

## Memo

From: Dean E. Shankle, Jr., Town Administrator  
To: Amherst Board of Selectmen  
Date: 04/26/2023  
Re: 2023 Protest Petitions Draft Results

Below is a list of the warrant articles that were the subject of protest petitions, followed by a very brief indication of the results.

Attached are the background studies and analysis done by NRPC GIS Manager Sara Siskavich and Town Attorney Steven Whitley.

Article 40: Planning Board Proposed Amendment #2: PASSED

*Amend Article III, General Provisions, Section 3.9 Reduced Frontage Lots, by deleting the existing section in its entirety and replacing it with language that provides an explanation of the Reduced Frontage Lot requirements, that specifies the number of reduced frontage lots allowed as part of a subdivision, that specifies the required minimum lot size in the different residential zoning districts, that includes a requirement for 50' of frontage, that includes requirements for the design and placement of driveways for access, that includes setback requirements, and that specifies that any required Conditional Use Permits be applied for at the time of subdivision; AND, to amend Article IV, Sections 4.3 C.2, Residential Rural, 4.4 C.2. & 3. Northern Transitional, and 4.5 D.2. Northern Rural, to delete reference to the previous reduced frontage requirements; AND, to amend Article IX, Definitions, Section 9.1 Meaning of Certain Words, to amend the definition of Reduced Frontage Lots to refer to the revisions to Section 3.9, as detailed in the full-text copy of the 2023 Amendments to the Amherst Zoning Ordinance as proposed by the Amherst Planning Board.*

**The protest petition for article 40 is INVALID because the proposed amendment relates to over 1/3 of the land area of the municipality and so falls outside of the criteria for a protest petition as outlined in state law. The article received more than 50% of the votes so it PASSED.**

---

Article 41: Planning Board Proposed Amendment #3: FAILED

*Amend Article III, General Provisions, Section 3.11 Scenic Setbacks, to add language to add minimum lot frontage requirements for scenic roads, and to add language to the purpose statement regarding preservation of natural vegetation and wildlife, to increase the setback from 100' to 125', to encourage establishment of a 50' buffer within the 125' setback, and to require the frontage of lots on scenic roads to be 300', as detailed in the full-text copy of the 2023 Amendments to the Amherst Zoning Ordinance as proposed by the Amherst Planning Board.*

**Article 41 did not get more than 50% of the vote so it FAILED.**

---

Article 43: Planning Board Proposed Amendment #5: FAILED

*Amend Article IV, Zoning Regulations, Section 4.9 Industrial Zone, to add a new use to the prohibited uses, to require buffers and noise attenuation between lots in the industrial district that border residential zones or uses, to refer to the former B&M railroad right- of-way correctly, to delete the 80' height allowance for uninhabited structures, and to add requirements for vehicle idling, parking and restroom requirements, as detailed in the full-text copy of the 2023 Amendments to the Amherst Zoning Ordinance as proposed by the Amherst Planning Board.*

**Article 43 protest petition is VALID. The article did not get 2/3 of the vote so it FAILED.**

---

Article 49: Petition Warrant Article: PASSED

To amend the Town of Amherst NH Zoning Ordinance, Article IX, Section 9.1 Meaning of Certain Words by adding the following definition:

Warehouse: A facility, or part of a facility, used primarily for storing goods, wares, commodities and merchandise, whether for the owner thereof or for others, and whether it is a public or private warehouse operation, or act in relation thereto. Warehouse shall include shipping and/or delivery to retailers and businesses (business to business and wholesalers).

Warehouse shall exclude Distribution Center as defined in Section 9.1.

