

faxed to BLC 3/28/97

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March 27, 1997

Mr. William M. Gardner
Secretary of State
State of New Hampshire
Concord, New Hampshire

RECEIVED
MAR 28 1997
NEW HAMPSHIRE
SECRETARY OF STATE

Dear Mr. Gardner:

On March 11, 1997, the Town of Amherst, the Amherst School District and the Souhegan Cooperative School District voted on RSA40:13 - Official Ballot Voting. The question appeared as Article 2 on each of our three ballots.

We believe that a number of egregious errors of judgment were made - the accumulation of which resulted in serious irregularities. Because of the closeness of the vote on the question on all three ballots, we believe these irregularities may have materially and significantly affected the outcome where a handful of votes decided the election. In addition, and most important, they have called into question the integrity of the secret ballot vote, itself, in Amherst.

We believe the following areas raise questions that warrant the attention of the Ballot Law Commission in order to determine the validity of our election process in this instance. These concerns are addressed in detail in the attached documentation.

- I. Pre-election and election day irregularities
 - A. Defective Amherst School District and Souhegan Cooperative School District absentee ballots sent to voters
 - B. Gross inconsistencies in voter qualification
 1. Interpretation of "Intent to reside" statutes
 - C. Poll hours and poll closing irregularities
 - D. Timeliness of Mont Vernon absentee ballots
- II. Election night vote counting irregularities
 - A. General overview
 1. Repeated counts
 2. Lack of security for the ballots
 3. Treatment of blank ballots
 4. Lack of control over vote counters during repeated counts
 - B. Amherst School District counts
 - C. Souhegan Cooperative School District counts
 - D. Town of Amherst counts
- III. Official recounts' irregularities
 - A. Lack of impartiality of the boards of recount
 - B. Amherst School District recount
 - C. Town of Amherst recount
 - D. Souhegan Cooperative School District recount

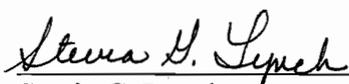
We believe that these errors, omissions and irregularities have resulted in a flawed election

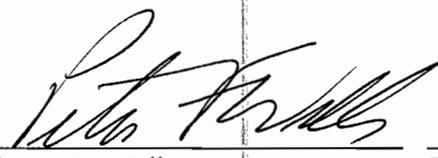
process on the question on all three ballots, disenfranchising a significant number of voters and depriving the voters of Amherst of their right to expect a fair and impartial election process. It should also be noted that the vast majority of our local elected officials, who were in control of the process from beginning to end, were vocal opponents to the question with many actively and publicly campaigning against the issue.

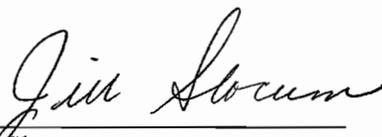
We respectfully request that the Ballot Law Commission conduct a thorough review of the attached documentation and, if appropriate, hold a hearing on these matters.

Thank you for your consideration.

