

From: Hinesburg Conservation Commission  
To: Hinesburg Select Board  
Subject: Proposed Rural Area Regulation Revisions  
by the Hinesburg Planning Commission  
Date: March 6, 2013

Greetings Select Board members,

The Conservation Commission (CC) has been acting in an advisory role with the PC to help formulate new and updated zoning regulations. These new regulations will substantially impact the Agricultural and Rural Residential 2 districts, directly affecting the future character of Hinesburg and the impact of development on its natural and cultural resources.

While we generally and enthusiastically support the bulk of these proposed regulations, there are a few important provisions, and omissions, which we believe do not meet the Town Plan's stated goals, and therefore need to be addressed. They are as follows:

1. **Objective #3, Rural Area Development Density & Maximum Build Out, Determination of Allowable Density (Para. 1, p.2)**

**Maximum Densities**

Arriving at appropriate density limits for Hinesburg's rural districts is the most important and, understandably, controversial issue of all. We believe, as elected and appointed officials, that we have an obligation to fulfill the reasonable expectations and desires of the majority of Hinesburg's residents. To guide us, we have a Town Plan that is regularly updated and informed by public forums and surveys as to what most residents' vision is of what Hinesburg will be in the future. There is no question they want to keep its rural character.

But what does that mean? How do we measure that? The most obvious and objective marker is the number of dwellings in our rural landscape; ie, the density of development. What is this density that is considered rural by most of Hinesburg's residents? Based on recent calculations done by Alex Weinhagen, the average density in Hinesburg's RR2 and Ag Districts is one home for every 29.2 acres.

The question then becomes, how much *more* density, even assuming responsible growth patterns, can we tolerate before we start losing our rural character? Undoubtedly, the answer is as much art as science. But the CC believes, as civic leaders of the community, we have a responsibility to *all* citizens, not just the property owners, to approach this question cautiously and conservatively; that it is better to err on the side of being too conservative (lower density), than being too rash (higher density).

In terms of calculating what are appropriate densities for rural Hinesburg, we need to consider the ramifications of adopting the proposed area-based (as opposed to the current

`minimum lot size') zoning. As discussed in more detail below, we should be encouraging a greater emphasis on *smaller* (rather than just variable) residential lot sizes in the new zoning. One reason for doing this, which would mostly benefit owners of large lots, is that creating smaller residential lots leaves open more of their remaining land for possible future development. Some of this development could actually include more residential lots, should our community leaders in the future decide, for whatever reasons, that it is now appropriate to allow for greater density of dwellings.

Because the proposed area-based zoning allows for this greater flexibility in future planning, we can approach the issue of what are appropriate current densities in a more incremental manner, keeping open the option for future density increases. Therefore, based on the current average density level, and without any assurance that the densities as proposed by the PC will actually keep Hinesburg rural, the CC believes taking a more cautious, incremental approach to density allocations makes more sense.

The PC's three-tiered formula, based on the parcel's access to road type, is a sensible one, given that we live in a community defined by, and which values, its dirt roads. However, we believe a more measured approach would be to lower the densities as follows:

- a) Rt 116, class 2 hways (except Silver St): from 10 acres to **12** acres (of developable area)
- b) class 3 hways & Silver St: from 12 acres to **15** acres (of developable area)
- c) class 4 hways, from 15 acres to **20** acres (of developable area)

Our recommendation would still allow Hinesburg's current density to *more than double*. We believe our recommendation is `development friendly'.

**2 Objective #3, Rural Area Development Density & Maximum Build Out, Determination of Allowable Density (pp.1&2) (See 12/6/12 draft showing deleted portions, including original para.1)**

**The so-called "Take-Out" Provision**

Following the 9/12/12 public hearing held by the PC, it decided to retract a key provision which related to calculating the allowable density for proposed building lots. This section, the so-called "take-out" provision, stated that density would be calculated based on the number of acres of actual "*developable area*". In other words, any land within a lot that was otherwise *not developable under existing state or federal laws*, such as wetlands and very steep slopes (>25%), would *not* be included in determining the number of acres within the parcel on which the final density calculation was based.

This provision, which other Vermont towns have adopted in various forms, supports the principle (as articulated by a former vice-chair of the PC) to "Let the Land speak for Itself". Eliminating this provision would allow pockets of unintended high density growth to occur in our rural landscape, and create an unpredictable risk to our rural transportation and recreational facilities, wildlife corridors, visual landscape, and other resources, depending upon where the high density development occurred.

Without the so-called “Take-Out” a provision, a large parcel with little developable land (eg, comprised of mostly wetlands), will actually be given preferential treatment because it would be afforded the huge benefit of increased density in the developable portion of its land by allowing the owner to *compress* more building lots into a smaller area(s) than is compatible with our density formula and the intended protection of our natural and cultural resources.

Based on the comments we heard at the public hearing, we believe that the residents who spoke in opposition to this provision did not understand what “take-out” means in this context. They believe the word “take-out” in the title of the provision means that their land use rights would be ‘taken away’. To the contrary, *this provision actually insures that all owners of **buildable** land are treated **equally***. Removing this provision provides an unintended benefit to owners of non-buildable land.

For example, should a person whose land includes a large swamp have the right to build on his/her remaining (legally developable) land at a *higher* density than the person who bought (or with good fortune inherited) land which is relatively flat and has good drainable soil? Is that fair? We don’t think so. We think that by eliminating this provision the Town would be giving a *free hand-out at public expense* to those who own land *where no reasonable person could ever have expected to build anything in the first place!*

Furthermore, following the public hearing, Alex Weinhagen expressed his opinion that eliminating the “Take-Out” provision would not significantly impact rural Hinesburg. This opinion might well have swayed some decision makers. However, from an environmental and public welfare standpoint, the CC strongly disagrees with this conclusion.

