

TOWN OF NATICK

Meeting Notice

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, Sections 18-25

Natick Finance Committee

School Committee Room, 3rd floor, Town Hall

March 9, 2017 7:00 PM

Agenda

1. Public Concerns/ Comments
2. Meeting Minutes
3. Old Business
4. New Business
 - a. March 9 Finance Committee Meeting
5. Adjourn

The Finance Committee will make every reasonable effort to update this agenda if additional information is provided subsequent to the initial posting. The Finance Committee reserves the right to consider items on the agenda out of order. Any times that may be listed on the agenda are estimates provided for informational purposes only. Agenda items may occur earlier or later than the stated time.

ITEM TITLE: March 9 Finance Committee Meeting

ITEM SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
FinCom Meeting Notice and Agenda for March 9 2017 revised v1 (1)	3/9/2017	Cover Memo
2017 SATM Response Article 15 White 03082017 (1)	3/9/2017	Exhibit
2017 SATM Response Article 19 White 03082017 v2	3/9/2017	Exhibit
2017 SATM Response Article 20 White 03082017 v2	3/9/2017	Exhibit
2017 SATM Response Article 21 White 03082017v2	3/9/2017	Exhibit
2016 Special TM Session1 .pdf	3/9/2017	Backup Material
November2016 Special TM Session 1	3/9/2017	Backup Material
2017 SATM Article 24 Warrant Article Questionnaire	3/9/2017	Exhibit
2017 SATM Warrant Article 38 Questionnaire 3.02.17	3/9/2017	Exhibit
Section 1A	3/9/2017	Backup Material
Section 4	3/9/2017	Backup Material
Section 5	3/9/2017	Backup Material
Section 6	3/9/2017	Backup Material
Section 9	3/9/2017	Backup Material
Section 14	3/9/2017	Backup Material
ZBL framework - 2012 05 30 Bobrowski memo	3/9/2017	Backup Material
April 30 2015 30, session	3/9/2017	Backup Material
Art. 38 Special Permits and SPGA 2.27.17	3/9/2017	Backup Material
Art. 38 Tracked Changes 2.27.17 VI - DD 1 and 2	3/9/2017	Backup Material
2017 SATM Response Article 14 White 03092017	3/9/2017	Exhibit
Article 14 Capital Stab Fund - Free Cash Spend-Down Plan	3/9/2017	Exhibit
Article 14 Capital Stab Fund - Financial Management Principles	3/9/2017	Backup Material
2017 SATM Response Article 37 Revised 3.01.17	3/9/2017	Exhibit
Art. 37 Motion A APD Amendment 2.20.17	3/9/2017	Exhibit
Art. 37 Motion B Modifications and Waivers Version 9 2.26.17	3/9/2017	Exhibit
Art. 37 Motion B Tracked Changes Modifications and Waivers Version 9 2.26.17	3/9/2017	Exhibit
Art. 37 Motion C Non Conforming	3/9/2017	Exhibit

Article 37 Motion C Tracked Changes Non Conforming	3/9/2017	Exhibit
BJORKLUND vs. ZONING BOARD OF APPEALS OF NORWELL, 450 Mass. 357	3/9/2017	Exhibit
BLASCO vs. BOARD OF APPEALS OF WINCHENDON, 31 Mass. App. Ct. 32	3/9/2017	Exhibit
Ch. 40 R Section 6	3/9/2017	Exhibit
October 25, 2016 Session 3, Fall ATM	3/9/2017	Exhibit
Current Modifications and Waivers	3/9/2017	Exhibit



TOWN OF NATICK

Meeting Notice

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, §§ 18-25

Finance Committee

PLACE OF MEETING

School Committee Meeting Room
3rd Floor, Town Hall
13 East Central Street
Natick, Mass. 01760

DAY, DATE AND TIME

Thursday, March 9, 2017
7:00 P.M. to 11:00 P.M

MEETING AGENDA - revised

1. Citizens Concerns

2. Old Business

- a) Meeting Minutes –Discuss & Approve for 1/5/17, 1/19/17, 1/24/17, 1/26/17, 1/31/17, 2/2/17, 2/7/17, 2/16/17
- b) Future Meeting Dates/Scheduling - FY 2018 Budget, SATM Warrant - Updates and Discussion

3. Public Hearing: 2017 Spring Annual Town Meeting Warrant

- a) Article #15- Creation of Other Post Employment Benefits (OPEB) Liability Trust Fund
- b) Article #16- Other Post Employment Benefits (OPEB) Appropriation or Transfer of Funds
- c) Article #19- Section 101 Increase
- d) Article #20- COLA Increase
- e) Article #21- Statutory Minimum Survivor Allowance
- f) Article #14- Capital Stabilization Fund
- g) Article #24- Rescind Previous Appropriation
- h) Article #37- Amend Zoning By-Law to Make Various Technical Corrections and Modifications
- i) Article #38- Amend Zoning By-Law to Change and/or to Specify SPGA Designations and Procedures

4. Public Hearing: Town Administrator's Preliminary FY 2018 Budget

- a) Town Administrators Preliminary FY 2018 Budget Revenue & Expense Reconciliation (Balanced Budget Review)

5. Adjourn

Please note the committee may take the items on this agenda out of order.

Patrick Hayes, Chairman

SUBMITTED BY

Warrant Article Questionnaire
Non Standard Town Agency Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 15	Date Form Completed: March 8, 2017
Article Title: Creation of Other Post Employment Benefits (OPEB) Liability Trust Fund	
Sponsor Name: Town Administrator	Email: mwhite@natickma.org

Question	Question
1	Provide the article motion exactly as it will appear in the Finance Committee Recommendation Book and presented to Town Meeting for action.
Response	Move that the Town vote to accept the provisions of Chapter 32B, Section 20 of the General Laws, originally accepted by vote of the 2011 Fall Annual Town Meeting under Article 8, as amended by section 15 of Chapter 218 of the Acts of 2016, which provides that the Town create an Other Post-Employment Benefits Liability Trust Fund, the assets of which shall be held solely to meet the current and future liabilities of the Town for group health insurance benefits for retirees and their dependents.
2	At a summary level and very clearly, what is the proposed purpose and objective of this Warrant Article and the accompanying Motion?
Response	The impetus for this Article is the Municipal Modernization Act, through which municipalities are authorized to establish an OPEB trust fund that complies with the legal requirements for trusts and with applicable GASB requirements. While the 2011 Fall Annual Town Meeting, under Article 8, voted to establish an OPEB Trust Fund, Town Counsel has advised that under the provisions of the Municipal Modernization Act, Town Meeting should re-authorize establishment of the fund.
3	Has this article or one of a very similar scope and substance been on a previous Warrant Article and what has been the actions taken by Finance Committee, other Boards or Committees and Town Meeting?
Response	As noted, this is essentially a repeat of a vote taken by the 2011 Fall Annual Town Meeting under Article 8.
4	Why is it required for the Town of Natick and for the Town Agency sponsor(s)?
Response	This vote is consistent with the Municipal Modernization Act.
5	Does this article require funding, how much, from what source of funds and under whose

Warrant Article Questionnaire
Non Standard Town Agency Articles

	authority will the appropriation be managed and spent?
Response	No funding required.
6	Does this article act in any way in concert with, in support of, or to extend any prior action of Natick Town Meeting, Massachusetts General Laws or CMR's or other such legislation or actions? Does this article seek to amend, rescind or otherwise change any prior action of Natick Town Meeting?
Response	As noted, this is essentially a repeat of a vote taken by the 2011 Fall Annual Town Meeting under Article 8; Town Counsel has advised that under the provisions of the Municipal Modernization Act, Town Meeting should re-authorize establishment of the fund.
7	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive Master Plan, and community values as well as relevant state laws and regulations?
Response	This proposal ensures compliance with the terms of the Municipal Modernization Act and, further, is consistent with the Town's Financial Management Principles by securing OPEB funds in a Liability Trust Fund.
8	Who are the critical participants in executing the effort envisioned by the article motion?
Response	Primarily, Town Meeting as that is the body that will authorize money to be deposited to the Other Post-Employment Benefits Liability Trust Fund, upon recommendation of the Administration, Board of Selectmen and Finance Committee.
9	What steps and communication has the sponsor attempted to assure that: <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process • Appropriate Town Boards & Committees were consulted • Required public hearings were held
Response	The Selectmen are scheduled to vote on this article at their March 13 meeting. Town Counsel has been consulted. No other interested parties have been identified.
10	Since submitting the article have you identified issues that weren't initially considered in the development of the proposal?
Response	NO

Warrant Article Questionnaire
Non Standard Town Agency Articles

11	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences?
Response	Our 2011 establishment of an OPEB Liability Trust Fund will have been done under prior legislative authorization, as opposed to legislation under the Municipal Modernization Act.

Warrant Article Questionnaire
Non Standard Town Agency Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 19	Date Form Completed: 03/08/2017 (v2)
Article Title: Section 101 Increase	
Sponsor Name: Town Administrator	Email:

Question	Question																								
1	Provide the article motion exactly as it will appear in the Finance Committee Recommendation Book and presented to Town Meeting for action.																								
Response	Move to approve the Natick Retirement Board's vote to adopt the provisions Section 27 and 28 of Chapter 131 of the Acts of 2010 to amend Massachusetts General Laws, Chapter 32, Section 101, to increase the benefit provided therein to widows and widowers of the Natick Retirement System om \$6,000 to \$9,000 per year.																								
2	At a summary level and very clearly, what is the proposed purpose and objective of this Warrant Article and the accompanying Motion?																								
Response	The purpose of this Article is to increase the payment to widows/widowers of Natick Retirement System members who retired for accidental disability and who could not provide a survivor benefit to the widow/widower from \$6,000 annually to \$9,000																								
3	Has this article or one of a very similar scope and substance been on a previous Warrant Article and what has been the actions taken by Finance Committee, other Boards or Committees and Town Meeting?																								
Response	<p>Type response here)</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 25%;">Warrant Period</th> <th style="width: 25%;">Other Committees</th> <th style="width: 25%;">FinCom Action</th> <th style="width: 25%;">Town Meeting</th> </tr> </thead> <tbody> <tr> <td>FTM 2016</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SATM 2016</td> <td></td> <td></td> <td></td> </tr> <tr> <td>FTM 2015</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SATM 2015</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Prior</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Comments:</p>	Warrant Period	Other Committees	FinCom Action	Town Meeting	FTM 2016				SATM 2016				FTM 2015				SATM 2015				Prior			
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4	Why is it required for the Town of Natick and for the Town Agency sponsor(s)?																								

Warrant Article Questionnaire
Non Standard Town Agency Articles

Response	Retirement Board has been told that it cannot sponsor an article under the current by-laws.
5	Does this article require funding, how much, from what source of funds and under whose authority will the appropriation be managed and spent?
Response	Yes, the additional unfunded liability of the Retirement System is estimated to increase by \$100,472. The appropriation in FY 19 is estimated to increase by \$9,620 and future appropriations will increase 7.75% per year.
6	Does this article act in any way in concert with, in support of, or to extend any prior action of Natick Town Meeting, Massachusetts General Laws or CMR's or other such legislation or actions? Does this article seek to amend, rescind or otherwise change any prior action of Natick Town Meeting?
Response	This Article is a local option pursuant to M.G.L. c. 32, § 101, as amended by Sections 27 and 28 of Chapter 131 of the Acts of 2010
7	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive Master Plan, and community values as well as relevant state laws and regulations?
Response	The proposed motion fits into the community values and it is consistent with state retirement law and regulations
8	Who are the critical participants in executing the effort envisioned by the article motion?
Response	Natick Retirement Board

Warrant Article Questionnaire
Non Standard Town Agency Articles

9	What steps and communication has the sponsor attempted to assure that: <ul style="list-style-type: none">• Interested parties were notified in a timely way and had a chance to participate in the process• Appropriate Town Boards & Committees were consulted• Required public hearings were held
Response	Retirement Board had matter on agenda for discussion prior to approval.
10	Since submitting the article have you identified issues that weren't initially considered in the development of the proposal?
Response	No
11	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences?
Response	There are no adverse consequences for the Town or the sponsors.

Warrant Article Questionnaire
Non Standard Town Agency Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 20	Date Form Completed: 03/08/2017 (v2)
Article Title: COLA Increase	
Sponsor Name: Town Administrator	Email:

Question	Question																								
1	Provide the article motion exactly as it will appear in the Finance Committee Recommendation Book and presented to Town Meeting for action.																								
Response	Move to approve the Natick Retirement Board's vote to increase the cost of living base for Natick Retirement System retirees and survivors from \$12,000 to \$13,000 for FY18: to \$14,000 for FY 19: and to \$15,000 for FY 20 and future years consistent with the provision of Section 19 of Chapter 188 of the Acts of 2010.																								
2	At a summary level and very clearly, what is the proposed purpose and objective of this Warrant Article and the accompanying Motion?																								
Response	To increase the cost of living base for Natick Retirement System retirees and survivors from \$12,000 to \$13,000 for FY 18; to \$14,000 for FY 19; and to \$15,000 for FY 20																								
3	Has this article or one of a very similar scope and substance been on a previous Warrant Article and what has been the actions taken by Finance Committee, other Boards or Committees and Town Meeting?																								
Response	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Warrant Period</th> <th style="width: 25%;">Other Committees</th> <th style="width: 25%;">FinCom Action</th> <th style="width: 25%;">Town Meeting</th> </tr> </thead> <tbody> <tr> <td>FTM 2016</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SATM 2016</td> <td></td> <td></td> <td></td> </tr> <tr> <td>FTM 2015</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SATM 2015</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Prior</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Comments: No</p>	Warrant Period	Other Committees	FinCom Action	Town Meeting	FTM 2016				SATM 2016				FTM 2015				SATM 2015				Prior			
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4	Why is it required for the Town of Natick and for the Town Agency sponsor(s)?																								
Response	Retirement Board has been told that it cannot sponsor an article under the current																								

Warrant Article Questionnaire
Non Standard Town Agency Articles

	by-laws.
5	Does this article require funding, how much, from what source of funds and under whose authority will the appropriation be managed and spent?
Response	Yes, the additional unfunded liability of the Retirement System is estimated to increase by \$3,649,000 if the COLA base is increased to \$15,000 by FY 21. The appropriation in FY 19 is expected to increase by \$333,000 and future appropriations will increase 7.75% per year.
6	Does this article act in any way in concert with, in support of, or to extend any prior action of Natick Town Meeting, Massachusetts General Laws or CMR's or other such legislation or actions? Does this article seek to amend, rescind or otherwise change any prior action of Natick Town Meeting?
Response	Section 19 of Chapter 188 of the Acts of 2010 amended M.G.L. c. 32, § 103 to allow retirement boards, subject to local legislative approval, to increase the cost-of-living adjustment base in \$1,000 increments
7	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive Master Plan, and community values as well as relevant state laws and regulations?
Response	The motion is consistent with community values and is in conformance with state laws and regulations
8	Who are the critical participants in executing the effort envisioned by the article motion?
Response	Natick Retirement Board

Warrant Article Questionnaire
Non Standard Town Agency Articles

9	What steps and communication has the sponsor attempted to assure that: <ul style="list-style-type: none">• Interested parties were notified in a timely way and had a chance to participate in the process• Appropriate Town Boards & Committees were consulted• Required public hearings were held
Response	Natick Retirement Board had matter on agenda for discussion prior to approval.
10	Since submitting the article have you identified issues that weren't initially considered in the development of the proposal?
Response	No
11	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences?
Response	There are no adverse consequences for the Town or the sponsors.

Warrant Article Questionnaire
Non Standard Town Agency Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 21	Date Form Completed: 03/08/17 (v2)
Article Title: Statutory Minimum Survivor Allowance	
Sponsor Name: Town Administrator	Email:

Question	Question																								
1	Provide the article motion exactly as it will appear in the Finance Committee Recommendation Book and presented to Town Meeting for action.																								
Response	Move to approve the Natick Retirement Board's vote to adopt the provisions of Section 30 of Chapter 176 of the Acts of 2011 to increase the statutory minimum payment made to survivors of deceased members of the Natick Retirement System pursuant to Massachusetts General Laws, Chapter 32, Section 12(2)(d) from \$250 to \$500.																								
2	At a summary level and very clearly, what is the proposed purpose and objective of this Warrant Article and the accompanying Motion?																								
Response	The purpose is to increase the mandatory minimum benefit from \$250 to \$500 per month to the surviving spouse of a retirement system member who dies while a Town employee for reasons unrelated to the member's employment.																								
3	Has this article or one of a very similar scope and substance been on a previous Warrant Article and what has been the actions taken by Finance Committee, other Boards or Committees and Town Meeting?																								
Response	<p>Type response here)</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 25%;">Warrant Period</th> <th style="width: 25%;">Other Committees</th> <th style="width: 25%;">FinCom Action</th> <th style="width: 25%;">Town Meeting</th> </tr> </thead> <tbody> <tr> <td>FTM 2016</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SATM 2016</td> <td></td> <td></td> <td></td> </tr> <tr> <td>FTM 2015</td> <td></td> <td></td> <td></td> </tr> <tr> <td>SATM 2015</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Prior</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Comments:</p>	Warrant Period	Other Committees	FinCom Action	Town Meeting	FTM 2016				SATM 2016				FTM 2015				SATM 2015				Prior			
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4	Why is it required for the Town of Natick and for the Town Agency sponsor(s)?																								

Warrant Article Questionnaire
Non Standard Town Agency Articles

Response	Retirement Board has been told that it cannot sponsor an article under the current by-laws.
5	Does this article require funding, how much, from what source of funds and under whose authority will the appropriation be managed and spent?
Response	Yes, the additional unfunded liability of the Retirement System is estimated to increase by \$116,505. The appropriation in FY 19 is estimated to increase by \$12,826 and future appropriations will increase 7.75% per year.
6	Does this article act in any way in concert with, in support of, or to extend any prior action of Natick Town Meeting, Massachusetts General Laws or CMR's or other such legislation or actions? Does this article seek to amend, rescind or otherwise change any prior action of Natick Town Meeting?
Response	The article is a local option pursuant to M.G.L. c. 32, § 12(2)(d), as amended by Section 30 of Chapter 176 of the Acts of 2011.
7	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive Master Plan, and community values as well as relevant state laws and regulations?
Response	The motion fits with community values and is a permissible discretionary act.
8	Who are the critical participants in executing the effort envisioned by the article motion?
Response	Natick Retirement Board
9	What steps and communication has the sponsor attempted to assure that: <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process • Appropriate Town Boards & Committees were consulted

Warrant Article Questionnaire
Non Standard Town Agency Articles

	<ul style="list-style-type: none">• Required public hearings were held
Response	Retirement Board had matter on agenda for discussion prior to approval.
10	Since submitting the article have you identified issues that weren't initially considered in the development of the proposal?
Response	No
11	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences?
Response	There are no adverse consequences for the Town or the sponsors if the Article is not approved.

**2016 Special Town Meeting #1
Fine and Performing Arts Center
Natick High School
April 12, 2016
First Session**

The First Session of the 2016 Special Town Meeting #1 was called to order at 8:00 PM by the Town Moderator, Frank W. Foss. Mr. Foss presented the official, duly posted warrant signed by the Board of Selectmen with the officer's return thereon to the Town Clerk to be entered into the official record of the town. The Moderator announced that he would not repeat all the rules that were detailed in the 2016 Spring Annual Town Meeting. The Moderator asked that any recently elected or appointed members of Town Meeting who were not previously sworn in stand to take the oath of office.

Moved by Mr. Sidney seconded by Mr. Gath to accept and incorporate into the record of 2016 Special Town Meeting #1 the by-law restatements and rules as voted and accepted by unanimous consent during the 2016 Spring Annual Town Meeting. *The motion passed unanimously.* The rules which were agreed are detailed below:

All residents and taxpayers of the town and town officers and employees, whether or not residents, have the same right to speak as Town Meeting Members; however they do not have the right to submit motions for consideration at Town Meeting, nor vote on any matter before Town Meeting. Non-residents may only speak at Town Meeting after approval by Town Meeting Members. The proceedings of Town Meetings shall be governed by ***Town Meeting Time***, the Town of Natick Home Rule Charter, the Natick By-Laws and the General Laws of the Commonwealth of Massachusetts.

All motions offered for consideration by Town Meeting shall be in writing if required by the Moderator; and all motions involving the expenditure of money shall be in writing when required by any Town Meeting Member. No person shall speak upon any article more than once when any other person desires to be heard, nor more than twice on the same question without permission of Town Meeting; and no person shall speak more than ten (10) minutes at one time without permission of Town Meeting. Consistent with the Natick By-Laws, once a member is recognized, it is the practice of Town Meeting to first ask questions, then propose a motion and/or debate the highest ranking motion. This practice is unchanged. Once a speaker is called upon by the Moderator the speaker's time will begin. Time expended asking questions will be considered part of the speaker's time, pursuant to the Natick By-Laws. Responses to the speaker's question will not be considered part of the speaker's requisite time. Each speaker will be limited to three questions, whether or not they are stated singularly or in a compound question and divided by the Moderator. When a question on an article is before Town Meeting, motions shall be received and have precedence as listed in the table entitled "Precedence of Motions," found in the Natick By-Laws, the Town Meeting Member Handbook and ***Town Meeting Time***. Any person having a monetary or equitable interest in any matter under discussion at a Town Meeting, and any person employed by another having such an interest, shall disclose the fact of his/her interest or employment before speaking on the matter. The motion for the previous question shall not be entertained by the Moderator if three or more persons, who have not previously spoken to the question, are seeking recognition.

The Moderator suggested a motion to waive the reading of articles and motions. Moved by Mr. Sidney seconded by Mr. Gath to waive reading the text of all 2016 Special Town Meeting #1 warrant articles and move to waive reading the text of motions, excluding the amounts to be appropriated and sources of said amounts to be appropriated when motions are provided in the text of Recommendations of the Natick Finance Committee publications. *The motion passed unanimously.*

Mr. Freedman moved seconded by Mr. Jennett that when considering articles under 2016 Special Town Meeting #1, the order considering such articles shall be Articles 1, 4, 3 and 2. *The motion passed by majority vote.*

ARTICLE 1: Rescinding Previous Appropriations (Town Administrator)

To see what actions the Town will take to rescind the appropriation under Article 20 of Fall 2014 Town Meeting or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION

By a vote of 8 -0 -0 on March 17, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 1 as presented in the voted recommended motion below.

MOTION (Requires majority vote)

Moved by Mr. Evans seconded by Mr. Griesmer to rescind the \$1,500 appropriation under Article 20 of Fall 2014 Town Meeting.

Ms. White spoke to this article. *The main motion under Article 1 passed by majority vote (136-0-1).*

ARTICLE 4: Amend General By-Laws Article 24

(Town Employees and Personnel Board) (Town Administrator)

To see if the Town will vote to amend Article 24 of the General By-Laws (Town Employees and Personnel Board), specifically Section 3.3 therein by deleting in the first sentence thereof the word "step" and replacing it with the words "rate of pay"; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION

By a vote of 8 - 0 - 0 on March 17, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 4 as presented in the voted recommended motion below.

MOTION (Requires majority vote)

Moved by Mr. Evans seconded by Mr. Griesmer that the Town vote to amend Article 24 of the General By-Laws (Town Employees and Personnel Board), specifically Section 3.3 therein by deleting in the first sentence thereof the word "step" and replacing it with the words "rate of pay".

Ms. White spoke to this article. *The main motion under Article 4 passed by majority vote (139-0-1).*

ARTICLE 3: Acquisition of the CSX Saxonville Branch (Board of Selectmen)

To see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase, or otherwise, for general municipal purposes, including without limitation recreational and transportation purposes, land known as the Saxonville Branch line and adjoining parcels, owned now or formerly by CSX Transportation, Inc., and shown on Natick Assessors Map 41, Lot RR1; Map 17, Lots 13, 14, 18 and 19; Map 26, Lots 40A and 116A; Map 35, Lot 296; and Map 43, Lots 413A and 413B; which land shall be used for the proposed Cochituate Rail Trail, a plan for which is on file with the office of the Natick Community and Economic Development Department, and further, to see what sum of money the Town will vote to appropriate and raise, borrow, or otherwise provide for the purposes of this article; and, further, to authorize the Board of Selectmen and other applicable boards, commissions, and personnel to apply for and receive grants or gifts for the purposes of this article, and to take all action necessary or appropriate to accomplish the purposes of this article; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION

By a vote of 10 - 2 - 0 on March 30, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 3 as presented in the voted recommended motion below.

MOTION (Requires two thirds vote)

Moved by Mr. Evans seconded by Mr. Griesmer to appropriate the sum of \$2,500,000 from the FAR Bonus Stabilization Fund to acquire, for recreational and non-motorized transportation purposes, land known as the Saxonville Branch line and adjoining parcels, owned now or formerly by CSX Transportation, Inc., and shown on Natick Assessors Map

41, Lot RR1; Map 17, Lots 13, 14, 18 and 19; Map 26, Lots 40A and 116A; Map 35, Lot 296; and Map 43, Lots 413A and 413B; which land shall be used for the proposed Cochituate Rail Trail; which is subject to provisions of the so-called federal railbanking statute, 16 U.S.C. 1247(d); and provided further that a public hearing be conducted under the authority of the Board of Selectmen to review the results of legal research and of environmental testing sampling that represents the dimensional width, all known formerly active use, and future planned utilization of the subject property, and any remediation for the subject property, said funds shall be expended only if 1) sufficient additional funds from grants, gifts and/or state appropriations are available to acquire said land; 2) a future Natick Town Meeting votes to authorize expenditure of the \$2,500,000 in FAR Bonus Stabilization Fund monies under the direction of the Board of Selectmen in accordance with the terms of the applicable purchase and sale agreement with CSX Transportation, Inc., as amended; and 3) funding for construction of the proposed Cochituate Rail Trail is in the Transportation Improvement Plan by the Boston Metropolitan Planning Organization at the date of the closing for acquisition of said land.”

Mr. Jennett spoke to this article as Chair of the Board of Selectmen and requested that Mr. Ostroff present this article on behalf of the Board. Moved by Mr. Sidney, seconded by Mr. Freedman to permit Mr. Ostroff to speak no more than twenty (20) minutes. ***The motion to allow Mr. Ostroff to speak for no more than twenty (20) minutes passed by majority vote.***

Mr. Ostroff made a presentation which covered Articles 2 and 3 at the same time. Discussion ensued on this article. Ms. Foss moved, seconded by Mr. Golden to call the question and close debate. ***The motion to close debate on the article passed by a two-thirds (2/3) vote. The main motion under Article 3 passed by a two-thirds vote (124-14-2).***

Mr. Ostroff moved seconded by Mr. Jennett that Town Meeting accept the following resolution:

Natick Town Meeting urges the Massachusetts Department of Transportation Board of Directors to provide \$3 million in funding for the acquisition of the land needed to construct the Cochituate Rail Trail, a significant project that will benefit the entire region.

The Cochituate Rail Trail will provide safe and convenient connections in a congested area to employment centers, residential neighborhoods and public transportation, and to recreational, commercial and cultural destinations, including the largest shopping center in New England and the largest military base in Massachusetts.

This project is currently programmed for construction beginning in 2018 with federal and state funding, but that construction cannot proceed without the acquisition of land from CSX Transportation, Inc.

The Town of Natick has committed significant local funds to the design of the CRT, and to land acquisition. A non-profit corporation has been organized to solicit private funds for acquisition and stewardship. The Commonwealth has funded acquisition of many rail corridors for both rail transportation and recreational trails.

Natick Town Meeting respectfully requests the MassDOT Board to designate \$3 million in Multi-Use Path funds in Fiscal Year 2017 for land acquisition for the Cochituate Rail Trail in the 2017-2021 Capital Investment Plan now under review.

Moved by Mr. Sidney, seconded by Mr. Jennett to waive the reading of the motion. ***The motion to waive the reading passed by majority vote. The main motion to accept the resolution passed by majority vote.***

ARTICLE 2: Acquisition of the So-Called Wonderbread Spur (Board of Selectmen)

To see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase, eminent domain or otherwise, for general municipal purposes, including without limitation recreational and transportation purposes, the so-called Wonderbread Spur, located off Speen Street in Natick and shown on Town of Natick Assessors' Map 17 as Parcels 5 FA, 5 FB and 5 FC; and further, to see what sum of money the Town will vote to appropriate and raise,

borrow, or otherwise provide for the purposes of this article; and, further, to authorize the Board of Selectmen and other applicable boards, commissions, and personnel to apply for and receive grants or gifts for the purposes of this article and to take all action necessary or appropriate to accomplish the purposes of this Article; or otherwise act thereon.

Mr. Evans reported that the Finance Committee did not have a recommendation at this time. Mr. Ostroff moved, seconded by Mr. Jennett to postpone consideration of Article 2 until Tuesday, April 26, 2016. Several concerns were raised by Town Meeting Members as Article 8 had already been postponed to April 26th. Mr. Ostroff and Mr. Jennett (as the second to the motion) agreed to change the postponement until April 28, 2016. ***The motion to postpone consideration of Article 2 until April 28th passed unanimously.***

Moved by Mr. Sidney, seconded by Mr. Gath to adjourn Special Town Meeting #1. ***The motion to adjourn passed unanimously.*** Special Town Meeting #1 adjourned at 9:35 PM.