**The protest petition for article 49 is INVALID because the proposed amendment relates to over 1/3 of the land area of the municipality and so falls outside of the criteria for a protest petition as outlined in state law. The article received more than 50% of the votes so it PASSED.**

---

Article 50: Petition Warrant Article: PASSED

To amend the Town of Amherst NH Zoning Ordinance, Article IX, Section 9.1 Meaning of Certain Words by adding the following definition:

Distribution Center: A facility, or part of a facility, where goods or products are stored on-site temporarily for the primary purpose of shipping and/or delivery to a consumer. Such facilities may include automated systems, office space, and a pick and pack area to be used by employees for sorting and packaging goods and products for shipping and/or delivery from available on-site inventory. Distribution Center includes fulfillment by third parties for the above stated purposes. Distribution Center excludes

shipping and/or delivery to retailers and businesses (business to business and wholesalers). Distribution Center is not defined as Warehouse, as defined in Section 9.1. Distribution Center is not defined as a Retail use that may have an accessory Delivery component.

**The protest petition for article 50 is INVALID because the proposed amendment relates to over 1/3 of the land area of the municipality and so falls outside of the criteria for a protest petition as outlined in state law. The article received more than 50% of the votes so it PASSED.**

---

Article 51: Petition Warrant Article: FAILED

To amend the Town of Amherst NH Zoning Ordinance, Article IV, Section 4.9 Industrial Zone, A. PERMITTED USES by including the following replacement use:

6. Warehouses, Distribution Centers no greater than 200,000 square feet, service industries and parcel delivery.

**Article 51 did not get more than 50% of the vote so it FAILED.**

---

Article 52: Petition Warrant Article: FAILED

To amend the Town of Amherst NH Zoning Ordinance, Article III, Section 3.11 Scenic Setbacks and Minimum Lot Frontage on Scenic Roads.

- A. **PURPOSE.** The purpose of this section is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes. *This purpose can be complemented by encouraging natural vegetation and wildlife habitats in the setback to increase the rural experience of viewing beautiful natural surroundings while traveling on scenic roads and Town roads with scenic setbacks. Further preservation of rural character and open space can be accomplished through establishment of scenic road minimum lot frontage requirements which additionally benefits highly rated wildlife habitat and wildlife corridors on scenic roads in Amherst. (3-14-23)*
- B. **REGULATIONS.** To accomplish the purpose of this section, a setback requirement for all structures of one hundred (100) feet from the highway right-of-way is established on the following roads, and said setbacks shall apply notwithstanding any other setback requirements which may be applicable as a result of other zone regulations: (3-2-76, 3- 14-23)

*RSA 231:158 states that as part of a scenic road designation or as an amendment to such a designation adopted in the same manner, a town may impose provisions with respect to such a road which are different from or in addition to those set forth in this section. Relative to RSA 231:158 this additional provision encourages best practices for preservation of existing trees, natural vegetation, and stone walls along scenic roads.*

*Each new lot on a scenic road shall have a minimum frontage of three hundred (300) feet on a publicly maintained road, unless frontage has been approved and recorded as a reduced frontage lot. Corner lots on scenic roads shall have the minimum required frontage on each side of the lot that abuts a street or road.*

*Lots created on or after the effective date of approval of this section (3-14-23) shall comply with its provisions. (3-14-23)*

**The protest petition for article 52 is VALID. The article did not get 2/3 of the vote so it FAILED.**

**MEMORANDUM**

**TO:** Dean Shankle, Town of Amherst, NH  
**FROM:** Jay Minkarah, NRPC, Sara Siskavich, NRPC  
**CC:** Nic Strong, Town of Amherst, NH  
**SUBJECT:** 2023 Amherst Protest Petitions – NRPC GIS Analysis V2  
**DATE:** 4/21/2023

The following summarizes NRPC’s GIS analyses to support the Town’s evaluation of protest petitions relative to 2023 Zoning Warrant Articles 40, 43, and 52.

Definition of Government Lots:

Government lots were defined as those where the assessing land use description equals TOWN-PROP, MUNICIPAL, US GOVT, STATE, where the land use code equals 9304, where the mailing address equals 2 MAIN STREET, 1 SCHOOL STREET, PO BOX 960, OR PO BOX 849, or where Owner Name contains “TOWN OF.”

