

DRAFT

Initial Planning Board Potential 2024 Town Articles Discussion (7/18/23 Pl. Bd. Work Session)

No Articles were drafted for consideration this past year by the Planning & Zoning Department. As part of our daily office work, we maintain a tote board with various ideas, prompted by issues/requests/inquiries that emerge.

This list presently includes the following topic areas:

I. Short Term Rentals (STR's)

Background: In recent years, (especially since the onset of Covid-19 in early 2020), the concept of Short-Term Rentals has gained in popularity across the entire nation, primarily for vacation use.

Large, well-entrenched companies such as *VRBO* and *Air BnB* have become so popular in recent years that their expanded presence in a community has caused many local govt. jurisdictions (without possessing any related and formulated regulations in their land use ordinances) to now feel compelled to craft regulatory language. Local governments have been forced to find ways to properly deal with and create a process of single family and multi-family homes in their communities being utilized for *STR* usage.

Overall, most *short-term rental* units operate successfully and very peacefully, without issue. Many residences are barely even known by the neighboring properties as being utilized as an "STR"! However, some STR's may be ill-used; some serve as a large party event rentals (i.e. weddings, college & family reunions, etc.), and their use may become problematic for the surrounding community with escalated *after hour* noise and a variety of other nuisances that may occur. Based on STR Webinars I have attended, each jurisdiction has its own way of addressing the usage of single family and multi-family homes as STR's., ranging from being heavily regulated (with enforceable and substantial annual registration renewal fees) to other local jurisdictions providing no governing regulations or guidance at all.

Considerations: If the Planning Board believes the Town should possibly regulate the usage of residential units as STR's, is now the time to consider appropriate regulatory language?

If so, several factors should be taken into account:

1. Start with a clear and precise Land Use Ordinance glossary definition of "*Short Term Rental*". (Many jurisdictions use "**30 (consecutive) Days or Less**").
2. What are the tax implications, (Tourism Tax basis, Rooms & Meals Tax?) for an STR in the Town of Milford?
3. Should a committee be established to comprehensively study the issue? Recent NH Planning Association Spring Conference presentations differed greatly on this topic! Should each STR Unit be approved solely as a *Special Exception*? (i.e. as an *Accessory Dwelling Unit*?).
4. Should STR's be limited to specific residential zoning districts; possibly only allowed in single-family homes-precluding the use of multi-family homes, for an example?

II. "Tiny Homes" Regulations

Background: Occasionally, inquiries are made of the Community Development Office in regard to the ability to build "Tiny Homes" on one's property. The popularity to potentially construct extremely small residential units began approximately 12-15 years ago; some say as an "HGTV Fad"!

These residential units are typically no larger than 400 square feet-many being under 200 square feet! However, various local governmental jurisdictions tend to come up with their own definitions and thresholds to define and quantify a "Tiny Home"!

These small residential units typically remain on its trailer's wheeled axles (akin to *mobile homes*); but some units are removed from its trailer rig to then be placed on a permanent foundation. Some "Tiny Homes" are quite popular in tourist areas, (in lieu of small *permanent foundation* cabins).

Complaints I have heard through time from other jurisdictions include various Fire Dept. or Building Dept. comments that tiny homes are not always truly Fire Code Compliant, nor are they meet ADA Compliant.

Considerations:

1. Presently, there are no direct land use regulations targeted specifically to the development of *tiny homes* in Milford. Thus, a detached "tiny home" ADU (Accessory Dwelling Unit, less than 750 sq. ft.) *may* be able to be built as long as all potable and wastewater issues are properly accounted for, providing all other building & fire code regs are also addressed and approved, pursuant to the respective codes.
2. Does the Planning Board feel there is a need to address the issue of "tiny homes" at this time?
3. Again, many jurisdictions' approved *tiny homes* are specific to providing tourism-based rental housing, (mostly for very short stay "eco-tourism" rentals). Should the town assume an Ordinance-driven stance providing for (or specifically excluding) this type of residential unit?

III. Potential Open Space Increases or Reductions for Industrial-Zoned Properties (Currently, a minimum of 30% Open Space is required)

Background: Late Autumn 2022, a brief analysis was begun to survey surrounding town jurisdictions to determine what was required for Open Space requirements for their respective *Industrial-Zoned* properties.