A record of the First Session of
2016 Special Town Meeting #1
April 12, 2016

Diane Packer, Town Clerk

**2016 Special Town Meeting #2
Fine and Performing Arts Center
Natick High School
November 1, 2016
First Session**

The First Session of the 2016 Special Town Meeting #2 was called to order at 7:40 PM by the Town Moderator, Frank W. Foss. The Moderator asked the audience to stand for the Pledge of Allegiance and a moment of silence in recognition of all the men and women serving on our behalf throughout the world.

The Moderator introduced the officials present on the stage and in the well of the auditorium. The following people were present: Carol Gloff, Assistant Town Clerk for this meeting; Paul Griesmer, Finance Committee Chair; Bruce Evans, Finance Committee Secretary; Martha White, Town Administrator; John Flynn, Town Counsel; and Richard Jennett, Chair of the Board of Selectmen; Mr. Chenard, Deputy Town Administrator for Operations; and a representative from Option Technologies who will be operating the electronic voting system.

All residents and taxpayers of the town and town officers and employees, whether or not residents, have the same right to speak as Town Meeting Members; however they do not have the right to submit motions for consideration at Town Meeting, nor vote on any matter before Town Meeting. Non-residents may only speak at Town Meeting after approval by Town Meeting Members. The proceedings of Town Meetings shall be governed by ***Town Meeting Time***, the Town of Natick Home Rule Charter, the Natick By-Laws and the General Laws of the Commonwealth of Massachusetts.

All motions offered for consideration by Town Meeting shall be in writing if required by the Moderator; and all motions involving the expenditure of money shall be in writing when required by any Town Meeting Member. No person shall speak upon any article more than once when any other person desires to be heard, nor more than twice on the same question without permission of Town Meeting; and no person shall speak more than ten (10) minutes at one time without permission of Town Meeting. Consistent with the Natick By-Laws, once a member is recognized, it is the practice of Town Meeting to first ask questions, then propose a motion and/or debate the highest ranking motion. This practice is unchanged. Once a speaker is called upon by the Moderator the speaker's time will begin. Time expended asking questions will be considered part of the speaker's time, pursuant to the Natick By-Laws. Responses to the speaker's question will not be considered part of the speaker's requisite time. Each speaker will be limited to three questions, whether or not they are stated singularly or in a compound question and divided by the Moderator. When a question on an article is before Town Meeting, motions shall be received and have precedence as listed in the table entitled "Precedence of Motions," found in the Natick By-Laws, the Town Meeting Member Handbook and ***Town Meeting Time***. Any person having a monetary or equitable interest in any matter under discussion at a Town Meeting, and any person employed by another having such an interest, shall disclose the fact of his/her interest or employment before speaking on the matter. The motion for the previous question shall not be entertained by the Moderator if three or more persons, who have not previously spoken to the question, are seeking recognition. Without objection, the preceding statements were accepted as rules of 2016 Fall Annual Town Meeting.

The Moderator suggested a motion to waive the reading of articles and motions. Moved by Mr. Sidney seconded by Mr. Gath to waive reading the text of all 2016 Special Town Meeting #2 warrant articles and move to waive reading the text of motions, excluding the amounts to be appropriated and sources of said amounts to be appropriated when motions are provided in the text of Recommendations of the Natick Finance Committee publications. ***The motion passed unanimously (by hand count).***

Moved by Mr. Sidney seconded by Mr. Gath to accept and incorporate into the record of 2016 Special Town Meeting #2 the by-law restatements and rules as voted and accepted by unanimous consent during the 2016 Spring Annual Town Meeting. ***The motion passed unanimously.***

The Moderator requested that all Town Meeting members make sure that they have their electronic voting devices and that they are turned on. In addition, the Moderator asked that all

remaining devices be brought into the Hall and any Town Meeting members who arrive can pick the device up at the front of the room. This will assure security of the devices.

Mr. Munnich moved, seconded by Mr. Glater to advance Article 11 so that it will be taken up prior to Article 9. Mr. Munnich spoke to the motion. *The motion passed unanimously (by hand count).*

Mr. Sidney moved, seconded by Ms. Collins to adjourn 2016 Special Town Meeting # 2 until the conclusion of tonight's business under 2016 Fall Annual Town Meeting. *The motion for adjournment passed my majority vote.*

2016 Special Town Meeting #1 was called back into order at approximately 8:00 PM.

ARTICLE 1: Middlesex Garage Feasibility Analysis (Town Administrator)

To see if the Town will vote to raise and appropriate, or otherwise provide, a sum of money for a Feasibility Analysis regarding development of a parking garage on essentially the same footprint as the former so-called Middlesex Garage, located generally between Middlesex Avenue, North Main Street, Summer Street and Spring Street; said Feasibility Analysis to include but not be limited to (1) review, analysis and utilization of information and recommendations from previously completed relevant studies; (2) performance of necessary tests (e.g. soil borings) to determine site suitability for a multi-level parking garage; (3) analysis of advantages and disadvantages of including commercial lease space within said garage; and (4) development of conceptual design(s) and associated projected costs, said designs to be in compliance with local zoning and other applicable regulations or identify variances necessary to achieve compliance; or otherwise act thereon.

Finance Committee Recommendation

By a vote of 9-0-0 on October 6, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 1.

Motion: (Requires majority vote)

Moved by Mr. Evans, seconded by Mr. Griesmer that the Town vote to appropriate \$200,000 from free cash, to be expended under the direction of the Board of Selectmen, for a Feasibility Analysis regarding development of a parking garage on essentially the same footprint as the former so-called Middlesex Garage, located generally between Middlesex Avenue, North Main Street, Summer Street and Spring Street; said Feasibility Analysis to include but not be limited to (1) review, analysis and utilization of information and recommendations from previously completed relevant studies; (2) performance of necessary tests (e.g. soil borings) to determine site suitability for a multi-level parking garage; (3) analysis of advantages and disadvantages of including commercial space with said garage; and (4) development of alternative conceptual design(s) and associated projected costs and (5) related identification of zoning or other regulatory relief that would be necessary to develop a parking garage on the subject parcel(s).

Mr. Jennett spoke to the subject matter of Article 1. Mr. Lista moved, seconded by Mr. Linehan to amend the main motion by changing (5) to (6) and amend (5) to read as follows: "analysis of operation and maintenance costs including but not limited to all labor and fixed costs of garage operation, and". Mr. Lista spoke to the amendment. *The amendment passed unanimously (by hand count).*

Debate on the amended main motion ensued. Mr. Magasanik moved, seconded by Mr. Gath to amend the main motion to add after the words "associated projected costs" insert the following words "and estimate of the revenue required to assure no cost to the Town. Ms. Salamoff moved, seconded by Mr. Yang to amend the previous amendment to delete the words "assure no cost to the Town". Debate ensued on the amendment to the proposed amendment. *The second amendment failed (by hand count).* Debate continued on the first amendment. *The first amendment to the main motion failed. The amended main motion under Article 1 passed by majority vote (117-11-1).*

ARTICLE 2: Appropriate Funds for the Design and Development of the Cochituate Rail Trail (Board of Selectmen)

To see if the Town will vote to appropriate a sum of money to fund design and development of the Cochituate Rail Trail, or otherwise act thereon.

Finance Committee Recommendation

By a vote of 11-0-0 on October 24, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 2.

MOTION: (Requires Majority Vote)

Moved by Mr. Evans, seconded by Mr. Griesmer that the Town vote to appropriate the sum of \$50,000 to be expended under the direction of the Board of Selectmen for design and related services for the proposed Cochituate Rail Trail, and that the amount of \$50,000 be raised from the MathWorks Mitigation Fund.

Mr. Ostroff made a presentation covering Articles 2 and 3. Mr. Ostroff was granted, without objection more than ten minutes for this presentation. Ms. White, Town Administrator and Mr. Errickson, Director of Community and Economic Development spoke to Articles 2 and 3 as well. The Moderator requested that without objection Town Meeting allow Mr. Young, who is not a Natick resident to speak. Mr. Charles Young, an employee of Stantec Consulting. Stantec Consulting performed the environmental research and testing on the rail trail. Debate on this article continued. *The main motion under Article 2 passed by majority vote (112-14-3).*

ARTICLE 3: Acquisition of the CSX Saxonville Branch (Board of Selectmen)

To see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase, or otherwise, for general municipal purposes, including without limitation recreational and non-motorized transportation purposes, land known as the Saxonville Branch line and adjoining parcels, owned now or formerly by CSX Transportation, Inc., and shown on Natick Assessors Map 41, Lot RR1; Map 17, Lots 13, 14, 18 and 19; Map 26, Lots 40A and 116A; Map 35, Lot 296; and Map 43, Lots 413A and 413B; which land shall be used for the proposed Cochituate Rail Trail, a plan for which is on file with the office of the Natick Community and Economic Development Department, and further, to see what sum of money the Town will vote to appropriate and raise, borrow, or otherwise provide for the purposes of this article; and, further, to authorize the Board of Selectmen and other applicable boards, commissions, and personnel to apply for and receive grants or gifts for the purposes of this article, and to take all action necessary or appropriate to accomplish the purposes of this article; or otherwise act thereon.

Finance Committee Recommendation

On October 13, 2016, the Finance Committee held an initial public hearing on Article 3. The Finance Committee postponed further consideration of Article 3 until Monday October 24, 2016. By vote of 9-2-0 on October 24, 2016, the Finance Committee recommends Favorable Action on the subject matter of Article 3.

MOTION: (Requires Two Thirds Vote)

Moved by Mr. Evans, seconded by Mr. Griesmer to appropriate the sum of \$6,065,000 to acquire, for recreational and non-motorized transportation purposes, land known as the Saxonville Branch line and adjoining parcels, owned now or formerly by CSX Transportation, Inc., and shown on Natick Assessors Map 41, Lot RR1; Map 17, Lots 13, 14, 18 and 19; Map 26, Lots 40A and 116A; Map 35, Lot 296; and Map 43, Lots 413A and 413B; which land shall be used for the proposed Cochituate Rail Trail; which acquisition is subject to provisions of the so-called federal railbanking statute, 16 U.S.C. 1247(d); to be expended under the direction of the Board of Selectmen in accordance with the terms of the applicable purchase and sale agreement with CSX Transportation, Inc., as amended; provided that funding for construction of the proposed Cochituate Rail Trail is in the Transportation Improvement Plan by the Boston Metropolitan Planning Organization at the date of the closing for acquisition of said land, and that the amount of \$6,065,000 shall be raised from the following sources:

FAR Bonus Stabilization Fund	\$3,100,000
Borrowing	<u>\$2,965,000</u>
Total Appropriation	\$6,065,000;

and, further,
1) that the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$2,965,000 under Massachusetts General Laws Chapter 44, Section 7, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than

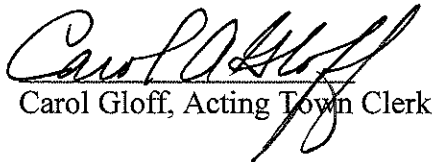
\$2,965,000 in principal amount and that the Town Administrator with the approval of the Board of Selectmen is authorized to take any action necessary to carry out this program; and further, 2) that the amount of said borrowing shall be reduced and/or repaid in full or in part by any grants or donations received in support of the Cochituate Rail Trail acquisition and, further, 3) that the Board of Selectmen is hereby authorized to expend for the purposes of this article, in accordance with the terms of the applicable purchase and sale agreement with CSX Transportation, Inc., as amended, the total sum of \$6,071,000, including appropriations under this Article and \$6,000 in donations received to date.

Mr. Evans moved seconded by Mr. Griesmer to make the following changes to the article:

1. To delete in section 1) the words "this program" and replace them with "the purposes of this article"
2. In the second to last line after the words "CSX Transportation, Inc" add "dated February 16, 2016"
3. Add the words "by First Amendment dated February 16, 2016" after the words "as amended" in the second to last line.

Mr. Ostroff raised several questions and there was a brief recess. The Moderator announced at 9:55 PM that this would not be sorted out immediately. Mr. Everett moved, seconded by Mr. Sidney to adjourn. *The motion to adjourn passed by majority vote. The meeting adjourned at 9:55 until Thursday, November 3rd at 7:30PM.*

A record of the First Session of
2016 Special Town Meeting #2
November 1, 2016


Carol Gloff, Acting Town Clerk

Warrant Article Questionnaire Citizen Petitions Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 24	Date Form Completed: 3/02/17
Article Title: rescind Previous Appropriation	
Sponsor Name: Paul Griesmer	Email:pgriesmer@comcast.net fincomgriesmer@gmail.com

Question	Question
1	Provide the article motion exactly as it is intended to be voted on by the Finance Committee.
Response	“Move that the Town vote to rescind the appropriation of \$2,500,000 from the FAR Bonus Stabilization Fund that was voted under Article 3 of 2016 Special Town Meeting #1.”
2	At a summary level and very clearly, what is proposed purpose and objective of this Warrant Article and the required Motion?
Response	<p>The motion under Article 3 of 2016 Special town Meeting #1 appropriated \$2,500,000 from the FAR Bonus Stabilization Fund for the acquisition of the rail trail. The motion contained several conditions including the requirement that “said funds shall be expended only if 1) sufficient additional funds from grants, gifts and/or state appropriations are available to acquire said land;”. The article was followed by a resolution requesting the state release its funds for the acquisition of the rail trail as contemplated under the article.</p> <p>By the Fall of 2016 it became clear that the state never intended to pay any part of the acquisition and that the condition 1) above could not be satisfied. Article 3 of 2016 Special Town Meeting #2 was sponsored by the Board of Selectmen and was worded in such a way that the \$2.5 million appropriation could neither be modified to remove the condition or have the \$2.5 million simultaneously rescinded and re appropriated. As a result, 2016 Special Town Meeting # 2 appropriated \$3.1 million from the remaining FAR stabilization money (virtually the entire remaining balance.) The \$2.5 million could not be spent and still cannot be spent.</p> <p>2016 Special town Meeting # 2 also authorized \$2,956,000 in borrowing to complete the rail trail purchase. Motions were made to borrow the full amount and much debate occurred. The administration signaled its intent to come back in the spring to use the unspent \$2.5 million to pay down the borrowing. Various Town Meeting members expressed opposition and indicated they would never vote for the rail trail if it meant exhausting the FAR money and made the rail trail the last piece of open space the town would acquire.</p> <p>Because of the wording of the article, no motion or vote could occur on what to do with the \$2.5 million.</p>

Warrant Article Questionnaire Citizen Petitions Articles

	<p>The vote to use FAR stabilization required a 2/3 vote. The vote to acquire real property also required 2/3 vote.</p> <p>Discussion occurred that a simple majority at a future Town Meeting could rescind the appropriation for the unspent \$2.5 million. The discussion at Town Meeting reflected similar discussion at the Finance Committee. Town Counsel had advised the Finance Committee and perhaps even Town Meeting that rescinding the appropriation would result in the money being returned to the FAR Stabilization fund from which it had come. Various Town Meeting members promsoed to sponsor an article for the spring for that purpose; hence Article 24.</p>
3	What does the sponsor gain from a positive action by Town Meeting on the motion?
Response	Nothing.
4	Describe with some specificity how the sponsor envisions how: the benefits will be realized; the problem will be solved; the community at large will gain value in the outcome through the accompanied motion?
Response	<p>The benefits are that the \$2.5 million will go back to the FAR Bonus Stabilization fund and be available to a future Town Meeting for the acquisition of open space; the available supply of which is dwindling in town.</p> <p>The town should be able to acquire at least one more significant parcel of open space before the fund is drained.</p>
5	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive plan, and community values as well as relevant state laws and regulations
Response	Please see above.
6	<p>Have you considered and assessed, qualified and quantified the various impacts to the community such as:</p> <ul style="list-style-type: none"> • Town infrastructure (traffic, parking, etc.)

Warrant Article Questionnaire Citizen Petitions Articles

	<ul style="list-style-type: none"> • Neighbors (noise, traffic, etc.); • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.);
Response	Yes.
7	<p>Who are the critical participants in executing the effort envisioned by the article motion?</p> <p>To this point what efforts have been made to involve those participants who may be accountable, responsible, consulted or just advised/informed on the impacts of executing the motion?</p>
Response	Town Meeting
8	<p>What steps and communication has the sponsor attempted to assure that:</p> <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process, that • Appropriate town Boards & Committees were consulted • Required public hearings were held
Response	The public discussion at the Finance Committee and Town Meeting last fall provided ample communication.
9	Why is it required for the Town of Natick AND for the sponsor(s)?
Response	Town Meeting needs to vote the motion.
10	Since submitting the article petition have you identified issues that weren't initially considered in the development of the proposal?
Response	Yes. There have been rumors that the administration is still looking to use the \$2.5 million to pay down debt and may be looking to the rescission under Article 24 to somehow make the funds

Warrant Article Questionnaire Citizen Petitions Articles

	<p>available for that purpose. The sponsors are strongly opposed to this use of the \$2.5 million. The sponsors also carefully drafted Article 24 to omit the words “ rescind and re-appropriate” so that the only action available under Article 24 is simple rescission. The sponsors believe that any vote to rescind would not take effect until Town Meeting dissolves and 7 days elapse as provided in our charter and that as such the funds could not be re purposed at this Town Meeting. This has been the longstanding view and practice around such articles.</p> <p>If somehow a new and inventive interpretation were to arise that would permit re purposing at this Town Meeting, the sponsors will seek to delay Article 24 until after Articles 25 and 26.</p>
11	What are other towns and communities in the Metro West area, or the Commonwealth of MA doing similar to what your motion seeks to accomplish
Response	Not applicable.
12	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences.
Response	The \$2.5 million will continue to be unavailable.

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 38	Date Form Completed: 3.02.17
Article Title:	
Sponsor Name: Paul Griesmer	Email: pgriesmer@comcast.net fincomgriesmer@gmail.com

Question	Question
1	Provide the article motion exactly as it is intended to be voted on by the Finance Committee.
Response	Please see attached motion and redline changes documents.
2	At a summary level and very clearly, what is proposed purpose and objective of this Warrant Article and the required Motion?
Response	Article 38 has four fundamental purposes; 1) to make the Planning Board the Special Permit Granting Authority for the C-2 and DMU, 2) to restore authority within the zoning bylaw to issue Special Permits in the Downtown Mixed Use (DMU) district, 3) to add authorization and criteria for issuing Special Permits separate and part from Site Plan Review and 4) to add missing districts to the list for which Special Permits and Site Plan Review can be conducted.
3	What does the sponsor gain from a positive action by Town Meeting on the motion?
Response	Nothing.
4	Describe with some specificity how the sponsor envisions how: the benefits will be realized; the problem will be solved; the community at large will gain value in the outcome through the accompanied motion?
Response	<p>There are several problems this article seeks to solve as discussed below.</p> <p><u>1. Change SPGA for C-II and DMU to the Planning Board</u></p> <p>This article was originally intended merely to complete the process begun under Article 7 of 2016 Special Town Meeting # 2. Under that Article 7, Town Meeting voted 89-1-2 to change the Special Permit Granting Authority (SPGA) designations in Section V-DD of the zoning bylaw to make the Planning Board the SPGA for all Industrial I (I-I) and Industrial II (I-II) districts instead of the ZBA. The scope of Article 7 did not allow for the Planning Board to be designated as the SPGA for all of Commercial –II (C-II) and the Downtown Mixed Use (DMU). The original purpose of Article 38 was to complete the process from Article 7 and change the SPGA designation for C-II and DMU.</p>

2. Restore Authority to Issue Special Permits in the Downtown Mixed Use District

There has been no authority for issuing Special Permits in the DMU since at least April 30, 2015. In writing Article 38, the sponsors checked to make sure the scope contained the correct references to the appropriate by law sections. Historically, C-II was on the list in Section VI-DD 2.b and DMU was in the actual text of the DMU district in Section III-E b which used to begin “The following uses may be allowed by the Board of Appeals acting as a Special Permit Granting Authority in accordance with the provisions of Chapter 40 A of the General Laws and in accordance with Section VI-DD of this by law.”

However, a check of the most recent by law indicated that the reference to the ZBA in Section III-E b no longer exists. Further research indicated that Article 27 of 2015 Spring Town Meeting voted on April 30, 2015 to change all references to specific boards within the zoning by law to merely read “Special Permit Granting Authority”. Section III-E b now begins “The following uses may be allowed by the Special Permit Granting Authority in accordance with the provisions of Chapter 40 A of the General Laws and in accordance with Section VI-DD of this by law.”

A review of the voted motion under Article 27 of 2015 Spring Annual Town Meeting indicated that the removal of the ZBA from Section III-E b was not accompanied by any addition of the DMU to the list in Section VI-DD 2 where all the special permit authorities and districts are listed. While undoubtedly not intended the unmistakable effect of Article 27 was to remove the power of any board to issue special permits in the DMU.

MGL Ch. 40 A s. 1.a defines "Special permit granting authority", shall include the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits. (Emphasis Added.)

MGL Ch. 40 A S. 9 on Special Permits states in relevant part “Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law.” (Emphasis Added.)

MGL Ch. 40 A S.14 on powers of Zoning Boards of Appeals states:

“A board of appeals shall have the following powers:

(1) To hear and decide appeals in accordance with section eight.

(2) To hear and decide applications for special permits upon which the board is empowered to act under said ordinance or by-laws.

(3) To hear and decide petitions for variances as set forth in section ten.

(4) To hear and decide appeals from decisions of a zoning administrator, if any, in accordance with section thirteen and this section.” (Emphasis Added.)

	<p>In order to issue a special permit, an SPGA MUST be designated and authorized in the town's by laws. Since April 30, 2015, no one has been designated for the DMU and no one has had any authority to issue any special permits in the DMU.</p> <p>The April 30, 2015 date of the vote is significant because MGL Ch. 40 A s. 5 appears to provide that the effective date of a zoning by law change is the date of the Town Meeting vote. The statute does not say the effective date is the date of the Attorney General's subsequent approval. Instead the statute provides that if the Attorney General disapproves a zoning by law amendment, the zoning by law language rolls back to the language before the vote.</p> <p>MGL Ch. 40 A S. 5 states in relevant part "The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote."</p> <p>MGL Ch. 40 A S. 6 contains language that building permits are subject to zoning by law changes as of the first date of the Planning Board's required hearing for a zoning by law change.</p> <p>The Town currently has two very significant projects currently in construction in the DMU. These projects first applied for special permits after April 30, 2015. These projects went through the same process as required for a special permit but were in front of a board with no power to issue that special permit. These companies have made investments in our community and have expensive construction in progress. Typically, new construction projects have loans and investor commitments that depend on necessary approvals and have made representations and warranties that all necessary approvals have been obtained. Serious question exists on the validity of the special permits for these projects. Town Meeting needs to remedy the situation in fairness to these companies, in order to avoid a black eye on economic development and in order to allow other development downtown to proceed legally. (MGL Ch. 40 A S.7 contains provisions under which even projects with valid permits can be forced to stop or be removed for a period of up to six years. Invalid permits might create greater exposure.)</p> <p>The intent of the sponsors is to have Town Meeting fix the problem by voting the motion under Article 38 that would allow these projects to go through a clearly authorized and valid special permit process as soon as possible if they so choose. The sponsors have met with key executives of these companies to communicate the problem and the proposed solution. Because of the effective date provisions cited above, the sponsors request that Town Meeting consider advancing Article 38 to the first order of business on the first night of Town Meeting. Passing the article as soon as possible will have the practical affect of protecting these projects by signaling Town Meeting's intent. Town Meeting's intent will in turn signal that the downtown is open for business.</p>
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The town created this problem and needs to fix it. Article 27 of 2015 Spring Town Meeting was sponsored and recommended 6-0-0 by the Planning Board and supported 14-0-0 by the Finance Committee with either a supporting recommendation or no review by the then Board of Selectmen. Neither Community Development nor the administration raised any questions on Article 27. The simple addition of the three initials "DMU" to the list on Section VI-DD would have prevented the problem. Details matter. This experience underscores the need for the Finance Committee to review zoning articles and not rely on either the Planning Board or Community Development or third party peer reviews.

Unfortunately, the problem might not end with undoing the effects of Article 27. The document record indicates that either someone became aware or should have become aware of the absence of authority regarding the DMU sometime between October 2015 and early February 2016. The drafts of the overall zoning by law rewrite during this period saw a change which added the DMU to the list. It is not clear whether the author/editor of the drafts was aware of the significance of what they were looking at and changing. However, no reports were made to any full boards or committees and applicants do not appear to have been informed. One of the companies first applied for its special permit in February 2016. Had the problem been reported, this company could have waited and an article placed on the warrant for 2016 Special Town Meeting #1. The failure of the Town to act upon knowledge of the effects of Article 27 could create legal problems for the Town – which are best overcome and rendered moot by prompt passage of this article. Recently after being expressly informed of the DMU problem regarding the pending 'special permit' for 9 Adams St., the ZBA went ahead with the special permit anyway last week notwithstanding their lack of authority. These points are disclosed because the community and Finance Committee should know that the state statutes and Natick by law for zoning are not being followed.

The point is not to assign responsibility but to identify and to fix the problems. Unfortunately, there is no town meeting action that can retroactively validate or ratify legally problematic special permits. Otherwise that would be part of the motion. The only alternative is to address the problem as soon as possible with an amendment to the zoning by law.

3. Add Authorization, Criteria and Procedures for Issuing Special Permits and Separating Them From Site Plan Review

The proposed motion provides for Special Permit procedures that are presently non-existent within the zoning by law with the exception of the Limited Commercial district and possibly some of the Highway Overlay districts. The motion also separates Special Permits from Site Plan Review as required by case law for 47 years and as strongly advised five years ago on May 30, 2012 in the written report of the Town's zoning expert legal counsel, Attorney Mark Bobrowski. The Bobrowski report was obtained as part of a separate effort to try to identify changes in the proposed zoning by law rewrite that was not filed for Spring Town Meeting. Review of the Bobrowski report identified additional problems.