Alex calculated that eliminating this provision would result in the building of 72 more homes in both of Hinesburg’s rural districts, an approximate 8% increase over the number of buildings that would otherwise be allowed. Without doing a “fairly time consuming” mapping project, he was unable to say exactly *where* the additional housing would go. We do not believe this increased number of dwellings can be assumed to be insignificant, given the fact that they will be forced into land areas potentially much smaller and environmentally more sensitive than would be consistent with the intentions of this proposed zoning ordinance.

Because the “Take-Out” provision actually *ensures* the equitable treatment of all landowners, while protecting the intended consequences of this ordinance and the public good, we believe that the PC was absolutely correct in originally proposing it, and that it should remain a part of our rural zoning. As the very name of the provision is misleading, we strongly recommend that “take-out” is changed to *Equity in Development* to better reflect the actual intentions and effects of the provision.

**3. Objective #2, Subdivision Design Standards for Rural Areas, Conservation Subdivision Design, Para. 1 Identify primary and secondary resource areas. (p.2)**

## Highly Visible Hilltops and Ridgelines / Significant Scenic Views

This section, identifying the primary and secondary resources to be considered in any rural development plan, perhaps second only to the density provisions, may be the most important in the new proposed regulations. This section essentially covers all the major categories of natural and cultural resources inventoried in the CC's Greenspace Plan (GSP), that we recognized as needing protection, with the exception of two critical omissions.

The first omission is that of Significant Scenic Views as a secondary resource. After much consideration and debate – and field trips - that category was eliminated at the eleventh hour by the PC. The CC supports the elimination of this category *at this time*; as carefully defining this category would be a lengthy and intensive process that would likely delay the passage of any new rural zoning ordinance. However, the CC recommends that the PC, when it has more time available, identify, and find some kind of public consensus on, a comprehensive list of which scenic views are “significant”. It is important to note that such a list, unlike the other categories dealt with in the GSP and these proposed rural zoning regulations, could be vulnerable to claims of subjectivity, or even bias, if not done in a careful and thorough manner. The other categories of resources can be backed with hard empirical data and/or verified by field studies.

The second omission is that of *Hilltops and Ridgelines of High Visibility* (from major public roads in Town). Despite considerable discussion on whether to include this category as a secondary resource, the PC declined to do so. Part of the reasoning behind this refusal was that its inclusion would be duplicative of the purposes behind the Moderately Steep Slope (15-25%) and Significant Scenic View categories. As already mentioned, this latter category was later deleted; thus eliminating the argument of redundancy over aesthetics (scenic views).

Our reasons for strongly supporting the inclusion of a specific protection for our hilltops and ridgelines are as follows:

- a) While this category of *Highly Visible Hilltops and Ridgelines* may be focused on regulating development that is most likely to impair the *visual* beauty of our community, regulating higher elevation development also *coincides* with the protection of our topsoils and surface and ground water quality, since development at higher elevations directly impacts those resources of landowners who live downhill. It would thus also serve as an important protection to these additional natural resources, which we do not believe are adequately addressed for higher elevation developments generally.
- b) The only explicit protection based on aesthetics exists under Objective #2's General Standards, Para. 3 (p.3), which we believe is too limited and vague. It states: “New structures shall be placed to enable new construction to be visually absorbed by natural landscape features, and to not protrude *above (italics added)* ridgelines.” We believe this brief sentence does not give sufficiently precise guidelines to all higher elevation development; nor does it protect hills or ridgelines from development when it does not actually rise *above* the ridgeline. In addition, the argument can be made that, since hills and ridgelines are two distinct geological phenomena, it doesn't prevent construction on or near the tops of *hills at all*.

Furthermore, to better define what “visually absorbed” means, we believe language should be added requiring structures “be placed *and designed with materials and colors* to enable new construction to be visually absorbed...”

c) The Town has bought and paid for a thorough and precise mapping of its rural landscape’s relative visibility (excluding the tree factor) from innumerable points along its major public roads. Therefore, the data is in our hands and the evidence thoroughly objective and incontrovertible, unlike the compilation of significant scenic views.

**4. Objective #1, Zoning District Purpose Statement Revisions, Agricultural Zoning District Purpose (p.1, 2<sup>nd</sup> para. under subheading ) and Rural Residential 2 Zoning District Purpose (p.2, 2<sup>nd</sup> para. under subheading)**

**Small Residential Lots**

Both sections define “Innovative residential development designs” as including “*variable lot sizes*”. As discussed above, we believe the focus should be on encouraging well-sited *smaller* residential lot sizes for the following additional reasons:

- a) smaller residential lots will free up more land for agricultural and shared or public recreational use;
- b) they can provide the same, or substantially the same, degree of privacy, practical use, and aesthetic enjoyment of the land as would larger lots, with less of a tax burden to the lot owner;
- c) they would reduce the amount of land at risk from a residential landowner’s use of herbicides, pesticides and chemical fertilizers, and any cutting of environmentally significant old growth trees;
- d) their market value and marketability would be substantially the same, and
- e) they would allow for greater flexibility for creating more residential lots in the future, should community values change in favor of allowing greater densities in the rural districts.

The Conservation Commission thanks you for your consideration of these concerns.

Respectfully submitted,

Bill Marks, Acting Chair, Hinesburg Conservation Commission