

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*  
Brooke Lovett Shilo  
Stephanie J. Thomson\*\*\*\*



Serving New Hampshire since 1908

Of Counsel  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MN  
\*\*\*\* Also admitted in VT

January 24, 2022

Via email [csterndale@nottingham-nh.gov](mailto:csterndale@nottingham-nh.gov)

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Warrant Petitioned Article: Solar Exemption

#20

Dear Board:

You requested our review of the petitioned Warrant Article on Solar Exemption. This Article states as follows:

*To see if the town will vote to adopt the provisions of RSA 72:61 through RSA 72:64 inclusively, which provide for an optional property tax exemption from the property's assessed value, for property tax purposes, for persons owning real property, which is equipped with solar energy systems intended for use at the immediate site. Such property tax exemption shall be in the amount equal to 100% of the assessed value of qualifying equipment under these statutes.*

My conclusion after consideration is that this is a valid article and consistent with the statutes cited within the article. RSA 72:61 through :64 permits Towns to offer tax exemptions for solar energy systems. This article tracks the suggested language from the NH Dept. of Revenue Administration.

Overall, this article is legal and suitable for its intended purposes and within the authority of the Town to carry out. Please let me know if you would like to discuss this article further.

Very truly yours,

Susan Aileen Lowry  
slowry@uptonhatfield.com

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Sabrina C. Beavens\*\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*\*  
Brooke Lovett Shilo  
David Grigoryan\*\*\*\*\*



Serving New Hampshire since 1908

*Of Counsel*  
John F. Teague  
Charles W. Grau  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker  
Earl S. Carrel

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MA & FL  
\*\*\*\* Also admitted in MN  
\*\*\*\*\* Also admitted in NY & PA

January 24, 2022

Via email csterndale@nottingham-nh.gov

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Warrant Petitioned Article: Emergency Lanes to Class  
V Roads

#21

Dear Board:

You requested our review of the petitioned Warrant Article to accept certain Emergency Lanes as Class V Town highways. This Article states as follows:

*To see if the town will vote to accept, in their current condition, as Class V Town-maintained highways, the following roads identified as Emergency Lanes by the Board of Selectmen: Sherwood Ln.; Langley Ln.; Little John Ln.; Snow Ln.; Rogier Place, beginning at its intersection with Water St., bearing Northwest at the fork and ending at Tax Map 1, Lot 124; and Water St., beginning at its intersection with Cooper Hill Rd. and ending at Tax Map 1, Lot 107. The combined length of these roads is approximately .7 miles (7/10ths of a mile) and have been maintained by the town for several decades. By citizens' petition. Majority Vote Required.*

After review of the applicable statutes and case law, this warrant article is valid and enforceable if so approved by Town residents. Town residents may accept a road in any condition through this avenue. Polizzo v. Hampton, 126 NH 398 (1985). Whether to accept these roads is a policy decision to be considered by the voters.

As policy matter, the Town residents should understand the effect of an affirmative vote on this article. The sufficiency and condition of these roads are likely to lead to increased costs for the Town. I have traveled many of the roads in this article, and many are substandard. Acceptance of these roads "in their current condition" will likely bring an immediate need for at least some upgrades. While there are fewer roads in this article than in 2021, there are still likely

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth

January 24, 2022

Page 2

to be considerable costs associated with this article, which will impact taxes in the coming years. It will be important to incorporate these roads into the Town's current plan for road maintenance.

It is my understanding that the roads as defined in this article match with designated emergency lanes, which will assist the Town in understanding what roads are being accepted; however, it is not clear whether the roads themselves lie within the areas as defined in the approved subdivision plans of the Town. If a road has been moved, it may give rise to future dispute and litigation.

I recommend that this article be amended in two ways to deal with these identified issues: (1) discretion should be given to the Board of Selectmen, in consultation with the Road Agent, to determine what needs to be done to each road before it is fully accepted, and (2) the road must be defined so the Town and the residents know what is being accepted.

