

Meeting Minutes
January 7, 2020
JK, SB, HK, KM, DC, RO, CW, KS, KS

**PLANNING BOARD
RINDGE, NEW HAMPSHIRE
January 07, 2020**

DATE: January 7, 2020 **TYPE:** Public Hearing **APPROVED:** 2/18/20

TIME: 7:00 pm

CALL TO ORDER: 7:00 PM

ROLL CALL MEMBERS: Jonah Ketola, Sam Bouchie, Holly Koski, Kim McCummings, Dennis Casey,

ROLL CALL ALTERNATES: Cheves Walling, Katelyn Smith

ABSENT: Jason Paolino

EX OFFICIO: Roberta Oeser

PLANNING DIRECTOR: Kirk Stenersen

APPOINTMENT OF ALTERNATES: Cheves Walling for Jason Paolino

OTHERS PRESENT: Daniel Aho, Isaac French, Doug Seppala, Michael Babineau, Phyllis McKeon, Cristy Taylor, Klayton Stenersen, Shawn Seppala, Kelen Geiger, Greg Aho, Aaron Pyhala, Derek Chamberlain, Michael Aho, Roniele Hamilton, Ben Coll, Max Geesey, Brenda Lashua, Rick Griffith, Caleb Maunu, Angela Dunne, Timothy Dunne, Jamison VanDyke, Pete Wortfiley, Ryan Hall, Kenyon Bertram, Scott Muhonen, Matt Somero, Kale Stenersen, Linda Dodge, Fred Dodge, Ross Somero, Candice Starrett, Jeff Dickler, Cheryl McCabe Charron, Terry Aho, Gene Andersen, Patricia Martin, Debbie Qualey, Jim Qualey, Craig Clark, Judy Unger-Clark, Nathaniel Merrell, Nate Chamberlin

**Call to order and Pledge of Allegiance
Roll call by Chairperson**

Appointment of alternates
Cheves Walling for Jason Paolino

Approval of Minutes

1. Approval of December 3rd, 2019 minutes

MOTION: Roberta Oeser moved to approve the minutes as written. Sam Bouchie seconded the motion. **Vote: 5-0-2** Kim and Dennis abstained.

New Business/ Public Hearings

PRELIMINARY CONCEPTUAL CONSULTATION: Fieldstone Land Consultants, PLLC, 206 Elm Street, Milford, NH on behalf of Navian Development, 581 N.H. Route 119, Rindge, NH for property located at N.H. Route 119, Tax Map 4 Lot 23 in the Residential – Agricultural District for a potential Planned Unit Residential Development.

Nate Chamberlin of Fieldstone Land Consultants addressed the Board. Mr. Chamberlin said that they were here in Rindge in October and have received a lot of concerns and feedback regarding the impact of this project on Town resources. For that reason, a study was done by Fougieri Planning and Development (dated December 4, 2019) for Navian Development.

Meeting Minutes

January 7, 2020

JK, SB, HK, KM, DC, RO, CW, KS, KS

Mr. Chamberlin reviewed this report which isolated the impact to three main areas: police; fire; school system. Discussions took place with these three departments and the study concluded that there would be little impact to the school system as enrollment has been declining. Impact to the police and fire departments would be minimal as well. Based on the sale price of these properties and revenue that these units will generate from registrations, Mr. Chamberlin said that the report concludes there will actually be a gain to the town.

Mr. Chamberlin said that the PURD regulations allow for 51 units; in addition to that, they are going to include the workforce housing bonus which will increase the density to 66 units. This would be broken down to 40 rental units (10 would be Workforce Housing) and 26 single family homes (6 would be Workforce Housing). Of the apartment units, 16 are townhouse style and 24 are flats. There is a possibility that this could become condominiums at some point in the future. There has been equipment on this site doing test pits. Chairman Jonah Ketola thanked Mr. Chamberlin for his time.

PUBLIC HEARING FOR A PETITION WARRANT ARTICLE:

“To see if the Town will re-instate an **Impact Fee Ordinance** (originally passed by the voters in 2003, and rescinded by the voters in 2017) that will authorize the Planning Board to asses impact fees for residential development and to adopt regulations to implement the provisions of the ordinance. If passed, this ordinance will be retroactive to January 1, 2020. This can only be rescinded by the legislative body (voters). These fees would help to off-set the costs to essential services, like our Police, Fire, and Highway Departments.”