The proposed motion also provides vastly improved Special Permit procedures compared to our

	<p>current minimal to nonexistent standards and criteria, which Attorney Bobrowski described as “terrible – no guidance at all.” Attorney Bobrowski’s report was very clear that the Town has only Site Plan Review criteria and has inappropriately merged or fused Special Permit procedures into and with Site Plan Review procedures. Bobrowski’s report stated “the Supreme Judicial Court defined its understanding of site plan review in a February 10, 1970 court case as “regulation of a use rather than its prohibition”, Atty. Bobrowski stated “The Supreme Judicial Court has repeatedly focused on this pronouncement to distinguish site plan review from the special permit process” and that “Site plan review can only be used to shape a project. For this reason, I don’t like the references to SPGA in this Section” {VI-DD}.</p> <p>Attorney Bobrowski advised further that in a special permit process the full range of discretion is available to the granting authority. Special permits can be denied. Site Plan’s must be approved and cannot be denied.</p> <p>The town has no protection from a special permit application that should be denied and no criteria with which to judge special permit requests. Attorney Bobrowski’s report also advised the by law should include a requirement to hold public hearings on special permits and provide for lapse of special permits.</p> <p><u>4. Add Missing Districts To The List For Which Special Permits and Site Plan Review Can Be Conducted</u></p> <p>In addition to the DMU omission, the Limited Commercial District, the Administrative and Professional District and the Subsidized Housing District were not on the list.</p>
5	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive plan, and community values as well as relevant state laws and regulations
Response	<p>The proposed motion fits within the existing structure of the zoning by law.</p> <p>The motion retitles section VI - DD to include Special Permits , adds special permits to the purpose and intent under VI-DD 1 a , clarify that any special permit also requires site plan review, adds language in VI-DD 1b to clearly empower and designate the SPGA for both special Permits and Site Plan Review, and divides VI-DD 2 into two parts. The first part VI-DD 2A deals with special permits. The second part VI-DD B deals with site plan review.</p> <p>The requirement that any special permit, unless specifically exempt from site plan review in the site plan section, is based on experience that site plan is a very important if not critical tool in support of special permits (this appears to be how we merged the two in the first place) and because of the experience with the Planet Fitness site which is located in the LC district .This project did not undergo site plan review even though it required a special permit because nothing in the bylaw required site plan review. This project also appears to have been improperly exempted from the APD process. The LC district is one of the few places where actual special permits are authorized and given by cross reference to the ZBA. (In Section III-D 2.</p>

	<p>The LC district section states “ The following uses may be allowed by the special Permit Granting Authority in accordance with Section VI-E 2. “ Section VI – E 2 is specific to the ZBA only and has only extremely limited special permit provisions (no site plan review) .</p> <p>Entirely new language is provided for new section VI-DD 2A to deal with the points raised in Bobrowski’s report. Most of the language comes directly from the proposed zoning by law re write section on special permits except as follows below. The language on Special Permit Criteria is taken from Bobrowski’s recommendation form May 30, 2012 and not the proposed zoning by law re write. Bobrowski recommended that the criteria be specified in addition to any other criteria in the bylaw. The zoning by law re write proposed that the criteria be used ‘except as more specifically provided elsewhere in the bylaw’. The difference is significant. The zoning by law re write language raises multiple questions and ambiguities; What is and isn’t more specific? Does it need to be more specific in whole or in part ? If in whole, then are the protections of the listed criteria lost ? Who determines which is more specific and how to they determine that? Which sections does one use and when ? What legal arguments can applicants make and sustain lawsuits as to what criteria should ad should not apply to them ?</p> <p>Bobrowski’s recommendation was then modified . Bobrowski’s recommendation allowed all the criteria to be blended or weighted to one overall conclusion without any guidance as to what weight should be given to each factor. This allowed the possibility that an application for a special permit could fail – even get a zero – on all but one of the criteria, get a minimal passing grade on one and have that weighted overwhelmingly. All of the criteria are important and a minimum threshold of each factor being individually on balance more favorable should be required. Stated differently, what project would you want approved in your town or neighborhood that fails one of these key criteria. For a decision to be good, the criteria should all be satisfied to at least some degree of net positive.</p> <p>Research has indicated that Atty Bobrowski’s criteria are more commonly found in city zoning ordinances where special permits are issued by the City Council. Cities typically elect their entire city council every two years. Cities are structurally different and have an important check on their special permit granting authorities – i.e. the entire SPGA faces the voters every 24 months. In town’s Planning Board members have 5 year staggered terms and only one Planning Board member faces the voters each year. Because of the timing requirements for submitting and hearing special permit applications, city councilors are no more than 21 months away from the voters.</p> <p>The proposed motion also adds the omnibus overall criteria paragraph from the Wayland zoning by law. Finally, the proposed motion adds the statutory requirement that the special permit be consistent with the objectives and purpose of the by law and the various individual districts. This is done to remind everyone of the statute’s requirement, remind everyone of the importance of objectives and purposes for various districts and the by law itself, and to preserve this requirement in the event statute ever changes. Town meeting created the by law and various districts for express purposes that should not be ignored or lightly changed. Interestingly Bobrowski advised getting rid of the purpose sections because they make it easier for laymen</p>
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	<p>(i.e. citizens , abutters and neighbors) to sue. Town Counsel reported to the 22 Pleasant St Committee which in turn reported to the town that special permits, properly granted, are very difficult and expensive for citizens to overturn. The sponsors believe strongly that the zoning bylaw should afford residents with reasonable protections and not undercut their already very expensive and already rather limited legal remedies and recourse. Protecting citizens from bad decisions and promoting good decisions is also why the town a) needs criteria and b) why the criteria need to differ from cities where the citizens have the recurring and frequent prospect of an election hangs over every member of the SPGA.</p> <p>The motion adds a list in new Section VI-DD 2 A that is very similar to the list in VI-DD 2B because one list is for special permits and the other for site plan review. This is because special permits and site plan review are different. The lists are intended to be identical. However the existing exceptions in Site plan Review are preserved. For efficiency, each district on the list has the same SPGA for special permits and site plan.</p> <p>The lists give responsibility for most of the districts to the Planning Board. For the cross reference issues referred to above, responsibility for the LC district could not be moved to the Planning Board without exceeding the articles scope by changing the LC district language. Special permit authority for the SHA district is imbedded in Section VI-E 2 under the ZBA. The SHA language was not changed by Article 27 of 2015 Spring Town Meeting.</p>
6	<p>Have you considered and assessed, qualified and quantified the various impacts to the community such as:</p> <ul style="list-style-type: none"> • Adequacy of traffic flow, parking, etc.) • Neighbors (noise, traffic, etc.); • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.); Currently these criteria are absent from the zoning bylaw
Response	<p>The proposed special permit criteria contain provisions recommended by Attorney Bobrowski that protect the residents and the town by requiring the effects of a development on each of the following to be separately considered and found satisfactory in order for a Special permit to be issued.</p> <ul style="list-style-type: none"> • Town infrastructure (traffic, parking, etc.) • Neighbors (noise, traffic, etc.); • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.); • Town finances • Social, economic or community needs • Adequacy of utilities and other public services <p>In addition an overall requirement similar to Wayland By Law has been added which protect</p>

	<p>neighborhoods.</p> <p>The motion also preserves the ability for economic development. Whether one wants a) unrestrained economic development, b) economic development balanced with community preservation and various Town capacities (schools, traffic, water supply, etc. as the sponsors do or c) no more development, the Town needs to have special permit authority , criteria and procedures that are separate fro site plan review and needs to have an SPGA authorized for each district in which special permits are allowed.</p>
7	<p>Who are the critical participants in executing the effort envisioned by the article motion?</p> <p>To this point what efforts have been made to involve those participants who may be accountable, responsible, consulted or just advised/informed on the impacts of executing the motion?</p>
Response	<p>There is no special effort required if the article’s motion is passed.</p> <p>We might actually get a reduction in effort by being clear on special permit criteria and allowing Town Meeting to weigh in on what these criteria should be.</p>
8	<p>What steps and communication has the sponsor attempted to assure that:</p> <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process, that • Appropriate town Boards & Committees were consulted • Required public hearings were held
Response	<p>Three weeks ago when the problem were first identified, the sponsors communicated with the community development department, administration, Planning Board, Board of Selectmen and ZBA, made them aware of the problem in the DMU and offered to help in a solution under the article. The sponsors 1) communicated for the express purpose of allowing these boards and departments to get ahead of issues that would inevitably surface in the warrant hearing process and 2) offered to help in an effort to solve the problems.</p> <p>The sponsors were disinvited from a meeting with Town Counsel, Community Development and the Planning Board chair on the topic but were informed that the town apparently was discussing using Article 38 as a vehicle for its changes. Except for a ‘thank you for bringing this issue to our attention’ message, the sponsors have received no response or cooperation from anyone except from the Planning Board chair.</p> <p>In view of the peculiar lack of communication and response over the last three weeks, the</p>

	<p>sponsors request that Finance Committee recommend Favorable Action on the motion at its meeting on March 7, 2017. Such recommendation might actually jar loose or stimulate a cooperative review. If such review indicates any significant problem, the recommendation can always be reconsidered. If no such effort commences, we should not lose sight of the fact that the Town needs to address and fix these issues. The sponsors have spent over 100 hours of research and writing on the subject matter of Article 38 and welcome a review by the Finance Committee. The sponsors also believe that a cooperative review with Town Counsel , staff and the Planning Board could be productive and believe that a Favorable Action recommendation is the best way to ensure that process occurs.</p> <p>The sponsors appreciate the efforts of the Planning Board Chair in reviewing two drafts of the motion and providing detailed comments. .</p>
9	Why is it required for the Town of Natick AND for the sponsor(s)?
Response	A 2/3's vote of Town Meeting is required.
10	Since submitting the article petition have you identified issues that weren't initially considered in the development of the proposal?
Response	Since submitting the motion, the sponsors are discussing adding more specific language on public hearings for special permits and site plan reviews.
11	What are other towns and communities in the Metro West area, or the Commonwealth of MA doing similar to what your motion seeks to accomplish
Response	Most towns appear to have addressed their separation of special permits and site plan review sometime after the February 10, 1970 court decision in Y.D. Dugout v. Board of Appeals of Canton that required this and presumably have acted more expeditiously than five years upon getting specific expert legal advice in regard to this critical matter which should have been accelerated and considered well before an overall zoning by law re write. Most but not all towns do not make changes that remove SPGA authority for existing and very active districts but presumably act promptly in the public interest to address such problems immediately upon recognizing them. Most towns do not proceed to illegally issue special permits.
12	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town

	and to the sponsor(s)? Please be specific on both financial and other consequences.
Response	The town is exposed to any number of risks and would not have the protection of an actual substantive special permit process with criteria. The downtown would remain closed to development under legal special permits. Current projects would not have recourse to a re – established special permit process if they so choose.

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter ZONING
40A

Section 1A DEFINITIONS

Section 1A. As used in this chapter the following words shall have the following meanings:

"Permit granting authority", the board of appeals or zoning administrator.

"Solar access", the access of a solar energy system to direct sunlight.

"Solar energy system", a device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating.

"Special permit granting authority", shall include the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits.

"Zoning", ordinances and by-laws, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

"Zoning administrator", a person designated by the board of appeals pursuant to section thirteen to assume certain duties of said board.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 40A	ZONING
Section 4	UNIFORM DISTRICTS

Section 4. Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.

Districts shall be shown on a zoning map in a manner sufficient for identification. Such maps shall be part of zoning ordinances or by-laws. Assessors' or property plans may be used as the basis for zoning maps. If more than four sheets or plates are used for a zoning map, an index map showing districts in outline shall be part of the zoning map and of the zoning ordinance or by-law.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 40A	ZONING
Section 5	ADOPTION OR CHANGE OF ZONING ORDINANCES OR BY-LAWS; PROCEDURE

Section 5. Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns

and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk

prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice

specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 40A	ZONING
Section 6	EXISTING STRUCTURES, USES, OR PERMITS; CERTAIN SUBDIVISION PLANS; APPLICATION OF CHAPTER

Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

[Second paragraph effective until August 10, 2016. For text effective August 10, 2016, see below.]

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

[Second paragraph as amended by 2016, 219, Sec. 29 effective August 10, 2016. For text effective until August 10, 2016, see above.]

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than 12 months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot for single and two family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership. The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof

is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January first, nineteen hundred and seventy-six, for seven years from the date of the endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

When a plan referred to in section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of law. Such appeal shall stay, pending either (1) the conclusion of voluntary mediation proceedings and the filing of a written agreement for judgment or stipulation of dismissal, or (2) the entry of an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original

submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter ZONING
40A

Section 9 SPECIAL PERMITS

Section 9. Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Zoning ordinances or by-laws may provide that special permits may be granted for multi-family residential use in nonresidentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such nonresidentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use.

Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protect open space, preserve farmland, promote housing for persons of low and moderate income or further other community interests.

Zoning ordinances or by-laws may also provide that cluster developments or planned unit developments shall be permitted upon the issuance of a special permit.

Notwithstanding any provision of this section to the contrary, zoning ordinances or by-laws may provide that cluster developments shall be permitted upon review and approval by a planning board pursuant to the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing subdivision control.

"Cluster development" means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. A cluster development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions of such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land when added to the building lots shall be at least equal in area to the land area required by the ordinance or by-law for the total number of units or buildings contemplated in the development. Such open land may be situated to promote and protect maximum solar access within the development. Such open land shall either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

"Planned unit development" means a mixed use development on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district, but of such larger size as an ordinance or by-law may specify, in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the ordinance or by-law. Such open space, if any, may be situated to promote and protect maximum solar access within the development.

Zoning ordinances or by-laws may also provide for the use of structures as shared elderly housing upon the issuance of a special permit. Such zoning

ordinances or by-laws shall specify the maximum number of elderly occupants allowed, not to exceed a total number of six, any age requirements and any other conditions deemed necessary for the special permits to be granted.

Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board.

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application; provided, however, that a city council having more than five members designated to act upon such application may appoint a committee of such council to hold the public hearing. The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action, may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the city or town clerk. A special permit issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board.

Failure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed, shall notify the city or town clerk, in writing within fourteen days from the expiration of said ninety days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The special permit granting authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

[Fourteenth paragraph effective until August 10, 2016. For text effective August 10, 2016, see below.]

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

[Fourteenth paragraph as amended by 2016, 219, Sec. 30 effective August 10, 2016. For text effective until August 10, 2016, see above.]

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Zoning ordinances or by-laws shall also provide that uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

In any city or town that accepts this paragraph, zoning ordinances or by-laws may provide that research and development uses, whether or not the uses are currently permitted as a matter of right, may be permitted as a permitted use in any non-residential zoning district which is not a residential, agricultural or open space district upon the issuance of a special permit provided the special permit granting authority finds that the uses do not substantially derogate from the public good.

"Research and development uses" shall include any 1 or more of investigation, development, laboratory and similar research uses and any related office and, subject to the following limitations, limited manufacturing uses and uses accessory to any of the foregoing.

"Limited manufacturing" shall, subject to the issuance of the special permit, be an allowed use, if the following requirements are satisfied: (1) the manufacturing activity is related to research uses; (2) no manufacturing activity customarily occurs within 50 feet of a residential district; and (3) substantially all manufacturing activity customarily occurs inside of buildings with any manufacturing activities customarily occurring outside of buildings subject to conditions imposed in the special permit.

A hazardous waste facility as defined in section two of chapter twenty-one D shall be permitted to be constructed as of right on any locus presently zoned for industrial use pursuant to the ordinances and by-laws of any city or town provided that all permits and licenses required by law have been issued to the developer and a siting agreement has been established pursuant to sections twelve and thirteen of chapter twenty-one D, provided however, that following the submission of a notice of intent, pursuant to section seven of chapter twenty-one D, a city or town may not adopt any zoning change which would exclude the facility from the locus specified in said notice of intent.

This section shall not prevent any city or town from adopting a zoning change relative to the proposed locus for the facility following the final disapproval and exhaustion of appeals for permits and licenses required by law and by chapter twenty-one D.

A facility, as defined in section one hundred and fifty A of chapter one hundred and eleven, which has received a site assignment pursuant to said section one hundred and fifty A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July first, nineteen hundred and eighty-seven; provided, however, that all permits and licenses required by law have been issued to the proposed operator. A city or town shall not adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or operation of the facility, unless such prohibition, license or permit was in effect on or before July first, nineteen hundred and eighty-seven; provided, however, that a city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of general application that has the effect of prohibiting the siting or expansion of a facility in the following areas: recharge areas of surface drinking water supplies as shall be reasonably defined by rules and regulations of the department of environmental protection, areas subject to section forty of chapter one hundred and thirty-one, and the regulations promulgated thereunder; and areas within the zone of contribution of existing or potential public supply wells as defined by said department. No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section seven.

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter ZONING
40A

Section 14 BOARDS OF APPEAL; POWERS

Section 14. A board of appeals shall have the following powers:?

- (1) To hear and decide appeals in accordance with section eight.
- (2) To hear and decide applications for special permits upon which the board is empowered to act under said ordinance or by-laws.
- (3) To hear and decide petitions for variances as set forth in section ten.
- (4) To hear and decide appeals from decisions of a zoning administrator, if any, in accordance with section thirteen and this section.

In exercising the powers granted by this section, a board of appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

May 30, 2012

Patrick Reffett
Planning Director
Town Hall
13 East Central Street
Natick, MA 01760

RE: Zoning Review

Dear Patrick:

As promised , I have reviewed Natick's existing zoning by-law (ZBL) to point out internal inconsistencies, noncompliance with statute or case law, and omissions that should be addressed. These are the basic goals of a zoning recodification. It is not the intent of this memorandum to identify master plan objectives that represent a change in policy. I used the March 2010 version of the ZBL in my work.

General Comments:

One goal of a recodification is to create an expandable format for the new ZBL, with chapters that make sense. My usual suggestion is as follows:

Section 1. Purpose, Authority, Applicability

Section 2. Establishment of Districts

Section 3. Use Regulations

Section 4. Dimensional and Bulk Requirements

Section 5. Nonconformities

Section 6. General Regulations (Signs, Parking, Lighting, etc.)

Section 7. Special Nonresidential Regulations (Adult Uses, Wireless, etc.)

Section 8. Special Residential Regulations (congregate living, accessory apartments, etc.)

Section 9. Special Districts (Floodplain and other overlay districts).

Section 10. Administration and Enforcement.

Section 11. Definitions.

The existing ZBL is quite comprehensive. It also has some limitations. First and foremost, the by-law is poorly organized. The placement of material is random. The by-law tends to hopscotch from one topic to another, with no particular rhyme or reason.

The ZBL repeats a lot of the Zoning Act reiterating (unnecessarily) procedures for notice, publication, and public hearings. I recommend eliminating this redundancy. If you think the public would be shortchanged, consider attaching the procedures to the application package handed out over the counter at the Building Department. For example, a petitioner for a variance would get instructions that include the procedures from the statute.

All references to dates would probably be rejected by the Attorney General's Office if the ordinance was subject to his review. The AG's Office is of the opinion that preferential treatment for established uses violates the uniformity requirement of G.L. c. 40A, s.4. This interpretation can undo the very delicate political compromises that lead to the initial enactment.

I was pleased to see that parking, loading, and signage provisions have been loosened up by allowing special permit relief from strict requirements. This offers a more flexible approach to site planning and may present opportunities for public/private partnerships.

My overall impression is that the by-law is functional and comprehensive, but not well structured.

Specific Comments:

Section 100: The purpose clause should incorporate reference to 1975 Mass. Acts 808, s. 2A. The purposes suggested in section 2A have been cited as a guide to the legitimate exercise of the zoning power. See, e.g., *Sturges v. Town of Chilmark*, 380 Mass. 246, 253 (1980). These extensive powers "are not to be narrowly interpreted." *Collura v. Town of Arlington*, 367 Mass. 881, 885 (1975)(citing *Decoulos v. City of Peabody*, 360 Mass. 428, 429 (1971)).

Similarly, the Home Rule Amendment, Article 89 of the Constitution, acts in conjunction with Section 2A to establish the purposes and authority of the zoning power. It should be referenced in a separate section stating the "Authority" by which the zoning power may be

implemented.

Sections 102 to 109: I recommend deleting these district purpose clauses, in their entirety. Too often, laypeople latch onto these clauses and use them as grounds for litigation. The purpose of a district is defined by its treatment in the use and dimensional tables.

Section 200: Most of the principal uses set forth in the Use Table are not defined. There are a few --- professional office, open storage yard --- but most are missing, for example:

Administrative office
Restaurant
Repair garage for motor vehicles
Warehouse
Wholesale

After recodification, each entry should have a modern definition. Some towns prefer to place all definitions in one location. Your definitions are randomly scattered throughout the by-law.

Section II-A and B: Why the change in numbering format? If there is a Natick Zoning Map, why are some districts narratively described

I note that there is no provision for the handling of lots split by zoning district lines. Many towns allow the uses available in less restricted district to be carried over a certain distance (typically, 30-50 feet) into the more restricted district.

Section III-A and Use Regulations Schedule:

Is there any reason why the HM-I, HM-II, HM-III, LC, HPU, and DM Districts can't be added to the Table?

The exempt uses need some attention.

- * Exempt farms may now be as small as two qualified acres;
- * Item 40A, regarding alternative energy, needs clarification;
- * Churches, schools, and child care center cannot be prohibited or placed on special permit status in any district;
- * Family day care homes are defined by G.L. c. 15D, s. 1A. There are small homes (up to 6 kids including resident participants) and large homes (up to 10 kids). The ZBL makes no reference.
- * Exempt farm stands are not referenced.

Sections III-A.3 and A.5: As I mapped out in my introductory remarks, these sections should be relocated to a chapter with other overlay and special districts, including Smart Growth and Highway Overlay.

Sections III-A.6: The ruling of the Appeals Court in *Wall Street Development v. Planning Board of Westwood* makes this affordable housing regulation voluntary only. **It cannot be mandated on a subdivision.**

Section III-F: Cluster Development should be relocated to a Chapter containing special residential regulations.

Sections III-H: Wireless Communications should be relocated to a Chapter containing special regulations.

Section V: These rules pertaining to nonconformities should be deleted and a new, more modern set of rules for nonconforming uses and structures to conform with recent case law should be substituted. There were a half-dozen decisions in the 1990-2005 period that fundamentally changed practice here. Your existing section is also short of the standards imposed by *Blasco v. Board of Appeals of Winchendon*, 31 Mass. App. Ct. 32 (1991), in which the court required all available changes to nonconformities to be listed in the ordinance. Some provisions run counter to the holding in *Bjorklund v. Norwell*, 450 Mass. 357 (2008).

Section V-B.2: There need to be better regulations for accessory uses. This barely skims the surface.

Section V-D: Subsection 19.d should allow for deviations by special permit, not by appeal. This would track the way you handle sign deviations in Section V-H.E.4 and outdoor lighting deviations in Section V-I.7

Section VI-A: There is no penalty provision. The statute sets a limit of \$300 per offense per day. There is no provision for noncriminal disposition.

Section VI-DD: In *Y.D. Dugout v. Board of Appeals of Canton*, 357 Mass. 25, 31 (1970), the Supreme Judicial Court defined its understanding of site plan review as: "regulation of a use rather than its prohibition . . . (guiding) us in interpreting the (by-law) . . . as contemplating primarily the imposition for the public protection of reasonable terms and conditions." The Supreme Judicial Court has repeatedly focused on this pronouncement to distinguish site plan review from the special permit process. See *Prudential Ins. Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Auburn v. Planning Bd. of Dover*, 12 Mass. App. Ct. 998 (1981). Site plan review can only be used to shape a project.

For this reason, I don't like the references to "SPGA" in this Section. In the special permit process, the full range of discretion is available to the granting authority.

- * I don't see a requirement to hold a public hearing.
- * The appeal provision is fine.
- * There should be a lapse provision.

Section VI-E.2: The general criteria for a special permit decision in subsection a. are terrible - no guidance at all. Try this:

Special permits shall be granted by the Special Permit Granting Authority as specified herein only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this ordinance, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential economic impact, including fiscal impact on city services, tax base, and employment.

Section VI-E.2 then goes on and on listing special permit criteria for specific uses eligible for a special permit. These criteria are better located in the specific sections - i.e., move 2.b. and c to the PCD District, move 2.d to the SH district regulations.

Section VI-E.3: I can't decipher whether use variances are prohibited or not. If that's your intent, why not announce your prohibition (or allowance)? See G.L. c. 40A, s. 10.

Finally, all of your overlay districts should be checked for conformance with the SCIT doctrine. In *SCIT, Inc. v. Planning Board of Braintree*, 19 Mass App. Ct. 101 (1984), the Appeals Court found it illegal to confer on local boards "a roving and virtually unlimited power to discriminate as to uses between landowners similarly situated." *Id.* at 108. In *Gage v. Town of Egremont*, 409 Mass. 345 (1991), the Supreme Judicial Court ruled that not *all* uses in a district could be placed on special permit. "[A] zoning by-law must permit at least one use in each zoning district as a matter of right." *Id.* at 348. In *Boch v. Planning Board of Tisbury*, 5 LCR 16 (1997), the

Land Court ruled that the SCIT doctrine is applicable in overlay districts. The flood plain overlay district may contemplate no use as of right (other than exempt agricultural or educational uses as set forth in Section III-A.3 in violation of the doctrine.

I hope my comments will prove useful. Please let me know if you have any questions.

Sincerely,

Mark Bobrowski

**2015 Spring Annual Town Meeting
Fine and Performing Arts Center
Natick High School
April 30, 2015
Fourth Session**

The Fourth Session of the 2015 Spring Annual Town Meeting was called to order at 7:40 PM by the Town Moderator, Frank W. Foss, who declared a quorum present. The Moderator welcomed residents, taxpayers, town officials, Town Meeting Members and interested parties to the Fourth Session of 2015 Spring Annual Town Meeting. The Moderator asked that all recently elected or appointed members of Town Meeting stand to take the oath of office. There were none. All members and the audience stood for the Pledge of Allegiance and a moment of silence in recognition of all the men and women serving on our behalf throughout the world.

The Moderator introduced the officials present on the stage and in the well of the auditorium. The following people were present: Diane Packer, Town Clerk; James Brown, Finance Committee Vice Chair; Bruce Evans, Finance Committee Secretary; Martha White, Town Administrator; Brandon Moss, Town Counsel; and Charles Hughes, Chair of the Board of Selectmen; Mr. Chenard, Deputy Town Administrator for Operations and Mr. Towne, Deputy Town Administrator for Finance.

The Moderator reviewed the general rules and procedures of Town Meeting. He indicated that all residents and taxpayers of the town and town officers and employees, whether or not residents, have the same right to speak as Town Meeting Members; however they do not have the right to submit motions for consideration at Town Meeting, nor vote on any matter before Town Meeting. Non-residents may only speak at Town Meeting after approval by Town Meeting Members. The proceedings of Town Meetings shall be governed by ***Town Meeting Time***, the Town of Natick Home Rule Charter, the Natick By-Laws and the General Laws of the Commonwealth of Massachusetts. No person shall speak upon any article more than once when any other person desires to be heard, nor more than twice on the same question without permission of Town Meeting; and no person shall speak more than ten (10) minutes at one time without permission of Town Meeting. Consistent with the Natick By-Laws, any person having a monetary or equitable interest in any matter under discussion at a Town Meeting, and any person employed by another having such an interest, shall disclose the fact of his/her interest or employment before speaking thereon.

Mr. Foss made several announcements regarding upcoming events open to the public. The Moderator announced that the meeting will begin with Article 13 and proceed through the remainder of the warrant in the order that Town Meeting has already voted.

ARTICLE 13: Personnel Board Classification and Pay Plan (Town Administrator)

To see if the Town will vote to fix the salary and compensation of all elected officers of the Town of Natick for Fiscal Year 2016 (July 1, 2015 through June 30, 2016) as provided by Section 108 of Chapter 41 of the General Laws, as amended; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 11-3-0 on February 24, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 13.*

MOTION (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote to amend the By-Laws by changing in its entirety the table entitled Classification and Pay Plan that is incorporated by reference into Article 24, Section 3, Paragraph 3.10. The new Classification and Pay Plan is as follows:

Mr. Connolly raised a point of order that the incorrect article was in the Finance Committee Book. The Moderator confirmed that the correct article was in the warrant but that the Finance Committee's Recommendation book was incorrect and that the article was not appropriately before the meeting and that it would be better to postpone consideration of the article until it is properly before the body.

Moved by Mr. Hughes seconded by Mr. Sidney to postpone consideration of Article 14 until after consideration of all other articles. Mr. Hughes said that there is a potential bargaining agreement before one of the unions and that there may be action before Town Meeting dissolves. ***The motion to postpone consideration of Article 14 until the end of the warrant passed by majority vote.***

ARTICLE 16: Morse Institute Library Fiscal 2016 Budget (Town Administrator)

To see what sum of money the Town will vote to raise and appropriate, or otherwise provide, for the maintenance and operation of the Morse Institute Library, for Fiscal Year 2016 (July 1, 2015 through June 30, 2016); or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION:

*By a vote of 11-0-0 on March 10, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 16.*

Moved by Mr. Evans, seconded by Mr. Brown:

Motions for Article 16: Morse Institute Library	
Motion for Morse Institute Library (Article 16)	
Motion: Move that the Town vote to appropriate the Total Budget Amount shown below to be expended under the direction of the Morse Institute Library Board of Trustees for the operation of the Morse Institute Library, for the Fiscal Year July 1, 2015 through June 30, 2016.	
Morse Institute Library	
Salaries & Expenses	\$2,090,345
Total Morse Institute Library	\$2,090,345
And that the above <u>Total Budget Amount</u> be raised from the following sources:	
Tax Levy of Fiscal Year 2016	\$2,090,345
	\$2,090,345

Ms. Stetson spoke to this article. *The main motion under Article 16 passed by majority vote.*

ARTICLE 17: Bacon Free Library Fiscal 2016 Budget (Town Administrator)

To see what sum of money the Town will vote to raise and appropriate, or otherwise provide, for the maintenance and operation of the Bacon Free Library, for Fiscal Year 2016 (July 1, 2015 through June 30, 2016); or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 11-0-0 on March 10, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 17.*

Moved by Mr. Evans, seconded by Mr. Brown:

Motion for Bacon Free Library (Article 17)	
Motion: Move that the Town vote to appropriate the Total Budget Amount shown below to be expended under the direction of the Bacon Free Library Committee for the operation of the Bacon Free Library, for the Fiscal Year July 1, 2015 through June 30, 2016.	
Bacon Free Library	
Salaries & Expenses	\$153,968
Total Bacon Free Library	\$153,968
And that the above <u>Total Budget Amount</u> be raised from the following sources:	
Tax Levy of Fiscal Year 2016	\$153,968
	\$153,968

Ms. Jain spoke to this article. *The main motion under Article 17 passed unanimously.*

ARTICLE 18: School Bus Transportation Subsidy (Superintendent of Schools)

To see if the Town will vote to appropriate and raise, or transfer from available funds, a sum of money for the purpose of operation and administration of the school bus transportation system, and to reduce or offset fees charged for students who elect to use the school bus transportation system for transportation to and from school, for Fiscal Year 2016 (July 1, 2015 through June 30, 2016); or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 9-5-0 on February 26, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 18.*

MOTION (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote to appropriate the sum of \$371,573 from the Tax Levy for the purpose of operation and administration of the school bus transportation system for FY 2016, and to reduce or offset fees charged for students who elect to use the school bus transportation system for transportation to and from school, said funds to be expended under the direction of the Natick School Committee.

Mr. Hurley spoke to this article. *The main motion under Article 18 passed by majority vote.*

ARTICLE 19: Establish Revolving Fund: Pay for Performance Program (Town Administrator)

To see if the Town will vote, pursuant to Chapter 44, Section 53E1/2 of the Massachusetts General Laws, to establish a Pay for Performance Revolving Fund in order to utilize monies received through the Town's Pay for Performance energy rewards program to fund future energy conservation and renewable energy projects; to authorize the Sustainability Coordinator, under the supervision of the Town Administrator, to expend money from such revolving fund; and to limit the total amount which may be expended from such fund up to and including \$25,000 during the fiscal year beginning July 1, 2015; or take other action relative thereto.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 10-0-1 on March 5, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 19.*

MOTION (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote, pursuant to Chapter 44, Section 53E1/2 of the Massachusetts General Laws, to establish a Pay for Performance Revolving Fund in order to utilize monies received through the Town's Pay for Performance energy rewards program to fund future energy conservation and renewable energy projects; to authorize the Sustainability Coordinator, under the supervision of the Town Administrator, to expend money from such revolving fund; and to limit the total amount which may be expended from such fund up to and including \$25,000 during the fiscal year beginning July 1, 2015.

