

January 4, 2023

**APPROVED**

1 In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of  
2 Selectmen Ex-Officio, Tom Quinn, Tracie Adams, Tim Kachmar (alternate) and Pam Coughlin  
3 (alternate, remote)  
4

5 Staff present: Nic Strong, Community Development Director; and Kristan Patenaude, Recording  
6 Secretary (via Zoom)  
7

8 Arnie Rosenblatt called the meeting to order at 7:00pm.  
9

10 **PUBLIC HEARING(S):**  
11

- 12 **1. Second Public Hearing on Proposed Zoning Ordinance Amendments. See**  
13 **separate notice.**  
14

15 **Bill Stoughton moved to enter into a Public Hearing on the Planning Board**  
16 **proposed Zoning Ordinance amendments and the Petitioned Zoning Ordinance**  
17 **Amendments. Seconded by Tom Quinn.**  
18 **Motion carried unanimously 3-0-0.**  
19

20 Bill Stoughton stated that the first proposed ordinance amendment is the Sign Ordinance. The  
21 intent was to make the ordinance comply with a U.S. Supreme Court decision, which prohibits  
22 content-based regulation. The ordinance was reframed so that signs do not need to be read in  
23 order to be regulated. A couple of changes for clarity and as suggested by Town Counsel were  
24 made at the first hearing.  
25

26 There was no public comment on this item.  
27

28 **Bill Stoughton moved to advance the proposed amendment to the Sign Ordinance to**  
29 **the ballot. Seconded by Tom Quinn.**  
30 **Motion carried unanimously 3-0-0.**  
31

32 Bill Stoughton stated that the next proposed amendment is regarding reduced frontage lots. There  
33 were previously very few requirements in the ordinance regarding reduced frontage. Most of the  
34 requirements were found in the regulations. Ambiguity on this item had been pointed out by  
35 applicants to the Board. A working group examined how other surrounding towns regulate  
36 reduced frontage lots. The recommendation of the working group, which consisted of three  
37 members of the Planning Board and held public participation meetings, is a set of best practices  
38 based on what other towns have done..  
39

40 Tom Quinn stated that he sat on the working group and has some mixed opinions on the best  
41 practices decided on. However, he believes it is good to clarify the ordinance and reduce  
42 discrepancy. For that reason, he supports the proposed amendment.  
43

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44 Brad Westgate, Winer and Bennett, LLP, representing Kevin and Claudine Curran, stated that he  
45 appeared before the Board on December 7<sup>th</sup>, at the first public hearing on the proposed zoning  
46 amendments. He addressed those proposals that night and submitted a letter to the Board  
47 outlining his thoughts in more detail. He explained that the stated goals of this amendment are to  
48 eliminate ambiguities and provide varying lot sizes with a now 50' proposed frontage  
49 requirement for reduced frontage lots. The apparent reasons for the changes are in recognition of  
50 typically higher wildlife habitat value of undeveloped areas located from road frontages. This  
51 justification relative to open space and wildlife habitat value, however, is not set forth in any  
52 study or recommendation from a scientific perspective. He stated that it would behoove the  
53 process to cite those studies that generate the goal of setting development back from road  
54 frontages.

55  
56 Attorney Westgate stated that he does not believe the proposed amendments achieve the goals of  
57 a reduction in ambiguity or the assistance for wildlife corridors by keeping development away  
58 from the frontage. Regarding ambiguities, he stated that he does not believe there is an ambiguity  
59 in the ordinance itself. The zoning ordinance provision is clear that reduced frontage lots may be  
60 two acres and the subdivisions from which they are created have to be at least ten acres, for each  
61 reduced frontage lot. The Board has read these regulations and interpreted them in that same  
62 manner for over 30 years. The question relative to reduced frontage lots which has arisen over  
63 this past year deals with the Subdivision Regulations, not the Zoning Ordinance provision. The  
64 ordinance provisions proposed include a 300' setback requirement, meaning that on a reduced  
65 frontage lot, a house cannot be built closer than 300' to the road frontage. In this case, the very  
66 purpose of reducing development away from the road is frustrated as this will force the  
67 development 300' back in a reduced frontage lot setting. The nature of reduced frontage lots is  
68 that they are not all back lots. A reduced frontage lot could have 100' of frontage, or 150' of  
69 frontage, but it has to have at least 50' of frontage. The proposed ordinance change sets up a  
70 standard, but this standard does not meet all the possibilities of reduced frontage lot designs, thus  
71 it causes a disruptive process. If an owner of a subdivision creates reduced frontage lots, it may  
72 be more logical to build the houses on these lots closer than 300'. Due to this change, the owner  
73 would have to get a variance.

74  
75 Attorney Westgate stated that the proposed regulation contemplates that in multifamily settings,  
76 minimum lot sizes be multiplied by the number of units. For example, in the Residential Rural  
77 District, which has a five-acre minimum, lots would have to have ten acres to contain a duplex.  
78 A duplex does not have the same impact on the land that two units, in comparison, would have.  
79 He stated that he believes the amendments are unnecessary, as they actually introduce ambiguity,  
80 and they do not achieve the objective of reducing impact from development.

81  
82 Wendy Rannenberg, 51 Christian Hill Road, echoed Attorney Westgate's comments. She noted  
83 that the proposed amendments make it very difficult to provide senior housing located closer to  
84 the road which would allow for less driveway area to clear in the winter and a shorter distance to  
85 haul trash cans. These amendments also make it expensive to create duplexes, which is a way to  
86 provide affordable housing in Town.

87

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88 Mike Del Orfano, Mack Hill Road, stated that he previously sat on the Planning Board. He stated  
89 that he believes this Board should unanimously vote down recommending this zoning to Town  
90 Meeting. He believes the legislation to be ill-conceived and an attempt to limit development  
91 rights of larger parcels of land in Town. The proposed zoning change will fail in court on many  
92 levels. At the highest level, this amounts to an inverse condemnation of constitutional property  
93 rights, without compensation. The regulation would force a select few, but not all, landowners to  
94 seek judicial approval to achieve the economic benefits from their land as allowed by current  
95 law. An owner challenging this zoning has the burden of proving the zoning change is  
96 unreasonable and unlawful. In effect, the proposed regulation creates an unnecessary hardship  
97 for a limited number of parcels scattered throughout Town, across multiple zoning districts. As  
98 set forth in RSA 674:20, the Town of Amherst has multiple zoning districts, and each has  
99 regulations that are different from those of other districts. As written, the proposed zoning  
100 change attempts to establish a single zoning ordinance that spans multiple districts. This is spot  
101 zoning. The courts have defined spot zoning as area being singled out for a treatment different  
102 from that of similar surrounding land, which cannot be justified on the basis of health, safety,  
103 and general welfare of the community, and is not in accordance with the Master Plan. During the  
104 2013 US Supreme Court session, the Court rendered three decisions, brought under the Takings  
105 Clause of the 5th Amendment to the United States' Constitution, which states, "...nor shall  
106 private property be taken for public use without just compensation." Property owners can invoke  
107 this clause when alleging that the value of their property is being indirectly taken by enacting  
108 overbroad regulations and ordinances. The law of inverse condemnation requires that the Town  
109 pay property owners just compensation for this taking. Currently, the Town has multiple venues  
110 for conserving land in its natural state. It would be a great expense to all taxpayers if the Town  
111 has to go to court to resolve personal property right issues. The Planning Board may want to  
112 consider the future expense of this proposal. He stated that he would submit the citations from  
113 the Supreme Court and the State Supreme Court to Nic Strong for the Board's consideration.  
114

