

Mad River Corporation
c/o Hall & Holden PC
PO Box 1427
Waitsfield, VT 05673

March 8, 2018

Fayston Planning Commission
Fayston Board of Selectmen
Fayston Town Offices
866 North Fayston Road
Fayston, VT 05660

Dear Planning Commission and Board of Selectmen,

Thank you for holding a public meeting on February 19th and soliciting opinions on the proposed changes to the Fayston Land Use Regulations. The redlined version of the proposed Regulations that you distributed prior to the meeting was also extremely helpful in clarifying the proposed changes.

As all the major shareholders of the Mad River Corporation currently live a long distance from Fayston, we engaged an attorney, Kevin Brown of Langrock, Sperry and Wool, to give a few points on our view of the proposed changes, including the defining of a new Natural Resource Overlay District as is in the proposed planning document. As you know, a large fraction of Mad River Corporation land in Fayston lies within the new Natural Resource Overlay District, by virtue of either elevation or by being located in a Primary Conservation Area as described in the 2014 Town Plan, or both.

I hope you understood from our representative that Mad River Corporation is, on the whole, in favor of most of the changes and believe they have the opportunity to preserve the special character of Fayston and promote the environmental ideals of its citizens. However, there are a few proposed rules that we believe need further consideration and likely modification.

The first rule is the absolute requirement that the maximum length of any driveway or roadway that lies in a Natural Resource Overlay District be 500 feet. We believe this rule has potential unintended consequences that could be better served by permitting longer driveways.

The first issue is, there is land that is currently in a Secondary Conservation Area that is best accessible through a Primary Conservation Area. Such land is not currently in a Natural Resource Overlay District but it can best be reached by a driveway through a Natural Resource Overlay District. However, such a driveway would need to be more than 500 feet long to access the secondary conservation area that is currently zoned as Recreation area. Therefore, the driveway length limitation cuts off access not only to land within a Natural Resource Overlay District, but also to all the land not in such an area,

but for which it would be prohibitive to build driveways without going through such areas. We believe this is a harsh and unintended consequence with severe economic consequences.

The second issue is, the strict limitation on driveway length will make it impossible to access a significant fraction of land following the natural contours of the land, but instead has the unintended consequence of demanding that driveways be cut as steeply as possible (up to the maximum permitted by the regulations) from the nearest road to reach the land in the shortest distance. The longer driveway following the natural contours of the land would likely have less erosion, less impact on the land, and would grant easier access, but could not be utilized in the context of a hard and fast 500 feet limitation on driveway length. For example, about a decade ago Mad River Corporation had plans drawn up for potential home sites with an access road averaging 7.7% grade, but the plans required a long road to accommodate this grade. Some Mad River Corporation land would be accessed with a driveway of 500 feet, but only if the road were steep or very steep.

The third issue is that this driveway limitation could force home sites to be built off existing roads, such as the existing logging roads on Mad River Corporation lands (including the road known as the 19th Hole). This is not preferential, as it would be far better to keep as much of the land in Current Use and logged and away from potential home sites. However, with the 500 feet new driveway limitation, this may be the only possibility for developing the land to add new homeowners.

A fourth issue is that a major concern for Fayston is that scenic views be preserved and not diminished by unseemly development. The ability to extend the length of the driveway could make the positioning of houses even more discreet in some circumstances.

For these reasons, Mad River Corporation strongly urges you reconsider the rule maximizing driveway length to 500 feet.

Another proposed change that we believe needs further consideration is the requirement that homeowners maintain an undisturbed vegetative buffer strip within 50 feet of the high water mark of any stream. The best way to reduce erosion, surely, is not simply to leave existing land undisturbed, but also to permit strategic planting that inhibits erosion near existing streams. It would be possible to place the onus or burden of proof on the landowner that wants to modify plantings near streams by requiring an opinion or statement of the environmental impact of such plantings. This would minimize additional work on a Planning Commission or Development Review Board when considering proposals to modify land near streams and wetlands while furthering the values expressed in Land Use Regulations, including encouraging responsible use and careful stewardship of natural resources. Additional proposed requirements that add cost to proposals without commensurate value, such as plans with contour lines with two foot intervals, should also be scrutinized to ensure they fulfill the goals of the proposed changes in the least costly and most effective manner.

Ultimately, the strength of a community includes its economic strength. The Planning Document's stated Purpose is to provide for orderly community growth and development, and includes developing regulations that will guide development in a manner that preserves important community resources, while encouraging a range of land uses in appropriate locations that will maintain a reasonable balance between community-imposed limitations on land use and the rights of individual landowners.

Some portion of Fayston's economic strength is related to the Mad River Glen ski area and its loyal and devoted ski area homeowners, who come not only when the snow flies, but also when it doesn't, and who use their homes not only during ski season, but also year round. These homeowners, including out-of-state homeowners, strengthen the local community in many ways. The Mad River Corporation wants to strengthen the base of homeowners by developing *land that is accessible from Mad River Glen by skiing*. This includes most of the Mad River Corporation land. The land has been zoned as Recreation land and we believe increasing opportunities for homeowners that can ski home will help preserve Mad River Glen's viability long-term. The proposed zoning changes, particularly the driveway limitation, could go a long way toward making any development, other than a single lot or two up near Schuss Pass, prohibitive, thus decreasing the value of the land not only to its current owners, Mad River Corporation, but to the Mad River Glen skiing community and the entire town of Fayston. We believe this is not in line with the "reasonable balance" between community-imposed limitations on land use and the rights of individual landowners, and would be an unintended and unwished for consequence.

We believe the goals in the proposed plan could still be met and the unintended consequences specified in this letter can be avoided by a few modifications to the proposed Land Use Regulations. We would be happy to discuss the matter further with you and are available at the phone numbers listed below.

Sincerely,



Truxton Bancroft Pratt III
President
Mad River Corporation
704-709-3717



Amanda Pratt Siegel
Treasurer
Mad River Corporation
317-414-0053

April 6, 2018

Fayston Selectboard
866 North Fayston Road
Fayston, Vermont 05660

Re: Comments from February 19, 2018 Selectboard Meeting

Dear Members,

Thank you for the opportunity to present the draft Land Use Regulations (LURs) at your last meeting. It was good to see the public well-represented. We received your February 26th email with questions for us regarding the LURs. Our responses are below:

- 1) *What are the factors/reasons for the change in LURs? Are there inherent weaknesses/shortcomings? Is the present system of rules and enforcement falling short?*

The primary reason for updating the LURs is to bring them into compliance with the Town Plan, which sets the policy for land use development in the town. The Fayston Town Plan adopted at the end of 2014 placed increased emphasis on ecological and stormwater protection, in response to the two most recent town surveys, and to more stringent state requirements.

The 2014 Fayston Town Plan points to the need to design land subdivisions in a way that minimizes development on and fragmentation of land characterized by significant wildlife habitat and travel corridors, riparian lands and river corridors, high elevations (above 1,500 feet), scenic viewsheds and adjacency to conserved lands. For example,

- “Ensure that land subdivision minimizes or mitigates adverse impacts to significant wildlife habitat, productive forest land, scenic viewsheds, shallow soils and headwater streams.”
- “Consider restrictions on further subdivision, taking into account the numerous undeveloped lots already in existence.”

The Plan also directs the DRB to use the ecological maps found in appendix of the Plan to guide them in their decisions.

- “Review the land use regulations in the context of data gathered in the 2007 Natural Heritage Inventory as well as the Tiered Ecological Priorities map developed by the FWC Project to ensure that the goals of maintaining unfragmented tracts of large forest are facilitated by the regulations.”
- “The Planning Commission and FNRC should work together to develop a wildlife habitat protection plan that includes a habitat map to guide the DRB in their development review process.”

Further, the Plan indicates that the 2013 Tiered Ecological Priorities Map (found in Appendix A of the Plan) should be used as a guide for DRB development review process.

The 2014 Fayston Town Plan also urges the Town to take actions to reduce or eliminate the long-term risk to human life and property from flooding and fluvial erosion. Such policy language helps bring the Town in conformance with the State and Federal Government requiring municipalities become more resilient to the increasing likelihood of flood and erosion storm events, e.g.:

- “Encourage the protection and restoration of floodplains and upland forested areas that attenuate and moderate flooding and fluvial erosion.”
- “Develop regulations for driveway culverts.”

Other amendments in the 2014 Fayston Town Plan included additional emphasis on individual on-site energy sources, and the need to update the zoning bylaw to prohibit large-scale systems, particularly at the higher elevations, but to encourage wind and solar systems on a smaller scale below 1,700 feet elevation. The Plan directs the Town to ensure that the siting of energy and telecommunication facilities do not have an adverse impact on Faystons’ landscape and environment. For example,

- “Amend the LURs as necessary to ensure that all new facilities meet community standards.”

The Plan also encourages the use of passive solar design and residential scale hydroelectric generation.

In terms of the Town Plan chapter on the Economy, the it states that any new business development must be compatible with the town’s values as reflected in the Town Survey, and must preserve the Town’s natural features such as ridgelines, open fields, wildlife habitat and corridors, water quality and wetlands, e.g.:

- “Encourage the location of commercial activities along Route 17, near Irasville, at the Mount Ellen base area, and adjacent to Waitsfield’s Mad River Park.”

Also, we should encourage the development of sustainable land-based economic activities and improve the viability of agriculture and forestry, and make sure that the LURs support and promote home-based employment.