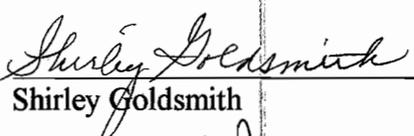
Sincerely,


Stevia G. Lynch

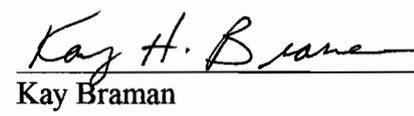

Peter F. Wells

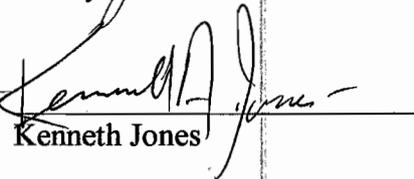

Jill Slocum


Wayne O. Lynch

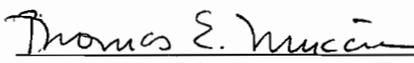

Shirley Goldsmith


Burton Knight


Kay Braman


Kenneth Jones


Edward Antal


Thomas Muccino


Marvin Braman

Enc: Attachments

**TOWN OF AMHERST, AMHERST SCHOOL DISTRICT
AND SOUHEGAN COOPERATIVE SCHOOL DISTRICT ELECTION
OF MARCH 11, 1997**

I. PRE-ELECTION AND ELECTION DAY IRREGULARITIES.

A. Defective Amherst School District and Souhegan Cooperative School District absentee ballots. (Please see Exhibit A - Sample Official Ballot as reprinted in the Amherst Citizen). This incorrect absentee ballot was sent to a number of voters requesting absentee ballots. Only one box was shown next to the question rather than the required two boxes marked "Yes" and "No." When the error was brought to the attention of the SAU office, the ballot was then corrected. Although officials originally stated that all but two of these voters were notified of the error, there were more than just two that appeared at the vote count. These were in two categories: 1) one box checked with no indication of "Yes" or "No" from the voter; 2) defective ballots with the one box with no mark at all. Because of the defect in the ballot, it can not be assumed that in the latter case the voter chose not to vote on the question. It could be an indication of the voter's confusion as to how to mark the ballot. All of these ballots were determined to be blanks. Through no fault of their own, these voters were disenfranchised because of the confusion of these absentee ballots.

In some cases, voters were also sent corrected absentee ballots. This resulted in two votes being cast by the same voter and returned. In Amherst this was handled by simply discarding one of the ballots. In Mont Vernon, where the Souhegan Cooperative School District votes were affected, the Moderator contacted the Secretary of State's office on election day to determine how to proceed. Upon instruction, he was told to have someone challenge one set of the ballots and to count the other. In both Amherst and Mont Vernon we can not assume that the voter voted identically on the two ballots that were sent in. In the period of time between the receipt and the return of each ballot, the voter could have had a change of mind and his/her intent can not be known.

B. Gross inconsistencies in voter qualification. ("Intent to reside" statutes). On Election Day, an individual was challenged at the polls in Amherst based on his residency. It was determined that he could vote. Currently, this individual is an SAU employee who resides out of state. The voter checklist indicates he lives at one address in Amherst. This address is occupied by others who voted on that day. He owns a property in Amherst at a different address which was determined to be his "intent to reside" residence even though this is not the address on the most recent checklist. This residence is also occupied by others who voted. It seems to be unclear from the checklist where this individual lives.

A family who is having a house built in Amherst and whose occupancy permit has been delayed was not allowed to register to vote. Their "intent to live" in Amherst would seem to be clear as the school district has allowed their children to attend the schools tuition-free and they have already purchased their property.

C. Poll hours and Poll closing irregularities. Election Day hours in Amherst are from 7:00 AM to 7:00 PM. On election night, rather than close the polls at 7:00PM allowing only those inside to finish their voting, the Moderator stepped outdoors. When asked why the polls were not yet closed since it was 7:00, he responded that he wanted to make sure that people who

were entering the parking lot would be able to vote even though it was past 7:00. Those late voters who had not yet entered the building by 7:00 were allowed to vote as well.

D. Timeliness of Mont Vernon Absentee Ballots. Two absentee ballots were not mailed in a timely fashion. These ballots included those for the Souhegan Cooperative School District. The absentee ballot request had been made well before the close of filing dates at the end of January to be sent to a military family stationed in Spain. The Mont Vernon clerk did not mail these ballots until March 4th and they were not received in Spain until March 11th, election day. These voters, through no fault of their own, were denied their right to vote because these ballots were not mailed in a timely fashion.

II. ELECTION NIGHT VOTE COUNTING IRREGULARITIES.

A. General Overview.

1. **Repeated counts.** Rather than taking one count on each of the three ballots, announcing the vote results, securing the ballots and waiting another day for formal recount requests, each of the three ballots was counted three times on election night at the direction of the Moderator. This resulted in a total of 9 counts in addition to the zoning ballot count. There were no two matching counts on any of the three ballots on the question. These recounts were done after the Moderator announced that the vote was virtually 60/40 for passage. That is, the counters were aware that a couple of votes either way could change the outcome of the election.

2. **Lack of security for the ballots.** In addition to the unprecedented three counts for each ballot, the election night vote counting was notable for its lack of security for the ballots. With the human element involved, special precautions that should have been taken were ignored. Ballots were left unsecured on several tables, the same pencils used in the voting booth were in abundance and vote counters were in constant motion around the room between counts.