Ms. Wilson-Martin spoke to this article. *The main motion under Article 19 passed by majority vote.*

ARTICLE 20: Re-authorization of Revolving Funds (Town Administrator)

To see if the Town will vote to authorize the use of revolving funds previously established pursuant to votes of Town Meeting; to determine: 1) the programs and purposes for which each such revolving fund may be expended; 2) the departmental receipts which shall be credited to each such revolving fund; 3) the board, department or officer authorized to expend money from each such revolving fund; and 4) a limit on the total amount which may be expended from each such revolving fund in the fiscal year which begins on July 1, 2015; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By seven separate votes on March 5, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 20.*

Revolving Account:

Council on Aging Transportation

MOTION A (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Everett that the Town vote to authorize the Council on Aging Director, with oversight by the Council on Aging, to expend up to and including \$15,000 during the fiscal year beginning July 1, 2015 for the purpose of operating a subsidized transportation program for senior citizens, pursuant to Chapter 44 §53E½ of the Massachusetts General Laws, from the revolving fund established by vote of the April 1995 Annual Town Meeting under Article 27 for receipts received in connection with the subsidized transportation program.

Ms. White spoke to this article as a whole. *Motion A under Article 20 passed unanimously.*

Revolving Account:

DPW Surplus Vehicle and Purchases

MOTION B (requires majority vote):

Moved by Mr. Evans seconded by Mr. Brown that the Town vote to authorize the Department of Public Works to expend up to and including \$80,000 during the fiscal year beginning July 1, 2015 under the direction of the Department of Public Works and the Town Administrator in order to utilize

revenue from the sale of surplus vehicles to fund the purchase of vehicles and equipment at auction pursuant to Chapter 44 §53E½ of the Massachusetts General Laws, from the revolving fund established by vote of the April 2005 Annual Town Meeting under Article 17.

Motion B under Article 20 passed by majority vote.

Revolving Account:

Morse Institute Library Materials

MOTION C (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote, pursuant to Chapter 44, Section 53E½ of the Massachusetts General Laws, to authorize the Morse Institute Library Director, under the supervision of the Library Trustees, to expend up to and including \$85,000 for the fiscal year beginning July 1, 2015, in order to utilize revenues collected from fines for overdue materials, and from charges for lost or damaged materials, for the purpose of purchasing new books and other related materials, from the revolving fund established by vote of the 2006 Spring Annual Town Meeting under Article 19.

Motion C under Article 20 passed unanimously.

Revolving Account:

Morse Institute Library Equipment & Maintenance

MOTION D (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote, pursuant to Chapter 44, Section 53E½ of the Massachusetts General Laws, to authorize the Morse Institute Library Director, under the supervision of the Library Trustees, to expend up to and including \$25,000 for the fiscal year beginning July 1, 2015, in order to utilize revenues collected from rental of facilities at the Morse Institute Library for the purpose of maintenance and repair of Library facilities and equipment and purchase of equipment for the Library, from the revolving fund established by vote of the 2006 Spring Annual Town Meeting under Article 20.

Motion D under Article 20 passed by majority vote.

Revolving Account:

Community – Senior Center Equipment & Maintenance

MOTION E (requires majority vote):

Move that the Town vote, pursuant to Chapter 44, Section 53E½ of the Massachusetts General Laws, to authorize the Community Services Director, under the supervision of the Town Administrator, to expend up to and including \$75,000 for the fiscal year beginning July 1, 2015, in order to utilize money received from building rental fees and donations for the purpose of funding maintenance of the Community-Senior Center and improvement projects for such building including salaries of part-time Building Monitors, from the revolving fund established by vote of the 2008 Spring Annual Town Meeting under Article 28.

Motion E under Article 20 passed majority vote.

Revolving Account:

Board of Health Immunization

MOTION F (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Everett that the Town vote, pursuant to Chapter 44, Section 53E½ of the Massachusetts General Laws, to authorize the Director of Public Health, under the supervision of the Board of Health, expend up to and including \$40,000 during the fiscal year beginning July 1, 2015, in order to utilize money received from Medicare, Medicaid and health insurance reimbursements from the Board of Health's annual flu clinics for the purpose of providing subsidized funding for future flu clinics, children and adult immunization programs, pandemic and emergency preparedness, from the revolving fund established by vote of the 2011 Spring Annual Town Meeting under Article 20.

Motion F under Article 20 passed unanimously.

Revolving Account:

Community – Senior Center Programs

MOTION G (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote, pursuant to Chapter 44, Section 53E½ of the Massachusetts General Laws, to authorize the Community Services Director and the Director of Human Services/Council on Aging, under the supervision of the Council on Aging, to expend up to and including \$95,000 during the fiscal year beginning July 1, 2015, in order to utilize money received from participants in programs and activities for the purpose of funding said programs and activities at the Community-Senior Center, from the revolving fund established by vote of the 2012 Fall Annual Town Meeting under Article 15.

Motion G under Article 20 passed by majority vote.

Revolving Account:

Board of Health Regional Coalition Tobacco Control

MOTION H (requires majority vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote pursuant to Chapter 44, Section 53E1/2 of the Massachusetts General Laws, to authorize the Public Health Director, under the supervision of the Board of Health, to expend up to and including \$25,000 during the fiscal year beginning July 1, 2015, in order to utilize money received through grants, retail tobacco dealer permit fees and fines for the purpose of funding tobacco control programs and enforcement, from the revolving fund established by vote of the 2104 Spring Annual Town Meeting under Article 33.

Motion H under Article 20 passed by majority vote.

ARTICLE 21: Capital Equipment (Town Administrator)

To see if the Town will vote to appropriate and raise, or otherwise provide, a sum of money as may be required for capital equipment for the various departments of the Town of Natick; to determine whether this appropriation shall be raised by borrowing or otherwise; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 14-0-0 on February 24, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 21.*

Motion A moved by Mr. Evans seconded by Mr. Brown.

Article 21 - Capital Equipment - 2015 Spring Annual Town Meeting

MOTION A: (Two-thirds vote required)

Move that the Town vote to appropriate the sum of \$518,000 to be expended under the direction of the Natick Public Schools for the purpose of purchasing portable radios and building equipment, and a van for transporting students, Police Department for the purpose of replacing police cruisers, and electronic control devices, under the direction of the Fire Department for the purpose of replacing NFD Car #1 and Car#2, under the direction of the Public Works Department for the purpose of purchasing loader mounted snow plows and an infield groomer tractor, and under the direction of the Information Technology Department for the purpose of purchasing a LAN Core Router individually shown as items 1, 2, 3, 4, 5, 6, 11, 13, and 14 in Table A below, and that to meet this appropriation the sum of \$518,000 be raised from the Capital Stabilization Fund.

TABLE A - MOTION A: Article 21 - Capital Equipment - 2015 Spring Annual Town Meeting

<u>Item #</u>	<u>Department</u>	<u>Item</u>	<u>Funding Source</u>	<u>Amount</u>
1	Public Schools	Purchase Portable Radios And Building Equipment	Capital Stab. Fund	\$ 162,000
2	Public Schools	Purchase Van For Transporting Academic Teams, Clubs, and Athletes	Capital Stab. Fund	\$ 65,000
3	Police Department	Cruiser Replacement	Capital Stab. Fund	\$ 80,000
4	Police Department	Replace Electronic Control Devices	Capital Stab. Fund	\$ 19,500
5	Fire Department	Replace NFD Car 2	Capital Stab. Fund	\$ 48,000
6	Fire Department	Replace NFD Car 1	Capital Stab. Fund	\$ 31,500
11	Public Works	Purchase 3 Loader Mounted One Way Snow Plows	Capital Stab. Fund	\$ 35,000
13	Public Works	Replace Infield Groomer Tractor	Capital Stab. Fund	\$ 27,000
14	Information Technology	Town LAN Core Router	Capital Stab. Fund	\$ 50,000

Appropriation under Article 21: MOTION A

\$ 518,000

Mr. Chenard gave an overview of all capital projects. *Motion A under Article 21 passed by two-thirds vote.*

Motion B under Article 21 was moved by Mr. Evans, seconded by Mr. Brown.

MOTION B: (two-thirds vote required)

Move that the Town vote to appropriate the sum of \$1,172,000 to be expended under the direction of the Public Works Department for purpose of replacing Truck S-31, purchasing one recycling side arm packer, to replace H-61 (Sidewalk Machine), to replace H-56 (Two Loader Mounted Snow Blowers), and to replace LF-9 (Bucket Truck), individually shown as items 7, 8, 9, 10, and 12, in Table B below, and that to meet this appropriation the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$1,172,000 under Massachusetts General Laws Chapter 44, Section 7, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than \$1,172,000 in principal amount and that the Town Administrator with the approval of the Board of Selectmen is authorized to take any action necessary to carry out this program.

TABLE B, MOTION B: Article 21 - Capital Equipment - 2015 Spring Annual Town Meeting

Item #	Department	Item	Funding Source	Amount
7	Public Works	Replace S-31 (Trash Packer)	Tax Levy Borrowing \$	280,000
8	Public Works	Purchase One New Recycling Side Arm Packer	Tax Levy Borrowing \$	275,000
9	Public Works	Replace H-61 (Sidewalk Machine)	Tax Levy Borrowing \$	142,000
10	Public Works	Replace H-56 (Two Loader Mounted Snow Blowers)	Tax Levy Borrowing \$	275,000
12	Public Works	Replace LF-9 (Bucket Truck)	Tax Levy Borrowing \$	200,000

Appropriation under Article 21: MOTION B **\$ 1,172,000**

Motion B under Article 21 passed by two-thirds vote.

Motion C was moved by Mr. Evans and seconded by Mr. Brown.

MOTION C: (two-thirds vote required)

Move that the Town vote to appropriate the sum of \$480,000 to be expended under the direction of the Public Works Department for purpose of installing variable frequency drives and controls, and replacing SCADA PLC/CPU Equipment, individually shown as items 16, and 17, in Table C below, and that to meet this appropriation the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$480,000 under Massachusetts General Laws Chapter 44, Section 8, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than \$480,000 in principal amount and that the Town Administrator with the approval of the Board of Selectmen is authorized to take any action necessary to carry out this program.

TABLE C, MOTION C: Article 21 - Capital Equipment - 2015 Spring Annual Town Meeting

Item #	Department	Item	Funding Source	Amount
16	Water & Sewer	VFD Installs and Controls	W/S Borrowing \$	195,000
17	Water & Sewer	Replace SCADA PLC/CPU Equipment	W/S Borrowing \$	285,000

Appropriation under Article 21: MOTION C **\$ 480,000**

Motion C under Article 21 passed by two-thirds vote.

Motion D was moved by Mr. Evans seconded by Mr. Brown.

MOTION D: (majority vote required)

Move that the Town vote to appropriate the sum of \$342,000 to be expended under the direction of the Department of Public Works for the purpose of replacing WS#6 Generator, W-27 Truck, and H & T Filter Piping Painting and Maintenance, individually shown as items 15, 18, and 19 in Table D below, and that to meet this appropriation the sum of \$342,000 be raised from Water & Sewer Retained Earnings.

TABLE D, MOTION D: Article 21 - Capital Equipment - 2015 Spring Annual Town Meeting

Item #	Department	Item	Funding Source	Amount
15	Water & Sewer	H & T Filter Piping Painting and Maintenance	W/S Retained Earning \$	250,000
18	Water & Sewer	Replace WS#6 Generator	W/S Retained Earning \$	47,000
19	Water & Sewer	Replace W-27 (1 Ton Work Truck)	W/S Retained Earning \$	45,000

Appropriation under Article 21: MOTION D **\$ 342,000**

Motion D under Article 21 passed unanimously.

ARTICLE 22: Capital Improvement (Town Administrator)

To see if the Town will vote to appropriate and raise, or otherwise provide, a sum of money to implement a Capital Improvement Program, to protect the physical infrastructure of the Town of Natick; to determine whether this appropriation shall be raised by borrowing or otherwise; or otherwise act thereon.

Motion A was moved by Mr. Evans and seconded by Mr. Brown.

MOTION A: (Two-thirds vote required)

Move that the Town vote to appropriate the sum of \$390,350 to be expended under the direction of the Department of Public Works for the purpose of replacing trees, under the direction of the Community Services Department for historical monument restoration, and under the direction of the Facilities Management Department to replace plumbing at the Johnson School, partial roof replacement at 75 West Street, town hall carpet replacement, to replace the concrete entry and approach at the Wilson School, to replace the library carpet at the Bennett Hemenway School, to repair the roof at the Wilson School, individually shown as items 3, 4, 5, 6, 7, 8, 9, and 10 in the Table A below, and that to meet this appropriation the sum of \$390,350 be raised from the Capital Stabilization Fund.

TABLE A, MOTION A: Article 22 - Capital Improvement - 2015 Spring Annual Town Meeting

Item #	Department	Item	Funding Source	Amount
3	Public Works	Tree Replacement	Capital Stab. Fund	\$ 35,000
4	Community Services	Historical Monument Restoration	Capital Stab. Fund	\$ 15,000
5	Facilities	Replace Rotted Plumbing at the Johnson School	Capital Stab. Fund	\$ 175,000
6	Facilities	Partial Roof Replacement - 75 West Street	Capital Stab. Fund	\$ 85,000
7	Facilities	Town Hall Carpet Replacement	Capital Stab. Fund	\$ 30,000
8	Facilities	Wilson Concrete Entry and Approach	Capital Stab. Fund	\$ 20,350
9	Facilities	Bennett Hemenway Library Carpet Replacement	Capital Stab. Fund	\$ 20,000
10	Facilities	Wilson Roof Repair	Capital Stab. Fund	\$ 10,000

Appropriation under Article 22: MOTION A

 **\$ 390,350**

Motion A under Article 22 passed by a two-thirds vote.

Motion B was moved by Mr. Evans and seconded by Mr. Brown.

MOTION B: (Two-thirds vote required)

Move that the Town vote to appropriate the sum of \$1,597,800 to be expended under the direction of the Natick Public Schools for the purpose of installing portable classrooms, and under the direction of the Department of Public Works for the purpose of Willow Street drainage improvements, individually shown as items 1, and 2 in Table B below, and that to meet this appropriation the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$1,597,800 under Massachusetts General Laws Chapter 44, Section 7, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than \$1,597,800 in principal amount and that the Town Administrator with the approval of the Board of Selectmen is authorized to take any action necessary to carry out this program.

TABLE B, MOTION B: Article 22 - Capital Improvement - 2015 Spring Annual Town Meeting

Item #	Department	Item	Funding Source	Amount
1	Natick Public Schools	Purchase & Install Portable Classrooms	Tax Levy Borrowing	\$ 1,097,800
2	Public Works	Willow Street Drainage	Tax Levy Borrowing	\$ 500,000

Appropriation under Article 22: MOTION B

\$ 1,597,800

Moved by Ms. Collins, seconded by Mr. Hughes to amend the main motion to delete the first instance of the word “purpose” in the second line and insert the words “purposes of purchasing and”. ***The amendment passed unanimously. Motion B under Article 22 as amended passed by two-thirds vote.***

Motion C was moved by Mr. Evans and seconded by Mr. Brown.

MOTION C: (Two-thirds vote required)

Move that the Town vote to appropriate the sum of \$28,000 to be expended under the direction of the Community Services Department for the purpose of purchasing a greens aerator, individually shown as item 11 in Table C below, and that to meet this appropriation the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$28,000 under Massachusetts General Laws Chapter 44, Section 7, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than \$28,000 in principal amount and that the Town Administrator with the approval of the Board of Selectmen is authorized to take any action necessary to carry out this program.

TABLE C, MOTION C: Article 22 - Capital Improvement - 2015 Spring Annual Town Meeting

11	Golf Course Enterprise	Greens Aerator	Golf Ent. Borrowing	\$ 28,000
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Appropriation under Article 22: MOTION C

\$ 28,000

Motion C under Article 22 passed by two-thirds vote.

Motion D was moved by Mr. Evans and seconded by Mr. Brown.

MOTION D: (majority vote required)

Move that the Town vote to appropriate the sum of \$16,000 to be expended under the direction of the Community Services Department for the purpose of the construction of an instruction facility, and repair of the landfill access road, individually shown as items 12, and 13 in Table D below, and that to meet this appropriation the sum of \$16,000 be raised from Golf Course Retained Earnings.

TABLE D, MOTION D: Article 22 - Capital Improvement - 2015 Spring Annual Town Meeting

Item #	Department	Item	Funding Source	Amount
12	Golf Course Enterprise	Construction of Instruction Facility	G/C Retained Earnings	\$ 10,000
13	Golf Course Enterprise	Repair of the landfill Access Road	G/C Retained Earnings	\$ 6,000
Appropriation under Article 22: MOTION D				\$ 16,000

Motion D under Article 22 passed by majority vote.

ARTICLE 23: Street Acceptance: Cider Mill Lane (Town Administrator)

To see if the Town will vote to accept Cider Mill Lane as a public way, and any appurtenant easements thereto, as laid out by the Board of Selectmen and as shown on a plan or plans, a copy of which is on file in the office of the Town Clerk; to see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase, eminent domain or otherwise, easements in any land necessary for laying out and acceptance of Cider Mill Lane, and any appurtenant drainage, utility or other easements related to said Cider Mill Lane, and/or to accept grants thereof; and, further, to authorize the Board of Selectmen and other applicable Town of Natick boards and personnel to take all related actions necessary or appropriate to accomplish the purposes of this article; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 10-0-0 on March 5, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 23.*

MOTION (requires two-thirds vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Town vote to accept Cider Mill Lane as a public way, and any appurtenant easements thereto, as laid out by the Board of Selectmen and as shown on a plan or plans, a copy of which is on file in the office of the Town Clerk; to authorize the Board of Selectmen to acquire by gift, purchase, eminent domain or otherwise, easements in any land necessary for laying out and acceptance of said portion of Cider Mill Lane, and any appurtenant drainage, utility or other easements related to said portion of Cider Mill Lane, and/or to accept grants thereof; and, further, to authorize the Board of Selectmen and other applicable Town of Natick boards and personnel to take all related actions necessary or appropriate to accomplish the purposes of this article.

Mr. Coviello spoke to the article. *The main motion under Article 23 passed by two-thirds vote.*

ARTICLE 27: Amend Zoning By-Laws: Consolidate Special Permit Granting Authority (Planning Board)

To see if the Town will vote to amend the Zoning Bylaws to consistently use the description of Special Permit Granting Authority, or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 14-0-0 on March 26, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 27.*

MOTION (requires two-thirds vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Zoning Bylaws be amended as follows:

In section III-A.3 FLOOD PLAIN DISTRICT: amend III-A. 3. (c) 3., to read:

- “3. The following is a permissible exception to Paragraphs 1 and 2: In any Flood Plain District after the adoption of this provision, the **Special Permit Granting Authority** ~~Board of Appeals~~ may issue a permit for any use permitted outside a Flood Plain District based on the following conditions:
- a. That any such use of such land will not interfere with the general purposes for which Flood Plain Districts have been established.
 - b. That any such use of such land will not be detrimental to the public health, safety, or welfare.

- c. The Special Permit Granting Authority will refer the question to the Planning Board (unless it is functioning as the SPGA with respect to such request), the Board of Selectmen, the Board of Health, the Conservation Commission and the Department of Public Works for recommendations. It will consider those recommendations returned within 22 days by the above Boards.”

~~The Board of Appeals will refer the question to the Planning Board, the Board of Health, the Board of Public Works, the Board of Selectmen and the Town Conservation Commission for recommendations. It will consider those recommendations returned within 14 days by the above Boards.~~

In section III-A.5 AQUIFER PROTECTION DISTRICT (APD): amend III-A. 5. 5., to read:

“5. PROHIBITED USES

- a) 1) In the APD District, the Board of Appeals shall not grant a variance to: (i) allow any use which is prohibited by this Section III.A.5(b) or (ii) to allow any use not permitted as a matter of right or not allowed upon the issuance of a special permit, in the underlying zoning district.
2) The Special Permit Granting Authority may grant special permits to allow such change in use, subject to the provisions set forth in Section 7 of this By-law (Special Procedures etc.).”
- ~~a) In the APD District, the Board of Appeals shall not grant a variance to: (i) allow any use which is prohibited by this Section III.A.5(b) or (ii) to allow any use not permitted as a matter of right or not allowed upon the issuance of a special permit, in the underlying zoning district, except that the Board of Appeals may grant variances or special permits to allow such change in use, subject to the provisions set forth in Section 7 of this By-law (Special Procedures etc.).~~

In section III-C HIGHWAY MIXED USE - (HM-II) DISTRICT USE REGULATIONS, amend III-C 1., to read:

“1. PERMITTED AND ALLOWED USES:

- a) Small Parcels- On lots located within an HM-II District, containing two hundred thousand (200,000) square feet of land or less, all uses permitted as of right and all uses allowable on such lots on the issuance of a Special Permit by the Board of Appeals acting as a Special Permit Granting Authority which were permitted or allowable in the zoning district within which said lots were located immediately prior to rezoning to an HM-II District shall respectively continue to be permitted or allowable uses.
- b) Large Parcels- On lots located within an HM-II District, containing over two hundred thousand (200,000) square feet of land, the following uses as set forth in Section III-A.2 (USE REGULATIONS SCHEDULE) shall be permitted as a matter of right: Use Nos. 1, 3, 5, 9 and 46C.” ~~(Amended — Art. 30, Fall ATM, 10/8/98)~~

In section III-D USE REGULATIONS FOR LC DISTRICTS, amend III-D 2. to read:

“2. USES ALLOWED ON SPECIAL PERMIT ONLY. The following uses may be allowed by the Board of Appeals acting as a Special Permit Granting Authority in accordance with Section VI - E - 2:”

In section III-E DOWNTOWN MIXED USE DISTRICT DM: amend III-E 2.b., to read:

“b. USES ALLOWED ON SPECIAL PERMIT ONLY:

The following uses may be allowed by the Board of Appeals acting as a Special Permit Granting Authority in accordance with the provisions of Chapter 40A of the General Laws and in accordance with Section VI-DD of this By-law.

1. Multi-family dwellings, provided the Special Permit Granting Authority Zoning Board of Appeals specifically determines that adequate provision has been made for off-street parking.”

In section III-G HIGHWAY PLANNED USE (HPU) DISTRICTS: amend III-G 2. A., to read:

“A. PERMITTED AND ALLOWED USES:

On lots located within an HPU District, all uses permitted as of right and-or all uses allowable on such lots upon the issuance of a Special Permit from the Special Permit Granting Authority ~~Board of Appeals~~, which were permitted or allowable in the zoning district within which said lots were located immediately prior to their being rezoned into an HPU District shall continue to be permitted or allowable uses, respectively, unless the owner or owners elect to develop their property under an Overall Site Plan as provided for in Section 2.B following hereafter, and such Site Plan is finally approved. Use No. 46C shall be permitted as a matter of right and Use No. 46A shall be allowed upon the issuance of a special permit by the Planning Board.”

In section IV-A. GENERAL REQUIREMENTS: amend IV-A. 4., to read:

“4. A lot or parcel of land containing two or more dwellings existing prior to August 10, 1960 ~~at the time of adoption of this bylaw~~ which can not be divided in conformity with these requirements may, under a Special Permit by the Planning Board ~~Board of Appeals~~, be divided in a manner complying as closely as possible with these requirements.”

In section V-D OFF-STREET PARKING AND LOADING REQUIREMENTS, amend V-D 6. to read:

“6. Location of Required Parking Spaces

Required parking spaces shall normally be located on the same lot as the building or use, which they serve. However, the Special Permit Granting Authority may grant a special permit to allow use of parking facilities not on the same lot provided that the Special Permit Granting Authority determines that proper provision is made to insure pedestrian and traffic safety and that the intent and purpose of this section of the bylaw are attained.

Except as hereinafter provided, no land in a Residential District shall be used for off-street parking accessory to or to service a structure or use in a Commercial, Industrial, Highway Planned Use, or a Highway Mixed Use District. “

In section V-D OFF-STREET PARKING AND LOADING REQUIREMENTS, amend V-D 10. to read:

“10. Entrance and Exit Driveways

b) Driveways in Residential Multiple, Downtown Mixed Use, Commercial II, Industrial I, Industrial II, Highway Planned Use, Highway Mixed Use I, Highway Mixed Use II, Highway Mixed Use III, and PCD Districts or serving uses allowed in these districts, shall not be more than forty-five (45) feet wide at the right-of-way line and fifty-five (55) feet wide at the curb line unless otherwise specified by the Natick Department of Public Works or the Massachusetts Department of Public Works. Each parcel within these districts, or occupied by such use, will be entitled to two (2) driveways where the property has two hundred (200) feet of frontage or less. Additional driveways may be allowed by special permit by the Special Permit Granting Authority ~~Board of Appeals~~ for lots with greater than two hundred (200) feet of frontage.”

In section V-D OFF-STREET PARKING AND LOADING REQUIREMENTS, amend V-D 15. to read:

“15. Buffer Areas

a) General. Any off-street parking or storage area serving other than one (1) and two (2) family dwellings which abuts residentially zoned land shall be separated from such adjoining land by a ten (10) foot buffer area which shall be suitably landscaped and maintained with natural and living materials so as to form an effective year round visual screen at least six (6) feet in height to insulate the residentially zoned land from the off-street parking area. Trees planted in this buffer area shall be at least six (6) feet in height and not less than two (2) inches in diameter

immediately after planting. The **Special Permit Granting Authority** ~~Board of Appeals~~ may by special permit allow the use of a fence, wall or other non-living structure to achieve the purpose of this buffer provided that it is determined to be a more effective and suitable buffer than could be provided with living materials. As a minimum all off-street parking and loading areas except those serving one and two family dwellings shall be separated from adjacent properties by a four (4) foot buffer strip planted with grass or similar natural ground cover. However, where adjacent parcels agree to share a common parking area with a common entrance and exit the minimum four (4) foot buffer may be eliminated on all common property lines.” (~~Art. 6, S.T.M. #2, 10/10/00~~)

In section V-D OFF-STREET PARKING AND LOADING REQUIREMENTS, amend V-D 19. b) 4) to read:

“4) such other information as the Building Inspector **or Special Permit Granting Authority** may reasonably require.”
~~4) such other information as the Building Inspector of Board of Appeals may reasonably require.~~

In section V-D OFF-STREET PARKING AND LOADING REQUIREMENTS, amend V-D 19. d) to read:

“d) Waivers – Except for the provisions of sections 3. r) through t) and section 5., the Special Permit Granting Authority may waive strict compliance by not more than ten percent (10%) with the requirements of Section V-D. pursuant to a special permit and site plan, provided that the Special Permit Granting Authority determines findings
~~d) Exceptions – The Board of Appeals may make exceptions to the provisions of this Section either upon appeal or upon written request of the owner, the owner's authorized representative, or with the written consent of the owner of a parcel of land in any case where, after a public hearing thereon, it shall find~~
that literal enforcement would cause a substantial hardship or that literal compliance is impractical because of the size, width, depth, shape or the use to which it is to be put, or because a lesser area would, except in unusual circumstances, accommodate the motor vehicles of all persons at any time using the building or less stringent requirements would carry out the other purposes of this Section of because of factors peculiar to the lot or building involved not generally affecting the zoning district in which it is located.”

In section V-H SIGNS AND ADVERTISING DEVICES, amend V-H C. 1.(b) to read:

“(b) No sign shall be illuminated more than thirty (30) minutes after closing, or before 8:00 A.M. on any day except for signs of business which are legally carrying on business before 8:00 A.M. which may be illuminate while said businesses are actually open to receive the public.

Signs identifying police or fire stations and residences of medical doctors, hospitals, nursing homes, and other such signs as the **Special Permit Granting Authority** ~~Board of Appeals~~ may authorize, may be illuminated at other hours if there is a finding that the nature and use of the premises is such that illumination should be permitted in the public interest.”

In section V-H SIGNS AND ADVERTISING DEVICES, amend V-H D. 3. (c) 1. to read:

“1. Arcade or Courtyard signs:

As used herein, the term "Arcade" and "Courtyard" mean pedestrian areas not enclosed within a building in which vehicle traffic does not enter and bordered on at least two sides by buildings: such areas being set back at least 300 feet from the street along which frontage is measured. The **Special Permit Granting Authority** ~~Board of Appeals~~ may allow a reasonable number of project directories, directional signs and signs each not to exceed fifty (50) square feet in area in a courtyard or arcade; in keeping with the architectural, geographic or theme image of a project. Such signs may project from a building into the arcade or courtyard, be suspended from or form free-standing architectural or structural elements of a project; as well as being affixed to walls of a building or structural element within the arcade or courtyard area; all in keeping with the style and character of a project. Business identification signs shall be limited

to the trading name and/or established logotype of a business and shall not include brand name slogans or advertising verbiage, unless such are also the trading name.”

In section V-H SIGNS AND ADVERTISING DEVICES, amend V-H E. 3. to read:

“3. Appeal and Review - Any person aggrieved by the issue or refusal of a permit or approval by the Building or Electrical Inspector or by a delay of more than two weeks (except for apartment houses as Defined in Chapter 2, Section 2.1 of the Building Code and Section I-D of the Zoning By-Law) in rendering a decision upon an application may appeal to the **Special Permit Granting Authority** ~~Board of Appeals~~ within fifteen days after the date of publication of notice of the granting of such permit, of receipt of notice of such refusal, or of the end of said two-week period, by filing a written notice of appeal with the Town Clerk **and Community Development office.** ~~on a form approved by the Board of Appeals.~~

The Building Inspector may in writing request the **Special Permit Granting Authority** ~~Board of Appeals~~ for a ruling in any case wherein he is in doubt as to the true intent or application of any part of this section and upon receipt of such request the **Special Permit Granting Authority** shall promptly determine the true intent and application of any provisions of this section in question.