The Planning Commission’s work on the LURs was done in order to implement the town policies set forth in the existing Town Plan. The Town Plan sets policy for the town; the LURs are there to implement that policy. Public opinion expressed through town-wide surveys (one in 2006 and another in 2012) provided much of the foundation for the policies set forth in the Fayston Town Plan. The Fayston Planning Commission is dedicated to receiving public input in the drafting of any public policy. The next item on the Planning Commission’s agenda, once the LURs are adopted, is to revise the Town Plan. We encourage the public to speak up and participate in this process - anticipated to take place over the next 18 months.

2) What percent of the town is in the Natural Resource Overlay District (NROD)?

| | | |
|---|--------|------------------|
| Fayston total acreage: | 23,369 | |
| NROD total acreage: | 13,778 | (59%) |
| Forest Reserve and Phen Basin land in NROD: | 5,348 | |
| Maximum developable area in NROD*: | 8,430 | (36% of Fayston) |

The PC worked with Jens Hilke to develop an alternative version of an NROD, which does not include the stream buffers and Forested Riparian Habitats. The amounts for that version are:

| | | |
|---|--------|------------------|
| Fayston total acreage: | 23,369 | |
| NROD alternative total acreage: | 11,539 | (49%) |
| Forest Reserve and Phen Basin land in NROD alternative: | 5,088 | |
| Maximum developable area in NROD alternative*: | 6,451 | (28% of Fayston) |

*Both the proposed NROD and the alternative NROD contain steep slopes, conserved lands, and other undevelopable land.

Fayston's Land Use Regulations already contain many of the considerations included in the NROD language. The distinction is that most of those considerations are 'suggestions' and not mandated to be taken a look at when considering development or subdivision applications. What the NROD does is to designate specific sections of Town where there are important natural resource features, and *requires* that impacts be taken into account when reviewing these applications.

The NROD includes the following resources/features:

- Streams with a 50' buffer
- Forested Riparian Habitats
- Lands above 1700' elevation (including high elevation Bicknell's Thrush habitat)
- Rare, Threatened, and Endangered Species
- Wetlands (class I and II) with a 50' buffer
- Bat Hibernacula with a 300' buffer
- Vernal Pools with a 100' buffer
- FEMA 100-yr floodplain
- S1, S2, S3 Natural Communities
- Wildlife Road Crossings with ¼ mi buffer

3) What are the number of parcels in the Natural Resource Overlay District?

| | |
|---|-----|
| Total Parcels in the NROD (estimate)**: | 275 |
| Already developed/development highly unlikely to be affected by NROD: | 165 |
| Number of parcels where development is <i>potentially</i> impacted by NROD: | 110 |

Many of these 110 parcels are in areas where there are features such as streams and steep slopes, which means that they would need to go through Conditional Use Review even without the NROD in place.

**These numbers do not include the parcels which are in the proposed NROD due solely to stream buffers and Forested Riparian Habitats, as development there will be impacted by the buffer even without NROD considerations.

4) *Will we become more restrictive than other towns in The Valley? The region?*

As mentioned during the Selectboard meeting, the Natural Resource Overlay District (NROD) does not pose restrictions on properties per se, but requires landowners to look at their property and determine which areas have features (e.g. wetlands, streams, steep slopes) that are less suitable for development and have the potential for ecological impact. Of the three criterion listed above, we have compared the proposed LURs to the existing regulations in the towns of Warren, Waitsfield, Bolton, Duxbury, Waterbury and Middlesex.

As discussed during the selectboard meeting, the Town of Waitsfield uses a variable setback approach for development along streams. This approach can be more restrictive than Fayston's proposed LURs if (when) slopes on a site are greater than 8%:

- 0-8% 50 feet
- 9%-15% 75 feet
- 15%-20% 90 feet
- 20%-30% 100 feet
- Above 30%: 20 feet for every additional 10% of slope
- Headwaters: 150 feet

In the Town of Warren, a 50 foot setback from the top of bank is established, identical to the proposed regulations. A conditional use review is also required when construction is proposed within 100 feet of a stream, as with the new LURs.

The Village of Waterbury has an overlay district similar to the NROD. In their Ridgeline/Hillside/Steep Slope (RHS) district, development above 1,200 feet is subject to additional requirements.

The Town of Middlesex recently updated their LURs in 2017, and they have adopted stream setbacks, and a recommendation that landowners ask the Agency of Natural Resources to see if wetlands exist on their site.

The Town of Bolton requires a 100 foot buffer from the larger brooks and streams (the ones with names), and 50 feet from the small unnamed streams (more seasonal?), as well as 200 feet from ponds.

Little information on wetlands and streams is provided for the Town of Duxbury.

A summary table of the information studied is attached for your further review.

5) *What is the science behind proposing such a district?*

Arrowwood Environmental completed inventories of the natural communities in Warren, Waitsfield and Fayston between 2007 & 2008. These ecological inventories involved identifying, assessing, and ranking wildlife habitat, upland and wetland natural communities, vernal pools, connecting lands, and rare elements. As a deliverable, Arrowwood Environmental generated GIS maps that highlighted key resource areas in the three towns, providing information about key natural communities and ultimately providing valuable data for future management and conservation. These maps were presented in a report that was given to Fayston, Warren, and Waitsfield, and were met with excitement and support from the three towns. The 2007 *Natural Heritage Inventory and Assessment* for Waitsfield & Fayston is linked on the web through the PC section of the Fayston website. Arrowwood's natural heritage inventories and assessments across the three-town provided the basis for the Forests, Wildlife & Communities Project, which began in 2008. The Forest, Wildlife & Communities Project was a collaboration among the Mad River Valley Planning District (MRVPD), local and state conservation organizations, state and federal agencies, and representatives from towns in the Mad River Valley to implement a regional and landscape level approach to wildlife and forestland conservation by engaging and assisting landowners, residents, and local officials about community oriented and landowner based strategies for forestland and wildlife habitat conservation. The FWC Project culminated in the 2011 report *Ecological Mapping and Build-out Analyses in the Mad River Valley*. A section of MRVPD's website is devoted to the [Forest Wildlife and Communities Project](#), which also has links to the Tiered Ecological Priority Maps and other resources. There is also a publication created by Vermont Natural Resources Council (VNRC) that is helpful in explaining the science: [Community Strategies for Vermont's Forests and Wildlife](#). And there are numerous other studies on a statewide and national level that have shown the impacts of development on forests and wildlife.

6) *Why eliminate biking and horseback riding trails in the Forest Reserve District? Couldn't we allow the various user groups to present the proposed trails, and demonstrate the use of "best practices" in their design, upkeep, and usage? The MRVPD and the Valley Chamber are trying to promote The Valley Trail systems for tourist recreation. Restricting the expansion of these trails goes counter to these efforts.*

The proposed elimination of biking and horseback riding trails in the Forest Reserve District was made based on concerns of erosive conditions in high elevation, steep slope sensitive areas. Following the meeting in February, the PC conducted a meeting with the Mad River Riders and learned that they already are working on a couple of planned trails that will either exceed or are very close to the 2500' elevation. The Mad River Riders go through a permitting process and use US Forest Service and use International Mountain Bike Association (IMBA) trail building guides/standards in the process. Best practices in design, upkeep and usage could be used to reduce the potential impact to these areas. We feel that if this path is chosen, it is crucial that there are inspections during and after construction to ensure that the work was performed in

accordance with those guidelines. Long term, it is essential that these trails be inspected and maintained regularly.

7) *There is a concern regarding affordability of property and decreased property values due to the impacts of:*

- *Clustering (Sec 6.3 (C))- this works in a village setting, but most people buying property in this part of VT want "space" from their neighbors. Is there a less restrictive way to avoid fragmentation?*

Not really. Cluster subdivisions are a tried and true land development tool used by communities to protect open space or environmentally-sensitive lands, including hazard-prone lands. Clustering development simply means grouping or directing new development to relatively less sensitive areas within a subdivision, away from more sensitive areas like open space, steep slopes, or floodplains. A simple example of a clustered versus a non-clustered development is attached to this letter.

Cluster subdivisions (also sometimes known as "conservation subdivisions") generally do not increase the overall density of a development but rather allow dwellings to be grouped (or "clustered") on smaller lots away from sensitive areas such as rivers or defined natural hazard areas. The key benefit to a developer is smaller lot sizes than otherwise permitted by the subdivision regulations in exchange for the conservation of sensitive lands. A developer also may benefit from local incentives that encourage the use of clustering, such as density bonuses, or state incentives, such as water rights.

Clustering is not a new tool, and has been in our regulations for at least 20 years, although it has not been taken advantage of. Waitsfield and Warren have utilized this technique more. People think that clustering means being on top of your neighbor, but it doesn't. Each lot can be of sufficient size to provide privacy, without being a large lot. For example, a one-acre lot with the right landscaping provides adequate privacy and access to plenty of undeveloped land if in a clustered subdivision.

When residential development infringes on existing wildlife habitat, wildlife often still live nearby, but the species tend to be different over time. Development creates conditions that attract generalist species (common species able to use a wide range of resources for food and shelter), while more rare, specialized species do not thrive near houses. This happens among plants, birds, amphibians, etc., as well as mammals. Scientists refer to this as biotic homogenization or a loss of biotic integrity.

- *Permits/surveys/maps- Are these necessary? Detailed site analysis (Sec 6.3 (A), Table 6.1. Visual Impact Studies? Wildlife Impact Statement?*

These may be necessary. The regulations give the DRB the chance to decide what level of information is required to be part of the application.

