

## Proposed Rural Zoning Revisions

In the 1/24/13 edition of the Record, Alex Weinhagen, Hinesburg's Town Planner, summarizes the contents and goals of the Planning Commission's (PC's) proposed rural zoning revisions for the Rural Residential (RR2) and Agriculture (Ag) districts, now before the Selectboard for consideration. In his article, Alex has succinctly described the proposed revisions as providing three new planning opportunities:

1. to allow for more farming related uses to help promote the rural character of the land;
2. to improve design standards to better respect the natural resources; and
3. to better define the maximum development density of the land and allow the option to create *smaller* residential lots at the same time.

The overall goal is to avoid the kind of suburban sprawl we see in many communities around us, while still allowing a "modest amount of additional development".

Throughout the course of the PC's deliberations, the Conservation Commission (CC) has been involved in an advisory capacity. While the CC generally and enthusiastically supports the bulk of these proposed regulations, there are a few important provisions, and omissions, which we believe do not adequately meet the Town Plan's stated goals, and therefore need to be addressed.

Because of the complexity of these issues, they will be dealt with in a series of three articles. This first article will deal with what the CC believes to be appropriate density standards for our rural areas.

First, it is important to understand that under the proposed regulations, there will be a *much smaller* minimum lot size for residences – presumably one-half acre, as opposed to the current 2 or 3 acre minimum lot sizes. This is a *good* thing because density will be determined by how many houses you can place on a given sized parcel (e.g., 1 house per 12 acres, per 15 acres, etc.), *not* by how many subdivided lots you can fit into that parcel (This latter premise is often thought to be true due to the lack of clarity of these regulations, but it is not an accurate reading of the current zoning regulations.)

A detailed review of why smaller residential lots are better for the community goes beyond the scope of this article. However, we believe that two important benefits are that smaller lots will give both the landowner and the Development Review Board (DRB) more flexibility in siting lots so as to provide the most desirable locations to more home sites, and to better preserve the natural resources of the land being developed.

Arriving at appropriate density limits for Hinesburg's rural districts is the most important and, understandably, controversial issue of all. The CC believes that the Town leaders have an obligation to fulfill the reasonable expectations and desires of the majority of Hinesburg's residents. We all have a stake in the future of Hinesburg.

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 should be now and in the future. There is no question that the vast majority of residents 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; i.e., the current 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 as already stated, the CC believes the leaders of this community have a responsibility to *all* its residents, 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). After all, we can always raise density levels at a later date, if we have been too conservative; but once the cows are out of the barn (meaning, once our landscape is littered with too many houses), it may be too late to lower densities to where they should have been in the first place.

This approach is particularly valuable to landowners, given the proposed small residential lot option. The smaller the residential lots, the larger the remaining open parcels are that landowners retain (or sell). Therefore, there is more land potentially available for future development should densities be allowed to increase.

Because the proposed 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 knowing that the densities proposed by the PC will actually keep Hinesburg rural, the CC believes taking a more cautious, incremental approach to density allocations makes the most sense.

The PC's formula for determining densities is based on the parcel's access to road type. Basically, it asks the question: is the property on a dirt or paved road? We believe this standard makes sense, 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) Rte. 116, class 2 highways (except Silver St): from 10 acres to **12** acres (of developable area)
- b) class 3 highways & Silver St: from 12 acres to **15** acres (of developable area)
- c) class 4 highways, from 15 acres to **20** acres (of developable area)

The CC's recommendation would still allow Hinesburg's current density to *more than double*. This recommendation is an incremental, cautious approach that maintains rural character, yet it is still very development friendly.

Bill Marks, Acting Chair, Hinesburg Conservation Commission

## Proposed Rural Zoning Revisions

This is the second in a series of three articles dealing with the Hinesburg Planning Commission's (PC's) proposed rural zoning revisions. The focus of this article is what the Conservation Commission (CC) believes to be an unwise retraction by the PC of an important provision that was contained in its original zoning proposal as presented at the 9/12/12 public hearing.