3. **Treatment of blank ballots.** When one of the vote counters encountered his first blank ballot, he called the Moderator to the table and suggested that these blank ballots should be segregated and secured because it would be too easy to "make a blank ballot unblank" at any time during the count. The Moderator agreed, but did not so instruct everyone on the treatment of these ballots. They remained with all the other ballots and were not separated out until the second count. However, once again, instead of removing these ballots, segregating and securing them, they continued to be passed around during the second and third counts when the counting teams were no longer relatively evenly matched, several people were counting alone and pencils with erasers proliferated. Given the announced closeness of the vote and the uncontrolled atmosphere of the count, the opportunity was present to mark ballots.

3. **Lack of control over the vote counters during repeated counts.** Before the actual vote counting began, the Moderator made an effort to see that the counting teams were evenly matched as to pro/con on the issue. This provided some semblance of a controlled check and balance in the initial count. However, after the first count, this control and security completely broke down and most teams were not evenly matched.

B. Amherst School District Counts. (Please see Exhibit B- Official Election results per town hall). The first vote counts were recorded on tally sheets. The second and third counts involved separating the ballots into "Yes," "No" and blank piles. These were then counted and recorded on blank white scraps of paper that were supposed to have been marked Amherst

School District #1 and Amherst School District #2. Instead of taking the segregated blank ballots and securing them in one place, these continued to be passed around during the second and third counts.

After the first count, the number of blanks totalled 117. We were not given the figures for the number of blanks for counts 2 and 3. On March 13th, we visited town hall to try to determine that number only to find that one of the first count tally sheets was missing and the sheets used to record votes in counts 2 and 3 were not clearly marked as such. Therefore, an accurate reconstruction of these two counts was impossible at that time. Please note the growth of "No" votes from each successive count. From the first count to the third count, this number increased by 5.

C. Souhegan Cooperative School District Counts. (Please see Exhibit C- Official Election results per town hall). This district encompasses Amherst and Mont Vernon. The Mont Vernon ballots were cast and counted in Mont Vernon. After the first count in Amherst, rather than either waiting for or requesting the results from Mont Vernon, the Moderator, without announcing the vote count from Amherst, determined there would be a recount because of the "closeness of the vote." At this point, the "Yes" vote was at 60.4%. It would have been appropriate to await the Mont Vernon results before even announcing the Amherst count and before having two additional counts. The two subsequent counts were taken and it was only after the third count was completed that the Mont Vernon results were requested, received and totalled in.

Once again, a similar confusing situation occurred with uncontrolled and unsecured ballots. Based on the figures in Exhibit C, on the second count it is apparent that a stack of "No" votes had not been counted. Once again, on the subsequent visit to town hall on March 13th, it was impossible to reconstruct the second and third counts because of mismarked count sheets.

D. Town of Amherst Counts. (Please see Exhibit D- Official Election results per town hall). As of March 13th, three of the original tally sheets from the first count were missing. However, it was possible to reconstruct the subsequent counts from the adding machine tapes. The second and third recount sheets are clearly marked Town #1 and Town #2. The second count does not appear in Exhibit D. Please note that there is one less vote in the total, although the number of blanks remains the same.

Town of Amherst first count from tally sheets:

Yes - 1,159; No - 782; Total 1,941; Checklist total - 1,978; Blanks - 37

Town of Amherst second count from recount sheets marked Town #1:

Yes - 1,162; No - 778; Total - 1,940; Blanks - 37

Town of Amherst third count from recount sheets marked Town #2:

Yes - 1,160; No - 780; Total - 1,940; Blanks - 37

These counts were marked by the same lack of control and security as with the other two ballots.

III. OFFICIAL RECOUNTS' IRREGULARITIES.

A. Lack of impartiality of the boards of recount. Of the 22 members of the combined boards of recount, 17 of the 22 were either openly against the article or actively campaigning against it. At the recounts it appeared that they were unable to separate their private agenda from their public responsibility to provide a fair and impartial recount for the citizens of Anherst.

B. Amherst School District Recounts. The official recount took place on Wednesday, March 19th. The Board of Recount consisted of the 5 member school board, the school moderator and the school clerk. Of these 7, only 2 maintained a semblance of impartiality to obtain a count regardless of the outcome. Although the "Yes" votes prevailed by 60.2% to 39.8%, there are a number of questions that remain after this recount in which the final vote count would actually indicate a larger "Yes" vote on the question than has been concluded.