On receipt of a notice of appeal the Town Clerk shall notify the **Special Permit Granting Authority** ~~Board of Appeals~~ who, after due notice to the parties concerned, shall hold a hearing and shall either affirm, annul or modify the action of the Building Inspector appealed from.

Every decision of the **Special Permit Granting Authority** ~~Board of Appeals~~ hereinafter shall be in writing and shall be signed by four of its five members, and shall be filed in the office of the Town Clerk and in the **Community Development office** ~~office of the Planning Board~~ and shall be public records and notice thereof shall be given by the **Special Permit Granting Authority** ~~Board of Appeals~~ to the applicant. A copy of each decision of the **Special Permit Granting Authority** ~~Board of Appeals~~ shall be furnished to the Building Inspector. If the **Special Permit Granting Authority** ~~Board~~ modifies or annuls any action of the Building Inspector, he shall issue a new permit or ruling in conformity with the decision of the Board without delay.”

In section V-H SIGNS AND ADVERTISING DEVICES, amend V-H E. 4. to read:

“4. Special Permits - The **Special Permit Granting Authority** ~~Board of Appeals~~ may grant a special permit for a sign not complying with the provisions of this By-Law, if it determines pursuant to a public hearing that the particular sign will be in harmony with the general purpose and intent of this section will not be injurious to the neighborhood in which such sign or signs are to be located nor to traffic and safety conditions therein, nor otherwise detrimental to the public safety and welfare.

In granting such permission the **Special Permit Granting Authority** ~~Board~~ shall specify the size, type, and location of the sign and impose such other terms, restrictions, and conditions as it may deem to be in the public interest.”

Ms. Evans and Mr. Munnich spoke to this article. Moved by Mr. Sidney seconded by Mr. Freedman to amend the main motion by removing highlighting and crossed out text. ***The amendment passed unanimously. The amended main motion under Article 27 passed by two-thirds vote.***

ARTICLE 28: Amend Zoning By-Laws: Ancillary Outlet (Planning Board)

To see what actions the Town will vote to amend the Zoning Bylaws 1) to define and add a new use of "Ancillary Outlet," 2) to determine the size of such use, 3) to determine the location of zones or portions of zones wherein such Ancillary Outlets may occur, 4) to provide for buffers or restrictions on such use in relation to residential uses, 5) to modify Use 39 Light Manufacturing to include the commercial production of food products, 6) to specify the Special Permit Granting Authority and/or 7) to specify the requirements for, or applicability of, special permit/site plan review process for such Ancillary Outlets, or for combinations of uses on the Use Regulation Schedule possibly, but not necessarily consisting of, the changes listed below; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 14-0-0 on March 26, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 28.*

MOTION A (requires two-thirds vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Zoning Bylaws be amended as follows:

by amending Use 39 within Section III-a.2. (Use Regulation Schedule); by adding a new use 39A “Ancillary Outlet,”; and Section 200 - DEFINITIONS as follows:

In Section 200 – DEFINITIONS insert:

“Ancillary Outlet” : An enclosed area, the principle purpose of which is to sell or serve food and / or goods which are prepared or made on the site. An Ancillary Outlet shall occupy no more than 10% of the area of the story in which it is located or 500 square feet, whichever is less. The Ancillary Outlet shall be operated in such a manner that noise, smoke, dust, odor, vibration, or similar objectionable features are confined to the premises.

“Ancillary Outlet Setback: The shortest distance from a residential zone to an Ancillary Outlet inclusive of its outside parking and vehicular access.”

In Section III-A.2 Use Regulations Schedule:

Insert: “or commercial food production,” in Use 39 so that Use table 39 reads as:

	BUSINESS USES	RG	RM	RS	PCD	SH	AP	DM	CII	INI	INII	H
39.	Light manufacturing uses (including renewable or alternative energy light manufacturing uses) when the processes involved entail only fabrication, assembly, finishing work, packaging, or commercial food production, conducted in such a manner that noise, smoke, dust, odor, vibration, or similar objectionable features are confined to the premises.	O	O	O	O	O	O	(*)	O	P	P	O

Insert new use 39A to appear on the Use Table as follows:

	BUSINESS USES	RG	RM	RS	PCD	SH	AP	DM	CII	INI	INII	H
39A.	Ancillary Outlet *	O	O	O	O	O	O	(*)	O	A	O	O

Insert a new footnote to the use table as follows:

“*Use 39A. Ancillary Outlet shall not be permitted in any Industrial Zones covered by or underlying the Regional Center Overlay District or HOOP Overlay Districts. The Ancillary Outlet Setback from a residential zone to an Ancillary Outlet inclusive of its outside parking and vehicular access is 85 feet.”

Ms. Evans spoke to Motions A and B at the same time. ***Motion A under Motion 28 passed unanimously.***

Motion B (requires two-thirds vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Zoning Bylaws be amended as follows with the condition of eliminating the highlighting and deleting the text which is crossed out:

by amending Paragraph 2 (Applicability and SPGA Designation) of Section VI-DD (Site Plan Review,) as follows:

In section VI-DD SITE PLAN REVIEW, amend VI-DD 2. to read:

“2. Applicability and SPGA Designation

b) All uses, other than Uses No. 46, 47, 48, and 54 which are permitted or allowed under the Use Regulation Schedule in the Commercial II (C-II), Industrial I (IN-I), and Industrial II (IN-II) zoning districts, shall be subject to the Site Plan Review procedure described herein with the following SPGA designations:

2.) The Planning Board shall act as the SPGA for all such review procedures involving more than 150,000 square feet of new or rehab construction floor space, or the development of a parcel of land having such area limitation, *or when a combination of uses, as described in the Use Regulation Schedule, is sought.*

c) Notwithstanding the foregoing, in the Commercial II, Industrial I, and Industrial II districts, the Site Plan Review procedures described herein shall not be required with respect to alteration or rehab construction unless:

1.) There is a change from one use designation to another use designation described in the Use Regulation Schedule, *or when an additional use designation, as described in the Use Regulation Schedule, is sought,* or

2.) The proposed alteration of a structure in existence prior to *August 10, 1960* ~~the effective date of this by-law section~~ will increase the floor area of a building on the premises by more than five (5%) percent.”

Motion B under Article 28 passed unanimously.

ARTICLE 29: Amend Zoning By-Laws: Uses and Dimensions of Parks and Open Space (Planning Board)

To see if the Town will vote to amend the Zoning Bylaws to clarify the definition and permitting of Parks, Trails, and Open Space Public Benefit Amenities; or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: *By a vote of 14-0-0 on March 26, 2015, the Finance Committee recommends **Favorable Action** with regard to the subject of Article 29.*

MOTION (requires two-thirds vote):

Moved by Mr. Evans, seconded by Mr. Brown that the Zoning Bylaws be amended as follows with the administrative changes of removing highlighting and deleting the text which has been crossed out:

In Section 200 – DEFINITIONS: **Open Space Public Benefit Amenity**, insert: “*including the area for trails and ways for pedestrians and non-motorized vehicles.*” so that the section reads as:

“Open Space Public Benefit Amenity: A public benefit amenity in the form of a park or excess pervious landscaping, available for passive or active recreation, or leisure use, by the public *including the area for trails and ways for pedestrians and non-motorized vehicles.*”

In Section 328.21 Parks: insert; “*largely*” and insert: “*A park exceeding 15,000 contiguous square feet in area may have a smaller minimum width if the Planning Board finds that such linear park can accommodate a way for public access by pedestrians or non-motorized vehicles.*” so that the section reads as:

“328.21 Parks: To be eligible as a public benefit amenity, a park must meet all of the following standards:

- be at least 2,500 square feet in area;
- have a minimum width of 50 feet;
- be *largely* buffered and/or screened from nearby roads, parking areas and other vehicular circulation facilities; and
- not be located within the landscape buffer strip required under Section 327.6

A park exceeding 15,000 contiguous square feet in area may have a smaller minimum width if the Planning Board finds that such linear park can accommodate a way for public access by pedestrians or non-motorized vehicles. “

In section **VI-DD SITE PLAN REVIEW:** VI-DD 2. e.: insert: “*parks, trails,*” so that the section reads as:

- e) Where Site Plan Review is not otherwise required by the provisions of Section VI DD, in all zoning districts referred to in this Section VI-DD - 2 the construction of *parks, trails,* roads, driveways and parking areas shall be subject to the Site Plan Review procedure described herein to be administered by the Planning Board as the SPGA. This section VI-DD 2 (e) shall not remove the exclusions created by Section VI-DD 2 (c).”

The main motion under Article 29 passed by two-thirds vote.

Moved by Mr. Hughes, seconded by Mr. Sidney to adjourn. ***The motion to adjourn passed by unanimously. The meeting adjourned at 10:00 PM until Tuesday, May 5th at 7:30 PM.***

A record of the Fourth Session of
2015 Spring Annual Town Meeting
April 30, 2015

Diane Packer, Town Clerk

Article 38 Amend Zoning ByLaw to Change and/or to Specify SPGA Designations and Procedures (Draft 2.27.27)

Motion:

“Move to amend the zoning by law by inserting the words “SPECIAL PERMIT PROCEDURES AND ” in the title of Section VI-DD before the words “SITE PLAN REVIEW”

and by inserting immediately after 1. Purpose and Intent Administration a.) the words:

‘ The purpose of the following Special Permit section of this zoning bylaw is to authorize the hearing of and decisions on Special Permit applications, authorize the issuance of Special Permits, establish criteria and procedures for the issuance of Special Permits and set forth matters which can be addressed and regulated in a Special Permit decision. Unless specifically exempted in Section VI-DD2.B, all uses requiring Special Permits under this Zoning ByLaw shall require Site Plan Review in accordance with VI-DD 2.B.’

And by inserting in subsection VI-DD 1 b) the words:

‘Special Permit Procedure and the’ after the first word ‘The” and before the words ‘Site Plan Review” in the first line of VI-DD 1b)

and by deleting the word ‘is’ in the first line of VI-DD 1b) and replacing it with the word ‘are’

and by inserting the words ‘A and Section 2B’ after the words ‘Section 2’ and before the word ‘hereafter.’ in the last line of VI-DD 1b)

and by inserting the words:

“2 A. Special Permits” as the title of a new subsection immediately after the conclusion of VI-DD 1c)

and by inserting the following words as the text of new subsection 2A. Special Permits:

- a. Special Permit Granting Authority. As designated in this By-Law, the Board of Appeals or the Planning Board shall act as the Special Permit Granting Authority (SPGA) for hearing and deciding all matters pertaining to Special Permits and for issuance of such Special Permits. The specific assignments are listed below.

1. The Planning Board shall act as the SPGA in the following Districts:

Highway Mixed Use - I
Highway Mixed Use - II
Highway Mixed Use - III

Highway Planned Use
Town House Cluster Development - RSA
Single Family Town House Cluster Development - RSB
Single Family Town House Cluster Development - RSC
Hospital (H)
Inclusionary Housing Option Program (IHOP)
Regional Center Overlay District
Highway Corridor Overlay District
Planned Cluster Development - PCD
Mall Center (MC) Overlay District
Housing Overlay Option Plan - I (HOOP I)
Housing Overlay Option Plan - II (HOOP II)
Regional Center Mixed-Use Overlay District
Historic Preservation
Administrative and Professional (AP)
Commercial II (C-II)
Industrial I (I-I)
Industrial II (II-II)
Downtown Mixed Use (DMU)

2. Zoning Board of Appeals shall act as the SPGA in the following Districts:

Limited Commercial (LC)
Subsidized Housing (SHA)
Non Conforming Uses in accordance with Section V-A

3. In the event of a failure of this zoning by law to designate an SPGA, the Planning Board shall be authorized to act and serve as SPGA

b. Decision Criteria. The following criteria shall be the minimum basis for all decisions on special permits, in addition to criteria as may be more specifically provided elsewhere in this By-Law. Special permits shall be granted by the Special Permit Granting Authority as specified herein only upon its written determinations for each of the following factors that the proposed use will not have adverse effects which outweigh its beneficial effects for both the neighborhood and the Town, in view of the particular characteristics of the site and of the proposal in relation to that site. The determinations shall be made separately for and indicate consideration of each of the following criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Adequacy of traffic flow and safety, including parking and loading,
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.
7. Conformity with the purposes and objectives of both this zoning by law and the district in which the property is situated

The applicant shall show to the satisfaction of the special permit granting authority that the use, building, or structure for which application is made shall not be against the public interest, shall not derogate from the character of the neighborhood in which such use, building, or structure is to occur and shall not be detrimental or offensive because of noise, vibration, smoke, gas, fumes, odor, dust or other objectionable features and that such use, building, or structure shall not otherwise be injurious to the inhabitants of the Town or their property or dangerous to the public health or safety. Consideration of traffic flow and safety and parking and loading shall consider affects on nearby and collector streets at both peak and off peak hours. When the foregoing criteria are not so satisfied, the special permit granting authority shall deny the application.

In addition to these criteria, the special permit granting authority may imposed conditions, safeguards and limitations on time and use.

c. Procedures. Each application for a special permit, together with copies of supporting plans and other materials, shall be filed by the petitioner with the Town Clerk. Fifteen copies of said application, including one having the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the Special Permit Granting Authority, together with five (5) copies of the supporting plans and other materials, and one copy of all materials in digital (PDF) format.

d. Referral to Other Officials and Agencies. The Special Permit Granting Authority shall refer notice of all applications immediately upon receipt to the Town Administrator, Building Commissioner, Planning Board (when it is not the SPGA), Town Engineer, DPW, Board of Health, Conservation Commission, Police Department, Fire Department, and to any other involved Town official or agency.

The Special Permit Granting Authority shall also transmit copies of the submitted plans and support documentation to all agencies having requested such documentation for either that specific project or for such projects generally, and to any other authorities whose review is judged appropriate by the Building Commissioner, for technical review and comment. Failure of any official or agency to make recommendation within thirty- five days of receipt of the application and support documentation shall be deemed lack of opposition thereto.

e. Decision. A special permit, if granted, shall be subject to any general or specific rules prescribed herein, and it may be made subject to appropriate conditions, safeguards, and limitations on time or use. When the special permit granting authority determines that a special permit may be granted if accompanied by conditions specially designated to safeguard the neighborhood and the Town, it shall impose such conditions and make them a part of the decision, and they shall be made a part of the building permit issued by the Building Commissioner.

f. Lapse. A special permit granted under this Section shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.'

and by inserting the words “B” after the number 2 and the words “Site Plan Review” before the word “Applicability” in the title “2. Applicability and SPGA Designation”

and by inserting the words ‘Downtown Mixed Use (DMU)’ after the words Industrial II (I-II) in current Section VI- DD.2

and by inserting the words “ The following zoning districts shall be subject to the Site Plan Review Procedures described herein , to be administered the Zoning Board of Appeals acting as the SPGA

Limited Commercial (LC)
Subsidized Housing (SHA)”

and after the words ‘b) All uses, other than Uses No. 46, 47, 48 and 54 which are permitted or allowed under the Use Regulation Schedule in the Commercial II (C-11) zoning districts, shall be subject to the Site Plan Review procedure described herein’ by deleting the words

“with the following SPGA designations:

- 1.) The Board of Appeals shall act as the SPGA for all such review procedures involving less than 150,000 square feet of new or rehab construction floor space, or the development of a parcel of land having such area limitation.
- 2.) The Planning Board shall act as the SPGA for all such review procedures involving more than 150,000 square feet of new or rehab construction floor space, or the development of a parcel of land having such arealimitation , or when a combination of uses, as described in the Use Regulation Schedule, is sought.”

And inserting in their place the words “ with the Planning Board acting as SPGA”

So that VI DD Site Plan Review header, subsections 1a, 1b, new section 2 A, and renumbered Section 2 B a) and b) including their respective subheaders now read as follows:

VI-DD SPECIAL PERMIT PROCEDURES AND SITE PLAN REVIEW

1. Purpose and Intent Administration

a) The purpose of the following Special Permit section of this zoning bylaw is to authorize the hearing of and decisions on Special Permit applications, authorize the issuance of Special Permits, establish criteria and procedures for the issuance of Special Permits and set forth matters which can be addressed and regulated in a Special Permit decision. Unless specifically exempted in Section VI-DD2.B, all uses requiring Special Permits under this Zoning ByLaw shall require Site Plan Review in accordance with VI-DD 2.B.The purpose of the Site Plan Review Procedure hereby established is to protect the safety, public health, convenience and general welfare of the inhabitants of the Town by providing a comprehensive review of plans for those uses and structures which have a significant impact upon the character of the . Town and upon traffic, utilities and property values therein. · Factors to be considered are the placement of buildings and utilities, surface and

groundwater drainage, wetlands, water supply, parking, loading, landscaping, lighting, dust and noise control, access to the development, acceptable sanitary conditions and the proper provision for open areas. It is intended to insure that the design and layout of those developments so subject to this procedure in this bylaw will constitute suitable development and will not result in a detriment to the neighborhood or to the environment. It is also intended hereby to assist those wishing to build projects within the Town by providing them with the necessary information about all of the Town's requirements affecting their project prior to the start of any construction or the issuance of the permits.

b) The Special Permit Procedure and the Site Plan Review Procedure are to be administered by a Special Permit Granting Authority ("SPGA") in those uses and/or districts, and in the manner as indicated in this Section VI-DD. Those Town Agencies who may function as the SPGA hereunder are: The Board of Appeals and the Planning Board. The specific assignments given to each SPGA are set forth in Section 2A and Section 2B, hereafter.

2. A Special Permits

- a. Special Permit Granting Authority. As designated in this By-Law, the Board of Appeals or the Planning Board shall act as the Special Permit Granting Authority (SPGA) for hearing and deciding all matters pertaining to Special Permits and for issuance of such Special Permits. The specific assignments are listed below.

1. The Planning Board shall act as the SPGA in the following Districts:

Highway Mixed Use - I
Highway Mixed Use - II
Highway Mixed Use - II
Highway Planned Use
Town House Cluster Development - RSA
Single Family Town House Cluster Development - RSB
Single Family Town House Cluster Development - RSC
Hospital (H)
Inclusionary Housing Option Program (IHOP)
Regional Center Overlay District
Highway Corridor Overlay District
Planned Cluster Development - PCD
Mall Center (MC) Overlay District
Housing Overlay Option Plan - I (HOOP I)
Housing Overlay Option Plan - II (HOOP II)
Regional Center Mixed-Use Overlay District
Historic Preservation
Administrative and Professional (AP)
Commercial II (C-II)
Industrial I (I-I)
Industrial II (II-II)
Downtown Mixed Use (DMU)

2. Zoning Board of Appeals shall act as the SPGA in the following Districts:

Limited Commercial (LC)
Subsidized Housing (SHA)
Non Conforming Uses in accordance with Section V-A

3. In the event of a failure of this zoning by law to designate an SPGA, the Planning Board shall be authorized to act and serve as SPGA.

b. Decision Criteria. The following criteria shall be the minimum basis for all decisions on special permits, in addition to criteria as may be more specifically provided elsewhere in this By-Law. Special permits shall be granted by the Special Permit Granting Authority as specified herein only upon its written determinations for each of the following factors that the proposed use will not have adverse effects which outweigh its beneficial effects for both the neighborhood and the Town, in view of the particular characteristics of the site and of the proposal in relation to that site. The determinations shall be made separately for and indicate consideration of each of the following criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Adequacy of traffic flow and safety, including parking and loading,
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.
7. Conformity with the purposes and objectives of both this zoning by law and the district in which the property is situated

The applicant shall show to the satisfaction of the special permit granting authority that the use, building, or structure for which application is made shall not be against the public interest, shall not derogate from the character of the neighborhood in which such use, building, or structure is to occur and shall not be detrimental or offensive because of noise, vibration, smoke, gas, fumes, odor, dust or other objectionable features and that such use, building, or structure shall not otherwise be injurious to the inhabitants of the Town or their property or dangerous to the public health or safety.

Consideration of traffic flow and safety and parking and loading shall consider affects on nearby and collector streets at both peak and off peak hours.

Consideration of the natural environment shall include not creating additional shadow or causing additional blockage of sunlight and/or view on or from existing buildings, constituting the primary use, on adjacent properties to a greater extent than could result from the construction of a permitted use (i.e. a use not requiring special permit) in full compliance with all applicable dimensional and intensity regulations on the parcel for which the special permit is sought.

When the foregoing criteria are not so satisfied, the special permit granting authority shall deny the application.

In addition to these criteria, the special permit granting authority may impose conditions, safeguards and limitations on time and use.

c. Procedures. Each application for a special permit, together with copies of supporting plans and other materials, shall be filed by the petitioner with the Town Clerk. Fifteen copies of said application, including one having the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the Special Permit Granting Authority, together with five (5) copies of the supporting plans and other materials, and one copy of all materials in digital (PDF) format.

d. Referral to Other Officials and Agencies. The Special Permit Granting Authority shall refer notice of all applications immediately upon receipt to the Town Administrator, Building Commissioner, Planning Board (when it is not the SPGA), Town Engineer, DPW, Board of Health, Conservation Commission, Police Department, Fire Department, and to any other involved Town official or agency.

The Special Permit Granting Authority shall also transmit copies of the submitted plans and support documentation to all agencies having requested such documentation for either that specific project or for such projects generally, and to any other authorities whose review is judged appropriate by the Building Commissioner, for technical review and comment. Failure of any official or agency to make recommendation within thirty- five days of receipt of the application and support documentation shall be deemed lack of opposition thereto.

e. Decision. A special permit, if granted, shall be subject to any general or specific rules prescribed herein, and it may be made subject to appropriate conditions, safeguards, and limitations on time or use. When the special permit granting authority determines that a special permit may be granted if accompanied by conditions specially designated to safeguard the neighborhood and the Town, it shall impose such conditions and make them a part of the decision, and they shall be made a part of the building permit issued by the Building Commissioner.

f. Lapse. A special permit granted under this Section shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.'

2 B Site Plan Review Applicability and SPGA Designation

All uses, other than Uses Nos. 1, 3, 5, 8, 9, 17, 18, 46, 47 and 48,

permitted or allowed in the following Zoning districts, shall be subject to the Site Plan Review Procedure described herein, to be administered by the Planning Board, acting as the SPGA:

- Highway Mixed Use - I
- Highway Mixed Use - II
- Highway Mixed Use - III
- Highway Planned Use
- Town House Cluster Development - RSA
- Single Family Town House Cluster Development - RSB
- Single Family Town House Cluster Development - RSC
- . Hospital (H)
- Inclusionary Housing Option Program (IHOP)
- Regional Center Overlay District (Art. 7, S.T.M. #1, 2/3/93)
- Highway Corridor Overlay District (Art. 7, S.T.M. #1, 2/3/93)
- Planned Cluster Development - PCD (Art. 2, S.T.M. #2, 10/11/00)
- Mall Center (MC) Overlay District (Art. 1, S.T.M. #2, 12/03/02)
- Housing Overlay Option Plan - I (HOOP - I) (Art. 27, Spring A.T.M., 4/15/04)
- Housing Overlay Option Plan - II (HOOP - II) (Art. 27, 2004 Spring A.T.M., (4/15/04))
- Regional Center Mixed-Use Overlay District (Art. 1, Fall STM #1, 10/18/05)
- Historic Preservation (Art. 37 Fall ATM 10/21/14)
- Industrial I (I-I)
- Industrial II - (I-II)
- Downtown Mixed Use (DMU)

The following zoning districts shall be subject to the Site Plan Review Procedures described herein, to be administered the Zoning Board of Appeals acting as the SPGA:

- Limited Commercial (LC)
- Subsidized Housing (SHA)"

b) All uses, other than Uses No. 46, 47, 48 and 54 which are permitted or allowed under the Use Regulation Schedule in the Commercial II (C-II) zoning districts, shall be subject to the Site Plan Review procedure described herein with the Planning Board acting as SPGA.

End of Motion

Tracked Changes Provided in Separate Document:

VI-DD Special Permit Procedures and SITE PLAN REVIEW

1. Purpose and Intent Administration

a) The purpose of the following Special Permit section of this zoning bylaw is to authorize the hearing of and decisions on Special Permit applications, authorize the issuance of Special Permits, establish criteria and procedures for the issuance of Special Permits and set forth matters which can be addressed and regulated in a Special Permit decision. Unless specifically exempted in Section VI-DD2.B, all uses requiring Special Permits under this Zoning ByLaw shall require Site Plan Review in accordance with VI-DD 2.B. The purpose of the Site Plan Review Procedure hereby established is to protect the safety, public health, convenience and general welfare of the inhabitants of the Town by providing a comprehensive review of plans for those uses and structures which have a significant impact upon the character of the Town and upon traffic, utilities and property values therein. Factors to be considered are the placement of buildings and utilities, surface and groundwater drainage, wetlands, water supply, parking, loading, landscaping, lighting, dust and noise control, access to the development, acceptable sanitary conditions and the proper provision for open areas. It is intended to insure that the design and layout of those developments so subject to this procedure in this bylaw will constitute suitable development and will not result in a detriment to the neighborhood or to the environment. It is also intended hereby to assist those wishing to build projects within the Town by providing them with the necessary information about all of the Town's requirements affecting their project prior to the start of any construction or the issuance of the permits.

b) The Special Permit Procedure and the Site Plan Review Procedure ~~are~~^{is} to be administered by a Special Permit Granting Authority ("SPGA") in those uses and/or districts, and in the manner as indicated in this Section VI-DD. Those Town Agencies who may function as the SPGA hereunder are: The Board of Appeals and the Planning Board. The specific assignments given to each SPGA are set forth in Section 2A and Section 2B, hereafter.

-2.A Special Permits

- a. Special Permit Granting Authority. As designated in this By-Law, the Board of Appeals or the Planning Board shall act as the Special Permit Granting Authority (SPGA) for hearing and deciding all matters pertaining to Special Permits and for issuance of such Special Permits. The specific assignments are listed below.

1. The Planning Board shall act as the SPGA in the following Districts:

Highway Mixed Use - I

Highway Mixed Use - II

Highway Mixed Use – III

Highway Planned Use

Town House Cluster Development - RSA

Single Family Town House Cluster Development - RSB

Single Family Town House Cluster Development - RSC

Hospital (H)

Inclusionary Housing Option Program (IHOP) Regional
Center Overlay District

Highway Corridor Overlay District

Planned Cluster Development - PCD

Mall Center (MC) Overlay District

Housing Overlay Option Plan - I (HOOP I)

Housing Overlay Option Plan - II (HOOP II)

Regional Center Mixed-Use Overlay District

Historic Preservation

Administrative and Professional (AP)

Commercial II (C-II)

Industrial I (I-I)

Industrial II (II-II)

Downtown Mixed Use (DMU)

2. Zoning Board of Appeals shall act as the SPGA in the following Districts:

Limited Commercial (LC)

Subsidized Housing (SHA)

Non Conforming Uses in accordance with Section V-A

3. In the event of a failure of this zoning by law to designate an SPGA, the Planning Board shall be authorized to act and serve as SPGA

b. Decision Criteria. The following criteria shall be the minimum basis for all decisions on special permits, in addition to criteria as may be more specifically provided elsewhere in this By-Law. Special permits shall be granted by the Special Permit Granting Authority as specified herein only upon its written determinations for each of the following factors that the proposed use will not have adverse effects which outweigh its beneficial effects for both the neighborhood and the Town, in view of the particular characteristics of the site and of the proposal in relation to that site. The determinations shall be made separately for and indicate consideration of each of the following criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Adequacy of traffic flow and safety, including parking and loading,
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.
7. Conformity with the purposes and objectives of both this zoning by law and the district in which the property is situated

The applicant shall show to the satisfaction of the special permit granting authority that the use, building, or structure for which application is made shall not be against the public interest, shall not derogate from the character of the neighborhood in which such use, building, or structure is to occur and shall not be detrimental or offensive because of noise, vibration, smoke, gas, fumes, odor, dust or other objectionable features and that such use, building, or structure shall not otherwise be injurious to the inhabitants of the Town or their property or dangerous to the public health or safety. Consideration of traffic flow and safety and parking and loading shall consider affects on nearby and collector streets at both peak and off peak hours. When the foregoing criteria are not so satisfied, the special permit granting authority shall deny the application.

In addition to these criteria, the special permit granting authority may imposed conditions, safeguards and limitations on time and use.

c. Procedures. Each application for a special permit, together with copies of supporting plans and other materials, shall be filed by the petitioner with the Town Clerk. Fifteen copies of said application, including one having the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the Special Permit Granting Authority, together with five (5) copies of the supporting plans and other materials, and one copy of all materials in digital (PDF) format.

d. Referral to Other Officials and Agencies. The Special Permit Granting Authority shall refer notice of all applications immediately upon receipt to the Town Administrator, Building Commissioner, Planning Board (when it is not the SPGA), Town Engineer, DPW, Board of Health, Conservation Commission, Police Department, Fire Department, and to any other involved Town official or agency.

The Special Permit Granting Authority shall also transmit copies of the submitted plans and support documentation to all agencies having requested such documentation for either that specific project or for such projects generally, and to any other authorities whose review is judged appropriate by the Building Commissioner, for technical review and comment. Failure of any official or agency to make recommendation within thirty-five days of receipt of the application and support documentation shall be deemed lack of opposition thereto.

e. Decision. A special permit, if granted, shall be subject to any general or specific rules prescribed herein, and it may be made subject to appropriate conditions, safeguards, and limitations on time or use. When the special permit granting authority determines that a special permit may be granted if accompanied by conditions specially designated to safeguard the neighborhood and the Town, it shall impose such conditions and make them a part of the decision, and they shall be made a part of the building permit issued by the Building Commissioner.

f. Lapse. A special permit granted under this Section shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.'

