaps a six acre parcel can be subdivided once, but prime agricultural soils are protected.

I think the charts shown above speak to Jon’s first three questions. The PC did NOT discuss varying the pre-existing lot exemption parcel size to different classes of roads. They really wanted to treat all landowners with these medium size parcels the same, and they felt that the additional build out from these “exempt” parcels would not be so large as to require additional complexity. Remember that the proposed language does not grant an absolute right for the additional lot. Subdivision review is still

necessary with all the considerations that go into that process. On that same note, the PC did not talk about reducing the acreage for exceptions in concert with some greater degree of resource consideration or protection – i.e., elevating prime agricultural soils from a secondary to a primary resource.

Objective #3 – Planned Unit Development (PUD) Revisions:

(PP) – PUD additional cost vs. density bonus. Will the additional cost of a PUD (any estimate?) be covered by the potential increased density?

See page 2 and 3, 3rd paragraph. Whether a PUD project is any more costly than a conventional subdivision really depends on the property in question, and the amount of development the landowner/developer is immediately interested in. Really, the additional cost to the developer is related to the creation of a master plan. If the developer wants to create two new building lots, and the conventional density allowance is four building lots, the cost to master plan the remaining two lots (should they even want to show a maximum build out) could be very small. On the other hand, if a developer only wants to create one new building lot in the short term from a very large parcel with a large overall build out potential, the master planning could require more work and cost more money. It's an incentive. Allowing more flexibility with the dimensional requirements (e.g., setbacks, lot coverage, etc.) is another incentive for PUD projects. The proposal also seeks to make the PUD option less cumbersome and easier to implement (eliminates the current PUD litmus test). Hopefully, taken together, these changes make it a viable option for landowners to consider.

(PP) – PUD changes affect entire town. Will the PUD changes only impact the rural areas?

Good observation! Yes, the proposed changes to the PUD regulations have a town-wide impact. The PC felt these improvements were general in nature and ought to apply to all PUDs – in the rural areas, the village growth area, and our “in-between” districts (e.g., RR1, Shoreline, Industrial 1 & 2).

Town Plan Revisions – Wildlife Habitat Section:

(TA) – Agricultural practices and field nesting bird species decline. Questions the truth of the statement that field production techniques (earlier and more frequent mowing/harvesting of hay and alfalfa fields) has contributed to the decline.

See page 43, 3rd paragraph, second to last sentence. It's debatable which of the three factors listed in this sentence is most responsible for the decline of certain field nesting birds. More frequent agricultural cropping of fields is often cited as a contributing factor, but admittedly it may not be the key factor given that farmers historically probably did take hay off their best fields well before many nesting birds (like the Bobolink) were able to fledge chicks.