- *500 foot driveways- Why limit the length of the driveway if it is properly designed to meet erosion standards? Does this apply to roads as well as driveways? Could this potentially restrict a property owner's access to parts of their property?*

The length of driveway was limited as the impacts on wildlife from development can extend away from the house, up to 600 feet. [*Make Room for Wildlife: a Resource for Landowners in the Northern Forest*, Wildlife Conservation Society] This is due to factors like noise, nighttime lighting, use of pesticides, pets running free, and physical changes to the forest. As a result, a new house has a "wildlife shadow" of 15 – 30 acres. It has been well-proven that this "shadow" can be reduced, and still achieve adequate privacy, by building reasonably close to the parcel boundary, neighbors' houses, or the road. By keeping the driveway short and locating the house close to a road, such development maximizes the space available for wildlife. There is a lot of scientific literature out on the impact of development on wildlife. We can get you titles is you would like.

This standard does not apply to roads, only driveways.

As written, this could potentially restrict a property owner's ability to develop some portion of their property. The Planning Commission understands the concern that some people have for limiting the length of drives and access roads in the NROD.

- *Increasing the contour requirements to 2' on plats/maps is another cost consideration. Is this necessary?*

The proposed LURs require five-foot contours on plats/maps in most instances. The five-foot requirement for proposed plans is the base standard. Two-foot contours are proposed only on steep slopes or very steep slopes if development is occurring in those areas. The PC felt that this level of topographic resolution is needed for the DRB to fully understand the nature of a particular site.

- 8) *Undue adverse impact/adverse impact. It was discussed that just about anything could be used as an argument to prove adverse impact. Is there other language that can be used?*

We agree that 'adverse impact' is not a reasonable design standard, in that anything could be considered adverse. That is why we have adopted 'undue' adverse impact, to make sure that the adverse impact is avoidable, and if not, then to minimize it. The LUR references adverse impacts in several instances, but never as a design standard.

- 9) *Should man-made ponds be classified as wetlands and be included in the NROD? If they were permitted ponds, why should the land owner be restricted by the 50' buffer?*

Classification of wetlands is performed by the Agency of Natural Resources Wetlands Program, not the Town of Fayston. Some activities are allowed in the vegetative buffer per the new

definition, with consultation with the Zoning Administrator (see definition). Per this definition, vegetated buffers don't apply to all man-made ponds, only to in-stream ponds, which are discouraged by the ANR.

10) *What is the impact of the NROD on Mad River Glen area development?*

Nothing outside what they already have to follow the Act 250 process, which applies to them for all development at their resort. Act 250 will ask for the same studies and information. Mad River Glen will simply be able to submit the same reports to the DRB for review.

11) *Is the driveway slope standard going back to 15%?*

Our intentions should be clarified in the LURs. Driveway slopes over 15% are prohibited. Driveways with slopes greater than 12% require a design by an engineer to ensure that the layout does not cause erosion issues in the future.

We recommend that Section 3.4(E)(1)(a) be reworded to say: "...driveways that exceed an average gradient of 12% over any 50-foot section, as determined from mapped contour intervals or site inspection, shall be designed by a qualified engineer and be subject to conditional use review..."

We also recommend that Section 3.4(E)(3)(d) be reworded to say: "Driveways and roads will follow the natural contours of the land, and shall not exceed an average finished grade of 15% over any 50-foot section [See also Section 3.1]. Driveways exceeding 12% over any 50-foot section must be designed by a qualified engineer and submitted for conditional use review for approval by the DRB."

12) *How was the current 25,000 sq ft development envelope determined (provide the basis for this benchmark)*

The 25,000 SF development envelope is already a standard in the Soil and Water Conservation District. To make the regulations more consistent, the PC believed that the same standard should exist in the Rural Residential (RR) District. However, the proposed regulations clearly say that in the RR district, the DRB may waive this.

13) *Concern was raised that even mentioning a 100' setback from streams and wetlands will lead the DRB to the more restrictive requirement. What is rationale for changing the existing 50' setback requirement?*

The proposed LURs establish Conditional Use Review for development between 50' and 100' setbacks from streams and wetlands - not prohibition. Development is allowed within this area when standards are met. Less than 50' is still the same as the previous version: a vegetated buffer strip along streams and wetlands is required, where no development, excavation, landfill, or grading shall occur.

It has been suggested that rather than limit the buffer to undisturbed vegetation, that the regulations allow strategic planting along the strip to inhibit erosion and encouraging responsible use and careful stewardship of natural resources., placing the burden of proof on the landowner to provide a statement of the environmental impact of such plantings. This would minimize additional work on a Planning Commission or Development Review Board when considering proposals to modify land near streams and wetlands while furthering the values expressed in Land Use Regulations. This suggestion makes sense, and is incorporated in the Regulations through some activities being allowed in the vegetative buffer per the new definition, with consultation with the Zoning Administrator.

The concept of 100' setback is a policy stated in the 2014 Fayston Town Plan, based on state recommendations. Instead of an outright prohibition of any activity within this area, the Planning Commission instead chose to develop standards that are more permissive between 50' and 100'. Conditional Use Review and related standards, as applied by the DRB, will guide such activity.

14) What is the rationale for establishing a 1700' "trigger" for additional scenic, wildlife and ecological review and analysis? Concerns about cost v. benefits. Please justify this added layer of landowner expense.

This number came from the Arrowwood Inventories and the Forest Wildlife & Communities Project, and is in our 2014 Fayston Town Plan. Actually, the number there is 1500 feet, in the goals and objectives of Chapter 3. In revising the regulations to be in compliance with the Plan, we originally had two overlay districts, one at 1700 feet and the secondary one at 1500 feet. Because this became very complicated, we dropped the secondary district. Again, this is not the place to argue setting an elevation number, since this policy was specifically set in the Town Plan.

We appreciate your input on this matter. Based on the email you sent us from the Vermont League of Cities and Towns, we understand the Selectboard has the ability to make changes to the LURs, and that any changes need to be completed at least 14 days prior to the final public hearing. Please let us know how we can assist you through this process.

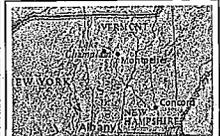
Sincerely,

Polly McMurtry
Chair, Fayston Planning Commission

Enclosures

Town of Fayston, Vermont
Natural Resource Setbacks of Other Towns

| Town | Year Adopted | Stream Setback | Stream Setback Advisory Zone | Class II Wetland Setback | Class III Wetland Setback | Max Slope Threshold | Prohibitions on Steep Slope Activity | Other |
|------------|--------------|----------------|------------------------------|--------------------------|---------------------------|---------------------|--------------------------------------|--|
| Fayston | proposed | 50 | 100 | 50' | 50' | 25% | - | |
| Waitsfield | 2016 | varies | no | 50' | none | 15% | avoid undue adverse impact | |
| Warren | 2008 | 50 | 100 | - | - | 25% | - | |
| Duxbury | 2011 | - | - | - | - | - | - | |
| Waterbury | 2016 | - | - | 50' | none | 25% | buildings | 50' wide max clearing corridor landowner should contact ANR |
| Middlesex | 2017 | 75 | 25 | - | - | 25% | nothing except limited work | for wetlands evaluation |



LEGEND

Roads

- Interstate
- Principal Arterial
- Minor Arterial
- Major Collector
- Minor Collector
- Local
- Not part of function Classification System

1: 2,067

1 in = 172 ft
1 cm = 21 meters



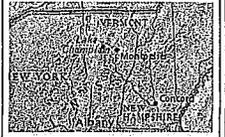
105.0 52.5 0 52.5 105.0 Meters

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NOTES
Map created using ANR's Natural Resources Atlas



LEGEND

Roads

- Interstate
- Principal Arterial
- Minor Arterial
- Major Collector
- Minor Collector
- Local
- Not part of function Classification System

1:2,067

Scale bar showing 0, 52.00, and 104.00 Meters.

North arrow icon.

106.0 0 52.00 104.00 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere
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NOTES

Map created using ANR's Natural Resources Atlas

April 13, 2018

To: The Fayston Select Board

From: Don Simonini

Re: Proposed LUR/Zoning

I have included in this envelope the following:

1. My comments, in red, highlighting certain concerns I have with the PC response to the SB where the SB asked for clarification as to why the PC had proposed these LUR \ Zoning changes
2. A copy of the book *Community Strategies for Vermont's Forest and Wildlife* published by the VRNC. Pages are tabbed for certain sections to be read carefully by the SB
3. A copy of the VRNC Financial Statement for 2017

My major concern with the Proposed LUR's is simple one:

The PC has simply adopted the proposals published by the VRNC, and taken them almost verbatim from the VRNC "playbook".

The VRNC is anti-development and the PC has simply, in many cases, copied over language that the VRNC has written without adapting these rules and suggestions to the specifics of Fayston, our history, and our unique topography.

I have tabbed specific pages in this publication for the SB to review:

- Pg. 39 "Things to consider"
- Pg. 40 "craft language to strike a balance"
- Pg. Pg. 43 "Building envelopes"
- Pg. 51 "Overlay District"
- Pg. 59 "Clustering"
- Pg. 60 "Clustering diagram"

I believe what is important to recognize is the Proposed LUR's, as written, anticipate a result *as portrayed in this VRNC manual*. If this result [like clustering] is what we expect and want for Fayston, then this booklet is a graphic portrayal of what we will "get".

What the PC has failed to do, in my opinion, is to customize, and adapt the useful parts of this VRNC publication, to the uniqueness of Fayston, our history, our past growth, and topography. A cart blanch acceptance of this VRNC manual is wrong for Fayston. We are not South Burlington, or Stowe, for that matter, as it relates to "run-a-way" growth and development.

I respectfully ask the SB considers what is best for Fayston, our near and longer term economic prosperity, and preservation of our wildlife and landscape, in your decision on these Proposed LUR \ Zoning changes.

Respectfully,

A handwritten signature in black ink, appearing to read "Don".

