

I HAVE A CONCERN REGARDING DOWNTOWN DISTRICT 9.414: DRA, DRD, DF1, DF2.

YOUR PROPOSED REQUIREMENT FOR RESIDENTIAL GROUND FLOOR ELEVATION IS TO BE 18" ABOVE SIDEWALK ELEVATION.

I REQUEST YOU CONSIDER ELIMATING THE 18" REQUIREMENT.

WHY?

DON'T MAKE IT HARD FOR PEOPLE TO ACCESS THE PLACE THEY LIVE OR ARE VISITING.

STEPS CAUSE ACCIDENTS (SLIP, TRIP, FALL).

WOULD NOT ALLOW A HOUSE WITH A SLAB ON GRADE FLOOR.

WHY BE DIFFERENT FROM THE COMMERCIAL REQUIREMENT?

THERE IS NO REQUIREMENT FOR HOUSES ELSE WHERE IN LOWELL

THERE IS NO EVIDENCE THAT A HOUSE ON GRADE WITH THE SIDEWALK IS A PROBLEM.

ROY NELSON, 4 [REDACTED]

MIA M. NELSON

January 4, 2023

Lowell Planning Commission
City of Lowell
107 E 3rd Street
Lowell, OR 97452

Re: Proposed new restrictions to R-1 and R-3 garage setbacks

Dear Chair Dragt and Planning Commission Members:

I am writing on behalf of both myself and my family's company Lookout Point LLC, owner of a large amount of Lowell's remaining vacant buildable land.

We support nearly all the code changes now before you, and commend the Planning Commission, City Council and staff for all the hard work that's gone into this project. These changes will allow future builders to create more affordable housing and more diverse housing choices.

However, there is one serious problem with the current draft: it would require all new homes and apartments built in the R-1 and R-3 zones to have the garage pushed back 5 feet behind the front of the house. I have attached the relevant pages (76 and 78) from the proposed code, with the problematic language highlighted in yellow.

In this letter, I will:

1. Explain why I believe this change was innocently (but erroneously) proposed by staff based on a misunderstanding of the purpose and meaning of the current code.
2. Provide evidence that nearly every new home built here in recent years does not comply with the proposed 5-foot garage setback.
3. Provide evidence that the new restrictions would cause significant additional building costs and may even render some hillside lots functionally unbuildable.
4. Explain why the new restrictions violate the Needed Housing statute's prohibition on code provisions that cause unreasonable additional costs.
5. Explain why the new restrictions would open the city up to Ballot Measure 49 claims due to the resulting reduction in property values.
6. Explain why these proceedings violate Ballot Measure 56's requirement for individual written notice mailed to all affected landowners.
7. Suggest a fix to the proposed setback language that would resolve all concerns.

The problematic R-1 and R-3 front yard setback change is found in Section 9.411(6)(A) and Section 9.412(6)(A):

“10 feet, except all garages, carports or other parking structures taking access from the front of the property shall be set back at least 5 feet behind the front façade of the primary structure.”

The problematic R-1 and R-3 street side yard setback change is found in Section 9.411(6)(B)(3) and Section 9.412(6)(B)(3):

“10 feet. Side facing garages, carports or other parking structures must be flush with or behind, but not protrude beyond, the side (façade or covered porch) of the primary structure.”

Lowell does not currently require garages to be flush with or pushed behind the front façade. As explained in the following sections, nearly all homes built recently in Lowell could not have complied with the proposed standard. It’s a terrible idea and one I hope the Planning Commission will reject, for all the following reasons:

1. The Proposed Restrictions Are Based On An Erroneous Interpretation Of Current Code.

Lowell’s current front setback requirements **do** need to be rewritten; they can’t even be logically understood, let alone applied in a way that makes sense. The current code was adopted almost 20 years ago, as an update to the original 1971 setback requirements. But I still remember why.

While awkwardly written, the current standard was meant to ensure a 20-foot parking area between the back of sidewalk and the garage, while allowing other parts of the house to have a 10-foot setback from the property line.¹

This had nothing to do with aesthetics and was not meant to ensure the garage face is pushed behind the façade of the house. Instead, it was intended to address the situation in Lowell, where rights-of-way are 50 to 60 feet wide but streets are only 20 to 28 feet wide.

