



## Waterbury Conservation Commission

### Draft Minutes

### March 14 Meeting

### In person

Commission attendees: Billy Vigdor, Tracy Sweeney, Kelsey Applegate, Allan Thompson, Steve Hagenbuch, Joan Beard, Meg Baldor

Commissioner Absence:

Public: Nelson Riley, Tom Scribner, Marcey Blauvelt

- Meeting convened at 6:00 pm
- Allan made a motion to approve minutes as presented. Steve seconded and all commissioners voted in favor of the motion. The minutes were approved as presented.
- Billy shared a draft DRB presentation to discuss impacts of a proposed housing project on the Shutesville Hill Wildlife Corridor. The project would be a multi-unit apartment complex in Waterbury Center.
  - The Conservation Commission will share the final presentation with the DRB but will not take an official position until there is a final site plan.
  - Nelson Riley was present to accept feedback on behalf of the project.
  - A. Thompson clarified that the Shutesville Corridor is a conservation tool, rather than a regulatory guideline.
  - N. Riley stated that his goal is to build something within the Shutesville Corridor within the framework of the Corridor.
  - K. Applegate made a motion to approve of the slides as revised subject to technical revisions. B. Vigdor seconded the motion.
    - T. Sweeney expressed concerns regarding the overall tone of the presentation. The commission discussed whether or not to call the Shutesville Hill Wildlife Corridor “irreplicable.” B. Vigdor made a motion to amend the motion to change “irreplicable” to “one of a kind.” K. Applegate seconded the amendment, and all commissioners voted in favor of the amendment.
    - The original motion passed as amended with five votes in favor; A. Thompson and T. Sweeney voted against the motion.
    - The final presentation is attached.



- Park Steering Committee
  - The Park Steering Committee accepted comments from the Conservation Commission and made some adjustments to the Hope Davey plan according to these recommendations.
  - M. Baldor brought up concerns that the Park Steering Committee has not considered all of the recommendations, including some enforcement and funding items. Also that some compromises neither optimize conservation nor create an ideal experience for disc golfers
  - M. Baldor volunteered to take the lead on engaging with the Park Steering Committee again
  - T. Scribner pointed out that the Hope Davey Park is within the contiguous wildlife habitat of the Shuttesville Hill Wildlife Corridor, and that the wood turtle is irreplaceable and that its habitat could be affected by the current design.
  - S. Hagenbuch pointed out that a stewardship plan should also be included
  
- Community Values Mapping Update
  - B. Vigdor asked the members of the commission to share the flyers, and to notify other members of who has been contacted to avoid contacting one person multiple times
  
- S. Hagenbuch and T. Sweeney both have terms expiring soon and neither is planning to extend into another term. A. Thompson is also planning to step down.
  
- Meeting adjourned 8:15 pm

Respectfully submitted by Kelsey Applegate March 16, 2023

# Waterbury Conservation Commission Presentation to the Development Review Board



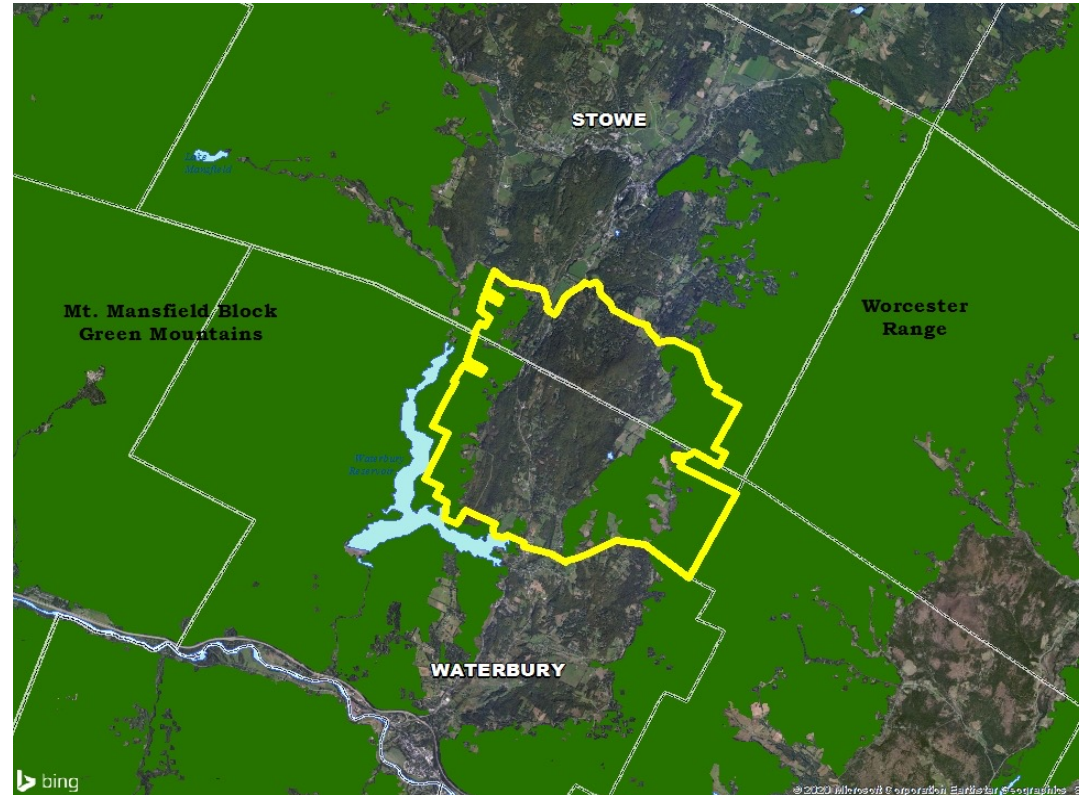
Ten Unit Multifamily Development (Project) in the Shutesville Hill Wildlife Corridor, File No. 114-22