Planning Director Kirk Stenersen said that the Board requested that he obtain a legal opinion for these two petition warrant articles. He initially requested this opinion from NHMA (New Hampshire Municipal Association). The NHMA advised the Board to seek Town Counsel for this process. At that point, these two warrant articles were turned over to Gary Kinyon of Bradley & Faulkner PC for a legal opinion.

Mr. Stenersen read both of the petition warrant articles into record as the legal letter addresses both articles.

To see if the Town will re-instate an **Impact Fee Ordinance** (originally passed by the voters in 2003, and rescinded by the voters in 2017) that will authorize the Planning Board to asses impact fees for residential development and to adopt regulations to implement the provisions of the ordinance. If passed, this ordinance will be retroactive to January 1, 2020. This can only be rescinded by the legislative body (voters). These fees would help to off-set the costs to essential services, like our Police, Fire, and Highway Departments.”

“To see if the Town will vote to re-instate the **Growth Management Ordinance (GMO)** as amended in 2008 which limits the number of building permits that can be issued in a calendar year for residential construction. A copy of the Ordinance can be obtained from

Meeting Minutes

January 7, 2020

JK, SB, HK, KM, DC, RO, CW, KS, KS

the Planning Department for review. If passed, this ordinance can only be rescinded by a vote of the legislative body (voters).”

Mr. Stenersen provided copies of the Impact Fee Ordinance and the Growth Management Ordinance that were referred to herein.

Mr. Stenersen read into record from the January 6, 2020 letter. (See file for letter)

Roberta Oeser said that when reading the RSA, she believes that they have actually modified that RSA since Rindge had an Impact Fee Ordinance. In the past, Roberta Oeser said we could use funds for improvements to capital needs of our buildings. Today, the RSA says you must have a Capital Improvement Plan.

Sam Bouchie asked if this will go on the warrant where it legally cannot be enforced. Roberta Oeser said that legally, it has to. Kim McCummings said that she was part of the process years ago when the GMO (Growth Management Ordinance) and Impact Fee Ordinances were worked on. There was a tremendous amount of research that went into this prior to it being put before the voters. Sam Bouchie asked Roberta Oeser if she knew what this cost. Roberta Oeser said that we were members of SWRPC (Southwest Regional Planning Commission) back then, so it was a lot cheaper. She could not recall the exact cost of those studies but the man that did the consulting work is still in business.

Cheves Walling said that what he sees here is a partial referendum, but it is not going to work as a referendum because it is not worded to allow for the research to be done.

Roni Hamilton read from some annual town reports from the 1980's when the Impact Fees and Growth Management Ordinances were being considered. At that time, there was no impact fee ordinance but fees were charged to a developer of a large development. Roni Hamilton asked why we cannot just do this voluntarily and request these fees without the need for studies and an ordinance. Planning Director Kirk Stenersen said the problem he sees with this is that either side could question the validity of the reasoning behind the amount to be charged.

Planning Director Kirk Stenersen said that he thinks that, should we decide to undertake a study, this should come from the Planning Board and then the expenses of that should be put on the ballot for the voters to decide if they want to spend that money. He would have preferred that this group had come to the Planning Board rather than doing a petition warrant article.

Roni Hamilton said that, in 2017, she agreed with Bruce Donati about the Impact Fee being an unfair tax and she voted to get rid of it. At that time, she did not realize how fast this growth would occur. Roni Hamilton said that, back in 1988, impact fees were paid by a developer without an ordinance as such.

Jamison VanDyke said that another subdivision was approved around the same time as Taggart Meadows. The town tried to implement an impact fee. The developer brought the town to court and the developer won. The town was unable to charge an impact fee for any of those units. Jamison Van Dyke said that while he understands people's concerns about growth, our economy dictates that. Right now, we are at a high point but it will go down again soon. Roni Hamilton said it is her desire to keep Rindge rural.

Meeting Minutes

January 7, 2020

JK, SB, HK, KM, DC, RO, CW, KS, KS

Terry Aho from Perry Road in Rindge said that this needs to be thought out by everyone. Putting this on the warrant could lead to lawsuit after lawsuit. Mr. Aho said that things were a lot easier back in the 1980's. Today, everything takes time. Mr. Aho said he is not in support of this ordinance. Mr. Aho said that in this town, you cannot afford to build a single family home because the cost of building and land is so high, and that is why you see a lot of people renting because that is what they can afford. Mr. Aho said that back in the 1980's people feared that Rindge would become another Nashua. It has not. Rindge is still a desirable town. Let's not discriminate against people who may want to move here. Mr. Aho asked if the petitioners would consider rescinding this petition warrant article until such time as more research could be done.