115 Sally Wilkins, 28 Green Road, stated that some of the language given as justification for this  
116 proposal, deals with the Town's rural aesthetic environmental/wildlife protection. However,  
117 these are clearly growth restriction ordinances, being proposed to reduce and restrict growth, not  
118 in the form of a moratorium, but as a permanent change to the density allowed in Town. In the  
119 case of the scenic road ordinances, this is an attempt to use the scenic road ordinance and the  
120 creation of new scenic roads or extensions of scenic roads, to enact spot zoning, which treats the  
121 same land within a district differently than other land within that district. She stated that this  
122 proposal is not surprising if one reviewed the addresses of the people who submitted this  
123 language in the first place, and the locations that are targeted by the proposals which include at  
124 least three applications currently before this Board. Those application parcels are vested under  
125 the law, and thus, these proposals will not have either the intended effect or the actual intent. If  
126 these proposals are enacted, a landowner with a limited amount of frontage will not leave that  
127 land undeveloped. The results, instead, will be the creation of new roads. The reduced frontage  
128 ordinances were first adopted 36 years ago to disincentivize the creation of new roads, as roads  
129 have substantially more impact on land and are also substantially more expensive for future  
130 homeowners and the taxpayers than driveways. As a member of the Amherst Land Trust, she  
131 explained that the group is currently actively in negotiation with a number of people to place

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132 easements over the back portions of their land. If these landowners are forced to install roads to  
133 access that land or create deeper lots, those easements will no longer be viable. In terms of the  
134 actual conservation and protection of land for wildlife habitat, it will be better not to include  
135 these proposals on the ballot.

136  
137 Richard Hart, Christian Hill Road, stated that his property is approximately 8 acres, and he has  
138 been considering separating a lot out of that 8 acres for his daughters to use. He stated that he  
139 does not have a concern with any individual warrant, but rather the interactions between all of  
140 them. The proposal to make Christian Hill Road a scenic road and the proposal that any  
141 subdivision on a scenic road has to produce properties that are at least five acres in size, would  
142 impact his 8-acre property. This would reduce his ability to split his lot into two or three lots to  
143 zero lots. He asked if the Board's intention was for citizens like him to lose the ability to separate  
144 their property.

145  
146 Arnie Rosenblatt stated that the Board is only discussing this one proposed ordinance change at  
147 this time. He stated that he does not view all of these changes together, but as separate items.  
148 Rich Hart stated that his concern is the interaction between all of these proposals and how they  
149 will affect a lot of citizens.

150  
151 Ken Clinton, Meridian Land Services, representing primarily Kevin and Claudine Curran, along  
152 with a large number of other clients, past, current, and future, stated that he submitted some  
153 comments to the Board through Nic Strong. He handed out a single page exhibit to illustrate  
154 some of these comments.

155  
156 *Tim Kachmar sat for Chris Yates.*

157  
158 Ken Clinton stated that the title of Section 3.9 is Reduced Frontage Lots, meaning lots which do  
159 not meet the frontage requirements of the applicable zoning district. The terminology 'back lot'  
160 is not used, and there is no definition for this term given. He stated that he believes a back lot  
161 could be considered a lot adjacent to a normal frontage lot, with the building area to the back of  
162 the lot. Section 3.9.B notes minimum lot area. The minimum lot size being proposed is 5 acres in  
163 the Residential Rural Zone. The minimum lot size in the Northern Transitional Zone is proposed  
164 to increase from 3.5 acres to 7 acres, which is a doubling of that minimum requirement. In the  
165 Northern Rural Zone, the lot size is proposed to increase from 5 acres to 10 acres, which is a  
166 doubling of the requirement. He asked why the lot size is proposed to be increased from 2 acres  
167 to 5 acres in the Residential Rural Zone, instead of logically doubling from 2 acres to 4 acres.  
168 Not only is the 5-acre lot size based without any scientific studies or reports, the larger  
169 requirement actually defeats the stated purpose of the amendment. Creating a lot with greater  
170 area allows for private landowners to do more with it, as opposed to protecting this area as  
171 natural forest. The 50' corridor proposed only applies if the reduced frontage lot is also a back  
172 lot. In some cases, this would not be applicable or would require a zoning variance. The Board  
173 has used the term 'applicable proposed dwelling unit location.' This is not well defined. He  
174 stated that, regarding Part C of Section 3.9, Frontage, a 50' frontage requirement is arbitrary and  
175 without justification on a reduced frontage lot. The current ordinance allows for 17.5' frontage

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176 each for a Class B parcel, with two adjacent reduced frontage lots. Doubling this would lead to  
177 35', thus he questioned where the justification is for the extra 15' proposed. He stated that he  
178 previously remarked that 50' sounds reasonable for two side-by-side reduced frontage lots,  
179 otherwise known as Class B, but to require 50' for every single reduced frontage lot is arbitrary.

180  
181 Ken Clinton stated that there is a statement in the proposal that a reduced frontage lot should  
182 have its frontage contiguous with, what is now known as, a normal frontage lot. He stated that he  
183 does not understand the purpose of this, as it only applies in a back lot scenario. The  
184 amendments, however, are not entitled 'back lots,' they are entitled 'reduced frontage lots.'  
185 There is no definition for a 'back lot.' It further states that additional reduced frontage lots are  
186 not allowed within the same subdivision. This statement is unclear, because if a subdivision was  
187 approved one year and another subdivision for the remainder of the land was proposed in the  
188 future, is it unclear if this provision is still available. He is also unclear regarding the sentence  
189 that requires each normal frontage lot to be contiguous with only a single reduced frontage lot.  
190 He believes this should read that a reduced frontage lot is required to be contiguous with a  
191 normal frontage lot.

192  
193 Regarding access, Ken Clinton stated that he is unclear regarding the sentence 'an integral  
194 portion of and attached to the back lot.' He asked if this means that a driveway has to be within  
195 the 50' frontage of the back lot. Regarding driveways and reduced frontage lots, this amendment  
196 has numerous requirements specific to back lots. He stated that he does not believe it is wise to  
197 have different regulations for reduced frontage lots or back lots, compared to adjacent normal  
198 frontage lots. There should be consistent driveway regulations which apply equally to everyone.

199  
200 Ken Clinton stated that there is also a reference that separation on cul-de-sacs requires 750'  
201 measured around a road and that reduced frontage lots are not allowed without using the Town's  
202 current singular geometric standard for cul-de-sacs. The Town's singular geometric standard is  
203 deeply flawed. One example is that it requires a right of way, both in the outside perimeter of the  
204 cul-de-sac and in internal radius as well. This forces an applicant to create a non-conforming lot  
205 inside the cul-de-sac, as the standard requires a right of way on both sides of the pavement. This  
206 will clearly require a zoning variance and was likely not the intention.

207  
208 Ken Clinton stated that there are also a couple of incidental things which are unnecessary, such  
209 as requiring Town Counsel review and Planning Board acceptance of a private easement and  
210 calling a shared driveway for two driveways a common private way. The proposed 300' setback  
211 completely contradicts the stated purpose by pushing buildings into the woods and creating  
212 lengthier driveways. There seems to be a substantial misunderstanding between reduced frontage  
213 lots and back lots. A reduced frontage lot simply means that it has less than the minimum lot size  
214 required in that zone. Where every back lot is a reduced frontage lot, not all reduced frontage lots  
215 are back lots. These amendments are deeply flawed, and he urged the Board not to submit them  
216 for the public warrant.

217  
218 There was no further public comment at this time. Arnie Rosenblatt asked the Board for their  
219 thoughts.

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220

221 Bill Stoughton stated that a reduced frontage lot is a choice. In a traditional subdivision, a  
222 developer could choose to seek approval for reduced frontage lots or propose a Planned  
223 Residential Development, which avoids the reduced frontage lot requirements altogether and  
224 includes other items to protect wildlife. He stated that he understands that developers have an  
225 incentive to get as many lots as possible out of a parcel. This proposal may change how  
226 developers have to calculate some of those incentives. He stated that he believes this will be a  
227 very workable ordinance and, if it is not, the Board will change it.