Proposed Article Language:

*To see if the town will vote to accept, ~~in their current condition~~ upon approval of the Board of Selectmen in consultation with the Road Agent, as Class V Town-maintained highways, the following roads identified as Emergency Lanes and as show on approved subdivision plans on record by the Board of Selectmen:*

Proposed Amendment #1: As with last year, this amendment is not meant to require each road be brought up to current Class V highway standards. This amendment is to assist the Town in managing its costs and tax implications to its residents. This amendment would allow the Board to ensure that equipment could travel these highways safely and that the Town is prepared to maintain these roads as more than just emergency lanes, which is what this article will require.

Proposed Amendment #2: The amendment will assist in defining the locations of the road being accepted. I recommend that the Board review what subdivision plans the Town currently has in advance of the deliberative session. There is a chance that litigation will result regardless of the attempted definition of the roads being accepted, but this amendment will help to limit this possibility. If there is a dispute as to where the road is, issues will arise when the Town attempts to perform maintenance.

Neither amendment nor the information proposed to be given at the deliberative session is meant to state a position on whether the Town should vote to accept the roads. The voters, however, should be aware of what the Town is accepting with its vote.

Please let me know if you would like to discuss this further with me. Thank you.

Very truly yours,



Susan Aileen Lowry  
slowry@uptonhatfield.com

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*  
Brooke Lovett Shilo  
Stephanie J. Thomson\*\*\*\*



Serving New Hampshire since 1908

*Of Counsel*  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MN  
\*\*\*\* Also admitted in VT

January 24, 2022

Via email [csterndale@nottingham-nh.gov](mailto:csterndale@nottingham-nh.gov)

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Warrant Petitioned Article: LUCT to Conservation Fund

#22

Dear Board:

You requested our review of the petitioned Warrant Article for LUCT funds to be placed in the Conservation Fund. This Article states as follows:

*Land Use Change Tax to Conservation Fund. To see if the town will vote to authorize \$300,000 (Three Hundred Thousand Dollars) of the Land Use Change Tax (LUCT) collected pursuant to RSA 79-A:25 to be deposited into the existing Conservation Fund in accordance with RSA 36-A:5, III, as authorized by RSA 79-A:25, II. LUCT collected in excess of \$300,000 shall be deposited in the General Fund. If adopted this article shall take effect April 1, 2022, and shall remain in effect until altered or rescinded by a future vote of the town meeting. (Majority vote required).*

My conclusion after consideration is that this article is consistent with the statutes cited within the article. RSA 79-A:25, II gives the Town authority to place Land Use Change Tax funds into the Conservation Fund and to set limits on the amounts so placed.

It is not clear from the article as written whether the petitioners intend this to be an annual amount of \$300,000 or an overall cumulative amount. Upon a reading of the statute, however, the statute creates an annual look at the amount or percentage of LUCT to be placed into the Conservation Fund, not a cumulative amount beyond one year. As the article reads presently, the Town would place up to \$300,000 of the Land Use Change Tax per year into the Conservation Fund. This amount could be amended at the Town's deliberative session to reflect

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth

January 24, 2022  
Page 2

the annual amount desired to be placed into the Conservation Fund annually if less than \$300,000.

Please let me know if you would like to discuss this article further.

Very truly yours,

  
Susan Aileen Lowry  
slowry@uptonhatfield.com

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Sabrina C. Beavens\*\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*\*  
Brooke Lovett Shilo  
David Grigoryan\*\*\*\*\*



Serving New Hampshire since 1908

*Of Counsel*  
John F. Teague  
Charles W. Grau  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker  
Earl S. Carrel

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MA & FL  
\*\*\*\* Also admitted in MN  
\*\*\*\*\* Also admitted in NY & PA

January 24, 2022

*Via email csterndale@nottingham-nh.gov*

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Petitioned Warrant Article: Conservation Funds to  
Mulligan Forest Debt

#23

Dear Board:

You requested our review of the petitioned Warrant Article on spending Conservation Funds to pay off Mulligan Forest Debt. This Article states as follows:

*To reduce our property taxes, shall we direct the Board of Selectmen and the Conservation Committee to use the Conservation Fund to pay off the town's remaining long-term debt from the 2007 purchase of the Mulligan Forest Conservation Easement?*

After consideration and research for this article, I must conclude that this article is illegal and unenforceable.