2 B Site Plan Review Applicability and SPGA Designation

All uses, other than Uses Nos. 1, 3, 5, 8, 9, 17, 18, 46, 47 and 48, permitted or allowed in the following Zoning districts, shall be subject to the Site Plan Review Procedure described herein, to be administered by the Planning Board, acting as the SPGA:

- Highway Mixed Use - I
- Highway Mixed Use - II
- Highway Mixed Use - III
- Highway Planned Use
- Town House Cluster Development - RSA
- Single Family Town House Cluster Development - RSB Single

Family Town House Cluster Development - RSC
Hospital (H)
Inclusionary Housing Option Program (IHOP)
Regional Center Overlay District (Art. 7, S.T.M. #1, 2/3/93)
Highway Corridor Overlay District (Art. 7, S.T.M. #1, 2/3/93)
Planned Cluster Development - PCD (Art. 2, S.T.M. #2, 10110/00)
Mall Center (MC) Overlay District (Art. 1, S.T.M. #2, 12/03/02)
Housing Overlay Option Plan-I (HOOP -1) (Art. 27, Spring AT.M.,
4/15/04)
Housing Overlay Option Plan-II (HOOP-II) (Art. 27, 2004 Spring A.T.M.,
4/15/04))
Regional Center Mixed-Use Overlay District (Art. 1, Fall STM #1, 10/18/05)
Historic Preservation (Art. 37 Fall ATM 10/21/14)
Industrial I (I-I)
Industrial II - (I-II)
Downtown Mixed Use (DMU)

The following zoning districts shall be subject to the Site Plan Review Procedures described herein, to be administered the Zoning Board of Appeals acting as the SPGA

Limited Commercial (LC)
Subsidized Housing (SHA)"

b) All uses, other than Uses No. 46, 47, 48 and 54 which are permitted or allowed under the Use Regulation Schedule in the Commercial II (C-II) zoning districts, shall be subject to the Site Plan Review procedure described herein with the Planning Board acting as SPGA. ~~with the following SPGA designations:~~

~~1.) The Board of Appeals shall act as the SPGA for all such review procedures involving less than 150,000 square feet of new or rehab construction floor space, or the development of a parcel of land having such area limitation.~~

~~2.) The Planning Board shall act as the SPGA for all such review procedures involving more than 150,000 square feet of new or rehab construction floor space, or the development of a parcel of land having such area limitation, or when a combination of uses, as described in the Use Regulation Schedule, is sought.~~

Warrant Article Questionnaire
Standard (Recurring) Town Agency Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 14	Date Form Completed: 3/9/2017
Article Title: Capital Stabilization Fund	
Sponsor Name: Town Administrator	Email: mwhite@natickma.org

Question	Question
1	<p>Provide the article motion exactly as it will appear in the Finance Committee Recommendation Book and presented to Town Meeting for action.</p> <p>Note: Failing to provide a complete motion will likely require a rescheduling of the hearing to a later date.</p>
Response	Move that the Town vote to appropriate \$2,000,000 from free cash for the purpose of supplementing the Capital Stabilization Fund established by vote of the 2010 Fall Annual Town Meeting under Article 2, as authorized by Chapter 40, Section 5B of the General Laws as amended.
2	At a summary level and very clearly, what is the proposed purpose and objective of this Warrant Article and the accompanying Motion?
Response	To add funds to the Capital Stabilization Fund
3	What previous Warrant's has this Article appeared and what has been the actions taken by Finance Committee, other Boards or Committees and Town Meeting?
Response	This is typically a standing article at each Spring and Fall Annual Town Meeting.
4	Why is it required for the Town of Natick and for the Town Agency sponsor(s)?
Response	<p>It is the Administration's goal to supplement the Capital Stabilization Fund to the greatest extent possible such that we may be able to construct a new Fire Station #4 (West Natick) without having to seek voter approval for a debt exclusion to fund this project.</p> <p>Our Financial Management Principles (attached) stipulate that a minimum of 6-7% of net general fund revenues (i.e. within-levy) should be set aside annually to fund capital needs,</p>

Warrant Article Questionnaire
Standard (Recurring) Town Agency Articles

	inclusive of cash appropriations and the subject year's debt budget. The concept is to temporarily increase the target percentage for funding of capital needs, such that we can re-pay the within-levy borrowing for the Fire Station, while not diminishing our borrowing capacity for our other capital needs,
5	Does this article require funding, how much, from what source of funds and under whose authority will the appropriation be managed and spent?
Response	Yes, \$2,000,000 from Free Cash. A "Free Cash Spend-Down Plan" is attached.
6	To the best of your knowledge has any other actions of recent Town Meetings, Massachusetts General Laws or CMR's or other such legislation or actions, created a conflict for this article's purpose and objective?
Response	NO
7	To the best of your knowledge does a favorable action on the part of this Town Meeting create a conflict or a possible future conflict with the relevant Town Bylaws, financial and capital plans, comprehensive Master Plan, community values, or any relevant state laws and regulations?
Response	NO
8	Is there anything contemplated in the proposed motion that is different in how it's expected this article will be executed if acted on favorably by Town Meeting?
Response	NO
9	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences?
Response	The \$2,000,000 would remain in Free Cash and the Capital Stabilization Fund would not be supplemented.



Free Cash Summary

3/1/2017

Total Free Cash Certification as of July 1, 2016

\$12,088,395

2016 Fall Annual Town Meeting

Article 1: Free Cash UnAppropriated

\$1,150,885

Article 4: Transfer of FY 2015 Local Option Taxes to Capital Stabilization Fund

(\$1,425,532)

Article 4: Supplement the Capital Stabilization Fund

(\$2,500,000)

Article 8: OPEB Fund

(\$1,000,000)

Article 9: Capital Equipment

(\$1,291,000)

Article 10: Capital Improvement

(\$245,000)

Available Balance of Free Cash after 2016 FATM

6,777,748

FY 2017 Proposed Free Cash Expenditures

Capital Stabilization Fund

(\$2,000,000)

OPEB Trust Fund

FATM

FY2018 Operating Budget

(\$3,500,000)

Remaining Free Cash

1,277,748

Financial Management Principles

PART 1: GENERAL

To protect the town's financial stability, to ensure the availability of adequate financial resources in times of emergency, to capitalize on high bond ratings (and thus low interest rates), it is essential that policies regarding the town's financial management be adopted and adhered to in the preparation and implementation of the town's operating and capital budgets. These policies shall be reviewed no less than annually and may be, but are not required to be, revised as a result.

PART 2: PRINCIPLES

Reserves: Use and Recommended Balances

- The Town shall appropriate reserve funds in accordance with M.G.L. C40 Section 6 for extraordinary and unforeseen expenditures. The reserve amount may not exceed three per cent of the tax levy for the fiscal year. No direct drafts against this fund shall be made, but transfers from the fund may from time-to-time be voted by the Finance Committee and the Town Comptroller shall make such transfers accordingly. The Board of Selectmen, in the case of the Water/Sewer Enterprise Fund vote transfers from the water/sewer reserve fund and the Town Comptroller makes such transfers accordingly.
- Reserves and one-time revenues should be used only for capital or other non-recurring expenses, except as noted below.
- The Town will strive to maintain unappropriated free cash at a minimum of 1% of revenues, and unappropriated free cash should never be less than ½ % of revenues.
- Encumbrances shall be reviewed annually and released as deemed appropriate by the Town Administration.

Stabilization Funds:

- The Town will maintain a diversified series of permanent reserves in the form of stabilization funds. These stabilization funds will consist of six types:
 1. A General Stabilization Fund should be maintained for the purpose of unforeseen and catastrophic emergencies. It should, at a minimum, be at a level equal to 2% of revenues, with the target being 5% of revenues. This fund was adopted in accordance with M.G.L. C40, Section 5B at the Annual Town Meeting in 1961.
 2. An Operational Stabilization Fund should be maintained for the purpose of augmenting operations in case of sustained economic downturn and associated loss of revenues in support of operations. Sustained economic downturn will be any situation whereby State Aid and/or local receipts are significantly reduced from one-year to the next. ("Significantly" being defined as more than 5% of the total for the respective revenue category.) The target amount of money in the Operational Stabilization Fund should be sufficient to sustain operations through a three-year period of economic downturn. This shall be equivalent to 10% of State Aid Revenues and 5% of Estimated Receipts cumulative for a three-year period. This fund was adopted in accordance with M.G.L. C40, Section 5B at the 2011 Spring Annual Town Meeting.
 3. A Capital Stabilization Fund should be maintained for the purpose of funding any capital related project, or pieces of capital equipment, or debt-service payment related thereto. It shall be funded primarily through local option taxes though other funding sources as may be available from time to time are not precluded. This fund was adopted in accordance with M.G.L. C40, Section 5B at the 2010 Fall Annual Town Meeting.
 4. An Inflow & Infiltration Stabilization Fund should be maintained for the purpose of funding repairs to and replacement of sewer lines to reduce inflow and infiltration into the Town's sewer system. It can also be used to pay debt service related to this purpose. Sewer connection fees will be the primary source of funding although other funding sources as may be available from time to time are not precluded. This fund was adopted in accordance with M.G.L. C40, Section 5B at the 2014 Spring Annual Town Meeting.
 5. A One-to-One Technology Stabilization Fund should be maintained for the purpose of funding the one-to-one technology program for Natick High School Students. This fund was adopted in accordance with M.G.L. C40, Section 5B at the 2014 Spring Annual Town Meeting.
 6. A FAR Bonus Stabilization Fund should be maintained for the purpose of the creation of additional open space and public parks. More specifically, FAR Bonus monies are to be used for "Open Space Public

Benefit Amenities” which are defined as either parks or excess pervious landscaping available for the active or passive recreation, or leisure use, by the public. This fund was adopted in accordance with M. G.L. C40, Section 5B at the 2015 Fall Annual Town Meeting.

- Stabilization Funds should be enhanced whenever possible in order to meet and/or maintain the desired target levels.

Capital Planning and Budgeting

- A 5-Year capital plan should be developed and updated annually, per Section 5-7 of the Town’s Charter.
- Funding for capital projects shall be timed to maximize efficiency, cost-effectiveness and return on investment
- A minimum of 6-7% of net general fund revenues (i.e. within-levy) should be set aside annually to fund capital needs, inclusive of cash appropriations and the subject year’s debt budget. Not included in this target are those capital improvements and equipment purchases funded through Debt Exclusions, Enterprise Funds, Intergovernmental Funds, Grants, Mitigation Funds, Chapter 90 Funds, etc. This goal should be revisited regularly to ensure that the Town is investing adequately in its capital needs.
- All capital needs of all Town Departments, including the School Department shall be included within the capital plan.
- Credit rating agency guidelines recommend that a town maintain a general fund debt service payment burden ratio, as a percentage of available revenue or expenditures, between 8% and 12%. The Town shall strive to maintain its burden ratio below 10%. Affordability analysis as determined by this measure will be undertaken prior to General Fund debt being authorized by Town Meeting.

Debt Issuance and Management

- Capital projects should be carefully scheduled and monitored to minimize borrowing costs while optimizing investment opportunities.
- Large capital projects, generally costing over \$1 million and having a useful life of ten years or more, are typically funded with debt to spread the cost out over many years.
- The Town will strive to issue debt on a level principal payment basis in order to reduce the total amount of interest that is paid on the issuance.
- Refinancing existing debt to reduce interest rates and costs will be reviewed annually.
- Projects with balances remaining after project completion shall be reviewed annually and excess balances shall be closed to free cash or appropriated for other projects of similar nature.
- Authorized unissued debt remaining after a capital project has been completed shall be presented to Town Meeting for rescission.

Financial Planning and Forecasting

- Revenue estimates should be realistic, yet conservative, to minimize the potential of shortfalls in the subsequent year’s operating budgets and corresponding impacts on free cash.
- Three year revenue and expenditure forecasts should be reviewed and updated no less than annually.

Cash/Investments Management

- Fees and charges will be reviewed regularly to ensure that – where appropriate – they cover direct and indirect costs associated with the related service and/or that they fulfill a policy objective or other purpose of the Town.
- The Town’s Investment Policy shall be reviewed annually by Board of Selectmen and Town Administrator.
- The Treasurer shall report the cash and investments balances of the Town, as of June 30 each year, to the Board of Selectmen and Town Administrator and provide a report of the safety, liquidity, investment earnings and the amount of insurance/collateralization for all funds.

Retirement System Funding

- The Town will use an actuarially accepted method of funding its pension system to achieve a fully-funded position. The Town’s contribution to employee retirement costs will be adjusted annually as necessary to maintain the funding schedule. If the Town reaches its actuarial-required contribution (defined as Town and employee contributions that when expressed as a percent of annual covered payroll are sufficient to accumulate assets to pay benefits when due), the Town may reduce its contribution provided that the amount reduced from the

annual actuarial requirement will only be used to fund other unfunded liabilities (i.e. OPEB liability), for one-time, non-recurring expenses, and/or to enhance the Town's Stabilization Funds in order to provide the ability to increase contributions as may be required by future market conditions.

Other Post-Employment Benefits (OPEB) Funding

- The Town will develop an actuarially accepted method of funding its Other Post-Employment Benefits to achieve a fully-funded position. The Town will strive to get its contributions to the level required by such a plan. The Town's contribution to Other Post-Employment Benefit costs will be funded into the OPEB Trust Fund established for this purpose using one-time funds (free cash) or annual appropriation in the future. After funding the Capital Stabilization Fund at the Fall Annual Town Meeting with free cash, in the amount of the local options taxes collected during the previous fiscal year, the Town should appropriate at least 10% of the remaining free cash to the OPEB Trust Fund at the Fall Annual Town Meeting prior to appropriating any other amounts from free cash for any other purpose. If the Town reaches its actuarial-required contribution (defined as Town and employee contributions that when expressed as a percent of annual covered payroll are sufficient to accumulate assets to pay benefits when due), the Town may reduce its contribution provided that the amount reduced from the annual actuarial requirement will only be used to fund other unfunded liabilities, for one-time, non-recurring expenses, and/or to enhance the Town's Stabilization Funds in order to provide the ability to increase contributions as may be required by future market conditions.

Adopted by the Board of Selectmen, March 2011
Revised by Board of Selectmen, February 6, 2012
Revised by Board of Selectmen, March 10, 2014
Revised by Board of Selectmen, November 23, 2015
Revised by Board of Selectmen, October 17, 2016

Warrant Article Questionnaire Citizen Petitions Articles

Article # 37	Date Form Completed: 3/01/17
Article Title:	
Sponsor Name: Paul Griesmer et al	Email: pgriesmer@comcast.net fincomgriesmer@gmail.com

Question	Question
1	Provide the article motion exactly as it is intended to be voted on by the Finance Committee.
Response	Please see attached motion and redlined copies of each of three motions; Motion A, Motion B and Motion C
2	At a summary level and very clearly, what is proposed purpose and objective of this Warrant Article and the required Motion?
Response	<p>To fix problems within the Town of Natick Zoning By Law concerning three topics: 1) complete exemption from Aquifer Protection District (APD) regulations any residential project (including apartment buildings Assisted Living Residences) in any residential (RG, RSA, RSB or RSC) zone, 2) to place limits on the subject matter and extent to which a Special Permit Granting Authority (SPGA) can grant Modifications and Waivers from the Zoning By Law and 3) to change the Non Conforming Use section of the Zoning By Law to be consistent with instead of contrary to case law and to protect and preserve key regulations of the Zoning By Law from being circumvented by the ZBA and the Community Development department.</p> <p><u>Aquifer Protection District</u> The original effect of the APD exempting residential projects in the RG and RS zones made sense when the only things that could be built were 1 and 2 family houses in RG and 1 family in all the RS zones. The Assisted Living amendment from 2010 made “Assisted Living Residences” allowable in the RG district. The Town now has proposals for Assisted Living Residences and Elderly Family Residences in the RS zones. The exemption from APD regulations should not exist for anything greater than a two family house.</p> <p><u>Modifications and Waivers</u> Currently, Assisted Living Residences are supposedly subject to the height, lot coverage and setback limits of their underlying zone and subject to a limit of 30 units per acre. All of this can be waived or modified to an unlimited extent.</p> <p>Presently, there are five zones or uses where Modifications and Waivers can be granted by an SPGA: Assisted Living Residences, HOOP I and II, Highway Overlay Districts, Smart Growth Overlay (SGO) and Historic Preservation. With exception of just the FAR Bonus provisions for three of the four Highway Overlay Districts and poorly worded unclear 10% limitations in the Historic Preservation Districts, there are NO limits on the extent or subject matter of the Zoning</p>

Warrant Article Questionnaire Citizen Petitions Articles

	<p>By Law that can be waived or modified. In these districts the <u>entire</u> zoning by law can be set aside. No SPGA needs or should have such unlimited power to effectively rezone a district. Any SPGA that has it and wants to keep it should have it taken away from them. This article and motion seeks to place 10% limits on waivers and modifications and preclude certain subject matter from being waived at all.</p> <p>(Modifications and Waivers are how the 40 foot height limit in the Town's only SGO - formerly Paperboard now Modera project - became a 59 foot height before being reduced to 57 feet in a subsequent SPGA decision. Some believe this waiver was a good thing because they claim it avoided a 40B project . Others say it was a bad thing because it created an enormous oversized project on a busy road next to and intruding on really small houses on Washington Avenue and we got a 40 B sized project anyway. Regardless, the article does not seek to change the SGO because the project has been built, it is the only property subject to the SGO at this time and because MGL 40R S. 6 subsection 13 (g) precludes any change to an SGO bylaw that has not been approved by the state. It is however a strong lesson for the future if another SGO is ever proposed.)</p> <p>The motion for limiting modifications and waivers has been carefully drafted to limit modifications and waivers for factors that could increase a building's dimensions to an increase no more than plus 10% and for factors that would move a building closer to a lot line to no more than minus 10%. Under the motion, variances and non conforming uses are not subject the proposed limitations since they are subject to statute (MGL Ch. 40 A s. 10 and s. 6 respectively) and other provisions of the by law. FAR Bonus and other Bonus density provisions I the zoning bylaw would also not subject to the +/- 10% limitations since these bonus density provisions a) might need to be accommodated by a greater than +/- 10% change and because all bonus density provisions in the by law are (or should be) separately subject to their own maximum limitations as require by MGL Ch. 40 A s. 9 paragraph 2.</p> <p>There is a serious legal question as to whether our presently unlimited modification and waiver language complies with MGL Ch. 40 A s. 4 which requires that "Any zoning ordinance or bylaw which divides cities or Town's into districts shall be uniform within the district for each class or kind of structures or uses permitted." Unlimited modifications and waivers on dimensions, intensity, density, requirements, uses, etc. are arguably far from uniform but instead highly variable.</p> <p>Unlimited modifications and waivers can be used to create additional density or intensity arguably violate MGL 40A s. 9 which states " Zoning ordinances or by laws <u>may</u> also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development, provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income , traffic or pedestrian improvements, installation of solar energy systems, protection for solar access , or other amenities." (Emphasis Added.) This is the <u>only</u> provision in MGL Ch. 40 A that allows additional density or intensity. However, that statute section</p>
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Warrant Article Questionnaire Citizen Petitions Articles

	<p>continues “Such zoning ordinances or by laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted and the maximum increase in density of population or intensity of use which may be authorized by special permits.” These statutes require that maximum increases be specified. None of our modification and waiver paragraphs contain such maximums. Increases in density or intensity can happen only by Special Permit and only for specific and limited increases in exchange for the Town getting “amenities”. None of the modification and waiver paragraphs provides for amenities back to the town. Modifications and waivers are not bonus density provisions much less specific bonus density provisions with amenity provisions.</p> <p>Only two of our five sections (Highway Overlay Districts and HOOP I and II) of our zoning bylaw have both bonus density provisions and waiver and modifications. In these two districts, the bonus density and modification and waiver provisions are not linked. The other three (SGO, Assisted Living and Historic Preservation) have no bonus density provisions at all. The modification and waiver provisions are Site Plan Review provisions not Special Permit bonus density granting provisions. (The important differences between these two processes will be made clear in the write-up and presentation on Article 38 or be immediately apparent reading Attorney Bobrowski’s May 2012 report.)</p> <p>Modifications and waivers under Site Plan Review can be used in conjunction with Special Permits as a tool to accommodate the grant of additional density provided the bonus density provisions of the by law are observed. The proposed motion preserves the ability of using modifications and waivers as this type of tool – if necessary to grant additional density or intensity – provided that the specific bonus density provisions are complied with. The motion provides that otherwise any modifications and waivers can be used only as Site Plan Review tools subject to 10% limits.</p> <p><u>Non Conforming Uses</u></p> <p>Nonconforming uses are governed by MGL Ch. 40 A S. 6, a town’s zoning by law and case law. The statute language in MGL Ch. 40 A s. 6 is difficult to read and has created confusion and conflict over the years. The issue deals with non conforming uses that seek a change in structure or use which are still non conforming. Non conforming properties always have a legal right to convert to a conforming use by complying with the by law.</p> <p>The Town’s Zoning By Law rewrite expert, Attorney Mark Bobrowski, reported in writing approximately <u>five years ago</u> that our present NonConforming Use language is "short of the standards" required by certain case law (Blasco v. Board of Appeals of Winchendon) and "counter to the holding" of other case law (Bjorklund v. Norwell) . Among his written comments was a statement that in the Blasco case “the court required all available changes to non conformities to be listed in the ordinance.” Our by law lists none.</p> <p>The Blasco decision acknowledges and even encourages communities to restrict changes to non</p>
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Warrant Article Questionnaire Citizen Petitions Articles

	<p>conforming uses otherwise the “goal” of eliminating non conforming uses will never be achieved and no community will ever be able to implement a comprehensive plan because non conformities will exist in perpetuity. The exact sentence says “ If the law were such that any property owner had the right to change a non conforming use so long as the new use was not substantially more detrimental to the neighborhood, non conforming uses would tend to exist in perpetuity, and any comprehensive municipal plan for regulating uses in particular districts would never fully take effect.” The Blasco decision states “ Whatever harshness might result from a particular town by law’s <u>strict</u> regulation of changes in nonconforming uses is justified by policy considerations which generally favor their <u>elimination</u>.” (Emphasis Added.)</p> <p>The Blasco decision further states “The ultimate objectives of zoning would be furthered by the eventual elimination of nonconformities in most cases.” The Blasco case clearly states that it resolves “the ambiguity in the statute by recognizing the continuing right of a municipality through it zoning by law <u>to regulate or forbid changes in nonconforming uses.</u>” The proposed motion seeks to regulate them through clearly stated reasonable limits rather than forbid them outright.</p> <p>The Blasco decision was written almost <u>26</u> years ago on July 8, 1991. The Blasco case and other cases from 1990 to 2005 were cited 5 years ago by Atty. Bobrowski as cases “that fundamentally changed practice here.”</p> <p>Interestingly, the proposed Zoning By Law rewrite proposed no limitations – other than procedural requirements – on non conforming uses. The proposed Zoning By Law rewrite actually proposed that a nonconforming structure or use could be enlarged to any extent or changed to another non conforming use. This effect is essentially if not exactly the same as total what the current by law language allows. The current language is anything but strict. As long as a nonconforming use or structure can get a finding from the ZBA that the proposed change is not <u>substantially more</u> detrimental <i>to the neighborhood</i> than the existing non conformity, then non conforming uses are not subject to the zoning bylaws regulations and have a right to bypass and circumvent zoning completely. This is an absurd result. The current language also allows non conforming uses to propagate easily. The more nonconforming uses that get to exist in a neighborhood , the harder it is to argue that a change of yet another non conforming property is detrimental at all; much less substantially more detrimental to the neighborhood.</p> <p>The Town needs to change the Non Conforming Use section of the By Law. Recently, the current NonConforming Use section of the by law was used by Community Development and the ZBA to approve a five story condo development on an existing 2 story building at 9 Adams St. in the Downtown Mixed Use (DMU) zone. The lot on which this conversion was approved and also knowingly given an illegal special permit to add several stories (see relevant part of Questionnaire for Article 38) is square. It has 40 feet of frontage and 39 feet of depth for a total of 1,872 square feet. The DMU requires a minimum 10,000 square foot lot, 80 feet of frontage, 120 feet of depth and 20 foot rear yard setback with a maximum of 60% lot coverage. The</p>
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Warrant Article Questionnaire Citizen Petitions Articles

current two story building has no setbacks and covers almost 100% of the lot. This non conforming building originally constructed in approx. 1880 will now be around for another 100 to 150 years. Unless 1,872 square foot lots with not setbacks are going to be part of **conforming** uses for the DMU under the not yet even draft Master Plan, the approval of this seemingly small nonconforming use on the middle of the street seems premature. The Blasco decision acknowledges the situations where a change to a non conforming use could be allowed would be where the property would otherwise fall into disrepair. 9 Adams St. could have been converted into a two story condo under the permitted uses in the DMU instead of a special permit for additional stories.

The town also needs to protect numerous other zones; actually any zone in which a non conforming use is located. For example, Article 25 of 2016 FATM changed the dimensional requirements in the RG zone to require at least 10,00 sq. ft. of land for construction or conversion to a 2 family house. Community Development reported to the Finance Committee that there are 1,186 RG lots of which 778 are less than 10,00 sq. ft. These 778 sq ft lots average 6,115 sq ft.

Under Article 25 of 2016 FATM, Planning Board requested these dimensional requirements changes we necessary so that “The town will have a clear dimensional requirement for single and two-family structures within the RG zoning district.” and “That Town staff and the ZBA will have a clearer zoning bylaw with regards to the amount of lot area that is needed to construct a single and a two family within the RG zone. The consequence of not passing Article 25 last fall was stated as “Continued redevelopment of undersized (pre-existing, non-conforming) lots within the RG zoning district, from single family to two-family projects.”

Unfortunately, because of the current language of Section V- A NONCONFORMING USES , the statements and rationale for Article 25 of 2016 FATM are not true.

The dimensional rezoning restrictions under Article 25 of 20116 FATM can be circumvented for all of the 778 nonconforming RG lots. Many of these are ‘nearby’ other two family houses making it almost impossible to conclude that further conversions to two family houses on these undersized lots is “substantially more detrimental’ to a neighborhood that already has 2 family houses. Article 25 of 2016 FATM was the right move. Limiting the extent of further nonconforming changes to non conforming uses is the right move now.

It is noteworthy that Community Development and the Planning Board under Article 25 last fall thought that 2 family housing on 6,115 q. ft. lots were a problem. However, now Community Development and the ZBA think that 5 family housing on even smaller 1,872 sq ft lot (70% smaller than 6,115 sq. ft.) is a great idea. This is a bad precedent for further extremely highly density development in the Downtown and the town overall before our Master Plan is even drafted. Without the limits sought under this Article 37, no zoning requirements will apply to nonconforming uses which will exist in perpetuity.

Warrant Article Questionnaire Citizen Petitions Articles

3	What does the sponsor gain from a positive action by Town Meeting on the motion?
Response	Nothing personally.
4	Describe with some specificity how the sponsor envisions how: the benefits will be realized; the problem will be solved; the community at large will gain value in the outcome through the accompanied motion?
Response	See above.
5	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive plan, and community values as well as relevant state laws and regulations
Response	<p>Please see redline for how it fits into zoning by law.</p> <p>There is no effect on either capital or financial plans.</p> <p>The APD and the Town's water supply and aquifer is protected.</p> <p>The comprehensive plan or Master Plan in process, the existing zoning bylaw regulations, and conforming properties are absolutely protected</p> <p>Integrity of Zoning is preserved</p> <p>Court decisions are respected no longer flouted or ignored</p> <p>One cannot be serious about developing a master plan without supporting the limitations on non conforming uses.</p> <p>Limiting modifications and waivers protects neighboring properties , protects each neighborhood and protects the town from unwarranted and unlimited development by promoting a balanced approach that allows some but not unlimited flexibility.</p>
6	<p>Have you considered and assessed, qualified and quantified the various impacts to the community such as:</p> <ul style="list-style-type: none"> • Town infrastructure (traffic, parking, etc.) • Neighbors (noise, traffic, etc.); • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.);
Response	By limiting changes to non conforming uses , we protect

Warrant Article Questionnaire Citizen Petitions Articles

	<ul style="list-style-type: none"> • Town infrastructure (traffic, parking, etc.) • Neighbors (noise, traffic, etc.); • Conforming properties from non conforming changes to neighboring properties • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.); • The ability to have zoning and • The ability to develop and implement a Master Plan
7	<p>Who are the critical participants in executing the effort envisioned by the article motion?</p> <p>To this point what efforts have been made to involve those participants who may be accountable, responsible, consulted or just advised/informed on the impacts of executing the motion?</p>
Response	The article requires 2/3 vote of Town Meeting and approval of the Attorney General to be implemented.
8	<p>What steps and communication has the sponsor attempted to assure that:</p> <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process, that • Appropriate town Boards & Committees were consulted • Required public hearings were held
Response	<p>The proposal for narrowing the exemption in the APD was reported by the 22 Pleasant St Rezoning Committee to the Planning 2014, the administration, the Board of Selectmen and FATM . The 22 Pleasant St. similarly advised that the modifications and waivers provisions of the Zoning By Law should be reviewed to be limited to 10% - as the 22 Pleasant St. Committee recommended for the rezoning of 22 Pleasant St property. Last fall, in connection with the ALOOD article, the administration and the Board of Selectmen were reminded of the APD loophole. The chairperson of the 22 Pleasant St. Committee reported these findings and observations from the 22 Pleasant St committee. Despite these findings and reports, no actions have been taken. Hence, this article has been sponsored.</p> <p>The need to change the NonConforming Use language became clear as a result of the 9 Adams St proposal, the effect of the principles of the 9 Adams on the entire RG zone and a review Attorney Bobrowski's report from almost five years ago. A further read of the Blasco and other decisions and the zoning by laws of other towns has guided the development of the motion. We have known about the problem for 5 years and should have known about it in 1991. Addressing this issue is seriously overdue and is needed now to protect the ability of the Master Plan</p>

Warrant Article Questionnaire Citizen Petitions Articles

	<p>effectively, to protect the recent reforms of the RG district and to strengthen zoning throughout all the other districts in Town.</p> <p>The sponsors have read the Bobrowski report from 2012. Interestingly this report says that overall our existing zoning by law is “quite comprehensive” and “functional”. According to Bobrowski, it has three problems – overall organization, nonconforming provisions counter to case law and a terrible special permit criteria. The findings from this report are the basis for addressing the non conforming sections of the by law.</p> <p>As part of the process for the motions, the sponsors have met with and received comments from the Chair of the Planning Board who agreed to meet and discuss the article.</p>
9	Why is it required for the Town of Natick AND for the sponsor(s)?
Response	Required for the town for the reasons stated above. The sponsors have no special requirement.
10	Since submitting the article petition have you identified issues that weren’t initially considered in the development of the proposal?
Response	Type response here)
11	What are other towns and communities in the Metro West area, or the Commonwealth of MA doing similar to what your motion seeks to accomplish
Response	<p>Most towns have not waited five or 28 years to address these issues.</p> <p>Zoning By Laws of numerous cities and towns were researched as part of the effort for this article.</p> <p>The provisions for the non conforming use changes are consistent with the provisions of the Winchendon by law upheld by the court and a similar by law in Brookline.</p>
12	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences.
Response	The protections and safeguards referred to above will not be obtained.