228

229 Tom Quinn stated that he is not thrilled with this proposed ordinance. He believes it will make it  
230 easier to develop back lots. However, the clarification of this ordinance will make the Board's  
231 process a lot easier. He noted that it is difficult to review all of the last-minute comments  
232 submitted. He stated that Ken Clinton was present at many of the working group meetings, but  
233 he does not recall hearing the points made by Mr. Clinton previously.

234

235 Tracie Adams asked Bill Stoughton to speak more to the differentiation between back lots and  
236 reduced frontage lots, as raised by Ken Clinton. Bill Stoughton stated that for both lots shown on  
237 the map handed out by Ken Clinton, as long as they had the required frontage on the road under  
238 the revised regulations, both could be reduced frontage lots under the proposed ordinance. The  
239 proposed ordinance does not outright prohibit a reduced frontage lot which is triangular in shape,  
240 but otherwise complies with the requirements.

241

242 Tim Kachmar stated that he believes this proposal supports where the Town residents want  
243 development to go. He stated that he believes it is funny that the comments received tonight were  
244 from ex-Planning Board members. These people are no longer on the Planning Board because  
245 the Town did not want them, due to their ideas of development or things they were planning for  
246 this Town. One ex-member should be sued because of his actions at Planning Board meetings  
247 that resulted in a recent case being kicked back to the Planning Board. He stated that he is in full  
248 support of this proposal.

249

250 Bill Stoughton stated that, respectfully, he disagreed with some of Tim Kachmar's comments.  
251 The views expressed tonight by all people were made in good faith. He stated that he does not  
252 believe Board members should be personal in their attacks. Tim Kachmar stated that he was not  
253 being personal. Bill Stoughton respectfully disagreed. He noted that, while he may not agree  
254 with all of the comments made, he welcomes them and defends each person's right to make  
255 those comments.

256

257 Arnie Rosenblatt noted that he welcomes comments by everyone. He stated that he has certainly  
258 made comments that people disagree with. He noted that this is a standalone amendment. Simply  
259 because this is approved or not approved does not mean that another proposal will be approved  
260 or not approved. He explained that no one present knows exactly what a court would do if this  
261 item was challenged. He stated that he does not believe this is spot zoning, exclusionary zoning,  
262 or snob zoning. He stated that he believes this is an effort to address ambiguous portions of the  
263 existing ordinance. He agreed with Attorney Westgate that the existing ordinance and regulations

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264 are ambiguous. He stated that the interpretation of the Planning Board over the last decades, as  
265 presented, is likely correct. The Board can either decide to live with the interpretation as it has  
266 been employed or change it. He does not believe that everyone on the Board agrees with how the  
267 existing ordinance is interpreted. While he sympathizes with some of the comments made this  
268 evening, he is not persuaded by them. He stated that arguably anything could be seen as a taking  
269 as zoning, by definition, is restricting someone's use of land. While he is not strongly in favor of  
270 this proposal, he also does not necessarily agree with the arguments against it.

271  
272 Tim Kachmar stated that Bill Stoughton has done a great job of considering these proposals and  
273 working through the process of the regulations and ordinances. This presents a clear step  
274 forward, with some limitations and clear direction. It would be impossible to make something  
275 perfect that fits every single case.

276  
277 Arnie Rosenblatt thanked Bill Stoughton and those involved in drafting this proposal.

278  
279 Tom Quinn stated that the impetus for this particular amendment was to bring some clarity to the  
280 ordinance, which was not clear. Attorney Westgate made a lot of great points. He stated that he  
281 can see the current ordinance in two different ways. The purpose of this proposal is to bring  
282 some sort of certainty to the zoning ordinance.

283  
284 Bill Stoughton stated that he is quite certain that this could be improved and will be improved  
285 over time. He asked if the Board wants to take the current ordinance, that it generally agrees is  
286 flawed, and replace it with something that is better, he believes, or leave the flawed ordinance  
287 and regulations in place.

288  
289 **Bill Stoughton moved to advance the proposed amendment to reduced frontage lots**  
290 **to the ballot. Seconded by Tom Quinn.**

291  
292 **Discussion:**  
293 **Tom Quinn stated that does not believe the proposal is flawed, though he may not**  
294 **100% agree with it.**

295  
296 **Motion carried unanimously 4-0-0.**

297  
298 Tracie Adams presented the proposed amendment to scenic setbacks and minimum lot frontage.  
299 She explained that, on September 27<sup>th</sup>, the Planning Board received a letter dated September 14,  
300 2022, from several citizens who supported it and were looking to change the frontage and lot size  
301 requirements on scenic roads. The Planning Board discussed this item and created a working  
302 group, consisting of three Board members, Tim Kachmar, Tom Quinn, and herself. Several  
303 citizens also participated. The group generated the current draft, minus a five-acre minimum  
304 item, which was removed at a subsequent Board meeting. The current suggestion includes a  
305 frontage of 300' on scenic roads. The purpose of this is to provide a vegetative buffer within a  
306 scenic setback, as well as increase that scenic setback from 100' to 125'.

307

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308 Bill Stoughton stated that there is a similar petitioned warrant article and the proponents have  
309 made very strong points in favor of making these changes. They are consistent with preserving  
310 more open space within the Town, which residents of Town expressed as a desire in the Master  
311 Plan. Preservation of the rural, scenic, and undeveloped nature of the Northern Rural and  
312 Northern Transitional Zones is a justification in the ordinance for increased lot sizes and frontage  
313 required in those zones. However, these increased frontage requirements are generally  
314 recognized as density reduction measures. Residents seem to favor this and there is value in  
315 preserving open space, but he does not think this proposal is the way to go about it. He does not  
316 object to the voters choosing whether to increase setback requirements on scenic roads and other  
317 designated roads, but he does not plan to support increasing the frontage requirements. The  
318 existing increased lot size and frontage requirements are based primarily on the ability of the  
319 land to support development. The northern zones have increased frontages and lot sizes due to  
320 the prevalence of steep slopes, poor soils, and limited access in that area of Town. Under the  
321 proposed amendment, that justification cannot be made in all parts of Town. It would establish  
322 increased frontage requirements based solely on location along designated roads. Some of those  
323 roads have been formally designated as scenic roads, while others have not. The result of this  
324 proposed amendment would be a scattered mix of frontage requirements within the Rural  
325 Residential Zone, which covers most of the Town. Two lots with identical physical  
326 characteristics could have significantly different frontage requirements, and therefore potential  
327 value, based solely on the respective street location. A neutral observer would be hard pressed to  
328 understand what basis the Town had for a mix of frontage requirements and the resulting  
329 noncontiguous zoning. Frontage requirements would also be subject to change in the future,  
330 based on whether a road is designated as scenic. The previously discussed amendment allows for  
331 an option between a traditional subdivision or one with reduced frontage lots, but there is no  
332 choice with this amendment.

333  
334 Tracie Adams explained that the working group was looking to enhance and maintain rural  
335 character. The group was also interested in wildlife corridors and landowner rights. This  
336 proposal was not intended to supersede their rights. The Penn Central Test was reviewed and  
337 there were three factors to be assessed, including reviewing the regulation's economic effect on  
338 the landowner, the extent that the regulation interferes with reasonable investment backed  
339 expectations, and the character of the government action. Tax maps and maps from the Nashua  
340 Regional Planning Commission (NRPC) were reviewed. There are 14.7 miles of scenic Town  
341 roads in the Residential Rural Zone and, of the 16 scenic roads listed there, approximately half of  
342 them contained lots that were determined would be impacted by this change. In *Conservation*  
343 *Biology* 2011, there was an article entitled 'The Effects of Road Networks on Bird Populations,'  
344 which stated that there is a direct effect of roads on birds, including habitat loss, fragmentation,  
345 vehicle mortality, pollution, and poisoning. The article stated that, "increasing habitat loss and  
346 fragmentation, and predicted species distribution shifts due to climate change, are likely to  
347 compound the overall effects of roads on birds." In *Current Landscape Ecological Reports*,  
348 2017, an article entitled 'Effects of Landscape Structure on Conservation of Species and  
349 Biodiversity,' examined 215 different research studies conducted between 2011 and 2015  
350 exploring the impacts of roads and road networks on a variety of species. The article stated that,  
351 "the presence of roads can be related directly to the mortality of wildlife, hindering wildlife

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352 movement both physically and behaviorally, and the loss and degradation of the habitat, all of  
353 which can have far reaching implications.” The NH Fish & Game website lists a NH Wildlife  
354 Action Plan, which is a blueprint to conserve species of greatest conservation needs and their  
355 habitats. Chapter 5 of that plan includes some ideas that can be implemented, including  
356 maintaining and creating wildlife habitat; this is the intention of the buffer and movement of the  
357 setback being proposed. This proposal should be considered for conservation and to increase and  
358 maintain the rural character desired in Amherst. There needs to be some sort of plan to allow for  
359 positive actions. She asked people to look at other towns nearby and see what growth has looked  
360 like when these factors have not been considered and regulated.