Don Simonini

Fayston Landowner since 1972, and full Time resident since 2010

This document is *respectfully* presented and contains comments from Don Simonini, in RED, responding to The Planning Commissions' response to the Selectboard's "request for information".

April 2, 2018

Fayston Selectboard
866 North Fayston Road
Fayston, Vermont 05660

Re: Comments from February 19, 2018 Selectboard Meeting

Dear Members,

Thank you for the opportunity to present the draft Land Use Regulations (LURs) at your last meeting. It was good to see the public well-represented. We received your February 26th email with questions for us regarding the LURs. Our responses are below:

- 1) *What are the factors/reasons for the change in LURs? Are there inherent weaknesses/shortcomings? Is the present system of rules and enforcement falling short?*

The primary reason for updating the LURs is to bring them into compliance with the Town Plan, The Town Plan is not valid as it was based on a faulty Town Survey which sets the policy for land use development in the town. The Fayston Town Plan adopted at the end of 2014 placed increased emphasis on ecological and stormwater protection, in response to the two most recent town surveys, and to more stringent state requirements. The Town plan's GOALS, as written, cannot remotely justify, many, if not all of the Proposed Zoning regulations as Proposed by the PC. Some members of the PC have taken a wide series of assumptions and have translated an invalid Town Survey, into a Town Plan that is based on weak information. The PC members have then taken GREAT Literary License and somehow have translated the goals in the Town Plan into an onerous and over reaching set of Proposed LUR's.

The 2014 Fayston Town Plan points to the need to design land subdivisions in a way that minimizes development on and fragmentation of land characterized by significant wildlife habitat and travel corridors, riparian lands and river corridors, high elevations (above 1,500 feet), scenic viewsheds and adjacency to conserved lands. For example,

- "Ensure that land subdivision minimizes or mitigates adverse impacts to significant wildlife habitat, productive forest land, scenic viewsheds, shallow soils and headwater streams."
- "Consider restrictions on further subdivision, taking into account the numerous undeveloped lots already in existence."

The Plan also directs the DRB to use the ecological maps found in appendix of the Plan to guide them in their decisions.

- "Review the land use regulations in the context of data gathered in the 2007 Natural Heritage Inventory as well as the Tiered Ecological Priorities map

developed by the FWC Project to ensure that the goals of maintaining unfragmented tracts of large forest are facilitated by the regulations.”

- “The Planning Commission and FNRC should work together to develop a wildlife habitat protection plan that includes a habitat map to guide the DRB in their development review process.”

Further, the Plan indicates that the 2013 Tiered Ecological Priorities Map (found in Appendix A of the Plan) should be used as a guide for DRB development review process.

The 2014 Fayston Town Plan also urges the Town to take actions to reduce or eliminate the long-term risk to human life and property from flooding and fluvial erosion. Such policy language helps bring the Town in conformance with the State and Federal Government requiring municipalities become more resilient to the increasing likelihood of flood and erosion storm events, e.g.:

- “Encourage the protection and restoration of floodplains and upland forested areas that attenuate and moderate flooding and fluvial erosion.”
- “Develop regulations for driveway culverts.”

Other amendments in the 2014 Fayston Town Plan included additional emphasis on individual on-site energy sources, and the need to update the zoning bylaw to prohibit large-scale systems, particularly at the higher elevations, but to encourage wind and solar systems on a smaller scale below 1,700 feet elevation. The Plan directs the Town to ensure that the siting of energy and telecommunication facilities do not have an adverse impact on Faystons’ landscape and environment. For example,

- “Amend the LURs as necessary to ensure that all new facilities meet community standards.” If the community standards are based on a statistical valid survey and not one with a 10%-20% response rate. Had the two surveys that are often sited as justification for these Proposed LUR’s \ Zoning been objective then maybe we could justify the Proposed regs.

Questions like: do you want to protect the wildlife drew the obvious answers.

Had the question been asked: do you want to protect the wildlife and if yes, would you be willing to abdicate some property rights like requirements of 100 foot stream setbacks; or driveways no longer than 500 feet; or no development over 1,700 feet: I suspect these “new” answers might have been more representative of Town overall sentiment with these qualifiers attached to the core questions. AND, when I referred to the large turnout of residents at our SB \ LUR hearing in February, the comment was made: only people who are against things attended these meetings so the concerns expressed that evening do not represent “real” Fayston resident \ landowner concerns. I respectfully disagree!!

The Plan also encourages the use of passive solar design and residential scale hydroelectric generation.

In terms of the Town Plan chapter on the Economy, the it states that any new business development must be compatible with the town’s values as reflected in the Town Survey, and must preserve the Town’s natural features such as ridgelines, open fields, wildlife habitat and corridors, water quality and wetlands, e.g.:

- “Encourage the location of commercial activities along Route 17, near Irasville, at the Mount Ellen base area, and adjacent to Waitsfield’s Mad River Park.”

Also, we should encourage the development of sustainable land-based economic activities and improve the viability of agriculture and forestry, and make sure that the LURs support and promote home-based employment.

The Planning Commission’s work on the LURs was done in order to implement the town policies set forth in the existing Town Plan. The Town Plan sets policy for the town; if the original Town Plan is based on statistically valid data BUT it was not the LURs are there to implement that policy. Public opinion expressed through town-wide surveys (one in 2006 and another in 2012) provided much of the foundation for the policies set forth in the Fayston Town Plan. The Fayston Planning Commission is dedicated to receiving public input in the drafting of any public policy. The next item on the Planning Commission’s agenda, once the LURs are adopted, is to revise the Town Plan. We encourage the public to speak up and participate in this process - anticipated to take place over the next 18 months.

2) *What percent of the town is in the Natural Resource Overlay District (NROD)?*

| | | |
|---|--------|------------------|
| Fayston total acreage: | 23,369 | |
| NROD total acreage: | 13,778 | (59%) |
| Forest Reserve and Phen Basin land in NROD: | 5,348 | |
| Maximum developable area in NROD*: | 8,430 | (36% of Fayston) |

The PC worked with Jens Hilke to develop an alternative version of an NROD, which does not include the stream buffers and Forested Riparian Habitats. The amounts for that version are:

| | | |
|---|--------|------------------|
| Fayston total acreage: | 23,369 | |
| NROD alternative total acreage: | 11,539 | (49%) |
| Forest Reserve and Phen Basin land in NROD alternative: | 5,088 | |
| Maximum developable area in NROD alternative*: | 6,451 | (28% of Fayston) |

This means that 59% of Fayston’s land mass is under extreme regulation[s] why?????????????? Even if we accept that “only” 8,430 acres is “developable, that means many land owners are burdened by undue and onerous restrictions for “what reason”?? We must always ask the question: have we had a problem in the past, or present? If the answer is NO, then why are we changing the regulations???? It has been stated by two PC members that the NROD is “really” the same as the existing Zoning rules. It simply now requires the DRB to look at these NRO districts more seriously. I OBJECT TO THIS. The open and stated implication is that the DRB is incompetent and therefore the PC needs to make the new rules so difficult that the DRB can’t screw up. I DIFFER WITH THIS APPROACH BECAUSE IT PENALIZES LAND OWNERS RATHER THAN FIXING ANY LEGITIMATE DRB PROBLEMS. Carol and Polly have both stated we have the rules on the books now to do the job but we need these new rules to insure the DRB does their job. Let fix the DRB and reject needless baseless Zoning changes!

*Both the proposed NROD and the alternative NROD contain steep slopes, conserved lands, and other undevelopable land.

Fayston’s Land Use Regulations already contain many of the considerations included in the NROD language. The distinction is that most of those considerations are ‘suggestions’ and not

mandated to be taken a look at when considering development or subdivision applications. What the NROD does is to designate specific sections of Town where there are important natural resource features, and *requires* that impacts be taken into account when reviewing these applications. Why not instead of "mandating these rules, ask the new DRB to enforce the existing rules and regulations. Over regulating never serves a good purpose in the "end"!

The NROD includes the following resources/features:

Streams with a 50' buffer With a qualifier that actually means a 100 foot buffer not 50 feet AND it is measured from the TOP OF BANK instead of the original rules that were measured from STREAM HIGH WATER MARK. The PC has done an "end run" around the Select Board. At the SB meeting with the PC in November, the SB departed with the understanding that the 50 buffer would remain the law. The PC has done an end run around the SB by adding language that in effect makes the buffer 100 feet. Further, the PC agreed to make it clear that the measurement can be either "high water mark" OR Top of Bank determined by the DRB to fit the specific application needs, typography, and such.

Forested Riparian Habitats

Lands above 1700' elevation (including high elevation Bicknell's Thrush habitat)

Rare, Threatened, and Endangered Species

Wetlands (class I and II) with a 50' buffer

Bat Hibernacula with a 300' buffer

Vernal Pools with a 100' buffer

FEMA 100yr floodplain

S1, S2, S3 Natural Communities

Wildlife Road Crossings with ¼ mi buffer

3) *What are the number of parcels in the Natural Resource Overlay District?*

| | |
|---|-----|
| Total Parcels in the NROD (estimate)**: | 275 |
| Already developed/development highly unlikely to be affected by NROD: | 165 |
| Number of parcels where development is <i>potentially</i> impacted by NROD: | 110 |

Many of these 110 But these landowners WILL be effected and likely will see the value of their land reduced because of these regulations as PROPOSED with no know or justifiable benefit to wildlife or the environment. parcels are in areas where there are features such as streams and steep slopes, which means that they would need to go through Conditional Use Review even without the NROD in place.

**These numbers do not include the parcels which are in the proposed NROD due solely to stream buffers and Forested Riparian Habitats, as development there will be impacted by the buffer even without NROD considerations.