The question raised is: Should land within a parcel that is otherwise not buildable under law (e.g., wetlands), be included in calculating the total number of houses that are permitted to be built on that parcel?

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

Simply stated, this provision calculates density based on the number of acres of actual "*developable area*". In other words, any land within a lot that is 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 to "Let the Land speak for Itself". Eliminating it 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 possibly 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 (e.g., comprised of mostly wetlands), will actually be given *preferential* treatment because it would be allowed *greater* density in the developable portion of its land by allowing the owner to compress more building lots into a smaller area than would otherwise be compatible with the intent of the density formula and the protection of our natural resources.

The very name of the provision, "Take-Out", is a misnomer that has likely generated much of the controversy surrounding it. Based on the comments we heard at the public hearing, we believe that the opposition to this provision stems from a misunderstanding of what "take-out" means in this context. Many comments expressed a belief the word "take-out" in the title of the provision meant that their land use rights would be 'taken away'. To the contrary, *this provision would actually insure that all owners of **buildable** land are treated **equally***. Removing this provision provides an unintended and unfair 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 whose land is mostly flat with 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, contrary to the opinion of some members of the PC, we believe that eliminating the “Take-Out” provision would significantly impact rural Hinesburg. It would result in the building of 72 more dwellings in both of Hinesburg’s rural districts, an approximate **8%** increase over the number of buildings that would otherwise be allowed. These dwellings would be compressed into environmentally sensitive land in areas smaller than intended by the proposed ordinance and its density formula.

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. We also recommend that its name be changed to the *Equity in Development* provision, to better reflect its actual impact in providing fairness of treatment to all landowners.

Bill Marks, Acting Chair, Hinesburg Conservation Commission

*(END OF SECOND ARTICLE)*

### **Proposed Rural Zoning Revisions**

This is the third in a series of three articles dealing with the Hinesburg Planning Commission’s (PC’s) proposed rural zoning revisions. It addresses what the Conservation Commission (CC) believes to be a significant omission by the PC to adequately consider the protection of one of our most important natural resources, our hilltops and ridgelines.

#### **Highly Visible Hilltops and Ridgelines**

A critically important section in the proposed rural zoning identifies the primary and secondary natural resources that must be considered in any development proposal. Primary resources, such as wetlands, must be avoided at all costs. Secondary resources, such as farmland, must be avoided to the extent practical. This section of the proposed zoning ordinance includes all the major categories of natural resources inventoried in the CC’s Greenspace Plan; except for two significant omissions. (The Greenspace Plan was developed over many years by the CC, pursuant to the Town Plan and at the request of the PC, to inventory and develop a strategy to protect Hinesburg’s natural and cultural resources.)

The first omission is that of Significant Scenic Views as a secondary resource. After much consideration and some field trips by the PC, that category was eliminated. The CC supports the elimination of this category *at this time* for several reasons, perhaps the most

important: creating an inventory for this category would be a lengthy and labor intensive process that would likely delay passage of the entire zoning ordinance.

The second omission, however, is not so forgivable. It is that of *Hilltops and Ridgelines of High Visibility* (from major public roads in town). Despite several requests by the CC 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 and more comprehensive protection for our hilltops and ridgelines are as follows:

1. 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 serves to protect our topsoils and surface and ground water quality. Development at higher elevations necessarily causes some erosion and contaminated runoff, which directly impacts residents who live downhill. Recognizing hilltops and ridgelines as vital natural resources in their own right is a necessary step to adequately addressing the many concerns raised by higher elevation developments in general.
2. The only explicit protection of our ridgelines, based on aesthetics, 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." Objective #2's General Standards, Para. 3 (p.3). We believe this brief sentence does not give sufficiently precise or comprehensive 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..."
3. 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 relatively subjective compilation of significant scenic views.

For the above reasons, the CC believes more specific and comprehensive protection for our hilltops and ridgelines in the proposed rural zoning revisions is needed.

Bill Marks, Acting Chair, Hinesburg Conservation Commission