TOWN OF LUMBERLAND
ZONING REWRITE COMMITTEE
DECEMBER 30, 2011

This memorandum addresses issues and comments that arose during the comment period and hearing for public review of the proposed Lumberland Zoning Law (Proposed Zoning Law). While the oral testimonies are transcribed, the Zoning Rewrite Committee (Committee) would like to take the opportunity to address the common themes and issues expressed.

INTRODUCTION

Public review and opportunity to comment on the Committee's recommendations began with an open house on September 2, 2010 where the Committee held an Open House to discuss the proposed zoning district map and use tables available. An announcement of the open house was published in two newspapers, posted at the Town Hall and on the Town website. Approximately 10 people attended the Open House. Subsequently, the zoning map was displayed in the case outside the Town Hall, and a notice was included in the Lumberland Newsletter that the map was available for viewing and comments were welcome. The proposed zoning map has been available for viewing at the Town Hall since this time. The Committee received several letters at that time and comments were incorporated into the Proposed Zoning Law where appropriate.

On July 28th, 2011 the Town declared lead agency under the New York State Environmental Quality Review Act (SEQRA).

On July 29th, 2011, the Committee held a public forum to receive feedback on the draft Zoning Law. This public forum was advertised in two papers, and posted on the sign in front of the Town Office Building and on the Town website, along with a copy of the draft Proposed Zoning Law. There was a large turnout, with approximately 40 people in attendance and the discussion primarily revolved around the inclusion of Article 10, which addresses prohibited uses. The Committee refined the draft and made some amendments based on public comment.

The committee held an additional public forum to walk people through the Proposed Zoning Law, section by section, to help the community understand the provisions of the proposed law. This forum was held on August 30, 2011, and was advertised in two area newspapers and posted at the Town Hall and on the town website with an updated version of the draft Proposed Zoning Law. Approximately 30 people attended this forum. The committee was available to answer questions posed by the public. At this forum, the public was encouraged to submit comments to the Town and come to the public hearing where there would be the opportunity to submit written and oral comments as part of the public record.

The public review of the Proposed Zoning Law was formally opened on October 12, 2011 with the announcement of the Public Hearing Date. At this time, the public was encouraged to review the latest draft of the Proposed Zoning Law and attend the hearing. By law the review

period must last 30 days, but the Town extended the process. The announcement of the public hearing and the request for comments was posted in two area newspapers, and the Proposed Zoning Law was made available for review on the Town website, or by request at the Town Hall.

The public hearing was postponed once, and ultimately held on December 12, 2011. The public hearing was advertised in the two area papers and on the Town's website. The public hearing had a large turnout, with approximately 60 people in attendance. The Town received oral comments from 37 people and letters were accepted by the town until 3PM on December 14th, 2011. A total of 36 letters were received by the Town.

The Proposed Zoning Law was lauded by the Upper Delaware Council and the National Parks Department for inclusion of goals and objectives set forth in the Upper Delaware River Management Plan and the associated design guidelines. Many residents expressed support of the work accomplished and adopting the document without any changes.

PRIMARY THEMES OF PUBLIC COMMENTS

The following identifies the main themes from the public comment and the Committee's response, which includes any amendments to the Proposed Zoning Law.

1. Article 10 – Prohibited Uses. The public comments were overwhelmingly positive for the inclusion of Article 10, which addresses "Prohibited Uses". Twenty one residents of the Town expressed support and eight people from nearby communities expressed support. One member of the public warned the Town they were being used as a pawn and there was no reason to adopt such a law.

There was overwhelming public support for this provision, but more importantly the Committee believes that the provisions of Article 10 are required to protect the public health, safety and welfare from the adverse impacts that heavy industrialized use would otherwise bring to the area.

Article 10 will remain part of the Proposed Zoning Law.

2. Minimum Lot Sizes. Proposed Zoning Law requires 5 acre minimum lot size in Rural Residential, Mongaup River Valley and Hillside Districts.