4) *Will we become more restrictive than other towns in The Valley? The region?*

As mentioned during the Selectboard meeting, the Natural Resource Overlay District (NROD) does not pose restrictions on properties per se, but requires landowners to look at their property and determine which areas have features (e.g. wetlands, streams, steep slopes) that are less suitable for development and have the potential for ecological impact. Of the three criterion listed above, we have compared the proposed LURs to the existing regulations in the towns of Warren, Waitsfield, Bolton, Duxbury, Waterbury and Middlesex.

As discussed during the selectboard meeting, the Town of Waitsfield uses a variable setback approach for development along streams. This approach can be more restrictive than Fayston's proposed LURs if (when) slopes on a site are greater than 8%:

- 0-8% 50 feet
- 9%-15% 75 feet
- 15%-20% 90 feet
- 20%-30% 100 feet
- Above 30%: 20 feet for every additional 10% of slope
- Headwaters: 150 feet

In the Town of Warren, a 50 foot setback from the top of bank is established, identical to the proposed regulations. A conditional use review is also required when construction is proposed within 100 feet of a stream, as with the new LURs.

The Village of Waterbury has an overlay district similar to the NROD. In their Ridgeline/Hillside/Steep Slope (RHS) district, development above 1,200 feet is subject to additional requirements.

The Town of Middlesex recently updated their LURs in 2017, and they have adopted stream setbacks, and a recommendation that landowners ask the Agency of Natural Resources to see if wetlands exist on their site.

The Town of Bolton requires a 100 foot buffer from the larger brooks and streams (the ones with names), And 50 feet from the small unnamed streams (more seasonal?), as well as 200 feet from ponds. **And many of Fayston's streams are un-named and dry much of the year**

Little information on wetlands and streams is provided for the Town of Duxbury.

A summary table of the information studied is attached for your further review.

5) *What is the science behind proposing such a district?*

Arrowwood Environmental completed inventories This was a crowd sourced compilation and was not done with the normal scientific backup of the natural communities in Warren, Waitsfield and Fayston between 2007 & 2008. These ecological inventories involved identifying, assessing, and ranking wildlife habitat, upland and wetland natural communities, vernal pools, connecting lands, and rare elements. As a deliverable, Arrowwood Environmental generated GIS maps that highlighted key resource areas in the three towns, providing information about key natural communities and ultimately providing valuable data for future management and conservation. These maps were presented in a report that was given to Fayston, Warren, and Waitsfield, and were met with excitement and support from the three towns. The 2007 *Natural Heritage Inventory and Assessment* for Waitsfield & Fayston is linked on the web through the PC section of the Fayston website. Arrowwood's natural heritage inventories and assessments across the three-town provided the basis for the Forests, Wildlife & Communities Project, which began in 2008. The Forest, Wildlife & Communities Project was a collaboration among the Mad River Valley Planning District (MRVPD), local and state conservation organizations, state and federal

agencies, and representatives from towns in the Mad River Valley to implement a regional and landscape level approach to wildlife and forestland conservation by engaging and assisting landowners, residents, and local officials about community oriented and landowner based strategies for forestland and wildlife habitat conservation. The FWC Project culminated in the 2011 report *Ecological Mapping and Build-out Analyses in the Mad River Valley*. A section of MRVPD's website is devoted to the Forest Wildlife and Communities Project, which also has links to the Tiered Ecological Priority Maps and other resources. There is also a publication created by Vermont Natural Resources Council (VNRC) that is helpful in explaining the science: Community Strategies for Vermont's Forests and Wildlife. And there are numerous other studies on a statewide and national level that have shown the impacts of development on forests and wildlife. I can find dozens of studies to refute these above-mentioned studies. The Vermont Natural Resources Council VNRC states on their federal tax return: To protect and enhance Vermont's natural environments, vibrant communities, productive working landscapes, rural character and unique sense of place. This group, in my opinion, is fixated on protecting Vermont against the ravages of human population. They have assets exceeding \$3,232,909 and have virtually unlimited resources to promote their left leaning stop development philosophy. In 2017 they received over \$1,265,767 in grants and contributions to foster their lobby effort to stop human development. Much of what has been used, many times verbatim, in our Proposed LUR's comes directly from the VNRC Handbook. Carol and Polly are "wedded" to the beliefs and objectives of this lobbying organization with multimillion dollar budgets. I believe we **must take a local, Fayston oriented view of any zoning** changes and not be overly influenced by an outside, very large, and financially dominate lobbying organization like VRNC. I respect the VRNC's first Amendment rights to have their beliefs, but I object to their beliefs being cascaded over the Town of Fayston without considering our very specific, and unique Town needs, and topography!

- 6) *Why eliminate biking and horseback riding trails in the Forest Reserve District? Couldn't we allow the various user groups to present the proposed trails, and demonstrate the use of "best practices" in their design, upkeep, and usage? The MRVPD and the Valley Chamber are trying to promote The Valley Trail systems for tourist recreation. Restricting the expansion of these trails goes counter to these efforts.*

The proposed elimination of biking and horseback riding trails in the Forest Reserve District was made based on concerns of erosive conditions in high elevation, steep slope sensitive areas. Following the meeting in February, the PC conducted a meeting with the Mad River Riders and learned that they already are working on a couple of planned trails that will either exceed or are very close to the 2500' elevation. The Mad River Riders go through a permitting process and use US Forest Service and use International Mountain Bike Association (IMBA) trail building guides/standards in the process. Best practices in design, upkeep and usage could be used to reduce the potential impact to these areas. We feel that if this path is chosen, it is crucial that there are inspections during and after construction to ensure that the work was performed in accordance with those guidelines. Long term, it is essential that these trails be inspected and maintained regularly. Like roads and driveways if we build HORSE AND BIKE trails properly we will not have a problem BUT>>>>>>we must have inspections and that is why I have proposed an occupancy permit fee" to insure that all development is done in compliance to the rules and regulations

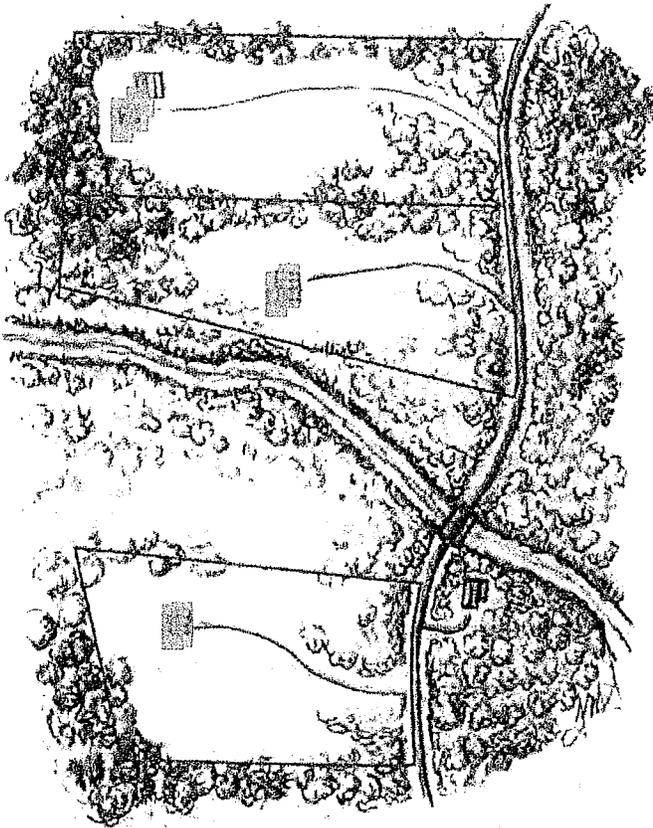
7) There is a concern regarding affordability of property and decreased property values due to the impacts of:

- Clustering (Sec 6.3 (C))- this works in a village setting, but most people buying property in this part of VT want "space" from their neighbors. Is there a less restrictive way to avoid fragmentation?
- Clustering has been promoted by the Vermont Natural Resources Council VNRC and in particular by Jamie Fidel of Waitsfield.

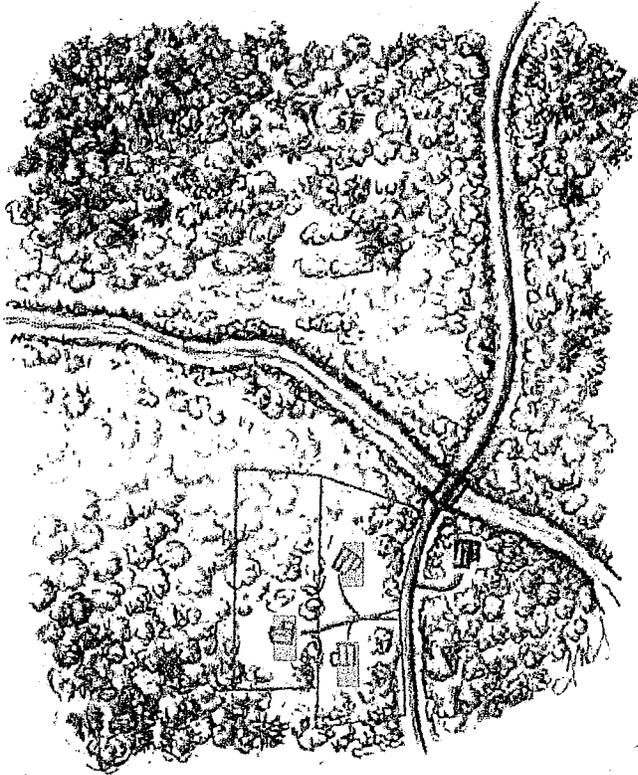
JAROD: with all due respect I do understand what "clustering means" and what the PC members have in mind **no matter how they gloss over the depth of control and community loss we will suffer if we adopt these regs as Proposed** . That is why driveways were proposed at 500 feet. Take a look at the image below and you will see what clustering means when interpreted by the VNRC folks and our PC **AND PUBLISHED IN THE VRNC BOOK!** I ask each SB member: Would you prefer image drawing A or B. If you want to see your neighbor's back yard and look like a NJ subdivision, then you would choose B. **I suspect 99% of Fayston landowners would prefer A.** We are locating ourselves "in the county" for privacy and quiet and not to be placed in a NJ- LEVITOWN scene like **B!!!** these diagrams were copied directly from the VRNC Handbook that was developed with their \$1,265,765 dollars of donations in 2017.