When it came time to determine the final 11 challenged ballots, the board of recount went into "executive" session and barred observers from even seeing these ballots. Observers had to remain behind a rope placed 4 feet from the counting table and were not allowed to observe the final determination. Of the 11 ballots, 2 were determined to be "No" votes and 1 a "Yes" vote. One of the "No" votes that was accepted was a contaminated ballot. A large X was marked across the face of the ballot - clearly not the voter's markings. The town moderator explained that this was a marking made by him or one of his assistants on election night designating that this ballot was on the top of a pile of 50 and the mark was made to show that the pile had been counted. The board determined that the remaining 8 ballots should remain as challenged ballots. Upon later examination it was found that two of these were "Yes" votes. One of these was a ballot that was marked as a Sample on the back of the ballot but not across the face of it. This ballot was one of the 1,978 ballots counted in the checklists as having been appropriately placed in the ballot box. It is the same color as all of the other ballots. We have since been told that sample ballots are always a different color than the regular ballots and are so indicated as samples on the face of the ballot. This ballot was, apparently, one that had been misprinted in the run of ballots and was inadvertently folded and included in the ballot sets prepared by the checklist personnel during the day on election day. There were no pin holes on the ballot to suggest that it had been posted somewhere and illegally taken down. The other "Yes" ballot was also indicated by the board of recount to be unclear and remains in the challenged pile. However, 2 "No" votes that were also unclear as to intent were included as "No" votes and were included in the total. One other "No" vote also remains challenged.

The remaining 5 challenged ballots are the defective absentee ballots. Two of these had the one box checked without a "Yes" or "No" designation. It could be argued that based on the wording of the question which begins "Shall we adopt the provisions of RSA40:13.....," the logical response, if there is only one box, would be a "Yes" to indicate that "we shall," signifying agreement with the statement. To signify disagreement with the statement would require a different wording that would suggest a "no we shall not" response. The other 3 had no markings. All 5 were not included in the total and remain as challenged.

The other larger issue involves the blank ballots. After the first count on election day, there were 117 blanks. After the recount on March 19th, there were 112 blank ballots - 5 less. After the first count on election day there were 741 "No" votes and after the third count, there were 746 "No" votes - 5 more. Included, then, in the recount which indicated 740 "No" votes, there are, it would seem, 5 additional "No" votes, perhaps accounting for the 5 blank votes. Without these 5 votes, it would appear that the actual "No" vote after the recount was 735 as opposed to 740. Because of the lack of security for the ballots and the proliferation of pencils with erasers on election night and the fact that many ballots had extraneous marks on them that were made by the vote counters and not by the voters themselves, anything could have happened.

C. Town of Amherst recount. The town of Amherst recount took place on Tuesday,

March 25th. The board of recount consisted of the 5 selectmen, the town moderator and the town clerk. Of these 7, 4 had been vocal or public opponents of this question. The final recount was Yes - 1,161, No - 780 or 59.8% to 40.2%. The issues here involve at least 7 questionable votes that were accepted as "No" votes even though the voters' intent was not entirely clear. Again, there were many other ballots that had marks on them made by the counters on election night. Once again, the board of recount's impartiality is in question.

The counting process itself was still characterized by confusion with many piles of contested ballots around the room. After the final count, 7 missing ballots turned up on a windowsill.

In addition, a selectman raised questions based on RSA669:24 as to the legality of many of the absentee ballots because a facsimile of the town clerk's signature was missing from several of them and there was only a partial facsimile of the signature on others. Although this omission was explained and accepted and it would not affect the outcome of the election, it is yet another example of inattention to proper procedures.

D. Souhegan Cooperative School District recount. This recount took place on Wednesday, March 25th. The board of recount consisted of the 7 member board, the school moderator and the school clerk. Seven of these 9 were vocal or public opponents to the question.

Although this recount was conducted in a more efficient and controlled manner, the problem of mismarked and defective absentee ballots remained.