Typical rights-of-way end just past the sidewalk. In these cases, it makes more sense to require a 20-foot setback for garages. But in Lowell, a 20-foot setback can put the garage as much as 35 feet behind the sidewalk. That had been the situation in 2001 when this issue was daylighted, and it was creating absurd results and an excessive need for setback variances.

The current standard reduced the front setback from 20 feet to 10 feet from the property line, plus additional distance (if any) needed to ensure 20 feet of parking between the house and the back of sidewalk or curb. It reads in part: *“For Streets with constructed or planned curbs and/or*

¹ There is no longer any need to require 20 feet of parking space on the lot, or between the garage and the back of sidewalk. In the past, two parking spaces per dwelling unit were required. That is no longer the case. Going forward, only one off-street parking space per dwelling unit will be required. Therefore, if a house has a garage or carport, there is no need to provide another parking space in front of the garage. The idea of an additional 20-foot off-street parking area, in addition to a garage or carport, is outdated and is not carried forward in the new code.

sidewalks, 20 feet from the outside edge of the curb or sidewalk but no less than 10 feet from the property line.”

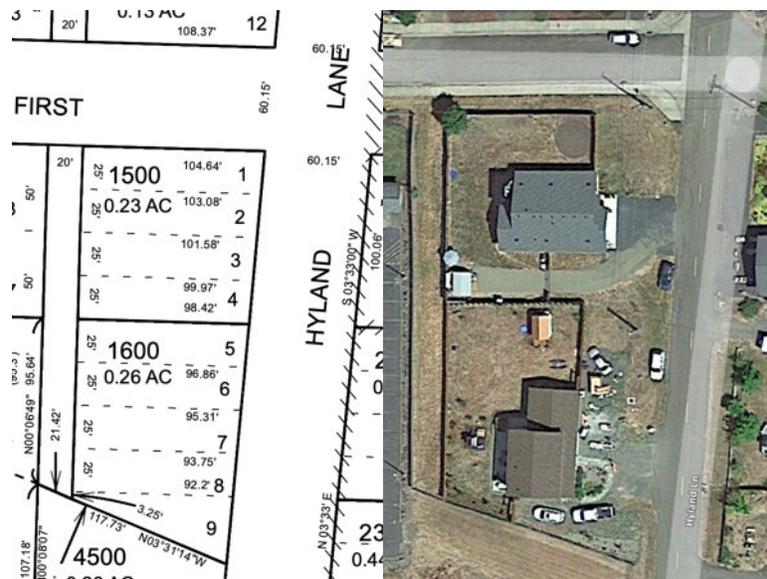
Note that nothing in the current standard requires garages to be flush or pushed behind the façade of the house. In fact, it doesn't differentiate at all between the garage and the house.

Lowell also has situations where there is no storm drain system, curbs, or sidewalks - only a paved roadway and ditches on each side. This is mainly found in the older, flat parts of Lowell. For this situation, it was decided to require a 15-foot setback for the house, and 20 feet for the garage. The thinking was that there was no way to establish how much parking space could be relied upon within the right-of-way, so it was safer to require the full 20 feet of parking space within the lot itself.

That part of the current code reads as follows: “Where no curbs or sidewalks are constructed or planned, 15 feet, except all garages, carports or other parking structures taking access from the front of the property shall be set back 20 feet.” Of course, this doesn't make sense, since the 15-foot setback for the house is at odds with the 10-foot setback allowed for properties that have curbs or sidewalks.

In addition, I believe this badly written provision is what gave rise to the new setback restrictions now before you. I believe city planners looked at this language, and decided it meant that the garage needs to be pushed 5 feet behind the house. However, that is not what it means and not how Lowell has ever interpreted this. It is entirely possible for **both** the house and garage to be set back 20 feet from the property line. It is even possible for the garage to be set back 20 feet, and the house set back even farther. The only thing this provision was trying to do is ensure 20 feet of parking space in front of the garage. It was never about creating a relationship between the front façade of the house and the face of the garage.

Below are two quarter-acre lots in the old part of town, where there are no sidewalks or curbs. These two houses were built in 2018, and as you can see, the garage is flush with the rest of the house. These lots are so large, the structures are set back almost 30 feet from the property line.



It is indisputable that Lowell's current code does not require garages to be flush or pushed behind the façade of the house. If Lowell truly wishes to make such a change now, then it should be frankly admitted that this is new, and not just a housekeeping-style cleanup of the current code.