<http://vnrc.org/programs/forests-wildlife/guide/>

A Parcel developed with conventional roads



frontages and setbacks as portrayed in The VRNC Handbook



B Parcel with clustered development, minimizing forest fragmentation as portrayed in the VRNC Handbook.

Not really. Cluster subdivisions are a tried and true land development tool used by communities to protect open space or environmentally-sensitive lands, including hazard-prone lands. Clustering development simply means grouping or directing new development to relatively less sensitive areas within a subdivision, away from more sensitive areas like open space, steep slopes, or floodplains. A simple example of a clustered versus a non-clustered development is attached to this letter. The PC has taken almost verbatim the recommendations of the VNRC. Who are these people. **What credibility do they have to control the destiny of our town and future Fayston community???** Other than the ability to raise \$1,265,765 in 2017???

Cluster subdivisions (also sometimes known as “conservation subdivisions”) VRNC language to try to make us all feel better while we are giving up our land owner rights generally do not increase the overall density of a development but rather allow dwellings to be grouped (or “clustered”) on smaller lots away from sensitive areas such as rivers or defined natural hazard areas. The key benefit to a developer is smaller lot sizes than otherwise permitted by the subdivision regulations in exchange for the conservation of sensitive lands. A developer also may benefit from local incentives that encourage the use of clustering, such as density bonuses, or state incentives, such as water rights.

Clustering is not a new tool, and has been in our regulations for at least 20 years, although it has not been taken advantage of. Waitsfield and Warren have utilized this technique more. People think that clustering means being on top of your neighbor, but it doesn't. Each lot can be of sufficient size to provide privacy, without being a large lot. For example, a one-acre lot with the right landscaping provides adequate privacy and access to plenty of undeveloped land if in a clustered subdivision.

When residential development infringes on existing wildlife habitat, wildlife often still live nearby, but the species tend to be different over time. Development creates conditions that attract generalist species (common species able to use a wide range of resources for food and shelter), while more rare, specialized species do not thrive near houses. This happens among plants, birds, amphibians, etc., as well as mammals. Scientists refer to this as biotic homogenization or a loss of biotic integrity.

I would suggest we eliminate the existing language in the Proposed Zoning Regulations with regard to clustering and ELIMINATE THE WORD SHALL, and replace it with a more simple language something like: *The DRB is encouraged to consider in any future land use applications the minimization of impervious surface [roads and driveway] and to encourage the applicant to consider clustering their development consistent with the limitations of the land and topography in question as relating to the permit request.*

In my opinion, The Town of Fayston will be standing in some future litigation because one person will see the words "SHALL" and find reason to sue the Town for either denying a permit or allowing someone a permit. I believe we should encourage but not SHALL this Clustering Issue.

- *Permits/surveys/maps- Are these necessary? Detailed site analysis (Sec 6.3 (A), Table 6.1. Visual Impact Studies? Wildlife Impact Statement?*

These may be necessary. The regulations give the DRB the chance to decide what level of information is required to be part of the application. At substantial additional cost for the new homeowner

- *500 foot driveways- Why limit the length of the driveway if it is properly designed to meet erosion standards? Does this apply to roads as well as driveways? Could this potentially restrict a property owner's access to parts of their property?*

The length of driveway was limited as the impacts on wildlife from development can extend away from the house, up to 600 feet. [*Make Room for Wildlife: a Resource for Landowners in the Northern Forest, Wildlife Conservation Society*] This is due to factors like noise, nighttime lighting, use of pesticides, pets running free, and physical changes to the forest. As a result, a new house has a "wildlife shadow" of 15 – 30 acres. This is "junk science. I could find a dozen other studies to refute this. It has been well-proven that this "shadow" can be reduced, and still achieve adequate privacy, by building reasonably close to the parcel boundary, neighbors' houses, or the road. **Not true:** My land is 50 acres; bought in 1972. It contained 20-year growth trees as the

land was clear cut in the 50's; with 1.2 miles of road/driveways we now have bear; moose; 30>50 deer wintering near out near our kitchen window; red fox; porcupines; and untold other small critters. Our presence here with 5 homes on 50 acres has not discouraged the wildlife...it has encouraged the wildlife and we happily co-exist with them enjoying their beauty. The wildlife shadow is a convenient figment of someone's' imagination and my own little corner of Fayston proves this every day each time I look out the window!!!!!!By keeping the driveway short and locating the house close to a road, such development maximizes the space available for wildlife. not true in my own experience There is a lot of scientific literature out on the impact of development on wildlife. We can get you titles is you would like.

This standard does not apply to roads, only driveways.

As written, this could potentially restrict a property owner's ability to develop some portion of their property. The Planning Commission understands the concern that some people have for limiting the length of drives and access roads in the NROD.

- *Increasing the contour requirements to 2' on plats/maps is another cost consideration. Is this necessary? I question this necessity and would rather rely on a competent DRB to require these 2 foot contours if, in their judgement, they are necessary relative to the very specific conditions of the application and topography of the specific parcel. Why impose this standard on all applicants? Each condition is different.*

The proposed LURs require five-foot contours on plats/maps in most instances. The five-foot requirement for proposed plans is the base standard. Two-foot contours are proposed only on steep slopes or very steep slopes if development is occurring in those areas. The PC felt that this level of topographic resolution is needed for the DRB to fully understand the nature of a particular site.

WHAT IS WRONG WITH THE EXISTING DEFINITION OF STEEP SLOPES AS PUBLISHED IN THE FAYSTON 2014 Town LUR's: I quote: [see page 36 in the proposed LUR's]

"Standard (2): **Development on Steep Slopes.** Development on steep slopes equal to or in excess of 15% shall be sited and constructed, and slopes stabilized to minimize to surface and ground waters and to protect neighboring properties from damage. With the exception of land developed for the operation, maintenance, and expansion of an alpine ski resort, development shall not take place on slope gradients of 25% or more. All development on slopes equal or in excess of 15% is subjected to Conditional Use Review under article 5.

- 8) *Undue adverse impact/adverse impact. It was discussed that just about anything could be used as an argument to prove adverse impact. Is there other language that can be used? The language proposed by THE PC is not clear. How about we adopt Waterbury's language:*

"UNDUE ADVERSE IMPACT: An adverse impact is undue if any of the following are true:
(1) the project violates a clear, written community standard intended to protect and

preserve the quality of the relevant resource; (2) the project is shocking and offensive to the average person; or (3) the applicant has failed to take generally available, reasonable mitigating steps to improve the harmony of the proposed project with its' surroundings or eliminate a serious negative impact on the relevant resource(s), public health, public safety or an adjacent property.

I believe this definition is much better than what we proposed and mirrors more closely the Quechee litigation case of the past.

We agree that 'adverse impact' is not a reasonable design standard, in that anything could be considered adverse. That is why we have adopted 'undue' adverse impact, to make sure that the adverse impact is avoidable, and if not, then to minimize it. The LUR references adverse impacts in several instances, but never as a design standard.

- 9) *Should man-made ponds be classified as wetlands and be included in the NROD? If they were permitted ponds, why should the land owner be restricted by the 50' buffer?*

Classification of wetlands is performed by the Agency of Natural Resources Wetlands Program, not the Town of Fayston. Some activities are allowed in the vegetative buffer per the new definition, with consultation with the Zoning Administrator (see definition). Per this definition, vegetated buffers don't apply to all man-made ponds, only to in-stream ponds, which are discouraged by the ANR.

- 10) *What is the impact of the NROD on Mad River Glen area development?*

Nothing outside what they already have to follow the Act 250 process, which applies to them for all development at their resort. Act 250 will ask for the same studies and information. Mad River Glen will simply be able to submit the same reports to the DRB for review. This is totally NOT TRUE. Even though they may fall under an Act 250 permit, Act 250 DEFERRS to the local Town Zoning when TOWN zoning is MORE restrictive than ACT250. In other words, if we impose restrictions like 500-foot driveways or other restrictions that are MORE restrictive than Act 250, the Town restrictions will take precedence and MAD RIVER GLEN is then limited by our Town Zoning not ACT 250

- 11) *Is the driveway slope standard going back to 15%?*

Our intentions should be clarified in the LURs. Driveway slopes over 15% are prohibited. Driveways with slopes greater than 12% require a design by an engineer to ensure that the layout does not cause erosion issues in the future.

We recommend that Section 3.4(E)(1)(a) be reworded to say: "...driveways that exceed an average gradient of 12% over any 50-foot section, as determined from mapped contour intervals or site inspection, shall be designed by a qualified engineer and be subject to conditional use review..."

We also recommend that Section 3.4(E)(3)(d) be reworded to say: "Driveways and roads will follow the natural contours of the land, and shall not exceed an average finished grade of 15% over any 50-foot section [See also Section 3.1]. Driveways exceeding 12% over any 50-foot section must be designed by a qualified engineer and submitted for conditional use review for approval by the DRB."