The Comprehensive Plan, with which by law the zoning must accord, clearly states a recommended 5 acre minimum lot size for these areas. The Comprehensive Plan represents the goals of the Town and guides policy decisions. To identify the goals of the Town for the Comprehensive Plan, 3 public focus meetings were held and a town wide survey was issued, and public hearings were held before its adoption.

In the existing zoning law, the Rural Forest district requires a 5 acre minimum. The Proposed Zoning Law redraws district lines, and portions of the Town currently zoned with a 2 acre

minimum (portions of Rural Residential, Lake, and River Districts) will now also have a 5 acre minimum lot size. There is an exemption for developing housing on existing lots. One and two family homes may be developed on pre-existing lots that are smaller than the minimum as long as the NYS Department of Health codes can be met.

The proposed lot sizes will remain in the Proposed Zoning Law.

3. Hillside Valley should remain a Hamlet District.

Hillside Valley will be kept as a River Hamlet, and not changed to Hillside District in the Proposed Zoning Law.

4. New zoning provisions are too restrictive in the River District.

The River District is where the Upper Delaware Scenic Byway and the Upper Delaware Wild and Scenic River are located, and the Town's Comprehensive Plan provides that this area is deserving of special protections. Furthermore, the Town is a party to the Upper Delaware Council and has agreed to implement zoning provisions that are protective of the river corridor. The National Park Service and the Upper Delaware Council have reviewed the Proposed Zoning Law and praised its consistency with the Upper Delaware River Management Plan.

The restrictions on development in the River District will remain in the Proposed Zoning Law.

5. The conditions on Special Use Permits are too restrictive.

Uses that are listed as Special Uses are generally acceptable for the area, but are more likely to have an impact on the community. The special use permitting process allows the planning board, on behalf of the community to work with applicants to ensure potential adverse impacts are minimized or avoided all together. The restrictions and conditions on Special Use Permits are designed to protect the community and the Town from negative impacts from uses designated as "special uses." The Planning Board ultimately decides what conditions are appropriate to impose in balancing an applicant's interest against the interests of the community at large.

The provisions on Special Use Permits will remain in the Proposed Zoning Law.

6. Competing views of that the Town should either postpone or not postpone adoption of the Proposed Zoning Law, often coupled with the argument that there has been not enough or alreadyenough time to adequately review the Proposed Zoning Law.

The zoning rewrite has been a long and careful process, and the Committee has incorporated generous amounts of time and outreach for review, and has responded to public input throughout the process. The amendments to the Proposed Zoning as a result of this process will extend the time for public input.

The Committee believes that there has been and will continue to be adequate time for public review and that once the Proposed Zoning Law is presented to the Town Board in final form, the Town Board should not needlessly postpone adoption of the Proposed Zoning Law.

7. Comments of out of towners should weigh less than residents.

All comments on the Proposed Zoning Law were considered on their merits, without regard to the residency of the person submitting the comment.

8. Private property rights should not be infringed upon, (with the recognition that some limits on high impact activities such as those prohibited in Article 10 are needed for the benefit of the community and to protect its health, safety and welfare.)

Property rights are a complex issue. Zoning necessarily takes away some of the potential uses or development rights of an individual lot in order to protect other uses or property rights of the community at large. The Proposed Zoning Law strives to achieve a balance between promoting development while preserving the rights and existing investments of those who have chosen to live and work in the Town. The Town has expressed its vision for the community in the Comprehensive Plan and the Proposed Zoning Law is designed to implement that vision. The expansion of the Glen Spey District and the River Hamlet District in Pond Eddy allows more uses and more flexible development, while the residential areas are more flexible with regard to uses that have no impact on community character. These changes were made to encourage focused cores of more dense mixed use development while preserving the rural character of the more residential areas of the Town.

The Proposed Zoning Law is found to adequately balance the property rights of all members of the community.

9. Competing Comments on whether the Proposed Zoning Law should be revised to impose fewer impediments on businesses uses versus the view that the Proposed Zoning Law encourages businesses.