All of the Town's Industrial Zoned Sites have a mandate of 30% Open Space, which has been found to be consistent and within the range of a majority of sampled towns (ranging from 10%-40%).

There are other factors at work for properties within the town's jurisdiction where one of our three available Industrial Zoning Districts exists: **Industrial ("I")**, **Industrial Integrated Commercial-Industrial (ICI)** & **Integrated Commercial - Industrial 2 (ICI-2)** currently abut various *residentially-zoned* properties.

Considerations:

1. Should the Town simply retain its current 30% Open Space Requirement for all Industrial-based Zoned properties?
2. Should the town consider increasing its Open Space% requirements where an industrial site wishes to develop their "I"-zoned land, for sites adjacent to existing residential lands?
3. Conversely, should certain *Industrial-Zoned* sites (i.e. those sites that do not abut residential properties) be permitted to opt into some form of a *Financial Incentive Program* to lower their overall site open space percentile requirement to a lower figure?
4. Lastly, should only the "I", the "ICI" or the "ICI-2" zoned lands be considered? Does the Planning Board feel there is a distinction to be made (depending on the classification) for the consideration of a *alternative funding mitigation program* being made available?

**Examples of program options I have drafted (for discussion purposes only) may look something like the below:

**Options and Incentives for Industrial-based Zoned Properties
to Allow for Required Open Space Reductions:**

- A. Town of Milford Options to (potentially) approve an open space reduction from the required 30% Open Space for an Industrial-Zoned property site.

These options could potentially include:

1. **Financial Payment Options** (made to the Town at time of *Site Plan Approval*):

For each requested **"site acreage percentile"** (i.e. "1%") **less than the required 30% of Open Space**, an applicant of *Industrial-Zoned* sites would be required to make a one-time payment of \$1,000-\$5,000 (tbd?).

These funds would be provided to the Town for additional conservation land funding, special conservation projects, etc. (budgetary assignments, funding usage, etc. to be determined) **Note:** RSA consistency will have to be furthered research regarding the legal validity and viability of enacting this form of a Mitigation Option.

2. **Land Donation or Direct Public Land Improvement Options**

The Applicant shall in coordination with the Town provide Town-determined Funding Options for consideration regarding potential Town Conservation Lands Expansion; or providing for *identified* physical improvements needed on existing conservation lands, but as yet unfunded.

These types of mitigative activities could include:

1. Conservation Lands' Maintenance
2. Boardwalks/Trail Signage Creation and Enhancements
3. Maintenance of any physical attributes within town-preserved lands, (as deemed appropriate by the Town's Planning Board in consultation with the Town of Milford Board of Selectmen & the Conservation Commission).

IV. Other Potential Town Article Needs:

- a. Junk Yard Definition Update-Consistency with RSA 236:111 through RSA 236:129 (see attached)
- b. Downtown Density Increases?
- c. Residential Lighting Codes?

MOTOR VEHICLE RECYCLING YARDS AND JUNK YARDS (RSA 236:111 through RSA 236:129)

Section 236:111 - Purposes

This subdivision is adopted under the police power of the state to conserve and safeguard the public safety, health, morals, and welfare, and to further the economic growth and stability of the people of the state through encouragement to the development of the tourist industry within the state. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion. In addition, such an environment is considered essential to the maintenance and continued development of the tourist and recreational industry which is hereby declared to be of significant and proven importance to the economy of the state and the general welfare of its citizens. At the same time, it is recognized that the maintenance of junk yards as defined in this subdivision, is a useful and necessary business and ought to be encouraged when not in conflict with the express purposes of this subdivision.

Section 236:111 – Scope

- I.** Except as provided by paragraphs II and III, the provisions of this subdivision shall apply to all junk yards, as defined by RSA 236:112, including those approved under RSA 149-M and those subject to regulation under RSA 236:90-110.
- II.** The provisions of this subdivision shall not apply to any junk yard that is also a type of solid waste management facility listed below and approved under RSA 149-M, including any such solid waste management facility approved prior to May 1, 1989:
 - (a)** Landfills;
 - (b)** Incinerators and other processing or treatment facilities, not including automotive recycling yards; and
 - (c)** Transfer stations that collect, store, and transfer municipal solid waste, whether or not they also collect:
 - (1)** Source separated waste derived from motor vehicles, such as tires, lead acid batteries, or used oil; and/or
 - (2)** Common household or commercial machinery, such as appliances, office equipment, or lawn mowers.