Warrant Article Questionnaire
Citizen Petitions Articles

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Article 37 Amend Zoning ByLaw to Make Various Technical Corrections and Modifications:

Motion A:

“ Move to amend the Zoning By Law in sub Section 1A.
APPLICABILITY: of Section III-A.5 Aquifer Protection District
(APD) by inserting the words

“Uses 1,1A, 2, 3, or 5 of the Use Regulations Schedule on”

in the first sentence after the words “shall not apply to”

so that the sub section now reads

“This Section 111-A.5 shall not apply to Uses 1, 1A, 2, 3, or 5
of the Use Regulations Schedule on residentially used lots in
the RS and RG districts, however where more than 20% of
such lots are hereafter proposed to be made impervious, roof
runoff shall be directed to a pervious area or dry-well
approved by the local building inspector.’ ”

Motion A ends with the .’ ” above.

Tracked Changes Text:

For your convenience, a copy of the current sub section is:

“This Section 111-A.5 shall not apply to residentially used lots
in the RS and RG districts, however where more than 20% of
such lots are hereafter proposed to be made impervious, roof
runoff shall be directed to a pervious area or dry-well
approved by the local building inspector.’

A copy of the sub section with the proposed amendment
highlighted is:

“This Section 111-A.5 shall not apply to Uses 1, 1A, 2, 3, or 5
of the Use Regulations Schedule on residentially used lots in
the RS and RG districts, however where more than 20% of
such lots are hereafter proposed to be made impervious, roof
runoff shall be directed to a pervious area or dry-well
approved by the local building inspector.’

Additional Information:

Use 1 is "One-family detached dwelling".

Use 1A is "Family Suite".

Use 3 is "Two-family or semi-detached dwelling".

Use 5 "Alteration or conversion of a one family house existing at the time of the adoption of this by law to accommodate two families of located on a lot having an area at least twenty-five percent greater than required for a one- family house."

Use 4 Multi Family building types would not be included in the exemption.

Article 37 Amend Zoning ByLaw to Make Various Technical Corrections and Modifications: (DRAFT 2.26.17)

Motion B:

Move to amend the zoning by law in Section V-E

By deleting, the word “DELETED” and inserting in its place the following:

“WAIVERS AND MODIFICATIONS

1. Purpose and Applicability

a. The purpose of this section is to establish criteria, limits, restrictions, prohibitions and exemptions for any and all modifications and/or waivers from strict compliance with the dimensional, intensity, use, purpose, objectives, standards and /or requirements provisions of this zoning by law. Notwithstanding anything else to the contrary in this zoning by law, this section shall apply both to any and all districts and to any and all waivers and/or modifications of dimensional and/or intensity unless specifically exempted or provided for below.

b. Provided that the SPGA is authorized in the provisions for a particular zoning district to grant modifications and/or waivers from strict compliance with the provisions of this zoning by law in connection with Site Plan Review and /or Special Permits for such zoning district, the SPGA may grant modifications and waivers subject to the permissions, criteria, limitations, restrictions and prohibitions of this Section V-E.

c. The SPGA may not grant modifications and or waivers for any use in any district unless the provisions for such zoning district in this zoning by law expressly allow for modifications and waivers.

d. Notwithstanding anything else in this zoning by law to the contrary, no waiver and/or modification may be granted unless either i) specifically exempted in 1.e , 1.f , 1.g or 1.g below or ii) specifically complying with V-E 2, 3 and 4 below or allowed below in connection with grants of allowable bonus density or intensity..

e. This section shall not apply to either i) Special Permits granted in conformity with Section 6 of MGL Chapter 40 A and Section V-A Nonconforming Uses of this zoning bylaw or ii) variances granted in conformity with Section 10 of MGL Chapter 40 A and section VI- E.3 of this zoning bylaw.

f. This section shall not apply to sub Section C. Smart Growth Overlay District (SGO District) of Section III-A.6 Affordable Housing of this zoning by law.

g. This section shall not apply to Section V-I.7

h. This section shall not apply to Section 329.2 regarding the FAR for redevelopment projects which retain all or any part of prior- existing structures.

2. Criteria and Written Finding

a. In granting any waiver and/or modification, the SPGA shall first make a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted and further that such waiver is necessary in order to allow or to encourage the purposes for which the district was created.

b. These criteria shall be in addition to any other criteria applicable to a district.

c. These criteria shall also be subject to V-E 3. and 4. below.

3. Limitations and Restrictions

a. No increase greater than 10% shall be allowed in any of the following regulatory factors: height, building coverage, lot coverage, number of units, any density measure or sky-plane angle.

b. No decrease of more than 10% shall be granted in any of the following regulatory factors: open space requirement, landscape surface ratio, front yard setback, rear yard setback or side yard setbacks. Side yard setbacks shall each be measured and considered separately.

c. Any modifications and/or waivers shall be measured on a cumulative basis such that the 10% limitations and restrictions are i) applied, ii) maintained and iii) never exceeded on a cumulative basis. Any modifications and/or waivers shall be measured and take into account any variances such that any modification and/or waiver, considered and together with any variances, may not exceed the above limitations and restrictions. This provision shall affect only the modification and/or waiver and shall not affect any lawful variance.

d. The maximum 10% shall be calculated by multiplying the regulatory factor by 1.10 if an increase and by 0.90 if a decrease. The result so calculated shall establish the limit for any regulatory factor modified and/or waived.

e. Any Special Permit granting modifications and/or waivers shall provide as a condition of such Special Permit that for the ongoing maintenance, continuing survival and enforcement of such waived or modified factors as a condition of the Special Permit.

f. . Modifications and or waivers granted in order to allow a grant of additional density or intensity in compliance with i) Section 9 of MGL Chapter 40 A and ii) specific authorizations in other sections of this zoning by law shall not be subject to these strict limitations and restrictions above. However, any regulatory factor that is modified or waived in order to accommodate a grant of additional density or intensity shall not be further modified or waived to exceed the limitations and restrictions above. If any regulatory factor exceeds the above limitations and restrictions in connection with a grant of additional density or intensity, such regulatory factor shall not be further modified and/or waived.

No waiver and/or modification shall be granted if such grant, whether alone or in combination with other factors, increases, contributes to an increase in or facilitates an increase in the otherwise permissible density or intensity of any particular use unless such increase in density or intensity complies fully with the applicable FAR Bonus or Bonus Density provisions of this zoning by law. For the purposes of determining compliance with this Section V-E, this standard shall be applied by considering and measuring the effects of any modification and/or waiver on a specific project on a specific application for a particular use before the grant of any modification and/or waiver. Nothing in this section shall preclude any bonus density section of this zoning by law from imposing its own more restrictive limitations and restrictions on any waivers and/or modifications which are granted for the purposes of allowing bonus density or intensity of use.

4. Prohibitions

a. No waivers and/or modifications can be granted if the application and/or parcel requests, includes or results in the continuance, extension or alteration of any pre existing non conforming use. For the avoidance of doubt, the intent of this provision 4.a) in conjunction with the exceptions in 1e) above is to allow the Zoning Board of Appeals to grant relief in conformity with Section 6 of MGL Chapter 40 A and Section V-A Nonconforming Uses of this zoning bylaw and to grant variances in conformity with Section 10 of MGL Chapter 40 A and section VI- E.3 of this zoning bylaw but to prohibit i) the Zoning Board of Appeals from granting such relief separate from the provisions of Section 6 of MGL Chapter 40 A , Section V-A Nonconforming Uses of this zoning bylaw and Section 10 of MGL Chapter 40 A and section VI-E.3 of this zoning bylaw and ii) the Planning Board or other SPGA from granting modifications and /or waivers which include or result in the continuance, extension or alteration of any pre existing non conforming use.

b. No waivers and/or modifications can be granted with regard to FAR Bonus or Bonus Density provisions or Affordable Housing requirements of this zoning by law. No waivers and/or modifications can be granted if the effect of such waiver and /or modification is to grant or to create additional density and/or intensity without strict compliance with Section 9 of MGL Chapter 40 A section 9 and the applicable FAR Bonus or Bonus Density provisions of this zoning by law.

c. No waivers and/or modifications can be granted with regard to minimum lot size, continuous frontage, lot frontage or lot depth.

d. No waivers and/or modifications can be granted with regard to the purpose, intent, definitions and/or uses specified for any zoning district or with regard to the purpose, intent, definitions or uses of the zoning by law itself.”

And in Section III-I by deleting, after the words ‘Modifications and Waivers:’ the words

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, provided that it makes a specific finding in writing that a waiver and/or modification will not create conditions that are substantially more detrimental to the neighborhood in which the parcel is located than if the waiver and/or modification were not granted.’

And replacing them with the words

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.

so that the Section III-I Modifications and Waivers now reads:

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.

and by deleting in Section 329.2 after the words ‘Modifications and Waivers:’ the words:

‘The Planning Board may modify and/or waive strict compliance with one or more of the standards, regulations and objectives set forth in these Highway Overlay District regulations, provided that it makes a specific finding, in writing, that a waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted.’

And replacing them with the words:

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.’

so that the Section 329.2 now reads

“Modifications and Waivers: ‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E. The Planning Board shall not grant a waiver of the FAR regulations set forth in Section 324, except with respect to redevelopment projects which retain all or any part of prior existing structures. (Art. 5, STM #2, 10/10/00)”

and by deleting , in Section III-A.6 Affordable Housing sub section B. Housing Overlay Option Plan – (HOOP) after the sub heading ‘7. MODIFICATIONS AND WAIVERS’ the words:

“The SPGA may modify and/or waive strict compliance with one or more of the regulations in any of the HOOP districts provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted, and”

And replacing them with the words:

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E, and provided’

so that the Section III-A.6 B.7 now reads

“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E, and provided further that such waiver and/or modification is necessary in order to encourage the creation of Affordable Housing units.”

and in Section III-J – Historic Preservation in Section III- J 7 Requirements subsection 4 Intensity Regulations after the words ‘Intensity Regulations:’ by deleting the words:

“The SPGA may, for new construction, modify the dimensional requirements for the district by up to 10%.”

And replacing them with the word “Deleted”

And in Section III –J subsection 8. Modifications and Waivers after the sub heading Modifications and Waivers by deleting the words

‘Except as specifically stated in this Section III -J, the SPGA may modify and/or waive strict compliance with one or more of the regulations of the Districts in which a Historic Preservation project is located provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted , and’
And replacing them with the words:

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives of the Districts in which a Historic Preservation project is located , in accordance with Section V-E and provided

So that Section III - J 7.4 now reads:

“.4 Intensity Regulations: Deleted”

And that Section III _ J 8 Modifications and Waivers now reads:

“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives of the Districts in which a Historic Preservation project is located, in accordance with Section V-E and provided further that such waiver and/or modification is necessary in order to encourage the preservation of the historic building.”

Conclusion of Motion B

Article 37 Amend Zoning ByLaw to Make Various Technical Corrections and Modifications: Draft 2.2.17

Motion B:

Tracked Changes

For your convenience, the following tracked changes version of this motion are provided.

V-E DELETED

WAIVERS AND MODIFICATIONS

1. Purpose and Applicability

a. The purpose of this section is to establish criteria, limits, restrictions, prohibitions and exemptions for any and all modifications and/or waivers from strict compliance with the dimensional, intensity, use, purpose, objectives, standards and /or requirements provisions of this zoning by law. Notwithstanding anything else to the contrary in this zoning by law, this section shall apply both to any and all districts and to any and all waivers and/or modifications of dimensional and/or intensity unless specifically exempted or provided for below.

b. Provided that the SPGA is authorized in the provisions for a particular zoning district to grant modifications and/or waivers from strict compliance with the provisions of this zoning by law in connection with Site Plan Review and /or Special Permits for such zoning district, the SPGA may grant modifications and waivers subject to the permissions, criteria, limitations, restrictions and prohibitions of this Section V-E.

c. The SPGA may not grant modifications and or waivers for any use in any district unless the provisions for such zoning district in this zoning by law expressly allow for modifications and waivers.

d. Notwithstanding anything else in this zoning by law to the contrary, no waiver and/or modification may be granted unless either i) specifically exempted in 1.e , 1.f , 1.g or 1.g below or ii) specifically complying with V-E 2, 3 and 4 below or allowed below in connection with grants of allowable bonus density or intensity..

e. This section shall not apply to either i) Special Permits granted in conformity with Section 6 of MGL Chapter 40 A and Section V-A Nonconforming Uses of this zoning bylaw or ii) variances granted in conformity with Section 10 of MGL Chapter 40 A and section VI- E.3 of this zoning bylaw.

f. This section shall not apply to sub Section C. Smart Growth Overlay District (SGO District) of Section III-A.6 Affordable Housing of this zoning by law.

g. This section shall not apply to Section V-I.7

h. This section shall not apply to Section 329.2 regarding the FAR for redevelopment projects which retain all or any part of prior- existing structures.

2. Criteria and Written Finding

a. In granting any waiver and/or modification, the SPGA shall first make a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted and further that such waiver is necessary in order to allow or to encourage the purposes for which the district was created.

b. These criteria shall be in addition to any other criteria applicable to a district.

c. These criteria shall also be subject to V-E 3. and 4. below.

3. Limitations and Restrictions

a. No increase greater than 10% shall be allowed in any of the following regulatory factors: height, building coverage, lot coverage, number of units, any density measure or sky-plane angle.

b. No decrease of more than 10% shall be granted in any of the following regulatory factors: open space requirement, landscape surface ratio, front yard setback, rear yard setback or side yard setbacks. Side yard setbacks shall each be measured and considered separately.

c. Any modifications and/or waivers shall be measured on a cumulative basis such that the 10% limitations and restrictions are i) applied, ii) maintained and iii) never exceeded on a cumulative basis. Any modifications and/or waivers shall be measured and take into account any variances such that any modification and/or waiver, considered and together with any variances, may not exceed the above limitations and restrictions. This provision shall affect only the modification and/or waiver and shall not affect any lawful variance.

d. The maximum 10% shall be calculated by multiplying the regulatory factor by 1.10 if an increase and by 0.90 if a decrease. The result so calculated shall establish the limit for any regulatory factor modified and/or waived.

e. Any Special Permit granting modifications and/or waivers shall provide as a condition of such Special Permit that for the ongoing maintenance, continuing survival and enforcement of such waived or modified factors as a condition of the Special Permit.

f. . Modifications and or waivers granted in order to allow a grant of additional density or intensity in compliance with i) Section 9 of MGL Chapter 40 A and ii) specific authorizations in other sections of this zoning by law shall not be subject to these strict limitations and restrictions above. However, any regulatory factor that is modified or waived in order to accommodate a grant of additional density or intensity shall not be further modified or waived to exceed the limitations and restrictions above. If any regulatory factor exceeds the above limitations and restrictions in connection with a grant of additional density or intensity, such regulatory factor shall not be further modified and/or waived.

No waiver and/or modification shall be granted if such grant, whether alone or in combination with other factors, increases, contributes to an increase in or facilitates an increase in the otherwise permissible density or intensity of any particular use unless such increase in density or intensity complies fully with the applicable FAR Bonus or Bonus Density provisions of this zoning by law. For the purposes of determining compliance with this Section V-E, this standard shall be applied by considering and measuring the effects of any modification and/or waiver on a specific project on a specific application for a particular use before the grant of any modification and/or waiver. Nothing in this section shall preclude any bonus density section of this zoning by law from imposing its own more restrictive limitations and restrictions on any waivers and/or modifications which are granted for the purposes of allowing bonus density or intensity of use.

4. Prohibitions

a. No waivers and/or modifications can be granted if the application and/or parcel requests, includes or results in the continuance, extension or alteration of any pre existing non conforming use. For the avoidance of doubt, the intent of this provision 4.a) in conjunction with the exceptions in 1e) above is to allow the Zoning Board of Appeals to grant relief in conformity with Section 6 of MGL Chapter 40 A and Section V-A Nonconforming Uses of this zoning bylaw and to grant variances in conformity with Section 10 of MGL Chapter 40 A and section VI- E.3 of this zoning bylaw but to prohibit i) the Zoning Board of Appeals from granting such relief separate from the provisions of Section 6 of MGL Chapter 40 A , Section V-A Nonconforming Uses of this zoning bylaw and Section 10 of MGL Chapter 40 A and section VI-E.3 of this zoning bylaw and ii) the Planning Board or other SPGA from granting modifications and /or waivers which include or result in the continuance, extension or alteration of any pre existing non conforming use.

b. No waivers and/or modifications can be granted with regard to FAR Bonus or Bonus Density provisions or Affordable Housing requirements of this zoning by law. No waivers and/or modifications can be granted if the effect of such waiver and /or modification is to grant or to create additional density and/or intensity without strict compliance with Section 9 of MGL Chapter 40 A section 9 and the applicable FAR Bonus or Bonus Density provisions of this zoning by law.

c. No waivers and/or modifications can be granted with regard to minimum lot size, continuous frontage, lot frontage or lot depth.

d. No waivers and/or modifications can be granted with regard to the purpose, intent, definitions and/or uses specified for any zoning district or with regard to the purpose, intent, definitions or uses of the zoning by law itself."

Section III – I Modifications and Waivers would be changed as follows:

~~'The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, provided that it makes a specific finding in writing that a waiver and/or modification will not create conditions that are substantially more detrimental to the neighborhood in which the parcel is located than if the waiver and/or modification were not granted.'~~
'The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.

Section 329.2 would be changed as follows:

329.2 Modifications and Waivers: ~~The Planning Board may modify and/or waive strict compliance with one or more of the standards, regulations and objectives set forth in these Highway Overlay District regulations, provided that it makes a specific finding, in writing, that a waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted.—~~The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.' The Planning Board shall not grant a waiver of the FAR regulations set forth in Section 324, except with respect to redevelopment projects which retain all or any part of prior- existing structures.

Section III-A.6 Affordable Housing sub section B. Housing Overlay Option Plan – (HOOP) '7. MODIFICATIONS AND WAIVERS' would be changed as follows::

~~“The SPGA may modify and/or waive strict compliance with one or more of the regulations in any of the HOOP districts provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted.”~~“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E, and and provided further that
such waiver and/or modification is necessary in order to encourage the creation of Affordable Housing units.”

Section III – J 7.4 Intensity Regulations is changed as follows:

~~“The SPGA may, for new construction, modify the dimensional requirements for the district by up to 10%.”~~“Deleted”

And Section III –J subsection 8. Modifications and Waivers would be changed as follows:

~~“Except as specifically stated in this Section III-J, the SPGA may modify and/or waive strict compliance with one or more of the regulations of the Districts in which a Historic Preservation project is located provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted,~~

“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives of the Districts in which a Historic Preservation project is located , in accordance with Section V-E and provided further that such waiver and/or modification is necessary in order to encourage the preservation of the historic building.”

Article 37 Amend Zoning ByLaw to Make Various Technical Corrections and Modifications:

Motion C:

Move to amend the Zoning By Law by inserting in Section V-A Nonconforming Uses after the words '1. Continuation' the following:

“, Construction and Operations”

And by inserting as a new paragraph in Section V – Special Requirements sub section 1. Continuation after the words ‘as adopted or amended’ the following:

“Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than 12 months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.”

And by inserting in V-A 2 Extension in the first paragraph after the words ‘,provided, ‘ the following:

“that such alteration or extension does not create any new nonconformity and further provided”

and by inserting at the end of the same paragraph the following:

“No special permit is needed if the reconstruction, extension or alteration is to be a nonconforming single or two-family dwelling and said reconstruction, extension or alteration does not increase the nonconforming nature of the dwelling.”

And by inserting, as a new paragraph in Section V – Special Requirements sub section 2. Extension, the following:

“Notwithstanding the previous paragraph, any alteration, change or extension of a pre existing non conforming use or structure shall be subject to the following:

1. Any increase in volume, area, or extent of the nonconforming use shall not exceed an aggregate of more than 25 percent during the life of the nonconformity.
2. No change shall be permitted which tends to lengthen the economic life of the nonconformity longer than a period reasonable for such amortization of the initial investment as to make possible the elimination of the nonconformity without undue hardship.

3. No change of use shall be permitted to a new non conforming use of land but shall only be to a use of land permitted as of right in the district.

So that Section V – SPECIAL REQUIREMENTS V-A NONCONFORMING USES subsection 1. Continuation and subsection 2 Extension now read as follows:

V-A Nonconforming Uses

1. Continuation, Construction and Operations.

The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this bylaw may be continued although each structure or use did not conform with the provisions of this bylaw as adopted or amended.

Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than 12 months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

2. Extension. No increase in the extent of the nonconforming use of a structure or land may be made beyond the limits of the property owned at the time of enactment or subsequent amendment of this bylaw. Pre-existing nonconforming structures or uses may be extended or altered, provided, that such alteration or extension does not create any new nonconformity and further provided that no such extension or alteration shall be permitted unless there is a finding by the Board of Appeals that such change, extension or alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of sections twenty - nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D. No special permit is needed if the reconstruction, extension or alteration is to be a nonconforming single or two-family dwelling and said reconstruction, extension or alteration does not increase the nonconforming nature of the dwelling.

Notwithstanding the previous paragraph, any alteration, change or extension of a pre existing non conforming use or structure shall be subject to the following:

1. Any increase in volume, area, or extent of the nonconforming use shall not exceed an aggregate of more than 25 percent during the life of the nonconformity.

2. No change shall be permitted which tends to lengthen the economic life of the nonconformity longer than a period reasonable for such amortization of the initial investment as to make possible the elimination of the nonconformity without undue hardship.

3. No change of use shall be permitted to a new non conforming use of land but shall only be to a use of land permitted as of right in the district.”

End of Motion C.

Article 37 Amend Zoning ByLaw to Make Various Technical Corrections and Modifications:

Motion C:

Tracked Changes Text:

For your convenience, a copy of the current sub sections are:

“V-A Nonconforming Uses

1.Continuation. The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this bylaw may be continued although each structure or use did not conform with the provisions of this bylaw as adopted or amended.

2. Extension. No increase in the extent of the nonconforming use of a structure or land may be made beyond the limits of the property owned at the time of enactment or subsequent amendment of this bylaw. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the Board of Appeals that such change, extension or alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of sections twenty - nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D.”

A copy of the sub section with the proposed amendment highlighted is:

V-A Nonconforming Uses

1.Continuation, Construction and Operations.

The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this bylaw may be continued although each structure or use did not conform with the provisions of this bylaw as adopted or amended.

Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than 12 months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

2. Extension. No increase in the extent of the nonconforming use of a structure or land may be made beyond the limits of the property owned at the time of enactment or subsequent amendment of this bylaw. Pre-existing nonconforming structures or uses may be extended or altered, provided, that such alteration or extension does not create any new nonconformity and further provided that no such extension or alteration shall be permitted unless there is a finding by the Board of Appeals that such change, extension or alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of sections twenty - nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D. No special permit is needed if the reconstruction, extension or alteration is to be a nonconforming single or two-family dwelling and said reconstruction, extension or alteration does not increase the nonconforming nature of the dwelling.

Notwithstanding the previous paragraph, any alteration, change or extension of a pre existing non conforming use or structure shall be subject to the following:

1. Any increase in volume, area, or extent of the nonconforming use shall not exceed an aggregate of more than 25 percent during the life of the nonconformity.

2. No change shall be permitted which tends to lengthen the economic life of the nonconformity longer than a period reasonable for such amortization of the initial investment as to make possible the elimination of the nonconformity without undue hardship.

3. No change of use shall be permitted to a new non conforming use of land but shall only be to a use of land permitted as of right in the district.



J. STEPHEN BJORKLUND & another, [\[Note 1\]](#) trustees, [\[Note 2\]](#) vs. ZONING BOARD OF APPEALS OF NORWELL.

450 Mass. 357

December 4, 2007 - January 7, 2008

Suffolk County

Present: MARSHALL, C.J., GREANEY, IRELAND, SPINA, COWIN, CORDY,
& BOTSFORD, JJ.

Zoning, By-law, Lot size, Nonconforming use or structure.

The plaintiffs' proposed reconstruction of a single-family residence, which satisfied all dimensional requirements in the town's zoning bylaw except the required minimum lot size, increased the nonconforming nature of the structure within the meaning of the language contained in the second "except" clause of G.L. c.40A, § 6, first par. [362-363] CORDY, J., dissenting, with whom IRELAND, J., joined.

CIVIL ACTIONS commenced in the Land Court Department on June 20, 2000, and June 8, 2004, respectively.

After consolidation, the case was heard by Alexander H. Sands, III, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Michael C. Hayes for the plaintiffs.

Robert W. Galvin for the defendant.

Carl K. King, for Massachusetts Chapter of the American Planning Association, amicus curiae, submitted a brief.

GREANEY, J. This case, transferred here on our own motion, raises the issue

unresolved in *Bransford v. Zoning Bd. of Appeals of Edgartown*, [444 Mass. 852](#) (2005) (*Bransford*) -- does the proposed reconstruction of a single-family residence, which satisfies all dimensional requirements in the town's zoning bylaw except the required minimum lot size, "increase the nonconforming nature of [the] structure" within the meaning of the language contained in the second "except" clause of G. L.

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c. 40A, § 6, first par.? [\[Note 3\]](#) In the *Bransford* case, the court was evenly divided on this issue, and the judgment of the Land Court, giving rise to that appeal, was affirmed. *Id.* at 852-853. The concurring opinion of three Justices in the *Bransford* case agreed with the conclusion of the Land Court judge that, under the second except clause, "doubling the size of the structure on an undersized (nonconforming) lot [would] increase the nonconforming nature of the structure," thereby requiring the plaintiffs to seek a special permit. *Id.* at 853 (Greaney, J., concurring, with whom Marshall, C.J., and Spina, J., joined) (concurring opinion). Justice Cordy authored a dissenting opinion. See *id.* at 863-870 (Cordy, J., dissenting, with whom Ireland and Sosman, JJ., joined) (dissenting opinion). We now adopt the result and reasoning of the concurring opinion in the *Bransford* case, and apply that opinion to this case, which involves a proposal to quintuple the size of an existing residence, a more drastic expansion than the one proposed in *Bransford*. Accordingly, we affirm the judgment of the Land Court.

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The background of the case is as follows. The plaintiffs own the property at 150 Prospect Street in Norwell, which is located in the residential district A. The lot size, or area, of the property consists of 34,507.6 square feet (.792 acres). Situated on the property is a one-bedroom, one-story, single-family house, and a shed. The house has 675 square feet of living space, and is thirty feet long (along its frontage). The house is set back thirty-five feet, nine inches, from the front property line.

The lot, house, and shed predate zoning in the town. Under the town's current zoning bylaw, [\[Note 4\]](#) a minimum lot area of one acre (43,560 square feet), a front setback of fifty feet, [\[Note 5\]](#) and a side setback of twenty feet [\[Note 6\]](#) are required for buildings and structures located in residential district A. [\[Note 7\]](#), [\[Note 8\]](#)

The plaintiffs propose to tear down the existing house and remove the shed. They plan to construct a new house, essentially a new and much larger house, that will comprise 3,600 square feet of living space. The new house will have three bedrooms; will be either a two, or a two and one-half, story structure; and will include an attached garage for two vehicles. [\[Note 9\]](#) The footprint of the new house will be approximately 1,920 square feet. There will be an additional 900 square feet of impervious surface on the property to account for the proposed driveway. [\[Note 10\]](#) The new house

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will be sixty-eight feet long (along its frontage) and will have a front setback of thirty-seven feet. The placement of the house on the lot is restricted due to the existence of wetland areas on the property. The plaintiffs' proposal complies with all dimensional requirements of the bylaw with the exception of the one-acre minimum lot area requirement. [\[Note 11\]](#)

Prospect Street is winding with elevation changes. To the north of the plaintiffs' property are nine homes containing an average of 2,638 square feet of living area, all located on lots that are at least one acre. To the south of the property are fourteen homes containing an average of 2,088 square feet of living area. Only one of these homes is located on a lot that is smaller than one acre, and that home has 1,472 square feet of living area. The undersized lots on Prospect Street have smaller, "rural farmhouse-type houses" located on them. The larger homes on the street are located further back from the street in comparison to the plaintiffs' proposed new house.