Rick Griffith asked how this ordinance gets reinstated. Is it automatic? How did this get in front of us? Roberta Oeser said this is a petition warrant article. More than 25 registered voters signed this to get it on to the ballot.

Phyllis McKeon said that she used to attend the Master Plan meetings. Many people wanted Rindge to remain rural. She said that when people of the town choose to get something onto the ballot, they have the right for it to be on the ballot. Phyllis McKeon said that if some builder decides to sue the town as a result of this, then that's what happens.

Max Geesey from 31 Michael Drive said that the \$5000 impact fee does not affect the affluent but it does affect the first time home buyer. So the young people who grew up here, who want to buy a home to raise their kids here cannot afford to come. If the goal is to keep things rural, the impact fee is the wrong approach. The builder will just pay that \$5000 and pass it along to the buyer. There are a lot of young people in the trades who are building their own homes. They are going to get their friends together and trade labor to build their houses. These are the kind of people we want in our community but the impact fee will put up a barrier. Max Geesey said this is a bad idea. This town does not need to impose arbitrary fees. If we need to slow things down, we will get too busy to do things quickly and that will naturally slow things down. To keep the town rural, you do it through zoning but not through fees.

Phyllis McKeon asked if she could make a rebuttal to what Mr. Geesey is saying. She said that if things hadn't gotten so out of hand, none of them would be here tonight. Phyllis McKeon said that this thing has gone rampant and there are just a few people to blame for this.

Chairman Jonah Ketola asked the audience members who would like to speak, to address the Board and not each other.

Kelen Geiger said that in 2017, the town voted to get rid of the impact fee. Kelen Geiger said it is her understanding that, had we not voted out the impact fee in 2017, we would be using those numbers. So why the need for a study now? Roberta Oeser said, because the Impact Fee Ordinance was rescinded, it does not exist anymore and therefore, the fee schedule does not exist anymore. Roberta Oeser said furthermore, the basis for the impact fee has changed.

Jeff Dickler from Old Jaffrey Road said he was a part of a discussion about these petition warrant articles. One of the things that came up during those discussions was that the city was struggling financially and that was the time when the impact fee was rescinded. This decision further contributed to the financial problems. The impact fee does not have to be a flat fee but

Meeting Minutes

January 7, 2020

JK, SB, HK, KM, DC, RO, CW, KS, KS

can be progressive depending on the amount of money. Mr. Dickler asked Planning Director Kirk Stenersen if he could show him where the state says that a study is needed for the Impact Fee Ordinance in order to establish fee schedules. Roberta Oeser and Kirk Stenersen said RSA 674:21 II. Planning Director Kirk Stenersen read the following excerpt from the NH RSA's:

“II. An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance.”

Planning Director Kirk Stenersen said that he would like to address the earlier comment regarding the Planning Board decision in 2017. The Planning Board decided in 2017 that the Impact Fee Ordinance was no longer needed due to the economic conditions. That question was put before the voters and the voters decided to do away with the Impact Fee Ordinance. This had nothing to do with de-funding the Town nor was the Planning Director or the Planning Board aware that the town's finances were in dire straits. As a Planning Department, we have cut our budget more than in half over the past ten years. The reason the impact fee went away was as a result of a town vote; the reason it was put on the ballot was due to financial conditions. If we are to put in an impact fee, we need data starting with how many building permits have been issued recently, showing the increase in growth. The Planning Board needs to see some sort of data to show that an impact fee may be needed. If the goal and objective of the people is to save the town money, then it only makes sense to heed the advice of town counsel and not support a warrant article that is unenforceable and if voted in, will just lead to legal expenses.

Chairman Jonah Ketola said that prior to putting the Impact Fee ordinance question on the ballot in 2017, many people had come to the planning board asking that a waiver be granted for these fees. These people were trying to get the economy going again, and needed some help from the planning board to do so.

Dan Aho said that if a study would be required for these then that should be explained to the voters. Mr. Aho said that the economy provides us with growth management. Dan Aho said that years ago, by the time the Growth Management Ordinance was voted in, the economy fell apart. Taggart Meadow is a good example of that. Although it was approved, it took some 30 years to actually build that project. Right now, it is very difficult to find a single lot in the Town of Rindge. Dan Aho said we will have a real problem if we start trying to regulate growth. The economy will take care of itself.