361  
362 Tom Quinn stated that he had concerns about setting a minimum lot size, based on the Penn  
363 Central Test. As that part of the proposal has been removed, he fully supports this. There are still  
364 some concerns that this may impact property owners. The intention is to increase setbacks and  
365 allow for a recommended no disturbance buffer on scenic roads. It also proposes to increase the  
366 setback on roads with scenic setbacks. This is an important proposal, as it is one that matters to  
367 the citizens of this Town. The recent Master Plan survey showed a highest priority for  
368 maintaining the rural nature of the Town. The Master Plan is supposed to drive zoning. This  
369 proposal does not require larger lot sizes, and if a minimum lot size is not sufficient to meet these  
370 standards there is relief available to a landowner. There are also other options for a landowner to  
371 develop their land, potentially with a higher density than a traditional development.

372  
373 Tim Kachmar stated that he is totally in favor of this and believes it reflects what citizens want.

374  
375 Arnie Rosenblatt stated that he cannot support the 300’ frontage, for the reasons articulated by  
376 Bill Stoughton. He stated that he is confident that a majority of people in Town would support  
377 this. He stated that he has tried to help preserve open space in his time in Town, but he cannot  
378 support this proposal. The best way to preserve open space in Town is to buy it. The Board does  
379 its best to protect the Town and to scrutinize applications, but the harsh reality is that the best  
380 way to preserve 100 acres is to buy the 100 acres and set it aside. This does not mean the Board  
381 should not scrutinize applications or create smart ordinances.

382  
383 Richard Hart, Christian Hill Road, and member of the Amherst Conservation Commission  
384 (ACC), stated that, from a conservation point of view, the proposed 300’ frontage is not going to  
385 help wildlife habitat at all. In fact, it will likely reduce the available habitat. Most wildlife  
386 requires areas that are much larger than 300’; it requires multiple acres. The best way to preserve  
387 habitat is to keep a house as close to the road as possible, and preserve 300’ of trees in the back,  
388 bordering other trees.

389  
390 Brad Knight, Upham Road, stated that the 300’ frontage may make sense for four or five acres. It  
391 is very difficult to develop a two-acre lot with a 200’ frontage, while meeting all of the other  
392 requirements. If the setback of that house is increased, this increases the width of that frontage,  
393 and the lot becomes very narrow. The Board is proposing to use RSA 231:157 Scenic Road  
394 Designation as an identifier for the proposed zoning change. The scenic road designation is not a  
395 zoning function; it was created to maintain the rural and scenic beauty of many older travel

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396 corridors in Town. It protects trees, stone walls, and the existing character of these roads.  
397 Overlaying the scenic road designation with zoning requirements essentially creates a new  
398 zoning district. Most voters will applaud any change that is perceived to slow down  
399 development, however most are unaware of the impact on many homeowners in Amherst. This  
400 action will make most existing homes on scenic roads nonconforming, as they no longer meet the  
401 proposed zoning requirements. All changes to those previously conforming homes will now  
402 require a variance. This will strip these owners of property value and increase costs for upgrades  
403 or maintenance. He stated that he is concerned that the Town is defending an illegal action of  
404 arbitrary increases to frontage and setbacks only applying to a few. It will be very difficult to  
405 justify this change, The Board will have to explain why two roads, side-by-side, have different  
406 requirements, solely based on a non-zoning designation. The Board has better options to control  
407 development of the few remaining parcels in Amherst.  
408

409 Wendy Rannenberg, Christian Hill Road, echoed Brad Knight's comments. She stated that the  
410 notion of moving a house back to help preserve open space in Town is silly. All that this will do  
411 is hide houses from the road. She stated that she is concerned that the Board is proposing this  
412 change at the same time there is a petitioned warrant article, which by law has to be on the  
413 warrant, to change the designation of Christian Hill Road to a scenic road. Voters may vote on  
414 the petitioned warrant article and this article without a clue as to how the two interact. She stated  
415 that proposing these two items at the same time is not in the best interest of the voters and  
416 homeowners in Town.  
417

418 Dave Williams, County Road, stated that he has reviewed every parcel of land proposed to be  
419 affected by this. There are only a few impacts, and these are not huge. This proposal does not  
420 deny development of property, but instead proposes an increase from a 200' frontage to a 300'  
421 frontage along scenic roads to maintain the rural character of the Town. He stated that he  
422 believes there is value in not driving off wildlife due to overbuilding. He asked how there can be  
423 a cost benefit cost analysis of owls in his backyard versus widening a scenic road to  
424 accommodate more traffic. He lives between Spring Road and County Road, containing one of  
425 the major aquifers in Town which could be a future source of water for the Town of Amherst. A  
426 major threat to this aquifer is overdevelopment. Every new house built on these roads, or any  
427 other scenic roads, will likely include 2-3 vehicles. This does not include the Amazon or FedEx  
428 delivery trucks and the oil trucks. These will all crowd pedestrians off the road. People come  
429 from all over the world to visit this State, see the landscape, and see the unique and quaint New  
430 England villages. He stated that he is not opposed to all development, but this amendment could  
431 help to move the Town forward. When the wildlife is gone, the water is contaminated and the  
432 streets are crowded with cars and pedestrians no longer feel safe, this quaint New England Town  
433 will be gone forever. People need to decide if the dollar value of a piece of property or the values  
434 of the citizens is more important.  
435

436 Howard Muscott, 48 County Road, stated that he and his wife emphatically support this  
437 amendment. He believes this item should be put to the voters. The residents have already spoken  
438 on this issue, via the Master Plan survey. This is a value judgment regarding how to protect the  
439 Town's spaces. This proposed revision is a compromise, dealing with a limited amount of a

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440 property which will be impacted. Simply because a scenic road is not a zoning item, does not  
441 mean that the people who are in charge of zoning should not deal with zoning on a scenic road.  
442 This proposal is likely the smallest amount of change and compromise which achieves what the  
443 voters want, protected open spaces and wildlife habitat. 91% of people in the Master Plan survey  
444 stated that they want to preserve these spaces.