Definition of Commons:

Commons were defined as privately-owned tracts of land where public access is legally-allowed and secured by deed restriction or covenant, known colloquially as follows: Arnold Easement, Schweiker Easement, Carey Easement (Purtell Reality Trust), and Gowing Easement; B&M ROW; Great Meadow; Ponemah Bog Wildlife Sanctuary; the Route 122 Canoport; certain tracts owned by Amherst Land Trust; certain tracts with conservation easements held by the Society for the Protection of NH Forests; certain set-aside areas in Village Woods.

Town of Amherst Baseline Statistics:

Amherst Total Area: <sup>1</sup>	22,026.89 AC
Amherst Total Inland Water Area: <sup>1</sup>	327.34 AC
Amherst Total Dry Land Area: <sup>1</sup>	21,699.55 AC
Total Streets Area: <sup>2</sup>	909.68 AC
Total Commons: <sup>3</sup>	391.41 AC
Total Government Entity-Owned Lands: <sup>4</sup>	3,635.61 AC

**Amherst Total Land Area for 1/3 land area calculations: 16,762.85 AC**

<sup>1</sup>2020 US Census Tiger/Line database.

<sup>2</sup>NRPC GIS road right-of way polygon area calculation

<sup>3</sup>NRPC GIS area calculation for selected conservation tracts

<sup>4</sup>Town of Amherst Assessing database recorded acreages

**Article 40: Reduced frontage on new lots in RR, NTR, and NR zones**

- Affected Area: Total area of all lots  $\geq 10$  AC zoned RR, NTR, and NR, excluding roads, commons, and government: **6,451.28 AC**
- Affected area is **38.48%** of the land area of the municipality.

*Protest petition is **INVALID***

---

**Article 43: New prohibited use, noise attenuation buffers, removed height allowance, etc. in IND zone.**

- Affected Area: Total area of all IND lots excluding roads, commons, and government: **494.17 AC**
- Affected area is **2.9%** of the land area of the municipality.

Test #1: Analysis of petitioner lots included in the change:

- All but one lot on the petition is zoned IND. The lot is zoned C by assessor but is shown within the IND district on tax maps. To be conservative, this lot is *included* in the 20% test\*
- Area required to pass 20% test: **98.83 AC**
- Petitioner lots total area: **238.49 AC (48.3%)**

Test #2: Analysis of petitioner lots within 100 feet:

- Not conducted; petition passes first test.

*Protest petition is **VALID***

---

**Article 52: Minimum 300' frontage for new lots along scenic roads**

- Affected lots are lots along scenic roads large enough to be subdivided (RR: 4+ AC, NT: 7+ AC, and NR 10+ AC), excluding roads, commons, and government: **2,934.94 AC.**
- Affected area is **17.5%** of the land area of the municipality.

Test #1: Analysis of petitioner lots included in the change:

- Petitioner lots included in the calculation have scenic road frontage, meet the above respective zoning district thresholds to be potentially subdivided, and are not road, commons, or government-owned.
- Area required to pass 20% test: **586.99 AC**
- Petitioner lots included in calculation total area: **1,107.22 AC**

Test #2: Analysis of petitioner lots within 100 feet:

- Not conducted; petition passes first test.

*Protest petition is **VALID***

*\*inclusion of these lots did not introduce enough area to affect outcome*



Articles 49 and 50:

“These two protest petitions are not valid, as explained below. Because the protests are not valid, a simple majority vote is all that is required to adopt them. Each of these amendments received a simple majority vote and so they each passed thereby amending the zoning ordinance as stated.

The Town zoning ordinance does not presently regulate where a “warehouse” or a “distribution center” may be located, and so there is no defined geographic area where these uses are being regulated; therefore, the proposed definitions of these two uses (Articles 49 & 50, respectively) would apply throughout the entire town. Because the area impacted by these two zoning uses is effectively the entire town, Articles 49 & 50 are not viable protest petitions as the proposed regulation applies to more than 1/3 of the land area of the town. See RSA 675:5, I-b (limiting the availability of protest petitions to “amendments which alter the boundary locations separating previously defined zoning districts, or to amendments which alter the regulations or restrictions of an area not larger than 1/3 of the land area within the municipality.)”

**Steven M. Whitley**

Attorney

DrummondWoodsum