On election night, the Amherst checklist was **1,978**. The number of Souhegan ballots at the recount was **1,977**. At the first count on election night, the total number of Souhegan ballots counted was **1,978**. The total of the second count could not be determined. The total of the third count was **1,976**. There seems to be no explanation for these continuing discrepancies.

As was the case with the Amherst School District ballots, there were 5 defective absentee ballots. Two of these had the one box checked with no designation of "Yes" or "No." The other 3 were not marked. Unlike the Amherst School District board of recount, however, this board determined that these were to be considered to be blank and thus were not included in the total. Unlike the Amherst School District board of recount, this board's final determination was that these ballots would no longer be considered to be challenges.

Because of the lack of security for the ballots on election night, there is no way to be sure that the other challenged Souhegan ballots with markings and erasures are, in fact, the way the voters intended them to be. Once again, extraneous markings made by vote counters were evident on significant numbers of ballots.

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**TOWN OF AMHERST, AMHERST SCHOOL DISTRICT AND
SOUHEGAN COOPERATIVE SCHOOL DISTRICT**

VOTE COUNTS

Total number of voters as per Amherst checklist - March 11, 1997: 1,978

Town of Amherst Counts:

March 11, 1997:

Count #1: Yes - 1,159
No - 782

Total	1,941
Blanks -	37

Total	1,978
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Count #2: Yes - 1,162
No - 778

Total	1,940
Blanks -	37

Total	1,977
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Count #3: Yes - 1,160
No - 780

Total	1,940
Blanks -	37

Total	1,977
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Recount - March 25, 1997:

Yes - 1,161
No - 780

Total	1,941
Blanks -	37

Total	1,978
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Voter Checklist total: 1,978

Amherst School District counts:

March 11, 1997:

First Count: Yes - 1,120
No - 741

Total	<u>1,861</u>
Blanks	117

Total	<u>1,978</u>
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Second Count: Yes - 1,118
No - 744

Total	<u>1,862</u>
Blanks	?

Total	<u>?</u>
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Third Count: Yes - 1,120
No - 746

Total	<u>1,866</u>
Blanks	?

Total	<u>?</u>
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March 19 recount:

Yes - 1,118
No - 740

Total	<u>1,858</u>
Blanks	112

Total	<u>1,970</u>
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Challenged ballots	8
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	<u>1,978</u>
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Souhegan Cooperative School District counts:**Total voter checklist count - Amherst: 1,978****Total voter checklist count - Mont Vernon 382**

March 11, 1997:

First count: Yes - 1,143
No - 748

Total	<u>1,891</u>
Blanks	87

Total	<u>1,978</u>
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Second count: Yes - 1,142
No - 703

Total	<u>1,845</u>
Blanks	?

Total	<u>?</u>
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Third count: Yes - 1,142
No - 749

Total	<u>1,891</u>
Blanks	85

Total	<u>1,976</u>
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March 26, 1997 recount:

Amherst: Yes - 1,142
No - 748

Total	<u>1,890</u>
Blanks	87

Total	<u>1,977</u>
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Combined: Yes - 1,142
No - 910

Total	<u>2,248</u>
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Mont Vernon: Yes - 196
No - 162

Total	<u>358</u>
Blanks	24

Total	<u>382</u>
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Amherst School District Ballot

Souhegan Cooperative High School Ballot

Article 2 (By Petition to Enact the Provisions of Senate Bill-2) Shall we adopt the provisions of RSA 40:13 to allow official ballot voting on all issues before the School District?

SCHOOL DISTRICT MODERATOR
For one year

CAROL H. HOLDEN

MEMBER OF THE SCHOOL BOARD
For three years

GEORGE RUSHANNA

SALLY E. WILKINS

SCHOOL DISTRICT CLERK
For one year

LOUISE MARLEY

SCHOOL DISTRICT TREASURER
For one year

LOUISE MARLEY

Article 2 (By Petition to Enact the Provisions of Senate Bill-2) Shall we adopt the provisions of RSA 40:13 to allow official ballot voting on all issues before the School District?