445  
446 Israel Piedra, Welts, White, & Fontaine, P.C., representing Brett Vaughn of Vonderosa, LLC,  
447 stated that his client owns multiple parcels. approximately 350 acres, on/or near County Road.  
448 His client intends to develop that land. Members of the public, supporters of this petition, and  
449 members of the Board have openly acknowledged that one of the main instigators of this  
450 proposal is to limit the planned development by his client. He questioned the statutory and  
451 zoning authority of the Board or the Town to even consider this type of regulation. Under the  
452 Scenic Road statute, ten members of the Town can petition to designate a road as a scenic road on  
453 the ballot. This creates a system where ten members of the Town can essentially create zoning  
454 through Town Meeting, without any review by the Planning Board. If this Board and the town  
455 continue to impose dimensional requirements on scenic roads that are tied to scenic roads, in the  
456 future ten members of the Town could petition Town Meeting to designate every road in Town  
457 as a scenic road. Thus, every road in Town could be subject to these dimensional requirements.  
458 This is not how zoning is intended to work under the State statute. He stated that he does not  
459 believe this type of dimensional requirement for scenic roads is lawful under State law. He stated  
460 that he knows the working group searched for any other town in the State with frontage  
461 requirements tied specifically to scenic roads, and there are not any. This is because it is not  
462 within the purview of the Scenic Road statute to create dimensional requirements. The Board  
463 cannot simply impose zoning requirements on random parcels in Town that have nothing in  
464 common with each other except that they have been arbitrarily designated as scenic roads. He  
465 stated that the Scenic Road statute itself has notice requirements to abutters that are on scenic  
466 roads. The citizen's petition to designate a road as a scenic road should have notified every  
467 abutter on that road. He does not believe that happened, thus, this item should potentially not be  
468 forwarded to Town Meeting. He stated that this proposal also has unlawful effects against his  
469 client, as it is partially targeted at him. The reasons given for this proposal are pretenses to limit  
470 development. This violates his client's substantive due process rights and his equal protection  
471 rights. His client is being treated differently than other nearby landowners. He noted that this  
472 proposal does not do what the Board is intending. The scenic setback is already twice as much as  
473 any other lot in this district, the Residential Rural Zone, and the Northern Rural Zone. Normally  
474 it would be 50', and it is already 100'. The proposal to make it even larger does not have an  
475 appreciable difference. This will simply allow for an extra 25' of lawn. It serves to limit  
476 development and does not have any legitimate purpose. Similarly, the frontage requirements are  
477 an arbitrary way to reduce the number of houses on a road. This will push houses back into  
478 wooded areas, require longer driveways, reduce the feasibility of having shared driveways,  
479 increase the number of curb cuts and potentially lead to the need to create new roads. These all  
480 work to the opposite of the intention of the proponents. This does not accomplish the goal of  
481 preserving open space. A better approach would be to work collaboratively with property owners  
482 on a case-by-case basis to come up with thoughtful and flexible planning. This can include  
483 working with developers to establish networks of trails and other conservation efforts to provide

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484 benefits to the Town. These options are eliminated if the Board forces developers to do certain  
485 things in order to use the land in a reasonable manner. This proposal is not good for the Town, it  
486 is not good for property owners, and it is not good for the land. He urged Board members to  
487 consider voting against this proposal.  
488

489 Beth Sullivan, Village Woods, stated that her driveway is ¼ mile long. There are back lots in her  
490 neighborhood, along with 25+ acres around the neighborhood that is mutually owned by those in  
491 the area. This was done to safeguard against developers coming into the area. Residents have less  
492 property rights than developers. There is no control unless there are covenants for a  
493 neighborhood.  
494

495 Brett Vaughn, 3 Huxley Lane, stated that this proposal is supposed to preserve wildlife and  
496 enhance the rural beauty of the Town, by stopping unsightly construction. This proposal does not  
497 stop someone from dumping junk in their front yard, or maintaining the woods in front of the  
498 property, it simply restricts the ability to build a house on a lot. It is in the best interest of a  
499 builder to place a house properly on a lot to make the lot look nice and avoid clear cutting. The  
500 43 signatures for this item live on a very small section of County Road and are trying to make  
501 changes for the whole Town. He stated that he believes there is a collaborative way to work  
502 through these items with developers and the Board. Most people that he has spoken to about his  
503 proposed development simply do not want a paved road through the area. There is a way to work  
504 collaboratively to make that happen, keep the road safe, and keep the area beautiful. This specific  
505 proposal does not meet the purpose. It is deceiving to say that this will increase the rural beauty  
506 of the Town, when it will really only harm people who want to build on their lots.  
507

508 Ken Clinton, Meridian Land Services, on behalf of Kevin Curran, stated that Section 3.11.A.  
509 Purpose, includes language, “to encourage” a vegetative buffer, and encouraging something in  
510 zoning is not appropriate. A zoning ordinance should either allow a certain use or specify a  
511 dimensional requirement; it should not encourage. ‘Encourage’ does not have any business being  
512 in a zoning ordinance. The ordinance needs to be black and white. The 25’ setback increase in  
513 Part B of Section 3.11, from 100’ to 125’, will not achieve the stated goals of this proposed  
514 purpose. He stated that he is a land surveyor by profession, and it is hard to find a surveyor that  
515 visually can tell the difference between 100’ and 125’; no one will notice an additional 25’. This  
516 is an insignificant, arbitrary change, especially when considering the landowners’ right to use  
517 their land. Moving a house back on a lot will simply allow for the area to be cleared, even if a  
518 buffer is encouraged, which, again, is not appropriate. This is based on an assertion of the State’s  
519 language within the ordinance which is not appropriate. The proposal notes it to be a ‘50’  
520 vegetative buffer, without a unit assigned to it. The amendment, as written, is incomplete.  
521 Finally, there is an absence of a list of roads in Section B, as there should be. He asked if this  
522 deals with the 16 scenic roads, or the additional 11 scenic roads with scenic setbacks, or both, for  
523 27 in total. This proposal is deeply flawed as it is incomplete and should not be placed on the  
524 ballot.  
525

526 Wendy Rannenberg approached the microphone to speak. Arnie Rosenblatt stated that she had  
527 already spoken once on this topic. Wendy Rannenberg stated that there was nothing stated at the

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528 beginning of the meeting to say that people could only speak once on a topic. Arnie Rosenblatt  
529 stated that he is stating it now. She explained that she waited for everyone else to speak on this  
530 topic before speaking again. Wendy Rannenber stated that there are a certain number of roads  
531 listed in this proposal, but there is also another amendment proposed to add additional roads as  
532 scenic roads in Town. The committee that put that item forward has the intention of putting  
533 forward a significant number of additional roads in Town in the coming years to add them as  
534 scenic roads.

535  
536 Jason Sorens, Cricket Hill Drive, stated that the minimum frontage requirement, and minimum  
537 lot size are not fundamentally different. A larger minimum frontage will effectively require a  
538 larger lot size. The NH Zoning Atlas contains every zoning district in the State and shows that  
539 only 79 districts in the State have a minimum frontage of 300' or more. Only 6% of zoning  
540 districts in the State have a minimum frontage that high; 1,217 have lower frontages. The claim  
541 that low density development protects the environment is actually untrue, according to the  
542 standard knowledge of urban planning. He encouraged people to review the University of  
543 Maryland Center for Smart Growth. Forcing people out into remote areas by limiting  
544 development creates longer commutes leading to more air pollution, more impervious surfaces,  
545 more disturbance, and more invasive species. The vegetative buffer mentioned in this proposal is  
546 optional, and it is not defined. This ordinance does not protect environmental values. He  
547 cautioned against assuming that the majority of voters support this. Approximately 10% of the  
548 Town participated in the Master Plan survey; this is probably not a representative sample. St.  
549 Anselm College does an annual survey regarding views on housing, which found that more than  
550 60% of NH voters support building more affordable housing in their community. This is likely  
551 not substantially different in Amherst.

552  
553 Tracie Adams explained that Ken Clinton pointed out that there should be a notation of the  
554 scenic roads. This is found in Section E: Scenic Roads but is not listed in this proposal. This was  
555 listed in the original but was not included in the public's version.

556  
557 Tom Quinn asked if there is a technical issue with this proposal, which could affect the other  
558 citizen's petition proposal. Tracie Adams noted that the word 'feet' is not included, as pointed  
559 out by Ken Clinton. Nic Strong explained that the only things in this item are the sections  
560 proposed to be changed. There are other pieces of existing Section 3.11 that are not included, as  
561 no changes are proposed to them. The list of roads is one of those items.