2. Nearly Every New Home In Lowell Could Not Comply With The Proposed Restrictions.

Further evidence that city staff misunderstood current code is that nearly every new home built in Lowell in recent years does not have a garage that is set back 5 feet from the front façade. This would be a radical change from the status quo, made without any reason for doing so. Past precedent should be respected and not altered without a thorough planning process and discussion with affected property owners.

For example, this aerial photo shows the first phase of Sunset View Ranch at Hyland and 4th. Every one of these new homes has a garage that is not set back 5 feet from the front façade:



Similarly, the brand-new Crestview Estates subdivision across from the industrial park doesn't have a single house that could comply with the new restrictions. Aerial photography is not yet available of these new homes, but we conducted a windshield survey and took these photos:



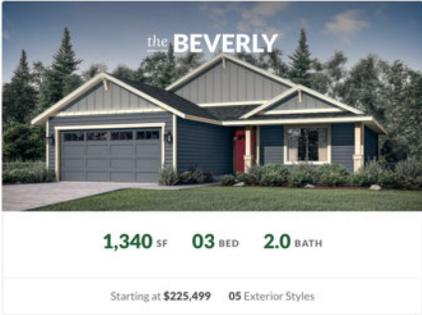
Finally, 32 of the 40 homes (80%) built or under construction in the Sunridge development do not have the garage pushed back five feet from the front façade. These are marked with a red X on the below map. Bare lots that are under construction or permitting are also included. In addition, six of the eight homes that do comply with the new restrictions have an unusual condition of the garage being placed at the back of the lot. This is more expensive and there were unique reasons for doing this on those lots.



3. The Proposed Restrictions Would Increase Building Costs And Threaten Buildability.

Even on flat land, the proposed setback restrictions would increase costs by imposing an artificial design constraint on home builders. Most pre-existing house plans and custom design options could not comply with the proposed setbacks. Builders would therefore be funneled into plans that are not optimal for the site or the needs of the future residents, decreasing choice and increasing building costs.

For example, I reviewed all the plans on offer from Adair Homes, a popular affordable housing builder in this area. Out of 41 house plans with garages, only 3 could meet the proposed new setbacks. The below photos show typical Adair Homes garage designs:



Hillside property further narrows the options that builders have. Nearly all of Lowell’s remaining vacant land is sloped. In addition, any land that Lowell might expand onto in the future is also sloped. Even Lowell’s future government-assisted housing developments will likely be placed on sloped ground. Therefore, it is especially important that Lowell’s code be sensitive to the realities of hillside building.

On a hillside, the greatest challenge is to access the garage from the street without an overly steep driveway or excessive foundation costs. It is crucial to keep the garage as close as possible to the street, where the natural grade of the lot is the most similar to the street grade. The best way to do that is with narrow streets and the minimum possible front setbacks.

On uphill lots, forcing the garage to be farther away means it will be pushed into an area that is higher up the hill. This means that either the driveway is steeper (which presents safety issues and might be impossible) or the garage must be cut deeper into the hillside and buttressed with tall concrete highwalls (which is expensive).

It is much the same on downhill lots. Forcing the garage to be farther away means it will be pushed into an area that is lower down the hill. That means either the driveway must be made steeper (which is might be too unsafe to do), or the garage must be built higher up. This in turn means taller concrete walls and additional imported gravel fill; both are expensive.

Below are three downhill homes on Sunridge Lane – the middle one belongs to Mayor Bennett. These homes illustrate a classic way of solving hillside access problems: the garage is placed as close as possible to the street, and the driveway is made as long as possible, to reduce the slope.



This technique would become illegal if the proposed front setback restrictions are adopted. Lowell’s steepest lots might become functionally unbuildable without the ability to do this.

4. The Proposed Restrictions Violate Oregon's Needed Housing Statute.

State law prohibits cities from enacting code provisions that lead to unreasonable additional housing costs:

ORS 197.307(4): *"Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures: * * * (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."*

As shown above, the proposed setback restrictions would create significant additional costs for most new housing in Lowell. There is no evidence that these additional costs are justified, or indeed, that the city has any reason whatsoever for creating these new restrictions. The proposed setback restrictions are at odds with normal building construction methods and must not be adopted.