The provisions of this subdivision shall not apply to any noncommercial antique motor vehicle restoration activities involving antique motor vehicles over 25 years old, where the owner or lessee demonstrates that each of the following requirements are met:

- (a)** All antique motor vehicles kept on the premises are owned by the property owner or lessee; and
- (b)** All antique motor vehicles and parts of antique motor vehicles are kept out of view of the public and abutters by means of storage inside a permanent structure, or by suitable fencing which complies with the fencing requirements of RSA 236:123, or by trees or shrubbery sufficient to block visual access year-round; and
- (c)** Any combination of antique motor vehicles or parts of antique motor vehicles that are not stored inside a permanent structure shall otherwise comply with the requirements of this section and shall not exceed a total amount of 5 vehicles. For purposes of this section, the sum of the parts of antique motor vehicles that equal in bulk to one antique motor vehicle shall be counted as one antique motor vehicle; and
- (d)** All mechanical repairs and modifications are performed out of view of the public and abutters; and

- (e) Not more than one unregistered and uninspected motor vehicle that is not over 25 years old shall be kept on the premises; and
- (f) The use of the premises is in compliance with all municipal land use ordinances and regulations.

Section 236:112 - Definitions

For the purposes of this subdivision:

- I. "Junk yard" means a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:
 - (a) Automotive recycling yards, meaning a motor vehicle junk yard, as identified in subparagraph (c), the primary purpose of which is to salvage multiple motor vehicle parts and materials for recycling or reuse;
 - (b) Machinery junk yards, as defined in paragraph III; and
 - (c) Motor vehicle junk yards, meaning any place, not including the principal place of business of any motor vehicle dealer registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126, where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:
 - (1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or
 - (2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle.
- II. "Local Governing Body" means the mayor and board of aldermen or the council of a city, the selectmen of a town, or the commissioners of a village district.
- III. "Machinery Junk Yard" means any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of 500 square feet.
- IV. "Motor Vehicle" means "motor vehicle" as defined by RSA 259:60, I, namely, any self-propelled vehicle not operated exclusively upon stationary tracks, including ski area vehicles.
- V. "Motor Vehicle Dealer"
 - (a) "New motor vehicle dealer" means every person principally engaged in the business of buying, selling or exchanging new and secondhand motor vehicles, or tractors on commission or otherwise who maintains in operating condition, and in operation, and at which the dealer does a major portion of his business a place of business capable of housing indoors in one building in an area of 1200 square feet, 5 average-sized automobiles, devoted to the motor vehicle, or tractor business and gives mechanical service on the same and who holds a written contract with a manufacturer giving such person selling rights for new motor vehicles, or tractors, or with a distributor of such vehicles who, as such distributor, holds a manufacturer's franchise or contract giving selling rights on new motor vehicles, or tractors.
 - (b) "Used Motor Vehicle Dealer" means every person or firm principally engaged in the business of buying, selling and exchanging secondhand motor vehicles or tractors, who maintains in operating condition and in operation and at which the dealer does the major portion of his business a place of business capable of housing indoors in one building, in an area of at least 1200 square feet, 5 average-sized motor vehicles devoted to the used

motor vehicles, or tractor business, and gives mechanical service on the same and at which the repair of used motor vehicles, or tractors is subordinate or incidental to the business of buying, selling and exchanging the same.

- (c) "Junk Motor Vehicle Dealer" means any person or firm who has an established place of business at which he is engaged in the business of buying secondhand motor vehicles for the purpose of taking the same apart, or buying, and selling parts of secondhand motor vehicles, or tires, for the assembling of secondhand motor vehicle parts.

Section 236:113 - Minimum Area Waiver Authorized

The director of motor vehicles may in his discretion and after a public hearing waive the minimum 1200 square foot requirement specified in RSA 236:112, V(a) and (b).

Section 236:114 - Requirement for Operation or Maintenance

A person shall not operate, establish, or maintain a junk yard or machinery junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of the junk yard.