562  
563 **Tim Kachmar moved to advance this proposal to the ballot, with the inclusion of the**  
564 **words '50 feet' in the appropriate location. Seconded by Tom Quinn.**

565  
566 **Discussion:**  
567 **Bill Stoughton stated that he appreciates and supports why people want to make**  
568 **this change but having listened carefully to all the comments, and as the frontage**  
569 **change remains in the proposal, he will oppose it.**

570  
571 **Arnie Rosenblatt stated that he has not been swayed and cannot support this item.**

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**Tom Quinn noted that this will go on the ballot anyway through the citizens' petition.**

**Arnie Rosenblatt stated that the support of the Planning Board on an article on the ballot holds some weight. He noted that, while he generally does not vote on motions, he will vote on this item.**

**Motion carried 3-2-0 [B. Stoughton and A. Rosenblatt opposed].**

Bill Stoughton stated that amendment #4 has already been advanced to the ballot.

Bill Stoughton stated that amendment #5 deals with a proposed outdoor lighting and glare ordinance. A couple of changes were made at the request of Town Counsel. One change helps to limit the amount of light shone upward at nighttime and leaving the lot.

**Bill Stoughton moved to advance amendment #5, regarding outdoor lighting, to the ballot. Seconded by Tom Quinn.**

**Motion carried unanimously 4-0-0.**

Bill Stoughton stated that amendment #6 deals with a limited set of changes to Section 4.9 regarding the Industrial Zone. Substantive changes were made at the first hearing and are reflected.

Morgan Hollis, Gottesman & Hollis, P.A., representing Tana Properties Limited Partnership, stated that his client is the owner of a significant amount of property in the Industrial Zone. He spoke in opposition for his client to the proposed amendment to Article 4 Section 4.9 of the Industrial Zone, a proposal to require an earthen berm and noise attenuation panels between lots in the Industrial District and bordering residential zones or uses. The provision states that between the 100' vegetated buffer and any building, an earthen berm topped by noise attenuation panels shall be constructed for visual, light, and noise attenuation. The height of the earthen berm and noise panels shall be adequate for visual, light, and noise attenuation, as determined by the Planning Board. Testimony was heard before the working group for this item and at the last public hearing, that this proposal is purposely vague, and that people should trust the Planning Board. He stated that all ordinance changes should be reviewed in light of the criteria of Penn Central standards, nexus versus reasonable investment backed expectations of property owners. This proposed amendment lacks the required and necessary sufficient detail to advise either an applicant before the Planning Board or the Board itself as to what the minimum requirement is for a plan to be submitted. The zoning ordinance must be complied with in order to submit a development plan for site plan review. This proposal includes a 100' vegetated buffer, which his client does not object to. It also states that, outside this buffer, there shall be an earthen berm. There are no details as to the size, or steepness of this berm, if it must be landscaped, or the size or materials of the noise attenuation panels which must top it. The noise attenuation panels shall be constructed for visual, light, and noise attenuation. He asked what the definition of attenuation

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616 is. One definition of attenuation is reduction, but this term is also not defined. The Planning  
617 Board will somehow mysteriously come up with an answer as to the details for these items and  
618 how attenuation is going to be accomplished. An ordinance has to have specificity and this  
619 proposal does not have specificity, as there is no specificity as to what is actually to be  
620 attenuated. There is no standard for the attenuation and there is no definition as to the earthen  
621 berm or the panel. This sounds more in keeping with the Board's Site Plan regulations which, in  
622 the Industrial District, already allow the Board to require an earthen berm. His client requested  
623 that the Board withdraw this proposed amendment in order to allow for further definitions and  
624 the incorporation of appropriate standards. This perhaps belongs in the Site Plan regulations not  
625 in the zoning ordinance.

626  
627 Barbara Staffiere, 9 Crystal Lane, requested that the Board consider amending this proposal to  
628 include a 40' maximum height of buildings throughout Town. She noted that the reason for  
629 leaving these decisions up to the Board was due to the fact that the size of the structure would  
630 not be known ahead of time. Thus, to require a 20' berm for a 10' tall building would not make  
631 any sense. The Board would base this decision on dimensions of the structure proposed.

632  
633 Richard Hart, Christian Hill Road, suggested that this article specify levels for the attenuation,  
634 for example, below 20 decibels at a distance of 10' from the border, some number of lumens or  
635 less 10' from the border, etc. This would give specifics and then let the developer decide the best  
636 way to achieve them.

637  
638 Bill Stoughton stated that he would not call the provisions regarding visual, light, and noise  
639 attenuation vague. He stated that they are flexible precisely for the reason mentioned by the  
640 resident. What is proposed to be built on a site will control what the berm and the panels look  
641 like. The Board has proposed amendments to the Site Plan Review Regulations should this  
642 zoning amendment pass to supply those details.

643  
644 **Bill Stoughton moved to advance amendment #6 to the ballot. Seconded by Tom**  
645 **Quinn.**  
646 **Motion carried 3-1-0 [T. Kachmar opposed].**

647  
648 **2. Public Hearing on Petitioned Zoning Ordinance Amendments. See separate notice.**

649  
650 Arnie Rosenblatt explained that the next items are four petition zoning ordinance amendments.  
651 He asked what needs to be done with these. Nic Strong stated that, generally speaking, the Board  
652 would allow the proponent of the petition to explain the proposal and then the Board can state if  
653 they recommend it or not. This recommendation will be placed on the ballot with the petition.

654  
655 Skip Dalton stated that the warehouse subcommittee group was made up of Board members, Bill  
656 Stoughton, Chris Yates, and Cynthia Dokmo. The group undertook extensive research to look at  
657 other towns that were struggling to deal with the impact of extremely large distribution centers  
658 proposed and/or built near residential neighborhoods. The group sent multiple letters to the  
659 Board outlining these problems. A number of these issues have been addressed in the Board's

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660 proposed amendments #5 and #6. This petition took the approach adopted by Chelmsford and  
661 Acton, MA, with their respective ordinances. The differences between warehouse and  
662 distribution center business models were added, with Chelmsford's comprehensive definitions, to  
663 Article 9. These definitions form the basis for the replacement section in the permitted usage for  
664 Industrial Zone. Chelmsford had this overwhelmingly passed by their Town Council in October  
665 2022, hence it is believed these definitions have gone through extensive legislation and legal  
666 review. The business models for warehouses and distribution centers have changed dramatically  
667 over the past 60 years. Distribution plants were added to Amherst's Section 4.9 in 1963, but  
668 there is no definition expressed at all. There is no definition for warehouse or distribution center  
669 in Section 4.9.1. Skip Dalton continued that the group's research indicated a massive surge in  
670 building extremely large distribution centers all across the nation. New Hampshire has been  
671 somewhat buffered from this impact until recently. Now, out-of-state developers are invading  
672 New Hampshire, seeking out vacant land and/or redeveloping commercial properties. Zoning  
673 regulations must protect the Town's neighborhoods, infrastructure, wetlands, aquifers, open  
674 space, wildlife, safety, traffic issues, property values, protect citizens from accidents that occur in  
675 industrial facilities, while still allowing reasonable progress. The Town wants to attract  
676 businesses that are beneficial and not all businesses will ultimately prove to be so. Skip Dalton  
677 stated that the planned development proposal from April 2022 was a wakeup call for action. The  
678 Town was caught with old, outdated ordinances that provided no guidance for reasonableness of  
679 the application. The proposed structures and parking facilities were so large they could not fit on  
680 148 acres. While that applicant ultimately walked away, the Bon Terrain properties continue to  
681 be aggressively marketed in exactly the same fashion by the property owner. Without ordinance  
682 changes, the owner will secure another client focused on building a 1M+ s.f. distribution center.  
683 The proposed amendment is, "To see if the Town will vote to amend the Amherst NH Zoning  
684 Ordinance Article 9 Section 9.1 Meaning of Certain Words, by adding the following definition:  
685 Warehouse: a facility or part of a facility used primarily for storing goods, wares, commodities  
686 and merchandise, whether for the owners thereof or for others, and whether it is a public or  
687 private warehouse operation, or act in relation thereto. Warehouse shall include shipping and/or  
688 delivery to retailers and businesses (business to business, and wholesalers). Warehouse shall  
689 exclude Distribution Center, as defined in Section 9.1." The reason for differentiating  
690 warehouses is that these generally have a much lower impact. Impact includes traffic volume  
691 anticipated from new land use construction and, as the Board knows, this is a key factor in  
692 calculating impact fees. The Institute of Transportation Engineers (ITE) has dramatically  
693 different traffic calculations for each type of warehouse use and the ordinances should reflect  
694 these differences, in order to help properly assess traffic, air quality, noise, and overall  
695 environmental intensity.