The Conservation Fund is governed by RSA 36-A:5. This statute states: "Money may be expended from said fund by the conservation commission for the purposes of this chapter without further approval of the town meeting." *Id.* at I. The statute further states that: "The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the conservation fund and shall pay out the same only upon order of the conservation commission." *Id.* at II.

This statute makes it clear that neither the Board of Selectmen nor a Town vote may compel the Conservation Commission to spend the funds as dictated in this article. This power rests solely with the Conservation Commission.

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth

January 24, 2022  
Page 2

Please let me know if you would like to discuss this article further.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Susan Aileen Lowry', written in a cursive style.

Susan Aileen Lowry  
slowry@uptonhatfield.com

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Sabrina C. Beavens\*\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*\*  
Brooke Lovett Shilo  
David Grigoryan\*\*\*\*\*



Serving New Hampshire since 1908

*Of Counsel*  
John F. Teague  
Charles W. Grau  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker  
Earl S. Carrel

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MA & FL  
\*\*\*\* Also admitted in MN  
\*\*\*\*\* Also admitted in NY & PA

January 24, 2022

Via email csterndale@nottingham-nh.gov

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Warrant Petitioned Article: School Union Negotiations

# 24

Dear Board:

You requested our review of the petitioned Warrant Article on School Union Negotiations. This Article states as follows:

*In order to promote transparency and ensure our elected officials represent the interests of Nottingham's taxpayers, shall we direct the School Board to allow public access to all negotiations of union contracts and collective bargaining, by conducting all such negotiations as meetings open to the public and subject to the provisions of NH RSA 91-A (Access to Governmental Records and Meetings)?*

After consideration and research for this article, I must conclude that this article is illegal and unenforceable.

The applicability of RSA 91-A to collective bargaining sessions was directly addressed by the New Hampshire Supreme Court in Talbot v. Concord Union Sch. Dist., 114 NH 532 (1974). In this case, that Court considered the policy reasons behind RSA 91-A to "protect the democratic process by making public decisions and considerations on which government action is based" and behind RSA 31:3 which "recognizes the right of public employees to negotiate the terms of their contractual relationship with the government by using the well-established techniques of private sector bargaining." *Id.* at 534. In the end the Court held that negotiation sessions between the school board and union committees are not subject to RSA 91-A. However, the Court also reinforced that the negotiation sessions only produce recommendations

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth



January 24, 2022  
Page 2

for submission to the board. The board's approval of the recommendations must be in an open meeting according to RSA 91-A:3. The New Hampshire Supreme Court further upheld the Talbot decision in Appeal of Exeter, 126 NH 685 (1985). A vote of the Town cannot change this settled law.

Please let me know if you would like to discuss this article further.

Very truly yours,



Susan Aileen Lowry  
slowry@uptonhatfield.com

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*  
Brooke Lovett Shilo  
Stephanie J. Thomson\*\*\*\*



Serving New Hampshire since 1908

Of Counsel  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MN  
\*\*\*\* Also admitted in VT

January 24, 2022

Via email [csterndale@nottingham-nh.gov](mailto:csterndale@nottingham-nh.gov)

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Warrant Petitioned Article: Recycling Center Picking

#25

Dear Board:

You requested our review of the petitioned Warrant Article to Allow Recycling Center Picking. This Article states as follows:

*To reduce the amount of waste the town must pay to dispose of, and to enable the reuse of salvageable materials, shall we direct the Board of Selectmen to allow town residents to pick and take reusable materials and objects, at their own risk, from the recycling center dumpsters?*

My conclusion after consideration is that this article is consistent with the powers given to the Town under RSA 149-M:17, II, which states: "A town may make bylaws governing its facility and fixing reasonable rates for its use, and governing the separation and collection of refuse within the municipality and the registration of haulers collecting or disposing of refuse within the municipality, all in a manner not inconsistent with this chapter." RSA 31:39 also provides authority for the Town to create bylaws related to waste management.