12) How was the current 25,000 sq ft development envelope determined (provide the basis for this benchmark) this appears very restrictive and need s more clarification

The 25,000 SF development envelope is already a standard in the Soil and Water Conservation District. To make the regulations more consistent, the PC believed that the same standard should exist in the Rural Residential (RR) District. However, the proposed regulations clearly say that in the RR district, the DRB may waive this. Why submit a standard that can be waived. It should not be included in the RRD as it has no merit. If I own 10 acres of land the PC is saying I only can use 25,000 SF for a building envelope. This is MY LAND. What right does the town have to me a landowner they can only use 25,000SF of their property out of a 10-acre parcel, for example, or 25,000 SF out of a total of 430,000 sf. This restriction is unfair, and onerous!

13) Concern was raised that even mentioning a 100' setback from streams and wetlands will lead the DRB to the more restrictive requirement. What is rationale for changing the existing 50' setback requirement? This change is in DIRECT conflict with what the SB expected after your meeting with the PC. This was a back-door attempt to keep their original 100 feet setback. The rule should be 50 feet from high water mark just like it has been for 10 years. WHY WHY change something if we have not had a problem in the past. This change is an attempt to limit a landowner's development rights and to potentially reduce the potential value of their property in the future.

The proposed LURs establish Conditional Use Review for development between 50' and 100' setbacks from streams and wetlands - not prohibition. Development is allowed within this area when standards are met. Less than 50' is still the same as the previous version: a vegetated buffer strip along streams and wetlands is required, where no development, excavation, landfill, or grading shall occur.

It has been suggested that rather than limit the buffer to undisturbed vegetation, that the regulations allow strategic planting along the strip to inhibit erosion and encouraging responsible use and careful stewardship of natural resources., placing the burden of proof on the landowner to provide a statement of the environmental impact of such plantings. This would minimize additional work on a Planning Commission or Development Review Board when considering proposals to modify land near streams and wetlands while furthering the values expressed in Land Use Regulations. This suggestion makes sense, and is incorporated in the Regulations through some activities being allowed in the vegetative buffer per the new definition, with consultation with the Zoning Administrator.

The concept of 100' setback is a policy stated in the 2014 Fayston Town Plan, based on state recommendations. Instead of an outright prohibition of any activity within this area, the Planning Commission instead chose to develop standards that are more permissive between 50' and 100'. Conditional Use Review and related standards, as applied by the DRB, will guide such activity.

14) *What is the rationale for establishing a 1700' "trigger" for additional scenic, wildlife and ecological review and analysis? Concerns about cost v. benefits. Please justify this added layer of landowner expense.*

This number came from the Arrowwood Inventories again Arrowwood is an unscientific crowd source study with no scientific backup other than a compilation of data from landowners. And the Forest Wildlife & Communities Project, and is in our 2014 Fayston Town Plan. Actually, the number there is 1500 feet, in the goals and objectives of Chapter 3. In revising the regulations to be in compliance with the Plan, we originally had two overlay districts, one at 1700 feet and the secondary one at 1500 feet. Because this became very complicated, we dropped the secondary district. Again, this is not the place to argue setting an elevation number, since this policy was specifically set in the Town Plan.

We appreciate your input on this matter. Based on the email you sent us from the Vermont League of Cities and Towns, we understand the Selectboard has the ability to make changes to the LURs, and that any changes need to be completed at least 14 days prior to the final public hearing. Please let us know how we can assist you through this process.

I will propose a rule requirement that the SB authorize the DRB\Zoning Administrator to apply a special occupancy permit fee [say \$400>\$600] to any development that is considered sensitive to streams, wetlands, or other environmentally sensitive areas, and this permit fee will be used to hire an independent engineer to ensure that all requirements in the DRP permit were followed. This will insure that all roads are built to standards to avoid stormwater runoff issues; that sensitive streambeds are protected; and to simply insure that the DRB rules as outlined in the landowner's permit were followed. This is "good business practice" and helps insure adjacent landowners and downstream people are protected. Only a few DRB approvals may fall into this kind of "bucket" but we need to have a mechanism in place when, and if, the DRB considers a permit to be "sensitive", that they can feel justified to attach an occupancy fee to the final occupancy permit.

I believe the overriding principle in any ZONING change to existing zoning regulations is to have us ask the question: "are these proposed Zoning regulation changes addressing a problem? Are we having, or have we had, a problem[s] where there is a need to add or modify our existing LUR\Zoning? If the answer is no, then we should not make changes to our existing\current zoning regulations!"

Sincerely,

Polly McMurtry
Chair, Fayston Planning Commission

Enclosures

VERMONT NATURAL RESOURCES COUNCIL, INC.
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2017
(With Summarized Information for 2016)

| | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>2017 Total</u> | <u>2016 Total</u> |
|--|---------------------|-----------------------------------|-----------------------------------|-----------------------|-----------------------|
| OPERATING SUPPORT AND REVENUE: | | | | | |
| Grants and contributions (Note 1) | \$ 529,306 | \$ 715,122 | \$ - | \$ 1,244,428 | \$ 1,024,002 |
| Other income | 21,337 | - | - | 21,337 | 8,675 |
| Operating investment income (Note 9) | - | - | - | - | 86,900 |
| Net assets released from restrictions: | | | | | |
| Satisfaction of program restrictions | <u>752,119</u> | <u>(752,119)</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL OPERATING SUPPORT & REVENUE | <u>1,302,762</u> | <u>(36,997)</u> | <u>-</u> | <u>1,265,765</u> | <u>1,119,577</u> |
| OPERATING EXPENSES: | | | | | |
| Program services (Note 1): | | | | | |
| Energy | 226,263 | - | - | 226,263 | 196,561 |
| Forests | 119,872 | - | - | 119,872 | 128,956 |
| Outreach & communication | 101,790 | - | - | 101,790 | 125,659 |
| Sustainable communities | 297,297 | - | - | 297,297 | 111,090 |
| Water | 186,862 | - | - | 186,862 | 101,137 |
| Total program services | <u>932,084</u> | <u>-</u> | <u>-</u> | <u>932,084</u> | <u>663,403</u> |
| Supporting services: | | | | | |
| Management and general | 154,681 | - | - | 154,681 | 149,343 |
| Fundraising | 100,279 | - | - | 100,279 | 95,093 |
| TOTAL OPERATING EXPENSES | <u>1,187,044</u> | <u>-</u> | <u>-</u> | <u>1,187,044</u> | <u>907,839</u> |
| CHANGE IN NET ASSETS FROM OPERATIONS | <u>115,718</u> | <u>(36,997)</u> | <u>-</u> | <u>78,721</u> | <u>211,738</u> |
| OTHER CHANGES: | | | | | |
| Non-operating investment income (Note 9) | 224,931 | 73,557 | - | 298,488 | (196,525) |
| Contributions restricted for endowment | - | - | 5,092 | 5,092 | 10,157 |
| TOTAL OTHER CHANGES | <u>224,931</u> | <u>73,557</u> | <u>5,092</u> | <u>303,580</u> | <u>(186,368)</u> |
| CHANGE IN NET ASSETS | 340,649 | 36,560 | 5,092 | 382,301 | 25,370 |
| NET ASSETS, beginning of year | <u>2,045,151</u> | <u>760,300</u> | <u>45,157</u> | <u>2,850,608</u> | <u>2,825,238</u> |
| NET ASSETS, end of year | <u>\$ 2,385,800</u> | <u>\$ 796,860</u> | <u>\$ 50,249</u> | <u>\$ 3,232,909</u> | <u>\$ 2,850,608</u> |

See accompanying notes and independent accountant's review report.

Mad River Corporation
c/o Hall & Holden PC
PO Box 1427
Waitsfield, VT 05673

April 18, 2018

JARED CADWELL, Chair, Selectboard
CHUCK MARTEL, Selectman
MICHAEL JORDAN, Selectman
Fayston Board of Selectmen
Fayston Town Offices
866 North Fayston Road
Fayston, VT 05660

Re: 2017 Land Use Regulations Proposed by Fayston Planning Board

Dear Jared, Chuck and Michael,

Thank you for holding a public meeting on February 19th and soliciting opinions on the proposed changes to the Fayston Land Use Regulations. The redlined version of the proposed Land Use Regulations (LURs) that you distributed prior to the meeting was also extremely helpful in clarifying the proposed changes. On behalf of Mad River Corporation, we wrote a letter to you and the Fayston Planning Commission dated March 8th outlining our concerns with some of the proposed changes in land use regulations.

In it, briefly, we noted that a large fraction of Mad River Corporation land in Fayston lies within the new Natural Resource Overlay District (NROD), by virtue of either elevation or by being located in a Primary Conservation Area as it is next to Route 17,¹ or both. Accepting that as a given, we focused our specific concerns around two changes in the LUR that affect NRODs: the driveway limit of 500 feet and the undisturbed vegetative buffer 50 feet from the highwater mark of any stream (we are pleased to note the "undisturbed vegetative buffer" language appears to have been modified according to the Fayston PC Response letter dated April 6th). We also noted that the strength of a community includes its economic strength, Fayston's economic strength is related to its ski areas, and the capability to develop land adjacent to the ski area vitally strengthens the ski area by creating more committed skier/homeowners. **In short, we feel the proposed LURs have potentially severe restrictions on Mad River Glen area development.** These restrictions are not overridden by the Act 250 process but place additional burdens on potential development.

¹ We note that requiring a ¼ mile buffer for Wildlife Road Crossings be designated NROD and mandating a maximum driveway length of 1/10th mile in an NROD effectively shuts down development next to all roads with a Wildlife Road Crossing, surely an unintended consequence.