March 15, 2023

# Overview

- The Waterbury Conservation Commission (Commission) wishes to address three topics in its preliminary comments:
  - (1) The Shutesville Hill Wildlife Corridor (Shutesville) and Property description;
  - (2) Applicable legal standards;
  - (3) Commission view of Waterbury’s “clearly written” policies regarding Shutesville and the property.
- The Commission is not yet advising the DRB whether to approve the application.
- The Commission is keenly familiar with the Zoning Regulations and standards having submitted comments to the Planning Commission and conducted significant legal research on the matter.
- The Commission has invested substantial resources in this project, including meeting or discussing the Project with the Applicant, the Zoning Office staff, Agency of Natural Resources staff, and neighbors; collecting and reviewing data; and conducting site walks.
- The Commission is a founding member of Shutesville Hill Wildlife Hill Partnership.

## Shutesville Hill Wildlife Corridor Area of Interest

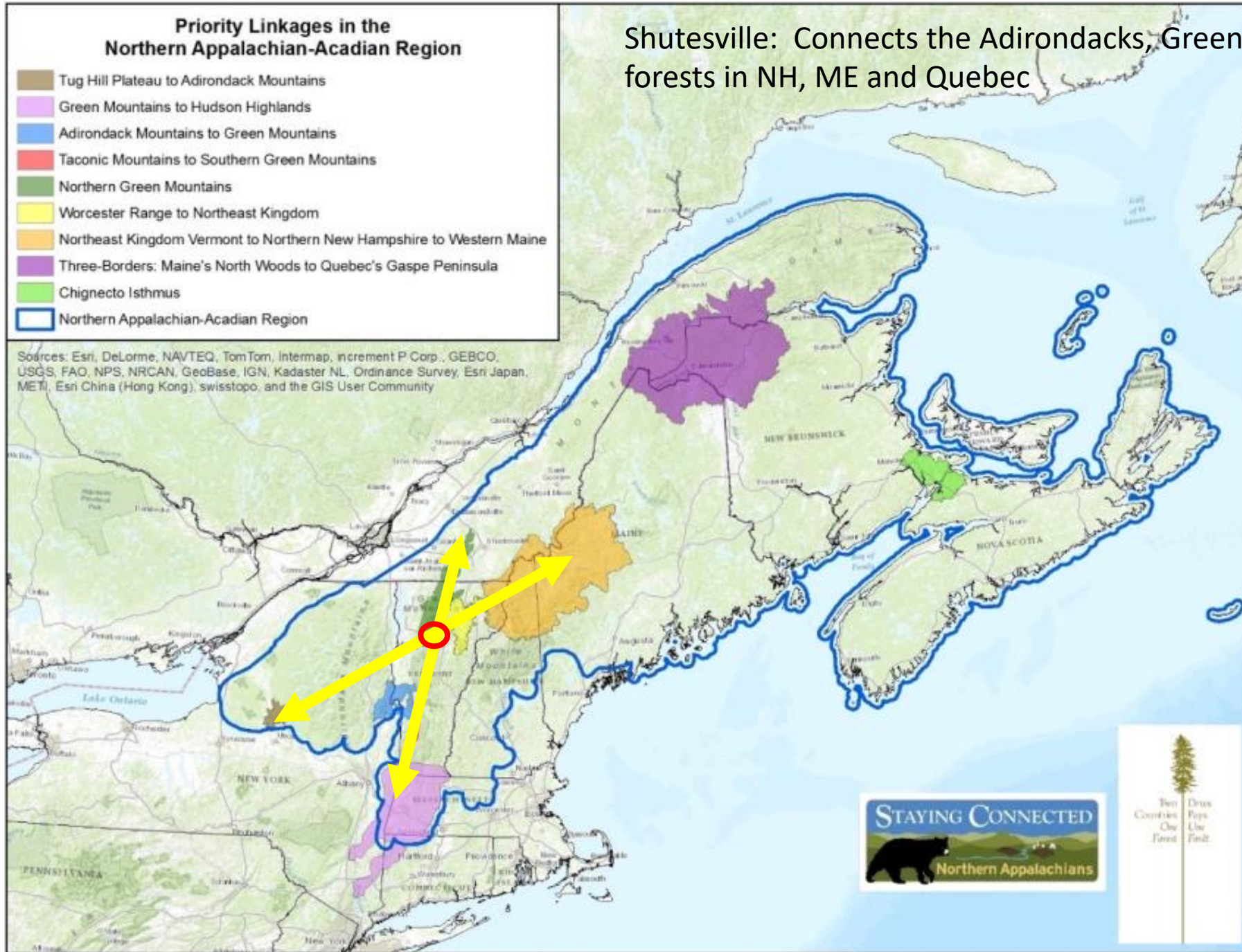


- A 10,000 acre forested area; Shutesville is composed of Highest Priority Connectivity Blocks and other features. Those blocks and other features can be found in the Town Plan, Natural Resources Map (Map 2-5)
- “[O]ne of the five most important wildlife crossings in the state and a **critical** part of an international network of connected forest habitats in the northeast.” Municipal Plan at A-5.

### Priority Linkages in the Northern Appalachian-Acadian Region

- Tug Hill Plateau to Adirondack Mountains
- Green Mountains to Hudson Highlands
- Adirondack Mountains to Green Mountains
- Taconic Mountains to Southern Green Mountains
- Northern Green Mountains
- Worcester Range to Northeast Kingdom
- Northeast Kingdom Vermont to Northern New Hampshire to Western Maine
- Three-Borders: Maine's North Woods to Quebec's Gaspé Peninsula
- Chignecto Isthmus
- Northern Appalachian-Acadian Region

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community



Shutesville: Connects the Adirondacks, Greens, Worcesters to forests in NH, ME and Quebec

The Shutesville Hill Wildlife Corridor is a one of a kind resource.

Map Source: SHWC Partnership & SCI; Comments are those of the Commission



Waterbury spent more than tens of thousands in legal fees protecting Shutesville in the Verizon Tower matter