Cities must be especially cautious about increasing the cost of government-assisted housing, which has additional protections in state law. Below is an aerial view of a recent government-assisted housing project: the St. Vincent de Paul development on Wetleau Drive. I have marked each home that could not comply with the new garage setback restrictions with a red X. Thirteen of the eighteen homes (72%) could not comply.



Small homes – and small lots – are crucial to affordable housing efforts. Most of the proposed code changes will encourage small lots and small homes, exactly what Lowell needs. For example, the updated code would allow lots as narrow as 30 feet - which means the house would only be 20 feet wide. That's great - but the proposed front setback restriction would work at cross purposes and might make it impossible to build a home on those narrow lots.

Below are photos of some designs that the City of Portland has approved for narrow lots. In order to have a garage, the front door is to the side and behind. These little houses look great just the way they are. Portland is a leader in affordable housing techniques. Lowell should not adopt a code provision that makes it impossible or impractical to use tools like these.



5. The Proposed Restrictions May Trigger Ballot Measure 49 Claims.

Ballot Measure 49 was approved by the voters in 2007. It provides that if a city enacts a land use regulation that restricts the residential use of private real property and that reduces the fair market value of that property, the city must provide just financial compensation to the owner of the property. See <https://www.oregon.gov/lcd/measure49/pages/index.aspx>

The proposed setback restrictions would reduce the value of affected properties because they increase construction costs, preclude certain design options and make it more difficult to accommodate hillside considerations. If the city follows through with adopting these restrictions, it should expect Measure 49 claims to be filed.

6. The City Failed To Send Individual Written Notice In Accordance With Ballot Measure 56.

ORS 215.503, adopted in 1998 via Ballot Measure 56, requires that cities provide to certain property owners advance, individual, written notice by mail of the first hearing on an ordinance that proposes to “rezone” their property. ORS 215.503 provides, in relevant part:

ORS 215.503(4): *“In addition to the notice required by ORS 215.223(1), at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.”*

ORS 215.503(9): *“For purposes of this section, property is rezoned when the governing body of the county:*

(a) Changes the base zoning classification of the property; or

(b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone."

A local government "limits * * * land uses previously allowed in the affected zone" when it changes standards for uses presently allowed in the zone, and the change either physically restricts or constrains those uses, or narrows the circumstances under which the use may occur at all. *Murray v. Multnomah County*, 56 Or LUBA 370 (2008).

Here, the proposed changes would physically restrict and constrain garage or carport uses and prevent them from occurring within 5 feet of the front façade of the structure. Thus, the proposed changes trigger the Measure 56 notice requirement.

Failure to send the required notice has substantially prejudiced the rights of numerous vacant lot owners in Sunridge. To our knowledge, all of them are presently unaware of these proceedings, and potentially all of them are planning garages that are not set back 5 feet from the front façade. Any of them could mount a later challenge to the adopted code and win a remand at the Land Use Board of Appeals (LUBA) on procedural grounds, for defective notice.

If the city does not amend the proposal to remove these setback restrictions, it must halt the proceedings and send individual written notice to every R-1 and R-3 property owner, in accordance with Measure 56.

7. The Proposed Fix Is Easy.

All that is needed to fix these identified problems is to simply strike the text highlighted in yellow on the attached pages 76 and 78 of proposed code. After doing so, the Front Yard and Street Side Yard setbacks for both R-1 and R-3 would be revised to simply say "10 feet."

We ask that you please make this change before passing the proposal to the City Council.