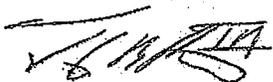
Since then, we have had more time to read the 2014 Town Plan. In the Town Plan, there are preferred areas for development, including along Route 17. The Town Plan also includes provisions for planned residential development in the Recreation District that surrounds the ski areas, the Mad River Corporation land, and Route 17. Roland Palmedo, Mad River Glen's founder, and subsequent owners, including our father Trux Pratt and our mother Betsy Pratt, acquired land, including the Mad River Corporation land, specifically to be able to develop more home sites and control land use adjacent to Mad River Glen Ski Area. Land use near the ski area was considered so crucial to its economic success that to this day, all existing home sites on the mountain were sold with and still contain a right of first refusal to Mad River Corporation.

However, and contradicting the purposes in the 2014 Town Plan that development be encouraged along Route 17, the effect of the 2017 LURs is to place heavy restrictions on this land because the Mad River Corp land next to Route 17 is designated as a Primary Conservation Area and therefore within an NROD (due to the Wildlife Road Crossings, it appears). In summary, we feel the 2017 LUR amendments go expressly counter to the Town Plan's vision that the Recreation District would be preserved for recreation and planned residential development. Further, cutting off the potential to create more home sites and more homeowners adjacent to the ski area limits Mad River Glen's economic strength. We therefore suggest, in the alternative, that the 2017 LURs be amended (or the Town Plan be amended) so that lands in the Recreation District are specifically not included in the NROD.

In summary, as noted in our letter dated March 8th, we believe the goals in the LURs could be met with reasonable modifications to the driveway length and vegetative buffer regulations inside NRODs. Alternatively, as we write in this letter, we do not believe it was or is the intention of the town of Fayston to severely restrict development in the Recreation District and it should reconsider whether to place this land in the NROD at all.

We would be happy to discuss the matter further with you and are available at the phone numbers listed below. One of us (Trux) is planning on attending the Selectboard meeting on April 24th.

Sincerely,



Truxton Bancroft Pratt III
President
Mad River Corporation
704-709-3717



Amanda Pratt Siegel
Treasurer
Mad River Corporation
317-414-0053

Subject: proposed land use regs

From: lisa loomis [REDACTED]

Date: 4/23/2018 10:33 AM

To: Jared Cadwell <[REDACTED]>, chuck martel <[REDACTED]>

Jared and Chuck,

please forward this to Michael as i don't have his email address readily available.

I'm writing as a resident (vs editor of the newspaper) to express my very strong support for the land use regulations as proposed by the planning commission. In particular, i think the stronger protections are needed to avoid deep wood species habitat fragmentation and to improve storm water run off problems and erosion.

--

Lisa Loomis

Editor

The Valley Reporter

www.valleyreporter.com

P.O.Box 119

Waitsfield VT 05673

802-496-3607

lisa@valleyreporter.com

[REDACTED]

[REDACTED]

[REDACTED]

Subject: Proposed Land Use Regulations

From: Jonathon Shea [REDACTED]

Date: 4/23/2018 4:06 PM

To: "Jared Cadwell ([REDACTED])" [REDACTED], "Chuck Martel
[REDACTED]"
[REDACTED]

Gentlemen,

I thought I would follow up on the testimony I provided at the last public hearing on the proposed LURs. I oppose the adoption of the proposed LURs as written. Below are some of the reasons:

- 1) I believe the Natural Resource Overlay District (NROD) is unnecessary and will impose significant restrictions and costs to any landowner to which this district applies. The end result will be to stifle any development within the district.
- 2) I do not believe the NROD is consistent within the Resort Development district (where development is encouraged) and will impose the same issues above upon any of the private landowners within that district.
- 3) I am opposed to the Scenic Resources provisions as they seem arbitrary and capricious.
- 4) I am opposed to the requirement to clustering development. The remedies since initially proposed do not seem to do much of anything.
- 5) The proposed redefinition of "lot" is an interesting topic. Since 1999 a "lot" developed after that date separated by a road was deemed two lots. A lot developed prior to 1999 even if separated by a road was deemed to be a single lot. The proposal is to change the definition to any land separated by a right of way owned by the same person is considered two lots. This will create new "lots" for some parcels developed prior to 1999 without any subdivision review. When Habitat for Humanity did their project off German Flats road on land donated by Sugarbush I did have a brief discussion with the Town's attorney about the subject. They advised there was little case law and defending the language could be a "challenge". So, I do believe this should be addressed at some point I do wonder whether the PC has any idea on how many new "lots" will be made with the change.
- 6) It is not a secret there are some on the PC who have disdain for the DRB and do not believe the DRB is effective. I disagree with that assessment. The PC has added various language throughout the proposed LURs to curtail any flexibility of decision making.
- 7) Asked by the SB to consider amending some these proposed changes the PCs response has been less than helpful.

The Steep Slope amendments are probably helpful. That said, I opine the rest should be rejected.

Thanks for listening.

Jon

Jonathon P. Shea, CPCU

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802-661-3910 Direct

*802.476.6631*800.649.6631*fax 802.476.5917*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subject: FW: Patty Please pass this to the SB before tomorrows meeting Thanks you DK

From: "Fayston Town Clerk" <faystontc@madriver.com>

Date: 4/24/2018 8:36 AM

To: [REDACTED], "Chuck Martel" <[REDACTED]>, "Michael Jordan" <[REDACTED]>

From: David Koepele [mailto:[REDACTED]]

Sent: Monday, April 23, 2018 5:53 PM

To: Patti Lewis <faystontc@madriver.com>

Subject: Patty Please pass this to the SB before tomorrows meeting Thanks you DK

I have read the proposal and wish to comment on it. I cannot attend the Selectboard meeting this week thus this email.

As a former member of the planning commission I know one of the problems as a member is knowing what the residents think, as they do not participate or attend the planning sessions thus leaving the commission members on their own, with discussions among themselves each with their own points of view and prejudice with respect to policy under discussion.

I think valid arguments for and against these changes can and are presented. When arguing a position one draws a very narrow position.

My thought is that the changes proposed are presented from only one point of view. That point of view is that the LUR's are not well enough developed to "to bring them into compliance with the Town Plan". This is a subjective view.

The Selectboard respectively asked the PC "Are there inherent weaknesses/shortcomings?"

That was not addressed in their response. There are several significant issues not considered see the following.

A question that could/should be asked are the Proposed LURs compatible with the economy of Fayston?

Are Property owners being given a fair representation as they pay the "freight" so to speak with respect to school and town taxes.

Another question revolves around the fragile economy of the Valley based on recreation: how significant will the negative impact be.

There is a position that the valley economy would improve if there are more full time residents lived in the Valley (including Fayston) will this negatively impact this or will it be a positive driver?

Are we (Fayston) really doing such a bad job ecologically and with wild life habitats?

These are a representation of many relative questions that can/should be asked and addressed.

The Selectboard also asked "Is the present system of rules and enforcement falling short?"

The response was very subjective and not inclusive considering such issues as economic and property rights.

I think most residents of Fayston do want to be ecologically responsible but I also think (believe) that most Fayston residents want lower taxes.

Thus the dilemma.

Are we (Fayston) really doing such a bad job ecologically and with wild life habitats, that we need to jeopardize the Town's well being?

I believe it is incumbent that the Selectboard consider and decide the outcome based not only on a very specific view but on a whole, overall, what is the best balance for Fayston.

--

David Koepele

PS: There is a reference made to 2 town surveys and I want to question the validity of outcomes based on total returns and who they sent to.

Fayston Town Clerk

From: Donald Simonini [REDACTED]
Sent: Tuesday, April 24, 2018 8:08 PM
To: Fayston Town Clerk
Subject: some additional and corrected information: Patti please pass these comments onto the SB for their deliberations-Thank you

1. Survey results are listed below. The 2012 survey which is used for the LUR proposals is 10%-20%
2. The words SHALL is "black and white" and leave no room for the DRB to decide based on topography and specific site \ landowner Application. SHALL is used throughout.
3. The 2 foot contours are not "just restricted to the NROD". See text below.
4. I respectfully request the SB have an attorney read these proposed LUR's before they are adopted.
5. I respectfully request the SB reject all of the Proposed LUR's EXCEPT the Solar and Wind Sections.

Don Simonini

Table 1-1: Fayston Town Survey Response Rates 2006

| | |
|-----------------------------|-------------|
| Survey Responses Households | |
| Response Rate | |
| Full-Time Resident | 145 472 31% |
| Part-Time Resident | 120 416 29% |
| Own Property | 16 |
| Unknown | 3 |
| Total | 284 888 |

Table 1: Response Rates 2012

| Survey Responses Households | Response Rate |
|-----------------------------|---------------|
|-----------------------------|---------------|

Full-Time Resident 127 594 21%
Part-Time Resident 51 594 10%
Own Property 23
Total 201

Words SHALL

(2) Application Requirements. In addition to application requirements under Section 5.2, conditional use approval for development on steep and very steep slopes shall be contingent upon the submission and Board approval of the following, as prepared by a qualified professional engineer licensed by the State of Vermont:

(a) A grading plan drawn at scale which indicates existing and proposed grades with contour lines at two (2) foot intervals within any area of proposed activity, site disturbance or construction, including access routes. The grading plan shall depict slope classes of 0-14.9%, 15-24.9% and 25% or more, based on two (2) foot contours.

(3) Review. The Board may require an independent technical review of grading and erosion prevention and sedimentation control plans by a qualified engineer, in accordance with Section 9.8(D). Based upon information submitted, the Board shall find that:

Donald F. Simonini
414 Deer Run Lane
North Fayston, VT 05660
[H] 802-496-4183
[C] 617-480-1102
[Email] dons@simoniniboston.com