Section 236:115 - Application for License and Certificate of Approval

Application for the license and the certificate of approved location shall be made in writing to the local governing body of the municipality where it is proposed to locate the junk yard or automotive recycling yard. In municipalities having a zoning ordinance and a zoning board of adjustment, the application must be accompanied by a certificate from the board of adjustment that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of the zoning ordinance. The application shall include:

A description of the land to be included within the junk yard or automotive recycling yard, by reference to so-called permanent boundary markers.

Certification of compliance with best management practices established by the department of environmental services, for applications to establish automotive recycling yards and motor vehicle junk yards.

Section 236:116 - Time of Hearing

A hearing on the application shall be held within the municipality not less than 2 nor more than 4 weeks from the date of the receipt of the application by the local governing body. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and the notice shall be published once in a newspaper having a circulation within the municipality, which publication shall be not less than 7 days before the date of the hearing.

Section 236:117 - License Requirements

At the time and place set for hearing, the local governing body shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish, or maintain the junk yard or automotive recycling yard. In passing upon the application, it shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the proposed junk yard or automotive recycling yard, to any record of convictions for any type of larceny or receiving of stolen goods, and to any other matter within the purposes of this subdivision.

Section 236:118 - Location Requirements

- I. At the time and place set for hearing, the local governing body shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junk yard or automotive recycling yard. In passing upon the application,

after proof of legal ownership or right to the use of the property by the applicant for the license period, it shall take into account the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gatherings; and whether or not the use of that proposed location can be reasonably prevented from affecting the public health, safety, or morals by reason of offensive or unhealthy odors or smoke, or of other causes.

- II. In no case may a license be granted for a new junk yard or automotive recycling yard located less than 1,000 feet from the right-of-way lines of an interstate highway.
- III. Unless a lesser setback is allowed by local zoning ordinance, or an ordinance adopted pursuant to paragraph IV, in no case may a license be granted for a new junk yard or automotive recycling yard located:
 - (a) Less than 660 feet from the right-of-way lines of a non-interstate class I, class II, class III, or class III-a highway; or
 - (b) Less than 300 feet from the right-of-way lines of class IV, class V, and class VI highways.
- IV. In a municipality that has not enacted a zoning ordinance, the local governing body may adopt an ordinance establishing lesser setback requirements than those established in paragraph III.

Section 236:119- Nuisance

Any junk yard or machinery junk yard located or maintained in violation of the provisions of this subdivision is hereby declared a nuisance, and the same may be abated on complaint of any prosecuting officer as provided in RSA 236:128.

Section 236:120 - Aesthetic Considerations

At the hearing regarding location of the junk yard or automotive recycling yard, the local governing body may also take into account the clean, wholesome, and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the use of the proposed location can be reasonably prevented from having an unfavorable effect thereon. In this connection the local governing body may consider collectively the type of road servicing the junk yard or automotive recycling yard or from which the junk yard or automotive recycling yard may be seen, the natural or artificial barriers protecting the junk yard or automotive recycling yard from view, the proximity of the proposed junk yard or automotive recycling yard to established tourist and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junk yard or automotive recycling yard.

Section 236:121 - Grant or Denial of Application; Renewal; Appeal

After the hearing the local governing body shall, within 2 weeks, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following July 1. Approval is personal to the applicant and is not assignable.

- I. Licenses shall be renewed thereafter upon payment of the annual license fee without a hearing, if all provisions of this subdivision are complied with during the license period, if the junk yard does not become a public nuisance under the common law or is not a nuisance under RSA 236:119, and if the applicant is not convicted of any type of larceny or of receiving stolen goods. In addition, applications to renew a license to operate an automotive recycling yard or motor vehicle junk yard shall include certification of

compliance with best management practices established by the department of environmental services for the automobile salvage industry.

- II. A writ of certiorari lies from the denial of the application to the superior court of the county in which the proposed location is situated.

Section 236:122 - License Fees

The annual license fee is not more than \$250 to be paid at the time the application is made and annually thereafter in the event of renewal. If the application is not granted, the fee shall be returned to the applicant.