Sincerely,


Mia Nelson

- ~~55-65 feet on any property line adjoining a street~~
- (3) Minimum Lot Depth: 80 feet
 - (4) Maximum Building coverage including Accessory Dwelling Units and accessory buildings, provided that any patio structure used solely for open space and swimming pool not structurally covered shall not be counted as a structure for ascertaining coverage: ~~50~~35%.
 - (5) Maximum building height – 2 stories, excluding basements/daylight basements, or 30 feet, whichever is lower. Accessory buildings are limited to one story, with the exception of Accessory Dwelling Units.
 - (6) Yards (all measurements are from the property line unless indicated otherwise):
 - A. Front Yard
 1. ~~10 feet, except all garages, carports or other parking structures taking access from the front of the property shall be set back at least 5 feet behind the front façade of the primary structure. For Streets with constructed or planned curbs and/or sidewalks, 20 feet from the outside edge of the curb or sidewalk but no less than 10 feet from the property line.~~
 2. ~~Where no curbs or sidewalks are constructed or planned, 15 feet, except all garages, carports or other parking structures taking access from the front of the property shall be set back 20 feet.~~
 - B. Side yard setbacks:
 1. Interior side yard: 5 feet ~~for single story, and 7 ½ feet for two story structures.~~
 2. Alley side yard: 5 feet. The City may require any lot with an alley to access off-street parking from the alley.
 3. Street side yard: ~~For Streets with constructed or planned curbs and/or sidewalks, 15 feet from the outside edge of the curb or sidewalk but no less than 5 feet from the property line except for parking structures which shall be set back at least 20 feet from a curb or sidewalk. Where no curbs or sidewalks are constructed or planned, 10 feet. Side facing garages, carports, or other parking structures must be flush with or behind, but not protrude beyond, the side (façade or covered porch) of the primary structure, except all parking structures taking access from the side street shall be set back 20 feet.~~
 - C. Rear yard: 10 feet; 5 feet for accessory buildings.
 - (7) See **Article 9.5** for additional General Development Standards, **Article 9.6** for Special Development Standards and **Article 9.7** for Use Standards that may apply in the R-1 District.

SECTION 9.412 MULTIPLE-FAMILY RESIDENTIAL DISTRICT R-3

- (a) **Purpose.** To provide areas suitable and desirable for medium density multiple-family residential use with provisions for associated residential or public service uses. Medium density shall mean a maximum of 15 dwelling units per acre unless approved as a Conditional Use.
- (b) **Permitted Uses.** In an R-3 District, the following uses and their accessory uses are permitted subject to the Type I review process: Site Plan Review provisions of Section

- (4) Maximum Building coverage including Accessory Dwelling Units, and accessory buildings – ~~50~~ 40%, provided that any patio structure used solely for open space and swimming pool not structurally covered shall not be counted as a structure for ascertaining coverage. Maximum Lot Coverage shall not apply to triplexes and quadplexes provided minimum setbacks and off-street parking standards are met.
- (5) Maximum building height – 3 stories or 45 feet, whichever is lower. Accessory buildings are limited to one story, with the exception of Accessory Dwelling Units. For R-3 development within 50 feet of an abutting R-1 district side or rear yard, R-1 height standards apply.
- (6) Yards:
- A. Front Yard
1. 10 feet, except all garages, carports or other parking structures taking access from the front of the property shall be set back at least 5 feet behind the front façade of the primary structure. For Streets with constructed or planned curbs and/or sidewalks, 20 feet from the outside edge of the curb or sidewalk but no less than 10 feet from the property line.
2. ~~Where no curbs or sidewalks are constructed or planned, 15 feet, except all garages, carports or other parking structures taking access from the front of the property shall be set back 20 feet.~~
- B. Side yard setbacks:
1. Interior side yard: 5 feet ~~and 7 ½ feet for two story structures.~~
2. Alley side yard: 5 feet
3. Street side yard: ~~For Streets with constructed or planned curbs and/or sidewalks, 15 feet from the outside edge of the curb or sidewalk but no less than 5 feet from the property line except for parking structures which shall be set back at least 20 feet from a curb or sidewalk. Where no curbs or sidewalks are constructed or planned, 10 feet. Side facing garages, carports, or other parking structures must be flush with or behind, but not protrude beyond, the~~ side (façade or covered porch) of the primary structure.
- C. Rear yard: 10 feet; 5 feet accessory buildings.
- (7) See **Article 9.5** for additional General Development Standards, **Article 9.6** for Special Development Standards and **Article 9.7** for Use Standards that may apply in the R-3 District.

Jeremy Caudle

From: Emily Guynn [REDACTED] >
Sent: Wednesday, January 4, 2023 9:22 PM
To: Jeremy Caudle
Subject: Public hearing feedback

Hello Jeremy,

My name is Emily and I have lived on [REDACTED] for 5 years. Tonight I attended my first public hearing, which I learned about from The Bridge publication. I was a bit confused during the meeting because I had not actually reviewed the document (Regulating Plan?) in advance, because that was not included in The Bridge. I got the feeling that most everyone in attendance had been to many in the past. It would have been nice to have a brief rundown of what was going on for anyone new. That said, I appreciated the professionalism of the committee. I also wanted to acknowledge that it didn't seem fair to depict the proposed revisions as "rushed" by some committee members and public because this has clearly been in the works for a long time.