Pat Martin said that if people are interested in keeping Rindge rural, then we need to support the Rindge Conservation Commission (RCC). Pat Martin said the RCC has money and grants to purchase and preserve tracts of land in Rindge. Rindge is not near any major highway nor public transportation, so the chance of Rindge becoming similar to Nashua or even Winchendon is just not going to happen.

Judy Unger-Clark said that she finds it interesting that the Planning Director is trying to put a halt to this. Judy Unger-Clark read from minutes of a meeting on June 11, 2013. During that meeting, the Chairman of the Planning Board, Kirk Stenersen, said that he was aware of a large faction of people in the Town of Rindge who were looking to rescind the Impact Fee Ordinance. That set the ball rolling to begin the process of eliminating impact fees. Finally, in 2017, the

Meeting Minutes

January 7, 2020

JK, SB, HK, KM, DC, RO, CW, KS, KS

Impact Fees were eliminated. Judy Unger Clark said that many people have seen the error of this decision to eliminate Impact Fees. They are concerned and these concerned citizens have come forward with a warrant article to reinstate the impact fee and the Growth Management Ordinance. Judy Unger Clark read some excerpts from within the Master Plan.

“...retaining a sense of rural character rather than uniformly spreading residential, commercial, and industrial activity across the entire community. The Town’s future land use should be driven by the need to protect open space, rights of property owner’s and groundwater resources. Wetlands, aquifers, watersheds, private wells.”

Judy Unger-Clark said the Master Plan should be the ultimate goal. Bringing back the two ordinances comes from people’s visions for the need for controls. Judy Unger-Clark said we are now seeing a new method of development with PURDS (Planned Unit Residential Developments) which Judy Unger-Clark said is an explosive way of building. Mrs. Unger-Clark said that the Navian proposal for 66 units shocked a lot of people last October. One third of that land is wetlands.

Mrs. Unger-Clark said the PURD regulations are in direct conflict with the zoning ordinances in this town. Mrs. Unger Clark said a Planning Board member, Jason Paolino, spoke in opposition to the Planning Board process. According to Mrs. Unger-Clark, Mr. Paolino said our zoning regulations and PURD regulations are at odds with each other. The Town of Peterborough is threatening to eliminate its planning board. Mrs. Unger Clark said that these warrant articles should go before the voters.

Gene Anderson said that it is his understanding that an Impact Fee is only charged when the land is developed and causes an impact to the town. He asked if that is what this is here. Chairman Jonah Ketola said that it is. Roberta Oeser said that the impact fee is for expansion in the town. Public Safety Building, DPW garage, etc. Mrs. Oeser said there are no plans in the town at this time to make these changes. If the impact fees are not used within 6 years, they must be given back. Mrs. Oeser said there are no capital improvement plans on the books at this point in time. In order to access the impact fees under a change in the statute, we have nothing. The method of assessing has changed at the state level over the years.

Debbie Qualey said that if what Roberta Oeser said is correct, and we need to use these fees for only capital improvements, there are plans for a new public safety building that were done years ago, we could bring those studies back out and use impact fees to build those.

Ryan Hall said that if the town isn’t able to function with what they have for money, shouldn’t they just raise taxes rather than charge just a few people.

Jim Qualey said he signed the two petitions that are under discussion. Jim Qualey read from the Master Plan.

*Chapter 1
Vision Statement*

Meeting Minutes
January 7, 2020
JK, SB, HK, KM, DC, RO, CW, KS, KS

The Town of Rindge and its residents are committed to protecting the Town's natural assets and preserving its small town rural character. We should strive to achieve our vision for Rindge by balancing the rights of property owners, environmental concerns and residential and commercial needs through the active participation of members of our diverse community.

The Town is served by private water and sewer systems. It is imperative that our existing water resources, such as wetlands, aquifers and watersheds, be protected to assure the continuous and adequate supply of clean water for present and future generations.

Jim Qualey said that he agrees with this Vision Statement in its entirety. He said there is a large group of people who are expressing concern about the preservation of the town's rural character. Mr. Qualey said this is not about development itself but more so, about the rate of the development that matters. Jim Qualey said it is clear under NH RSA 674:22 that a study would be needed for a Growth Management ordinance which would make that petition warrant article illegal and unenforceable. Mr. Qualey said, when we see that vote, there should at least be a survey to hear what the people's concerns are. These warrant articles are an expression of the concerns of quite a few people that we are not living up to our commitment to preserve the rural character of the town. There has been talk recently of a 66 unit development and a 27 unit development. Jim Qualey said that according to the census, 1800 households are in Rindge. If we add 93 more households, that's a five percent increase. The March vote will show what the level of concern is in the community.