Section 236:123 – Fencing

Before use, a new junk yard or automotive recycling yard shall be completely surrounded with a solidly constructed fence at least 6 feet in height which substantially screens the area and with a suitable gate which shall be closed and locked except during the working hours of the junk yard or automotive recycling yard or when the applicant or his agent is within. All motor vehicles and parts stored or deposited by the applicant shall be kept within the enclosure of the junk yard or automotive recycling yard except as removal is necessary for its transportation in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts and all burning of vehicles shall be accomplished within the enclosure. Where the topography, natural growth of timber, a natural barrier, or other considerations accomplish the purposes of this subdivision in whole or in part, the fencing requirements hereunder may be reduced by the local governing body, upon granting the license. Any citizen of the municipality may apply for writ of certiorari to the superior court for the county in which the new junk yard or automotive recycling yard is located to review the action of the local governing body.

Section 236:124 - Effect of Local Ordinances

This subdivision is not in derogation of zoning ordinances or ordinances for the control of junk yards now or hereafter established within the proper exercise of the police power granted to municipalities, but rather is in aid thereof. Specific local ordinances shall control when in conflict with this subdivision.

Section 236:125 - Established Junk Yards or Automotive Recycling Yards

For the purposes of this subdivision the location of junk yards or automotive recycling yards already established are considered approved by the local governing body of the municipality where located and the owner of the yard considered suitable for the issuance of a license. Within 60 days from the passage of this subdivision, however, the owner shall furnish the local governing body the information as to location which is required in an application, together with the license fee, and the local governing body shall issue him a license valid until April 1, 1966, at which time the owner may apply for a renewal. The owner shall comply with all other provisions of this subdivision including the fencing requirements set forth in RSA 236:123.

Section 236:126 - Motor Vehicle Dealers

Both new and used car dealers are hereby required to remove from their premises registered with the director of motor vehicles as their principal place of business any motor vehicle which is of the type referred to in RSA 236:112, I, under the definition of junk yard, within at least 160 days from the date of its original entrance thereon. Any other location within the same community used by such dealer shall be subject to the terms of this subdivision if in its operation it falls within the confines of the definition of the term junk yard as defined in this subdivision.

Section 236:127 - Penalty

Any person who is in violation of any provisions of this subdivision shall be guilty of a violation and each day or fraction thereof shall constitute a separate offense.

Section 236:128 - Local Enforcement; Injunction; Civil Penalties

The governing body, elected or appointed officers or other appointed agents of a town, city, or unincorporated place, or a private person pursuant to RSA 236:129 may initiate proceedings for the enforcement of the provisions of this subdivision. In addition to the criminal penalty in RSA 236:127, enforcement may be by the following:

- I. The local governing body may obtain a mandatory injunction to end the violation.
- II. If the local governing body does not obtain such an injunction the attorney general may obtain an injunction in the name of the state.
- III. The local governing body or other enforcement official of the town, city, or unincorporated place, after providing notice, may impose a civil penalty of up to \$50 for each day upon any person whose land is deemed a nuisance pursuant to RSA 236:119 until such time as the nuisance is removed or abated to the satisfaction of the governing body, or until the owner of the land acquires a license and is in compliance with the provisions of this subdivision. The building inspector or other local official with the authority to enforce the provisions of this section may commence an action to collect the civil penalty in the district court. Imposition of a civil penalty under this paragraph shall not relieve the owner of any requirement to comply with the provisions of this subdivision, nor shall it preclude the imposition of further actions or remedies under this chapter. The proceeds from the assessment of civil penalties under this section shall be for the use of the town, city, or unincorporated place. This paragraph shall not apply to automotive recycling yards and junkyards properly licensed or pending license renewal under this subdivision.

Section 236:129 - Private Persons

Any person owning real property whose property is directly affected by the site of a junk yard or automotive recycling yard maintained in violation of the provisions of this subdivision may in writing addressed to the local governing body request the local governing body to take appropriate action under this subdivision. A copy of the written communication to the local governing body shall be mailed to the person complained of. If the local governing body shall not, within 30 days thereafter, make a determination that a junk yard or automotive recycling yard does exist and issue the appropriate order, such person may, in his own name and in his own right, seek appropriate injunctive relief for the enforcement of this subdivision in the superior court.