This article, however, conflicts with the Town's current Recycling/Trash Disposal Policy. The current policy recognizes that the Town receives revenues from metal, wire, pipe, batteries, aluminum, cardboard, and other materials and that there is no "scrapping" from the Town's Recycling Center. If Town residents were permitted to take these items and sell them, the Town would be deprived of the revenue it would otherwise receive.

In addition, allowing residents access to the containers/dumpsters presents a large liability risk for the Town that the phrase "at their own risk" likely does not fully address. The current policy recognizes this liability risk and specifically states that "Residents must not get

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth

January 24, 2022

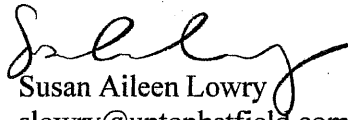
Page 2

into containers.” There is a question whether the law would recognize the phrase “at their own risk” in this article to minimize this risk. I recommend that the Town present this article to its insurance carrier for input and review.

At a minimum, I would recommend the Board move to amend this article to include the ability for the Board to create policies and procedures to implement this articles as safely as possible if approved by the voters. I recommend a sentence be added to the end of this article to read: “The Board of Selectmen shall have the authority to adopt regulations, policies, and procedures to implement this article.”

Please let me know if you would like to discuss this article further.

Very truly yours,



Susan Aileen Lowry  
slowry@uptonhatfield.com

Russell F. Hilliard  
James F. Raymond  
Barton L. Mayer  
Heather M. Burns  
Lauren Simon Irwin  
Michael S. McGrath\*  
Jeanne S. Saffan\*\*  
Susan Aileen Lowry  
Michael P. Courtney\*  
Peter W. Leberman  
Nathan C. Midolo\*\*\*  
Brooke Lovett Shilo  
Stephanie J. Thomson\*\*\*\*



Serving New Hampshire since 1908

Of Counsel  
Thomas W. Morse  
Norman H. Makechnie  
Jeffrey R. Crocker

\* Also admitted in MA  
\*\* Also admitted in MA & NY  
\*\*\* Also admitted in MN  
\*\*\*\* Also admitted in VT

January 24, 2022

Via email [csterndale@nottingham-nh.gov](mailto:csterndale@nottingham-nh.gov)

Board of Selectmen  
Town of Nottingham  
139 Stage Rd  
Nottingham, NH 03290

Re: 2022 Town Warrant Petitioned Article: Tax Cap

#26

Dear Board:

You requested our review of the petitioned Warrant Article for a Tax Cap. This Article states as follows:

*Shall we adopt the provisions of RSA 32:5-b, and implement a tax cap whereby the governing body (or budget committee) shall not submit a recommended budget that increases the amount to be raised by local taxes, based on the prior year's actual amount of local taxes raised, by more than 4%?*

My conclusion after consideration is that this article is consistent with the statutes cited within the article. The adoption of this article is governed by RSA 32:5-c, which provides the required language. The petitioned article mirrors the statutory language.

RSA 32:5-b, III also states that "The legislative body may override the cap by the usual procedures to annual meetings or deliberative sessions of the legislative body. The provisions of this section shall not limit the legislative's body authority to increase or decrease the amount of any appropriation or the total amount of all appropriations." Thus, this article, if approved, would bind the budget committee, but the Town voters, as the legislative body, may override this cap by voting on appropriations.

Overall, this article is legal and suitable for its intended purposes and within the authority of the Town to carry out.

10 Centre Street, PO Box 1090, Concord, NH 03302-1090  
Concord – Hillsborough – Peterborough – Portsmouth

January 24, 2022  
Page 2

Please let me know if you would like to discuss this article further.

Very truly yours,



Susan Aileen Lowry  
slowry@uptonhatfield.com