Chairman Jonah Ketola said that the area that he is currently building was approved in 1986. The economic times stalled it until now. The economy will control the growth.

Planning Director Kirk Stenersen said we have a Phased Development ordinance in place right now that controls the number of units that can be built each year. So there are some ordinance controls on development. An unnamed woman said that Robert's Landing had phasing requirements that were waived. Planning Director Kirk Stenersen said that was built over a two year period. The unnamed woman asked who waives the requirements. Planning Director Kirk Stenersen said that is the Planning Board. The unnamed woman said that if the Board is able to waive requirements, then we do not have controls.

Planning Director Kirk Stenersen said that the Planning Board has heard the concerns from the people about the impact of the growth in town and that needs to be looked at. The focus tonight is whether or not the Planning Board can recommend the two petition warrant articles. The town's attorney has recommended that these not be backed by the Board as they are not legally enforceable as written. The Planning Board may need to come up with the money to do a study about growth.

Chairman Jonah Ketola closed the public hearing.

Dennis Casey asked if the impact fee is for all building. Chairman Kirk Stenersen said that our prior Impact Fee Ordinance had fees for both residential and commercial building. Roberta Oeser said that this petition warrant article speaks only to residential fees and that fees be used for Police, Fire and Highway. The previous Impact Fee Ordinance had fees being used for Schools, Recreation and Public Safety.

MOTION: Roberta Oeser made the motion as follows: Shall the Planning Board vote to support the petition warrant article for Impact Fees. Sam Bouchie seconded. **Vote: 0-7-0**

Meeting Minutes
January 7, 2020
JK, SB, HK, KM, DC, RO, CW, KS, KS

1. PUBLIC HEARING FOR A PETITION WARRANT ARTICLE:

“To see if the Town will vote to re-instate the **Growth Management Ordinance (GMO)** as amended in 2008 which limits the number of building permits that can be issued in a calendar year for residential construction. A copy of the Ordinance can be obtained from the Planning Department for review. If passed, this ordinance can only be rescinded by a vote of the legislative body (voters).”

MOTION: Roberta Oeser made the motion as follows: Shall the Planning Board vote to support the petition warrant article for the Growth Management Ordinance. Sam Bouchie seconded the motion. **Vote: 0-7-0**

Planning Office Report

Kirk Stenersen said that he has not received any more applications for the Planning Secretary job. Susan Hoyland has been coming in two days a week, for 4 or 5 hours per day. This is helping out at this time.

Planning Director Kirk Stenersen said that he had received an email from Michele for a person interested in becoming an alternate. Chairman Jonah Ketola said that we have two alternates at this time and it is working fine. Planning Director Kirk Stenersen said that normally, we address the need for alternates after elections. Chairman Jonah Ketola took a straw vote and the Board was in agreement that two alternates are sufficient at this time.

Other Business

Roberta Oeser said that the Board of Selectmen received a petition warrant article about road acceptance. The Planning Board’s zoning ordinance speaks to accepting roads in new subdivisions only. Planning Director Kirk Stenersen said that the Roadway Committee meets and recommends to the Board of Selectmen. The Board of Selectmen can still say no if they choose to. Kirk Stenersen said that this petition warrant article has nothing to do with the Planning Board. Jim Qualey read from the RSA 674 Section 40A. The Board of Selectmen have had the authority to approve roads. This petition warrant article is looking to rescind that authority and return it to the voters. Chairman Jonah Ketola said that this is a Board of Selectmen’s meeting issue and not a Planning board issue.

Dennis Casey said he has a question about the lighting at Crossroads. He said there is one light leaving the drive-through from Dunkin’s that is not downward. Planning Director Kirk Stenersen said he would check it out.

Adjourned: 8:46 PM

Respectfully submitted,
Susan Hoyland
Planning Department

BRADLEY & FAULKNER, PC

ATTORNEYS AT LAW

Homer S. Bradley, Jr.