SCHOOL DISTRICT MODERATOR
For One Year

CYNTHIA DOKMO

MEMBER OF THE SCHOOL BOARD
For Three Years

Vote for One

WILLIAM-J. DONOVAN

LEE G. SLOCUM

Exhibit B

Article 2 (By Petition to Enact the Provisions of Senate Bill-2) Yes
Shall we adopt the provisions of RSA 40:13 to allow official ballot voting on all issues before the School District? No

Yes 1120 60.2
NO 741 39.8

Sample 1861
A SD

yes 1118 .60
NO 744 .40

1862

Yes 1120 60.02
NO ~~741~~ 746 39.98
1866

Amherst school
SCHOOL DISTRICT MODERATOR
For one year Vote for One

CAROL H. HOLDEN 1589

Miscellaneous 27

MEMBER OF THE SCHOOL BOARD
For three years Vote for One

GEORGE RUSHANNA 555

SALLY E. WILKINS 1242

Miscellaneous 9

SCHOOL DISTRICT CLERK
For one year Vote for One

LOUISE MARLEY 1644

Miscellaneous 4

SCHOOL DISTRICT TREASURER
For one year Vote for One

LOUISE MARLEY 1622

Miscellaneous 7

5. 4. 8. 2 C
 Article 2 (By Petition to Enact the Provisions of Senate Bill-2)
 Shall we adopt the provisions of RSA 40:13 to allow official ballot voting on all issues before the School District?

Yes
 No

yes 1143 60%
 NO 748 40%

Sample 1891
 SCS

yes 1142 ✓ 62
 NO 703 38

1845
 yes 1142 60.4
 NO 749 39.6
 1891

85 Blank
 1976

SCHOOL DISTRICT MODERATOR
 For One Year Vote for One

CYNTHIA DOKMO 1573

Miscellaneous 23

MEMBER OF THE SCHOOL BOARD
 For Three Years Vote for One

WILLIAM J. DONOVAN 893

LEE G. SLOCUM 1026

Miscellaneous 12

Total 2248

51.5% 1153
 48.5% 910

192
 161
 353

Exhibit D

Article 1.

To chose all necessary Town Officers for the ensuing terms.

SELECTMAN FOR THREE YEARS
VOTE FOR TWO

MARILYN PETERMAN 1301

RICHARD SHERWOOD 1479

Peckham 58

TREASURER FOR THREE YEARS
VOTE FOR ONE

SHARON FLANDERS 1579

TRUSTEE OF TRUST FOR THREE YEARS
FUNDS VOTE FOR ONE

STEPHEN MANTIUS 1575

BD. OF ADJUSTMENT FOR THREE YEARS
VOTE FOR TWO

DOUGLAS H. KIRKWOOD 1514

WILLIAM H. KRAMER 1376

LIBRARY TRUSTEE FOR THREE YEARS
VOTE FOR TWO

DAVID HALLENBECK 1495

HAROLD STRUSS 1448

Article 2. (By Petition to Enact the Provisions of SB-2)

Shall we adopt the provisions of RSA 40:13 to allow official ballot voting on all issues before the Town.

1162 ~~1157~~ YES NO 778
59990 ~~1011~~ 403 40.1%

Article 3.

To see if the Town will vote to change the position of Tax Collector from a three year elected position, to a one year position appointed by the Board of Selectmen effective March 1998.

990 YES NO 862

Article 4.

Shall we modify the elderly exemptions from property tax in the Town of Amherst, based on assessed value, for qualified taxpayers, to be as follows: For a person 65 years of age up to 75 years, \$15,000; for a person 75 years of age up to 80 years, \$22,500; for a person 80 years of age or older \$30,000. To qualify, the person must have been a New Hampshire resident for at least five (5) years, own the real estate individually or jointly, or if the real estate is owned by such person's spouse, they must have been married for at least five (5) years. In addition, the taxpayer must have a net income of not more than \$28,400 or, if married, a combined net income of less than \$39,400; and own net assets not in excess of \$50,000 excluding the value of the person's residence.

1543 YES NO 267

Article 5. (By Petition)

To see if the Town will vote to elect Planning Board members in accordance with NH RSA 673:2, II (b) (1), "the Selectmen shall choose one Selectman as an ex officio member and the remaining Planning Board positions shall be filled at the next regular town election pursuant to RSA 669:17. Thereafter, a Planning Board member shall be elected for a term provided under RSA 673:5, II".

1193 YES NO 492

Sample