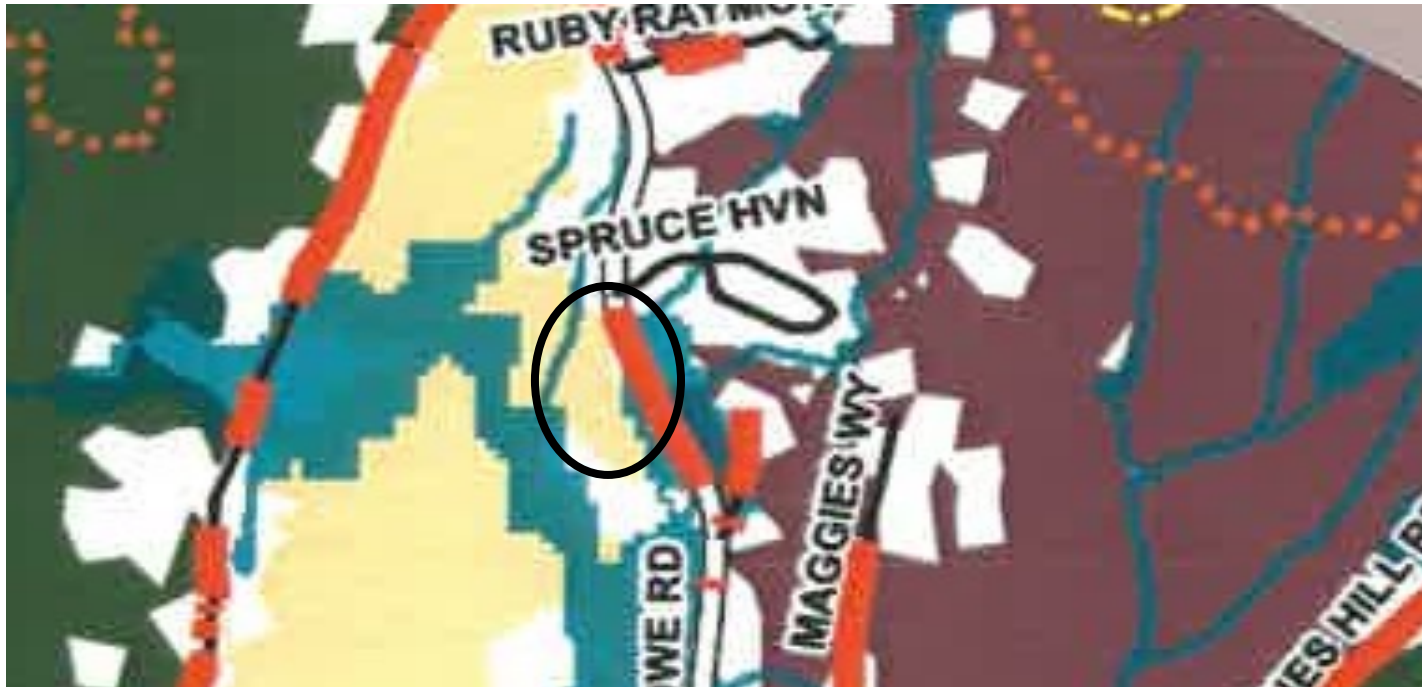
# The Property & Its Boundary are Irreplaceable

- The Project's Eastern boundary is Highest Priority Wildlife Crossing and Highest Priority Surface Water and Riparian Area. Map 2-5.
- The southern part of the boundary has a “high degree of irreplaceability, as there is only one other active crossing in the road section.” Mohr, Critical Paths II (2011)
- The Applicant has explained that (and the Commission agrees):
  - “The project lot DOES overlap with a Priority Connectivity block;”
  - “The project lot DOES overlap with a Highest Priority Surface Water & Riparian Area”
  - “The Project lot IS bordered by a Highest Priority Wildlife Crossing.”

Map 2-5 Excerpt

Interior Forest Block (Highest Priority) (Green)

Priority Connectivity Block (Priority) (Yellow)

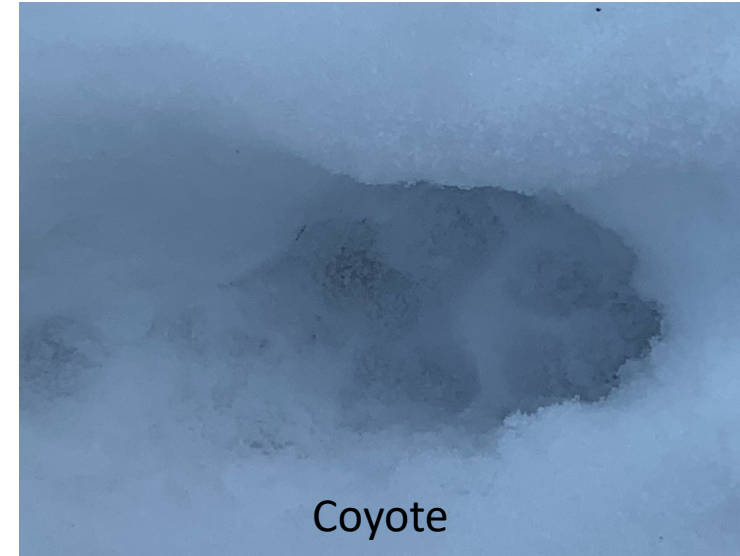


Connectivity Block (Highest Priority) (purple)

Property (Green Circle)

Surface Water and Riparian Area (Highest Priority) (blue)

# Wildlife Activity at the Project Site



- Dec. 29, 2022 photos of Fisher and Coyote tracks (B. Vigdor).
- Moose use two salt pools/wallows at the Eastern boundary. Critical Paths, at 30.
- The Applicant and its environmental expert identified bear claws on the property. N. Riley email to B. Vigdor.
- Trudell Consulting Engineers identified potential roost trees and coyote, red and gray squirrels, deer, cottontail rabbit tracks, among others. Feb. 15, 2023 memo.