696  
697 Skip Dalton stated that petitioned amendment #2 is, "To see if the Town will vote to amend the  
698 Amherst NH Zoning Ordinance Article 9 Section 9.1 Meaning of Certain Words, by adding the  
699 following definition: Distribution Center, a facility or part of a facility where goods or products  
700 are stored on site temporarily for the primary purpose of shipping and/or delivery to a consumer.  
701 Such facilities may include automated systems, office space, and a pick and pack area to be used  
702 by employees for sorting and packaging goods and products for shipping and/or delivery from  
703 available onsite inventory. Distribution Center includes fulfillment by third parties for the above

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704 stated purpose. Distribution Center excludes shipping and/or delivery to retailers and businesses  
705 (businesses to business and wholesalers). Distribution Center is not defined as Warehouse, as  
706 defined in Section 9.1. Distribution Center is not defined as Retail use that may simply have an  
707 accessory delivery component.” Currently no definition exists for Distribution Center in the  
708 ordinance. This distinguishes higher impact distribution centers from lower impact warehouses.  
709 Distribution Centers are business-to-consumer facilities built primarily to facilitate distribution  
710 of fulfillment of goods and materials to consumers. The Distribution Center definition also does  
711 not include any retail use that may have an accessory delivery component.  
712

713 Skip Dalton stated that petitioned amendment #3 is, “To see if the Town will vote to amend the  
714 Amherst NH Zoning Ordinance Article 4 Section 4.9 Industrial Zone A., Permitted Uses by  
715 including the following use: 6. Warehouses, Distribution Centers no greater than 200,000 s.f.,  
716 service industries, and parcel delivery.” Currently, the ordinance reads “6. Distribution Plants,  
717 service industries, parcel delivery.” This 200,000 s.f. limit is being proposed for high impact  
718 distribution centers and is a reasonable metric. All the open industrial lots in Amherst are well  
719 over 6 miles from the Everett Turnpike, along an already heavily congested traffic area, Route  
720 101A. Most of the open lots along this area reside on sensitive aquifers and have other  
721 environmental considerations. This amendment will provide flexibility and planning tools for the  
722 Town, while still mitigating the negative impacts from mega distribution centers. There are  
723 seventeen additional permitted uses for Industrial Zones. This proposal offers a balance between  
724 the Board's need to provide additional tax dollars, without unduly compromising Town resources  
725 or resident safety. These ordinances can be further amended as business models change and  
726 based on the impact of those changes on the Town. Through application of this amendment,  
727 Amherst will send a responsible message to outside developers that Amherst is interested in  
728 adding reasonable growth to its industrial base.  
729

730 Morgan Hollis, Gottesman & Hollis, P.A., representing Tana Properties Limited Partnership,  
731 stated that his client owns a number of parcels of land in the Bon Terrain Industrial Park, which  
732 contains the primary open land remaining in the Industrial Zone. His client has asked him to  
733 speak in opposition to the three citizen’s petitions. The definitions of Warehouse versus  
734 Distribution Center are benign in terms of the impact on his client. The biggest impact is from  
735 the third proposed amendment, which is the arbitrary and capricious selection of 200,000 s.f. as  
736 the maximum size of a structure. The Planning Board regulates development based upon adverse  
737 impacts. An applicant must mitigate those impacts. Traffic impacts are the genesis for this  
738 arbitrary selection of 200,000 s.f. Particular uses must complete traffic studies which are then  
739 presented to the Board. Uses fall into different land use categories, which are then used to  
740 calculate an appropriate amount of traffic for the site. It is the Board's job to make sure that the  
741 traffic study analyzes the proposed use. An applicant cannot switch back and forth between uses.  
742 He questioned why 200,000 s.f. is being considered, instead of 300,000 s.f., as there are already  
743 two buildings in the Bon Terrain area which are 300,000 s.f. These buildings would not be  
744 allowed to change to distribution centers, per this ordinance. He questioned how the Board  
745 knows that some of the activity in those buildings is not already being distributed to consumers,  
746 rather than to a business consumer. Any consumer delivery, under this ordinance, requires that  
747 the building be under 200,000 s.f., without any justification or explanation, other than fear that

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748 these buildings, if they get bigger, might be out of control. Any proposal has to be vetted before  
749 the Board. This ordinance is similar to placing square footage restrictions on single-family  
750 houses in the Residential Rural Zone. He stated that he will attach his memo on this item to an  
751 exhibit from Conger Industries which outlines 13 definitions of warehouses, among which is  
752 distribution center. A distribution center is defined as a type of warehouse in that industry.  
753 Warehouses typically store goods for longer periods, whereas warehouse distribution centers  
754 temporarily store goods while they are prepared for routing to the retailer. The definition  
755 proposed in this ordinance is at odds with the industry definition. Simply because these centers  
756 distribute to consumers should not allow for an arbitrary definition of a maximum 200,000 s.f.;  
757 that is inappropriate and illegal, in his opinion.

758  
759 David Patterson, 18 Summerfield Way, expressed sincere appreciation for the Board's tireless  
760 work in sorting out key proposed ordinances or adjustments for voter consideration. There was  
761 some disappointment regarding the Board's decision to exclude four of the seven proposed  
762 ordinances that the warehouse committee put forward. One, adopted in its entirety, dealt with  
763 dark night skies, while the other two were rewritten with somewhat reduced effectiveness,  
764 dealing with noise abatement and a building height restriction. The proposals this evening  
765 include adding a definition of Warehouse to the Amherst Zoning Ordinance, eliminating  
766 vagueness, and clearly defining a warehouse, with an emphasis on storage. A second proposal  
767 proposes to add a definition of Distribution Center to the Amherst Zoning Ordinance. This  
768 tightens the focus on what a distribution center is and that it includes high traffic volume. This is  
769 the complete opposite of a warehouse storage facility. The third proposal proposes to add an  
770 amendment under Industrial Permitted Use section to include warehouses and distribution  
771 centers no greater than 200,000 s.f. This aims to lessen the severe impact a proposal might have  
772 on the community; a community which does not have the infrastructure capable to support  
773 massive high volume business ventures. These three proposals are a step forward to help the  
774 community minimize negative impacts of proposed land development in the Bon Terrain  
775 industrial area, especially as it abuts several residential properties. It is clear more work is  
776 needed to bring Amherst zoning standards into the 21<sup>st</sup> century. The Town cannot effectively  
777 protect nearby landowners and residences against the aggressive business development  
778 proposals. He urged citizens to help safeguard the character and heritage of the Town.

779  
780 Barbara Staffiere, 9 Crystal Lane, stated that she supports the three petitions and urged the Board  
781 to consider supporting them as well. She stated that she moved here from Chelmsford, which has  
782 a distribution center being built in a residential neighborhood. Citizen petitions tried to prevent  
783 this from happening. That town is taking, by eminent domain, areas of people's property to put in  
784 roads for tractor trailers. She does not want this to happen in Amherst. She urged the Board to  
785 slow down any distribution center entering the Town. The impacts of this would be felt by  
786 residents near Bon Terrain, throughout Town, and into surrounding towns.