Gary J. Kinyon

Douglas F. Green

50 WASHINGTON STREET
P.O. BOX 666
KEENE, NEW HAMPSHIRE 03431 0666

(603) 352 2030

FAX
(603) 357-9334

E-MAIL
gkinyon@bradleyfaulkner.com

WEBSITE
www.bradleyfaulkner.com

DIRECT DIAL
(603) 352-2940

January 6, 2020

Kirk L. Stenersen, P.E., Planning Director
Town of Rindge
30 Payson Hill Road
Rindge, NH 03461

Re: Petition Warrant Article to Reinstate Rindge Growth Management Ordinance
Petition Warrant Article to Reinstate Rindge Impact Fee Ordinance

Dear Mr. Stenersen:

You have asked for my opinion regarding the above-referenced Petition Warrant Articles filed with the Town Clerk for inclusion on the 2020 Town Meeting Warrant, whether the Board of Selectmen should include these articles on the 2020 Town Warrant, and the legality or enforceability of these articles if included on the warrant and passed.

Attached is a copy of the Petition Warrant Article to reinstate the Growth Management Ordinance (the "GMO Article") and a copy of the Petition Warrant Article to reinstate the Impact Fee Ordinance (the "Impact Fee Article"). I assume for purposes of this opinion the Town Clerk has verified each Petition was been signed by 25 registered voters in the Town pursuant to RSA 675:4. I also understand the GMO Article seeks to reinstate verbatim a growth management ordinance adopted by the Town in 2008 (the "2008 GMO") under the authority of RSA 674:22, and the Impact Fee Article seeks to reinstate an impact fee ordinance adopted by the Town in 2003 (the "2003 Impact Fee ordinance"), pursuant to RSA 674:21, which was rescinded by vote of the Town in 2017.

The first question is whether the Board of Selectmen has the authority to refuse to insert either or both articles from the warrant based on claims the articles are unenforceable or illegal. Under RSA 39:3, the Selectmen "shall insert in their warrant" a petition article "with only such minor textual changes as may be required." RSA 39:3-b states that the Board of Selectmen is guilty of a violation if it refuses to insert a petition article in the warrant. A decision of the New Hampshire Supreme Court suggests that these statutes "indicate a clear legislative intent that the selectmen have no discretion whether to insert an article in a warrant in compliance with RSA

39:3." *Woodside v. Selectmen of Town of Derby*, 116 N.H. 606 (1976). Accordingly, the warrant articles should be included on the warrant and the public hearing process for consideration of the articles should be followed.

The Board of Selectmen may disclose at any public hearing and at Town meeting its recommendation about whether each article should be passed. In my opinion, the Board should recommend neither article be passed, and my analysis of each article is below.

The GMO Article:

The 2008 GMO was adopted by the Town under the authority of RSA 674:22. By its terms (Section K) and in accordance with the requirements of RSA 674:22, the 2008 GMO included a termination date for the ordinance of March 31, 2011. By seeking to reinstate the 2008 GMO verbatim, if approved at Town meeting the GMO would already have expired in 2011. Given this, the GMO article would have no legal effect.

In addition, RSA 674:22, the enabling statute, required and still requires any GMO be accompanied by "a demonstrated need to regulate the timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance" and this must be established by a study "based on competent evidence and shall consider the municipality's projected growth rate and the municipality's need for additional services to accommodate such growth." RSA 674:22, II. The 2008 GMO was supported by such a study. This GMO Article is not supported by such a study, and of course the 2008 study cannot support the GMO Article, and the statute requires a study for a petition article. RSA 674:22, II. Accordingly, the GMO Article if passed would be unenforceable.

The Impact Fee Article:

RSA 674:21, the enabling statute, required and still requires that any impact fee ordinance "shall contain within it the standards which shall guide the person or board which administers the ordinance." RSA 674:21, II. The 2003 Impact Fee ordinance was supported by such standards in the form of an "Appendix to Impact Fee Ordinance" containing classifications for impact fee assessments, and an "Impact Fee Assessment Schedule." The Impact Fee Article is not supported by such standards and the 2003 Impact Fee ordinance of course cannot supply these standards. The New Hampshire Supreme Court has analyzed impact fee ordinances and made clear that standards such as the standards adopted for the 2003 Impact Fee ordinance must exist. *Caparco v. Town of Danville*, 152 N.H. 722 (2005). Since the Impact Fee Article includes

Kirk L. Stenersen, P.E., Planning Director
January 6, 2020
Page 3

no standards, it would be unenforceable and the Board of Selectmen should not recommend its approval.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gary J. Kinyon", with a horizontal line extending to the right.

Gary J. Kinyon

GJK/bas
Enclosures