The Proposed Zoning Law reduces the necessary lot sizes for commercial uses, and eliminates the confusion between "home occupations" and "home businesses." Due to the fact that certain businesses have impacts on communities that are greater and different from those associated with residential uses, some business uses are required to obtain a special use permit. Special use permits are discussed above (comment 5). Glen Spey and Pond Eddy hamlet districts have been enlarged to encourage focused areas of more intense mixed use development.

The Proposed Zoning Law adequately balances residential uses and commercial/business uses.

10. Competing views on landscaping and survey requirements: Surveying trees on 5 acre lots is too expensive – Landscaping requirements are too detailed – Landscaping should be more

flexible - Landscaping is good, there is a waiver.

The intent of the landscaping requirements is to allow the Planning Board and Zoning Board of Appeals to use landscaping as a way of mitigating potential adverse impacts during the review of a special use, site plan, or variance. Landscaping requirements do not apply to any use that is a permitted principle use or "as of right" use. The Boards are able to waive any of the requirements for projects where the potential for impact is minimal or non-existent. The tree surveying applies only to the portion of the project where landscaping and ground disturbance will occur. Surveying these trees can help an applicant ultimately reduce landscaping costs.

The text of the Proposed Zoning Law has been modified to read more clearly and avoid misinterpretation. As clarified, the landscaping requirements adequately balance an applicant's interest in development with the mitigation of adverse impacts from that development on the community at large.

A list of invasive and native species is part of the Proposed Zoning Law. Prohibiting the use of invasive species is important because these plants can easily spread rapidly throughout the region by dissemination from birds, water and automobiles. The use of native species are a (non-binding) recommendation. The lists were provided to the Committee by a local master gardener.

11. Care Cottages are expensive to build and remove; accessory apartments should be allowed in all districts without site plan approval to fulfill the need for eldercare.

The care cottage provision was added to allow for a smaller residential footprint than accessory apartments require, and to allow for a manufactured home to be temporarily located outside of a park. There is a growing business that will place and remove structures such as these, reducing the costs to families.

Care cottages may be converted into any permitted accessory use. The Code Enforcement Officer would have to issue a building permit, but Planning Board review would not be necessary. Accessory apartments are allowed with a building permit issued by the Code Enforcement Officer.

The provisions in the Proposed Zoning Law on care cottages and accessory apartments will remain.

12. Parking requirements should be made more flexible while still being protective of the Town. The parking requirements should consider the impact on Kadampa.

The parking requirements in the Proposed Zoning Law are considerably more flexible than in the current zoning, and an emphasis is placed on avoiding the creation of more spaces than needed. The Proposed Zoning Law has a minimum requirement that is based on Low Impact Development guidelines (http://www.lowimpactdevelopment.org/), and may be reduced in

certain circumstances such as if an applicant can show fewer spaces are needed, or shared parking is arranged. The Proposed Zoning Law does require that the room to accommodate the maximum amount of spaces be set aside should the parking provided be insufficient.

In the case of Kadampa, there would not be the requirement to add spaces since it is a preexisting use. If Kadampa were to expand its facilities, the historic demand for parking at the site could be used to how many, if any, new spaces would be needed.

The provisions on parking requirements in the Proposed Zoning Law will remain.

13. The words "future and present" should be removed from the Proposed Zoning (the Committee infers that the resident is concerned that technological advances would not be accommodated.)

The Proposed Zoning Law and the underlying Comprehensive Plan should be updated at least every ten years. If there are important technological advances that would change the development patterns of the town, the Zoning may (and should) be amended.

14. The allowable land clearing percentages are too restrictive.

This comment cited 30% allowable land clearing, but this is for a 5 acre or larger parcel. Smaller parcels allow for more land clearing. On a 5 acre parcel, 30% would allow clearing of an one and a half (1 ½) acres, which should easily accommodate a house and many accessory uses, yards and gardens. The Proposed Zoning Law has been amended so River Hamlet Districts are exempted from the "natural cover" section of the River Overlay District. Relief may be sought in the form of an area variance.