787  
788 Steve Nelson, 9 Beacon Lane, stated that he believes the 200,000 s.f. limit on warehouses is  
789 necessary, due to the Town's infrastructure and ability to protect the surrounding area. Large  
790 warehouses are tall and dense. They create a nightmare for towns and fire departments. A 2022  
791 fire in an Indiana warehouse destroyed a 1.2M s.f. fulfillment house. It took 350 firefighters from

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792 30 fire agencies to put out that blaze. The building will not be reopening. In February of 2022, a  
793 document warehouse caught fire and it took two days to put out the blaze. A North Carolina  
794 mega warehouse fire required dozens of mutual aid fire departments and 10 days to extinguish.  
795 The all-Volunteer Fire Department in Amherst is a dedicated group of well-trained firefighters  
796 with outstanding leadership. He asked if citizens want the Department to have to fight a massive  
797 fire of this scale. On Saturday, December 24<sup>th</sup>, the Amherst Fire Department responded to a  
798 house fire in the north end of Town. Most of the department responded and they called in mutual  
799 aid from Milford to cover the Fire Station and then Brookline when Milford was called out. This  
800 was the response needed for a 3,000 s.f. house. He asked the Board to consider how much aid  
801 would be needed for a 1M s.f. warehouse fire. The Town needs to be realistic in its capabilities.  
802 Warehouses need to be limited to 200,000 s.f., with a limited height as well.

803  
804 Deb Keough, 16 Summerfield Way, stated that other towns in the area have restricted large  
805 warehouses and asked why Amherst has not done the same thing. This will preserve the Town's  
806 heritage and rural look. She stated that she does not care what impact fees applicants have to pay,  
807 as they will never cover the total fees of a large operation. The Master Plan survey found that  
808 91% of people want to preserve the Town's rural character. Large warehouses will impact other  
809 retailers, traffic, and emergency travel along Route 101A. There are 17 other uses a landowner  
810 could use the land for.

811  
812 Barb Dalton, 14 Summerfield Way, stated that the proposal deals with more than just the  
813 residents of Summerfield Way, Peacock Brook, and Patricia Lane; this is about the Town and  
814 how to protect it from being overwhelmed by mega distribution centers. Fear of litigation should  
815 not be a reason not to protect the Town. These three petitions allow the Board an additional year  
816 to make any necessary amendments, while giving the Town some protection.

817  
818 Dan Cuoco, 2 Appleton Way, stated that he is in agreement with all previous speakers and is in  
819 support of these proposals.

820  
821 Bill Stoughton stated that the subcommittee consisted of himself, Cynthia Dokmo, and Chris  
822 Yates. He thanked all of the residents for the way they conducted themselves during the working  
823 group meetings. The group originally set out to review definitions and incorporate definitions  
824 into the ordinance. This item was far more complex than anticipated. He has no particular  
825 objection to the definitions proposed, but he will likely not support these petitions because he has  
826 not had enough time to review them fully and he believes that the Board needs to review the  
827 nature of these restrictions to potentially couple them with additional uses not permitted today.

828  
829 Tom Quinn stated that he wished the Board did not have to make a vote on a citizen's petition.  
830 Any citizen has the right to create a petition and it is up to the voters to then say yes or no. These  
831 particular proposals seem fairly simple and narrow in scope, so he would be in favor of moving  
832 them forward.

833  
834 Arnie Rosenblatt noted that, regardless of how the Board votes, these proposals will be on the  
835 ballot.

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836  
837 Tracie Adams stated that Attorney Hollis stated that even he thought the definitions were benign.  
838 Thus, she is okay with advancing those. She questioned the proposed 200,000 s.f. maximum but  
839 was fairly convinced that these structures would be a large undertaking for the Town's  
840 infrastructure and Fire Department to handle. It appears this subcommittee is ongoing and will  
841 continue to work on this.

842  
843 Tim Kachmar stated that he voted no on the last proposal, and will not support this one, because  
844 he believes the current industrial zoning is appropriate. Limiting the size of a building is  
845 dependent on the size of the property and what the property can support, based on current zoning  
846 rules and regulations. He stated that he does not have a problem with the definitions, as proposed  
847 but does not believe the Board's job is to limit the size of what can be built on a property.

848  
849 Arnie Rosenblatt suggested that the three items be framed individually.

850  
851 **Tim Kachmar moved to support the definition of a Warehouse amendment, as**  
852 **proposed. Seconded by Tracie Adams.**  
853 **Motion carried 3-1-0 [B. Stoughton opposed.]**

854  
855 **Tracie Adams moved to support the definition of a Distribution Center, as**  
856 **presented. Seconded by Tom Quinn.**  
857 **Motion carried 3-1-0 [B. Stoughton opposed.]**

858  
859 **Tim Kachmar moved to not support the 200,000 s.f. maximum warehouse size**  
860 **amendment. Seconded by Bill Stoughton.**  
861 **Motion carried 3-2-0 [T. Adams and T. Quinn opposed.]**

862  
863 Arnie Rosenblatt thanked everyone involved, both on the Board, subcommittees and in the  
864 public.

865  
866 Tim Kachmar asked if the Board can simply support the fourth citizen's petition, as it is similar  
867 to one already supported by the Board. Arnie Rosenblatt stated that it would be best to hear the  
868 petition first.

869  
870 Dave Williams noted that the fourth petitioned amendment is a Plan B in case the Planning  
871 Board did not approve the other, similar language proposed for the scenic road setbacks. The  
872 proponents suggested withdrawing this petition, as the Board did approve the other language.  
873 Nic Strong stated that the petition cannot be withdrawn. Arnie Rosenblatt expressed concern that  
874 there will be confusion regarding these two similar items. Nic Strong stated that she checked  
875 with the Municipal Association, which stated that each petitioned amendment shall be placed on  
876 a ballot, which may be separate from the ballot used to elect town or village district officers. The  
877 town cannot follow the directions of the petitioner to not put the article on the warrant, if  
878 amendment #3 is moved to the ballot by the Planning Board, regardless of any changes made to  
879 the numeration of the pending drafts. Arnie Rosenblatt stated that these two items seem to be the

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880 same thing. He believes the Board should still vote on the #4 amendment. He stated that he is  
881 frustrated that there will be two similar amendments.

882

883 Wendy Rannenbergs stated that, for the Town warrant, petitioners have the ability to modify the  
884 language in a petition warrant article, so long as it does not change the fundamental purpose of  
885 the article. Nic Strong stated that this is not true for zoning petitions.

886

887 Bill Stoughton stated that the Board could oppose this petition, as the Board already supported  
888 the other one. Arnie Rosenblatt stated that he is concerned this could be more confusing. Tom  
889 Quinn stated that he is concerned the two items could potentially pass with different regulations.  
890 Nic Strong stated that she believes, if both pass, the stricter one would prevail. If this occurs, the  
891 Town will need to get in touch with Town Counsel to figure out which one takes precedence.  
892 Arnie Rosenblatt stated that 'stricter' seems to be in the eye of the beholder. He stated that the  
893 Board may want to turn this item down, regardless of how it substantively feels about it. Tim  
894 Kachmar stated that he is concerned that some people may vote for this item as it does not  
895 contain the 125' setback, included in the other item.

896

897 **Tom Quinn moved to support the scenic setback citizens' petition, as presented.**

898 **Seconded by Tim Kachmar.**

899 **Motion carried unanimously 3-2-0 [B. Stoughton and A. Rosenblatt opposed.]**

900

901 **3. Minutes: December 21, 2022**

902 None at this time.

903

904 **4. Any other business that may come before the Board**

905

906 **Tim Kachmar moved to adjourn at 9:50pm. Seconded by Tracie Adams.**

907 **Motion carried unanimously 4-0-0.**

908

909 Respectfully submitted,

910 Kristan Patenaude

911

912 Minutes approved: January 18, 2023