## Undue Adverse Impact on Shutesville, Highest Priority Wildlife Crossing, Highest Priority Surface Waters and Riparian Areas, and Priority Connectivity Blocks

- Section 303(e)(2) provides:
  - “(e) Prior to granting any approval for conditional use, the Board must find that the proposed use conforms to the following [1] **general** and [2] **specific** standards:
    - (2) The proposed use will not have an undue adverse impact on the **character of the area affected as defined by the Municipal Plan** and the zoning district in which the proposed project is located. **Specifically**, the proposed use: ...
      - (C) Will not have an undue adverse effect on the scenic or natural beauty of the area, historic sites, or **rare and irreplaceable** natural areas.”

# Undue Adverse Impact (cont'd)

- “Where the meaning of a statute is plain on its face, this Court will enforce the statute according to its terms for there is no need for construction; the legislative intent is to be ascertained from the act itself.” *Burlington Elec. Dept. v. Dept. of Taxes*, 576A.2d 450, 452. (1990) (internal quotations omitted).
- The Commission respectfully submits that the language is plain; the Regulations require the DRB to find both the general and specific standards are to be met in order to grant a conditional use permit.
- That is,
  - (1) the project will not have an undue adverse impact on the character of the area as defined by the Municipal Plan and
  - (2) not have an undue adverse impact on an rare and irreplaceable natural area.
- These areas are clearly delineated by Map 2-5: Shutesville, Highest Priority Wildlife Crossings, Highest Priority Surface Waters and Riparian Areas, and Priority Connectivity Blocks.

# Standard 2: Consistent with the Town Plan

- Section 705(I) provides:
  - The following standards must be met for PUD approval. ... The proposed PUD must be **consistent with the Municipal Plan**.
- Section 705(I) does not incorporate the undue adverse impact standard requiring a clearly written community standard.
- Rather, Section 705 contains a more general statement than the undue adverse impact standard.
- Had the Select Board wished to apply the undue adverse impact standard, it was clearly aware of the standard and would have done so.

# Waterbury Has Clearly Written Policies Restricting Development in Shutesville

- To be a clearly written standard the policy must “apply to specific resources in the proposed project area.” *In re UPC Vermont Wind, LLC*, 969 A. 2d 144, 156 (2009). Here, the specific resources (Shutesville, Highest Priority Wildlife Crossings, Highest Priority Surface Waters and Riparian Areas, and Priority Connectivity Blocks) are identified in Map 2-5 and are on or adjacent to the property.
- The Commission submits that Waterbury has clearly written policies:
  - “The Shutesville Hill Wildlife Corridor is a critical connection between the Green Mountains and Worcester Range. It has been identified as one of the five most important wildlife corridors in the State of Vermont by the Staying Connective Initiative. **Development of any kind in this area is highly restricted.**” Plan at A-5 (Energy Plan). (The Corridor is mapped as the Highest Connectivity Blocks on Map 2-5).
  - “There are several locations throughout the Town of Waterbury that have been identified **as unsuitable for development. In general, these areas have been identified due to their significance as supporting wildlife habitat.**” Plan at 32.
  - The Shutesville Hill Wildlife Corridor is “[o]ne area [] specifically recognized where **development of any kind, including renewable energy development, should be restricted.**” Plan at 72 (Renewable Energy Section).

# Clearly Written Waterbury Policies (cont'd)

- In the Route 100 Corridor where the property lies: “Ensure that new development and re-development is compatible with existing uses, adheres to smart growth planning principles, respects the integrity of historic structures, and enhances existing development.” Plan at 135.
  - Smart Growth is “a pattern of land development that uses land efficiently, reinforces community vitality and protects natural resources. Smart Growth is about promoting development that is good for the economy, community and the environment.” Plan at 131.
- These particular policies are consistent with other equally applicable policies:
  - Growth should not occur at the expense of the natural environment or Waterbury’s historic and cultural resources. Plan at 4-5.
  - Future land uses should protect natural resources, preserve and promote land based agricultural and horticultural businesses, and encourage cluster and conservation planning principles for new residential development. Plan at 134.
  - Guide future growth and development by reinforcing Waterbury’s traditional pattern of concentrated settlements surrounded by rural countryside. Plan at 135.

Thank you for your time and attention