In regards to the lot size minimum, I regret that I did not publicly speak in favor of the 5500sqft size. I am in support of the new minimum because I believe it will create more affordable housing, increase our population density, and bring more people to our area to support new businesses. I would love to see Lowell have more restaurants and stores! I plan to attend the next public hearing and signed up for the city of Lowell emails, so hopefully I can have more advance information.

Best regards,

Emily GuynnMiller

Lowell Planning Commission

Re: Update to Lowell's Development Code – 1/4/22 meeting

Dear Commissioners,

First off, I appreciate Commissioner's Dragt's comments supporting that this process is neither rushed nor new. As a reminder to the Commissioners who said they just starting looking at the code changes the morning of the January 4th meeting this process started 3 years ago and the redline version has been available since July 2022. The unpreparedness implied to the residents that this process was being rushed, which it is not. This process has been very deliberate and has done an excellent job to incorporate as many folks as possible within Lowell who wanted to add their input.

I was, however, pleased to hear that each of you wanted to understand the language prior to approving. It is essential that you fully comprehend what is before you. I am confident that you will find the suggested changes will improve Lowell as well as the development process for the city. No one is trying to become a Coburg or Creswell or any other city we are just trying to better define and set boundaries as to what Lowell will look like in the future.

Also, in Lowell's Comprehensive Plan, one of our goals is affordable housing. As a city there are very few levers we can pull to help achieve this goal. One of those levers is lot size. If we reduce the minimum lot size to 4,500 sq.ft. it will increase the number of houses that can be built within our Urban Growth Boundary and the more housing inventory the more affordable a new home will be. This opportunity to reduce our minimum lot size is golden and won't come around again any time soon. I would encourage you at least drop to 5,500 sq.ft. but 4,500 sq.ft. would be the better option. The existing minimum of 7,000 sq.ft. will only encourage prices to remain out of reach for new home buyers.

Sincerely,

Jimmy Martini
149 W Main
Lowell

Jeremy Caudle

From: Kathy Hatch [REDACTED]
Sent: Friday, October 7, 2022 3:09 PM
To: Jeremy Caudle
Subject: comments on Lowell Code Amendments

Hello Jeremy,

We met at the Lowell planning meeting on 9/29. I appreciated the presentation and information. I've penned my comments below on the questions handed out and I hope you have time to consider them.

Thank you for your time!

Kathy Hatch
Lowell resident

Lowell Code Amendments Questionnaire

Q1 – the Form approach to planning seems to fit best with our small town of Lowell. However, I don't agree with the arbitrary planning of the downtown district and many residents seemed to also disagree with that at the meeting. I think our local planning should accommodate people's needs and not worry so much about a "quaint" exterior look. I know the goal is a coherent look, but I don't think the approach taken fits with this very small town. We'd be better off with "old west" type storefronts or even cottage type look. I do agree with the maximum building height of 3 stories.

Q2 – Personally, I don't like the ADU concept for this town. There is enough buildable land to allow for more housing. I don't agree that we are going to grow that much. However, I do like the cottage cluster concept to address the housing issue. In fact, I intend, when some funds come in that I'm expecting, to find a piece of land in Lowell where I can build a cottage cluster. I have already spent some time working on concepts and will address these to the planning department when I have the funds.

Q3 – Again, I don't agree with reducing the minimum lot size. People move here to get a bit of that country feel. There are so many sociological studies that demonstrate the stresses of living close to your neighbors. People need elbow room. Lowell, again, is very small and I don't like the idea of making it like other towns. That's not why I moved here. In addition, how will reducing the lot size decrease impervious surfaces? Rather, it would seem to do the opposite with more residences on the land.

Q4 – I think there should be more public input before these big decisions are made. I appreciate this opportunity to give my ideas, but there should be more meetings on the planning. Each town has their own character and many of us moved here to get away from what other towns are doing. It would be concerning to me to see this town turn into a

mini Springfield – which is a concern from the images presented and the reports of a traffic circle being planned. We don't need this!

What do we need? What about promoting local industry? What is it that the community could get a return on to keep their town prosperous and also help their residents? Provide jobs? What could we be known for?

Towns are meant to be communities where people can support each other. We can better live in harmony if common goals are found and acted upon. So many in this town live in sub-standard homes because of taxes and their inability to keep up with repairs. I'd like to help establish a fund to help those people.