The provisions of the Proposed Zoning Law providing for allowable land clearing percentages will remain, with one edit to the River Overlay District.

15. Percentages of allowable clearing are listed in a way that is unclear how they would be implemented.

The schedule to the Proposed Zoning Law has been amended to account for all sizes of lots.

16. Attach the fee schedule so people understand the costs associated.

The fee schedule changes with associated costs more regularly than the zoning. In order to make fee adjustments more easily, the fee schedule should remain separate from the Zoning Law. The schedule will be readily available in the same locations as the Zoning Law.

17. Comments relating to specific uses/areas: Riparian Overlay District should have exemptions when a body of water is under one ownership, specifically for floats, docks, and

setbacks; Accommodations for summer camps on Lake Champion; Lake Devenoge should be 100' set back to agree with Homeowners Association provisions.

The Riparian Overlay District is not simply about visual impact. It is about water quality, flooding and erosion. Therefore, an exemption when a body of water is under one ownership is not warranted. The environmental impacts from floats, docks and setbacks are unchanged whether the water body is in unified ownership or not.

Lake Champion has been changed to a 50' set back, which should allow for the planned expansion of the summer camps, while still providing adequate environmental protections.

Lake Devenoge has been changed to a 100' foot setback so the Proposed Zoning Law will be in accord with the homeowners association rules.

18. Large scale water use should have an exemption for children's summer camps for irrigation purposes.

The Committee feels the definition for Large Scale Water Use in the Proposed Zoning exempts irrigation for the purpose of lawn and landscape maintenance (agricultural and recreational).

***Large Scale Water Use** – any water withdrawal or sequestering water use of over one hundred thousand (100,000) gallons of water in any thirty (30) day period from water resources within the Town. Large scale water use does not include water withdrawn for agriculture use, for emergency uses such as fire fighting, or for drinking, recreational, cooking, washing, or sanitary purposes.*

The provisions on large scale water withdrawals will remain in the Proposed Zoning Law.

19. The Historic District is too restrictive.

The Comprehensive Plan calls for a historic district in this small section of Town where there are many historic buildings. The Committee sought to balance protection of the Historic District while avoiding the complications and expense of a separate historic district review board. Therefore, the Proposed Zoning includes a recommended style and materials section and a prohibition of certain materials not associated with the Town's vernacular architecture. Through the Historic District Overlay, the Proposed Zoning Law will help to preserve the historic feel of this section of Town, and fulfill the recommendations of the Comprehensive Plan, without forming new review boards.

The provisions of the Proposed Zoning Law relating to the Historic District will remain with the removal of the prohibition of tin for roofs.

20. Add a right to farm ordinance.

The Committee has made the Proposed Zoning friendly to agricultural uses. The Committee recommends the Town consider the adoption of a right to farm ordinance, which is generally a separate law from the zoning.

21. Add a reference to limit telecommunications tower height to the minimum necessary.

The Proposed Zoning Law contains such a provision: "(g) the height of the telecommunications facility may not exceed the minimum height that the applicant has demonstrated is necessary for the service area," to which was added, "In the River Overlay District, the height may not exceed 195' and may not be illuminated."

22. Recommend defining maximum height of "small wind energy facilities" within the River Overlay

The Committee feels the following provision of the Proposed Zoning Law would prevent "small wind energy facilities" from being sited in a location that would detract from the views from Delaware River and the Upper Delaware Scenic Byway.

(vi) No small wind energy facility shall be installed at any location that would substantially detract from or block the view of the major portion of a recognized scenic vista, as viewed from any public road right-of-way or publicly-accessible parkland or open space within the Town.

23. Recommend identifying incompatible uses in the Delaware River Overlay district.

The Proposed Zoning Law provides that "All uses not listed are prohibited." Article 10 identifies a set of uses that are expressly prohibited in order to make it clear that these specified high impact uses are not allowed. The provisions of Article 10, however, do not change or detract from the general provision in the Proposed Zoning Law that "All uses not listed are prohibited."

24. Other changes are not substantive, consisting of minor spelling errors and addition of definitions.