The plaintiffs filed a request for a finding under G. L. c. 40A, § 6, and § 1642

of the zoning bylaw [\[Note 12\]](#) with respect to their proposed reconstruction. The defendant, the zoning board of appeals

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of Norwell (board), denied the request, [\[Note 13\]](#) and the plaintiffs appealed to the Land Court pursuant to G. L. c. 40A, § 17. The case was remanded to the board. The board concluded that, under G. L. c. 40A, § 6, and § 1642 of the zoning bylaw, the proposed reconstruction would increase the nonconforming nature of the structure and would be substantially more detrimental to the neighborhood than the existing structure. In its decision, the board made several findings, including the following. The impact of the length of the proposed new house (over twice the length of the original house) could not be screened or diminished because of limited available setback caused by wetlands. The height of the proposed new house would increase the impact of the structure. Due to the placement, length, and height of the proposed new house, the reconstruction would not be in keeping with the rural character and aesthetics of the neighborhood. The reconstruction would add noise and light to the neighborhood; would eliminate open space and screening; and would lead to the parking of motor vehicles along, or next to, a narrow country road, Prospect Street, all to the detriment of the neighborhood and the safety and welfare of its residents and persons using Prospect Street. The reconstruction would, because of the proposed new house's length, height, and placement, intensify and exacerbate the present nonconformity of the property. [\[Note 14\]](#)

The plaintiffs appealed from the board's decision on remand to the Land Court, and the case was consolidated with the plaintiffs' initial case. After a trial, which included taking a view of the property, the Land Court judge entered a comprehensive decision affirming the board's findings and decision. Relying on the concurring opinion in the Bransford case, the judge determined that the board's decision, that the proposed reconstruction would increase the nonconforming nature of the house, was based on legally tenable grounds and

was otherwise proper. The judge also concluded that there was sufficient evidence to support the board's finding

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that the proposed reconstruction would be substantially more detrimental to the neighborhood than the existing house. Judgment entered, and this appeal followed.

The plaintiffs do not challenge the judge's determination that reconstruction of the house would result in substantial detriment to the neighborhood. The sole issue before us is whether the plaintiffs' proposed reconstruction increases the nonconforming nature of the structure under the second except clause of G. L. c. 40A, § 6. For the reasons stated in the concurring opinion in the Bransford case, we affirm the Land Court judgment. *Id.* at 853-862 (concurring opinion).

We need not repeat the content of the concurring opinion in the Bransford case. However, some additional observations are in order. The plaintiffs do not contend that a different conclusion is compelled by § 1642 of the zoning bylaw, see note 12, *supra*. The plaintiffs did not argue below, before judgment entered, that a different provision of the zoning bylaw might exempt their property from the one acre lot area requirement. The judge did not abuse his discretion in refusing to consider the plaintiffs' new contention on a motion to reconsider the judgment. See *O'Donnell v. Bane*, [385 Mass. 114](#), 121 (1982). See also *Harley-Davidson Motor Co. v. Bank of New England-Old Colony, N.A.*, 897 F.2d 611, 616 (1st Cir. 1990), and cases cited.

The board does not dispute that the plaintiffs could reconstruct a house on the lot, or modernize the existing house, in keeping with the existing structure's building footprint and living area. The plaintiffs cannot be compelled to remove the existing house because of the protection granted to a preexisting structure on a preexisting nonconforming lot. Concerns over the making of small-scale alterations, extensions, or structural changes to a preexisting house are illusory. Examples of such improvements could include the addition of a

dormer; the addition, or enclosure, of a porch or sunroom; the addition of a one-story garage for no more than two motor vehicles; the conversion of a one-story garage for one motor vehicle to a one-story garage for two motor vehicles; and the addition of small-scale, proportional storage structures, such as sheds used to store gardening and lawn equipment, or sheds used to house swimming pool heaters and equipment. Because of their small-scale nature, the improvements

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mentioned could not reasonably be found to increase the nonconforming nature of a structure, [\[Note 15\]](#) and we conclude, as matter of law, that they would not constitute intensifications. [\[Note 16\]](#) More substantial improvements, or reconstructions, would require approval under the second except clause and under the terms of an existing ordinance or bylaw that will usually require findings of the type specified in § 1642 of the Norwell bylaw.

Our decision recognizes that many municipalities do not welcome the building of structures that represent the popular trend of "mansionization." This is especially so when the structures involve reconstruction on nonconforming lots. The expansion of smaller houses into significantly larger ones decreases the availability of would-be "starter" homes in a community, perhaps excluding families of low to moderate income from neighborhoods. Municipalities may permissibly exercise their police power to attempt to limit these potential adverse effects. Doing so is consistent with the Legislature's concern for the critical need for affordable housing, see *Jepson v. Zoning Bd. of Appeals of Ipswich*, ante 81, 95 (2007), and cases cited, and with the autonomy given local communities to determine land use issues sensibly.

The final determination, of course, is for the Legislature, if it chooses to eliminate the controversy that has arisen over the meaning of the second except clause, by changing or clarifying our decision. For now, the equipoise created by the Bransford decision is altered to move the weight of the law to the Land Court's position as explained in the concurring opinion in Bransford

and here.

Judgment affirmed.

CORDY, J. (dissenting, with whom Ireland, J., joins). I agree with the court's conclusion that certain "small-scale alterations,

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extensions, or structural changes to a preexisting house" could not reasonably be found to increase the nonconforming nature of a house whose only nonconformity is that it is located on a smaller lot than what the town's zoning bylaw now requires as a minimum for future residential development. Ante at 362. I continue to disagree, however, with the court's conclusion that the reconstruction and enlargement of an existing single family residence that fully complies with current zoning and building size requirements, except minimum lot size, "increase[s] the nonconforming nature of [the] structure," such that the grandfathering provisions of G. L. c. 40A, § 6, first par., provide it no protection. Ante at note 3. My disagreement with the court's reasoning is set forth in the dissenting opinion in *Bransford v. Zoning Bd. of Appeals of Edgartown*, [444 Mass. 852](#), 863 (2005) (Bransford) (Cordy, J., dissenting, with whom Ireland and Sosman, JJ., joined), and need not fully be repeated here.

It does bear repeating, however, that the size of residential structures is not regulated by minimum lot size requirements. Rather, a town may (among other things) impose setback requirements, height restrictions, and even lot coverage ratios for this purpose, as apparently the town of Norwell does. Thus, while a preexisting residential structure that exceeds building size requirements may remain pursuant to G. L. c. 40A, § 6, first par., any attempt to alter, reconstruct, or extend the structure in a manner that would increase its size would plainly "increase the nonconforming nature of [the] structure," thereby removing such an alteration, reconstruction, or extension from the

protection of the statute and requiring a special permit.

Minimum lot size requirements are, however, of a different nature. They limit the number of dwellings that can be built in a town, thereby limiting the density of the population, and most particularly the number of families who may reside there and the burden such families place on town services (such as schools, sewers, and public safety). A home on a lot that has become nonconforming because of an increase in minimum lot size is not nonconforming because of the size of the structure. The nonconformity is that there is a dwelling on the lot at all. Whether the dwelling is 675 square feet or 3,500 square feet is irrelevant to the nonconformity of its lot -- the latter is as nonconforming

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as the former. Consequently, increasing the dwelling's size (so long as permitted by current setback and other building-size requirements) cannot be said to increase a nonconformity that has nothing to do with building size. There will still be one, and only one, dwelling on the property.

For these reasons, and those regarding what I perceive to be the Legislature's intention to provide greater protection for the owners of single-family and two-family homes (as discussed in the Bransford dissent), I respectfully dissent from the court's interpretation of the statute to the contrary.

FOOTNOTES

[\[Note 1\]](#) Mark K. Winchester.

[\[Note 2\]](#) Of Diamond Development Realty Trust.

[\[Note 3\]](#) General Laws c. 40A, § 6, first par., provides in pertinent part (with the second "except" clause italicized):

"Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such

ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent *except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure*. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood. . . ." (Emphasis added.)

The bracketed phrase "structure or" appearing in the second sentence quoted above was first supplied by Willard v. Board of Appeals of Orleans, [25 Mass. App. Ct. 15](#) , 21 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., [409 Mass. 361](#) , 363 n.4, 364 (1991).

[\[Note 4\]](#) The parties have reproduced only portions of the zoning bylaw. These portions did not contain any definitions. It is helpful to have a complete copy of the zoning bylaw.

[\[Note 5\]](#) The zoning bylaw allows a front setback based on the averaging of the abutting yards on either side of the property.

[\[Note 6\]](#) Concerning the side setback, the zoning bylaw provides that no structure "shall be erected or placed within 20 feet of a side or back line except that with respect to a building and/or structure existing on July 7, 1955, *additions* thereto may be erected or placed within 20 feet, but not within 10 feet of a side line" (emphasis added).

[\[Note 7\]](#) Under the zoning bylaw, all lots in all districts of the town must be at least one acre.

[\[Note 8\]](#) With respect to residential districts in the town, the zoning bylaw does not regulate the "footprint," or amount of land area occupied by the house, and does not contain a "ground coverage ratio" provision, or ratio of building area to lot area on a parcel. See Bransford v. Zoning Bd. of Appeals of Edgartown, [444 Mass. 852](#) , 854 n.3 (2005) (Greaney, J., concurring, with whom Marshall, C.J., and Spina, J., joined) (defining "footprint" and "ground coverage ratio").

[\[Note 9\]](#) The garage accounts for 600 square feet of "living" area.

[\[Note 10\]](#) The plaintiffs assert that the proposed reconstruction covers only seven per cent of the lot. Neither the defendant, the zoning board of appeals of Norwell (board), nor the judge, however, made any finding on the issue of ground coverage ratio, and the plaintiffs have not substantiated their assertion with any materials in the record appendix. Even assuming the percentage is correct, a small ground coverage ratio has no bearing on the plaintiffs' inability to satisfy the minimum lot area requirement. The ratio hardly can be said to be determinative of the issue of intensification.

[\[Note 11\]](#) There was conflicting evidence at trial concerning the plaintiffs' compliance with the side setback requirement as to one of the sides of the proposed new house, see note 6, *supra*. Because the board did not contest the plaintiffs' compliance with the side setback requirement, the judge found that the requirement had been satisfied.

[\[Note 12\]](#) Section 1642 of the bylaw is entitled "Change, Extension, or Alteration," and reads: "As provided in G. L. c. 40A, § 6, a nonconforming single- or two-family dwelling may be altered or extended provided that doing so does not increase the nonconforming nature of said structure. Other pre-existing nonconforming structures or uses may be extended, altered, or changed in use on Special Permit from the Board of Appeals if the Board of Appeals finds that such extension, alteration, or change will not be substantially more detrimental to the neighborhood than the existing nonconforming use. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use."

[\[Note 13\]](#) The plaintiffs' proposed reconstruction received approval from the local board of health and conservation commission.

[\[Note 14\]](#) The board asked the plaintiffs if they would consider constructing a house with approximately 2,000 to 2,200 square feet of living area and a reduced building width along its frontage. The board "did not receive an encouraging response."

[\[Note 15\]](#) Owners intending such projects, however, are obliged, nevertheless, to seek approval by the local building inspector if required.

[\[Note 16\]](#) Indeed, counsel for the board acknowledged that such modest additions create an illusory problem under the second except clause, and that, in response, many municipalities have placed exceptions in their zoning codes permitting additions and structures of the type listed in the examples as nonintensifications.

Commonwealth of Massachusetts. [Trial Court Law Libraries](#). Questions about legal information? Contact [Reference Librarians](#).



MAUREEN BLASCO & others [\[Note 1\]](#) VS. BOARD OF APPEALS OF WINCHENDON & another [\[Note 2\]](#) (and a companion case [\[Note 3\]](#)).

31 Mass. App. Ct. 32

April 24, 1991 - July 8, 1991

Suffolk County

Present: SMITH, FINE, & LAURENCE, JJ.

Provisions in the zoning by-law of a town providing for continuation of a prior nonconforming use and authorizing by special permit alteration of a nonconforming use of a building or structure did not authorize the town's zoning board of appeals to grant a special permit to change the nonconforming use of certain land from a gravel removal operation to a demolition landfill. [34-35]

General Laws c. 40A, Section 6, did not require a municipality to allow a landowner to change the valid prior nonconforming use of its land from a gravel removal operation to a demolition landfill, which a local zoning by-law did not permit, upon a finding by the appropriate municipal body that the proposed nonconforming use was not substantially more detrimental to the neighborhood than the existing nonconforming use. [35-39]

CIVIL ACTIONS commenced in the Land Court Department on January 23, 1989, and January 27, 1989, respectively.

The cases were heard by Robert V. Cauchon, J., on a motion for partial summary judgment.

Anton T. Moehrke for C. J. Mabardy Washed Sand & Gravel, Inc.

Stephen D. Anderson for the plaintiffs.

June S. Riddle for the Planning Board of Winchendon & another.

FINE, J. C. J. Mabardy Washed Sand and Gravel, Inc. (Mabardy), operates a gravel pit from a 148-acre site in a residentially zoned district off River Street in Winchendon as a protected nonconforming use. On July 29, 1988, Mabardy applied to the Winchendon board of appeals (board) for a special permit to change its nonconforming use from a gravel removal operation to a demolition landfill. On December 20, 1988, after six evenings of hearings, by a four to one vote, the board issued a lengthy decision in which it determined that the proposed use would not be more detrimental to the neighborhood than the preexisting use, and it granted the special permit, subject to numerous conditions. [\[Note 4\]](#) A group of citizens residing in the vicinity of the proposed landfill appealed from the board's decision to the Land Court pursuant to G. L. c. 40A, Section 17, as did the Winchendon planning board and board of selectmen. The appeals were consolidated, and the judge, acting on a motion for partial summary judgment, determined that neither the Winchendon zoning by-law, nor G. L. c. 40A, Section 6, authorized the board's grant of the special permit to operate the demolition landfill. He, therefore, ordered the permit annulled. Final judgment was entered pursuant to Mass.R.Civ.P. 54(b), 365 Mass. 821 (1974), and Mabardy appealed.

We first consider whether the Winchendon zoning by-law authorizes the board to approve the proposed change of use of Mabardy's land. Not finding that authority in the by-law, we next consider whether G. L. c. 40A, Section 6, by itself, entitles a landowner to make such a change upon a finding that the proposed nonconforming use is not substantially more detrimental to the neighborhood than the existing nonconforming use. In other words, does G. L. c. 40A, Section 6, require that municipalities allow such changes? We think it does not and, therefore, affirm the judgment of the Land Court.

1. The Winchendon zoning by-law. Article 3.41 of the by-law provides for

continuation of prior nonconforming uses. It provides, further: "A nonconforming use, however, shall not be changed or extended to a conforming use unless a special permit is obtained from the Board of Appeals." A landfill is not on the list of permitted uses, and Article 3.1 of the by-law provides that any use not listed "shall be construed to be prohibited." As a landfill could not be a "conforming use," Article 3.41 provides no authority for the proposed change. The only other relevant provision, Article 3.43, [\[Note 5\]](#) provides that the board may authorize by special permit "alteration" [\[Note 6\]](#) of a nonconforming use of a building or structure. The provision does not mention changes in nonconforming uses of land. The only reference to nonconforming uses of land in Article 3.43 is as follows: "Nonconforming use of land shall not be extended beyond the boundaries of the property within which the use occurred at the time of adoption of this bylaw." A change of use, however, is not an extension of a nonconforming use.

The intent of the by-law not to permit changes in nonconforming uses of land, as opposed to buildings and structures, seems clear from its express terms. This is particularly so in light of the provisions relating to nonconforming uses in the by-law as it preexisted the present version. The earlier version expressly provided that nonconforming uses of land

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could be changed to certain other nonconforming uses upon a finding by the board that the changed use would not be substantially more detrimental to the neighborhood. [\[Note 7\]](#)

Contrary to Mabardy's contention, therefore, the present Winchendon by-law is not "permissive in spirit" in its treatment of changes in nonconforming uses of land. Contrast *Murray v. Board of Appeals of Barnstable*, [22 Mass. App. Ct. 473](#), 478 (1986), and cases cited. It has not been argued, nor would we say, that a legislative distinction between land, on the one hand, and buildings and structures, on the other, for these purposes, would be improper.

2. The effect of G. L. c. 40A, Section 6, on changes in nonconforming uses. We must decide whether G. L. c. 40A, Section 6, entitles a landowner to change a valid prior nonconforming use which a local zoning by-law does not permit, assuming a finding by the appropriate municipal body that the new use would not be substantially more detrimental. This question of statutory interpretation is one that has previously been identified, but not decided. See *Sullivan v. Board of Appeals of Harwich*, [15 Mass. App. Ct. 286](#) , 290 n.2 (1983); *Murray v. Board of Appeals of Barnstable*, 22 Mass. App. Ct. at 477 n.9. See also Healy, *Massachusetts Zoning Practice Under the Amended Zoning Enabling Act*, 64 Mass. L. Rev. 157,

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161 (1979); Healy & Mack, *Massachusetts Zoning Manual* 6-17 (1989).

The first two sentences of G. L. c. 40A, Section 6, as inserted by St. 1975, c. 808, Section 3, have been described as "difficult and infelicitous." *Fitzsimonds v. Board of Appeals of Chatham*, [21 Mass. App. Ct. 53](#) , 55-56 (1985). See also *Willard v. Board of Appeals of Orleans*, [25 Mass. App. Ct. 15](#) , 20 (1987), and cases cited. The statute provides in those two sentences as follows:

"Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence . . . but shall apply to any change or substantial extension of such use. . . . Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood."

The language suggests, on the one hand, that local zoning by-laws govern the extent to which there may be changes in nonconforming uses and, on the other, that changes in nonconforming uses may be made by a property owner so long as the appropriate municipal body makes the required finding. The two

sentences are either contradictory to each other, or the second sentence provides for an exception to the rule stated in the first sentence. Such an exception, however, would swallow the rule. The Legislature had the ability to use language clearly providing either that no by-law could forbid such changes, see, e.g., G. L. c. 40A, Section 3, or that no such changes could be made except as expressly authorized by the local by-law, see, e.g., G. L. c. 40A, Section 10, second sentence. We conclude that, with respect to the question before us, the language is ambiguous. We proceed, therefore, to consider the legislative history of G. L. c. 40A, Section 6, and the

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policies relating to nonconforming uses likely to have affected the legislative intent.

The legislative history suggests an intent to allow local zoning authorities, through their by-laws, to regulate and even prohibit changes in nonconforming uses. "Prior to the 1975 amendment, the Zoning Enabling Act allowed a town to forbid any changes in nonconforming uses, and required a unanimous vote by a zoning board of appeals to decide in favor of any application under any zoning ordinance or by-law. See St. 1954, c. 368, Sections 5 and 19." *Shrewsbury Edgemere Assocs. Ltd. Partnership v. Board of Appeals of Shrewsbury*, [409 Mass. 317](#) , 322 (1991). See *Inspector of Bldgs. of Burlington v. Murphy*, [320 Mass. 207](#) , 209-210 (1946); *Chilson v. Zoning Bd. of Appeal of Attleboro*, [344 Mass. 406](#) , 412-413 (1962). In the *Shrewsbury* case, the issue was the number of votes required by G. L. c. 40A, Section 6, to approve a change in nonconforming use. As the particular local by-law, unlike the *Winchendon* by-law, expressly permitted changes in nonconforming uses, that decision has no direct bearing on the present case. The court's comment, at 322, that, in enacting G. L. c. 40A, Section 6, the Legislature "liberalized" the rules relating to changes in nonconforming uses must be read as relating specifically to the relaxation of the earlier requirement of a unanimous vote to allow such a change.

The court had occasion in the Shrewsbury decision to refer to the legislative history of G. L. c. 40A, Section 6, as follows: "The 1975 revision of the Zoning Enabling Act, St. 1975, c. 808, Section 3, resulted from a report to the Legislature by the Department of Community Affairs, which recommended a number of changes. See 1972 House Doc. No. 5009, Report of the Department of Community Affairs Relative to Proposed Changes and Additions to the Zoning Enabling Act (report)." Id. at 320. We refer, therefore, to that report. In discussing changes in nonconforming uses, the report notes, at 39, the unanimity of authoritative opinion that "the ultimate objectives of zoning would be furthered by the eventual elimination of nonconformities in most cases" and the consequent

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legislative prohibition or regulation of, among other things, changes of use. The report then points out, at 43-44, that strict enforcement of rules prohibiting changes may, in certain situations, have a detrimental effect on a community. An example would be when a nonconforming use continues after becoming uneconomical and the structure containing the use falls into disrepair. See *Chilson v. Zoning Bd. of Appeal of Attleboro*, 344 Mass. at 412. To meet that concern, the report, at 44, recommends "that the enabling act explicitly *recognize the validity of regulations* which authorize such a change of use upon application to the board of appeals, after a showing that the proposed change of use will be less detrimental to the neighborhood than the existing use" (emphasis added). The italicized portion of the recommendation, contained in the report on which G. L. c. 40A, Section 6, was based, was clearly directed towards the kind of local regulations which should be recognized and not what right a property owner might have with respect to the use of his property. [\[Note 8\]](#)

Earlier drafts of G. L. c. 40A, Section 6, contained language similar to that now in the second sentence of Section 6, but in a provision included in the first sentence rather than in a separate sentence. See 1974 House Doc. Nos. 5864

at 10, 6480 at 8; 1975 House Doc. No. 5457 at 10. Those drafts more clearly indicated a legislative intent to allow local regulation, or even prohibition, of changes in nonconforming uses. One might speculate that the change to the present form, with two separate sentences, was made carelessly and at the last minute to avoid the long and cumbersome first sentence in the earlier drafts. Compare *Baldiga v. Board of Appeals of Uxbridge*, [395 Mass. 829](#) , 835 (1985). In any event, there is no indication in any report of which we are aware that the Legislature intended at the last minute either to bestow vastly expanded rights on owners of property with nonconforming uses or to take away rights historically residing with the local zoning authorities.

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Moreover, whatever harshness might result from a particular town by-law's strict regulation of changes in nonconforming uses is justified by policy considerations which generally favor their eventual elimination. See *Strazzulla v. Building Inspector of Wellesley*, [357 Mass. 694](#) , 697 (1970); *Dowling v. Board of Health of Chilmark*, [28 Mass. App. Ct. 547](#) , 551 (1990); Anderson, *American Law of Zoning* Sections 6.07, 6.35 (3d ed. 1986), and cases cited. See also G. L. c. 40A, Section 5, as in effect prior to St. 1975, c. 808 (permitting the regulation of the "non-use of non-conforming buildings and structures so as not to unduly prolong the life of non-conforming uses"). If the law were such that any property owner had the right to change a nonconforming use to any other use so long as the new use was not substantially more detrimental to the neighborhood, nonconforming uses would tend to exist in perpetuity, and any comprehensive municipal plan for regulating uses in particular districts would never fully take effect. Further, the interpretation of G. L. c. 40A, Section 6, advanced by Mabardy would tend to detract from another principle underlying the Zoning Enabling Act, that of allowing the maximum scope for local self-determination. See St. 1975, c. 808, Section 2A, and the Home Rule Amendment, art. 2, Section 1, as appearing in art. 89 of the Articles of Amendment to the Massachusetts Constitution. Compare *Collura v. Arlington*, [367 Mass. 881](#) , 885 (1975).

Based on both the legislative history of G. L. c. 40A, Section 6, and the policies underlying it, we resolve the ambiguity in the statute by recognizing the continuing right of a municipality through its zoning by-law to regulate or forbid changes in nonconforming uses. Winchendon's by-law does not permit the change proposed by Mabardy. Winchendon is free to amend its by-law to allow such changes. Should Winchendon so amend its by-law, any change authorized by it may take effect so long as the finding required by Section 6 is made.

Judgment affirmed.

FOOTNOTES

[\[Note 1\]](#) Joseph Cote, Leona Goodwin, Derek Knerr, and Rudy Perkins.

[\[Note 2\]](#) C. J. Mabardy Washed Sand & Gravel, Inc.

[\[Note 3\]](#) A suit against the same defendants, brought by the planning board of Winchendon and the board of selectmen of Winchendon.

[\[Note 4\]](#) The board also voted to allow expansion of Mabardy's existing gravel removal operation. That vote was also challenged in the G. L. c. 40A, Section 17, appeal to the Land Court. Summary judgment on that aspect of the case was denied, however, upon the determination that there existed issues of material fact; and that part of the case is still pending in the Land Court.

[\[Note 5\]](#) Article 3.43 provides in its entirety:

"Nonconforming use of land shall not be extended beyond the boundaries of the property within which the use occurred at the time of adoption of this bylaw.

"The Board of Appeals may authorize by Special Permit a nonconforming use of a building or structure to be altered or enlarged provided that:

a. such alteration or enlargement does not result in a floor area increase of more than 25 percent of the original floor area in use at the time of adoption of this bylaw, and,

b. such alteration or enlargement shall be in conformity with the dimensional requirements and other pertinent provisions of this bylaw."

[\[Note 6\]](#) We assume throughout that there is no difference between "alteration" of a use and a "change" of use.

[\[Note 7\]](#) Section 8(B) of the 1958 Winchendon zoning by-law stated, with respect to changes in nonconforming uses:

"Such [nonconforming] building or structure or use of building, structure or land may be altered or enlarged to twenty-five per cent (25%) of the original floor area or land area in use at the time of the adoption of this by-law, and to a greater extent when approved by the Board of Appeals, provided the alteration or enlargement is on the same or an adjacent parcel of land in the same or joint ownership of record at the time of the adoption of this by-law or any amendments thereto, and the Board of Appeals shall rule that such alteration or enlargement would not be substantially more detrimental or injurious to the neighborhood. The use of any non-conforming building, structure or land may be changed to a use permitted in the most restricted district in which the present use would be conforming provided that when so changed, it shall not be returned to a use permitted in a less restricted district."

[\[Note 8\]](#) The language in the department's recommended statute would have been clearer on the point than the version enacted.

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Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 40R	SMART GROWTH ZONING AND HOUSING PRODUCTION
Section 6	MINIMUM REQUIREMENTS FOR SMART GROWTH ZONING DISTRICT

[Text of section effective until January 1, 2017. For text effective January 1, 2017, see below.]

Section 6. (a) A proposed smart growth zoning district shall satisfy the following minimum requirements:

1. The proposed district shall be located in an eligible location;
2. The zoning for the proposed district shall provide for residential use to permit a mix of housing such as for families, individuals, persons with special needs or the elderly.
3. Housing density in the proposed district shall be at least 20 units per acre for multi-family housing on the developable land area; 8 units per acre for single-family homes on the developable land area; and 12 units per acre for 2 and 3 family buildings on the developable land area.
4. The zoning ordinance or by-law for each proposed district shall provide that not less than 20 per cent of the residential units constructed in projects of more than 12 units shall be affordable, as defined in section 2, and shall contain mechanisms to ensure that not less than 20 per cent of the total residential units constructed in each district shall be affordable.
5. A proposed district shall permit infill housing on existing vacant lots and shall allow the provision of additional housing units in existing buildings, consistent with neighborhood building and use patterns, building codes and fire and safety codes.
6. A proposed smart growth zoning district shall not be subject to limitation of the issuance of building permits for residential uses or a local moratorium on the issuance of such permits.
7. A proposed district shall not impose restrictions on age or any other occupancy restrictions on the district as a whole. This shall not preclude the development of specific projects that may be exclusively for the elderly, the disabled or for assisted living. Not less than 25 per cent of the housing units in such a project shall be affordable housing.

8. Housing in a smart growth zoning district shall comply with federal, state and local fair housing laws.

9. A proposed district may not exceed 15 per cent of the total land area in the city or town. Upon request, the department may approve a larger land area if such approval serves the goals and objectives of the chapter.

10. The aggregate land area of all approved smart growth zoning districts in the city or town may not exceed 25 per cent of the total land area in the city or town.

11. Housing density in a proposed district shall not over burden infrastructure as it exists or may be practicably upgraded in light of anticipated density and other uses to be retained in the district.

12. A proposed smart growth zoning district ordinance or by-law shall define the manner of review by the approving authority in accordance with section 11 and shall specify the procedure for such review in accordance with regulations of the department.

(b) A city or town may modify or eliminate the dimensional standards contained in the underlying zoning in the smart growth zoning district ordinance or by-law in order to support desired densities, mix of uses and physical character. The standards that are subject to modification or waiver may include, but shall not be limited to, height, setbacks, lot coverage, parking ratios and locations and roadway design standards. Modified requirements may be applied as of right throughout all or a portion of the smart growth zoning district, or on a project specific basis through the smart growth zoning district plan review process as provided in the ordinance or by-law. A city or town may designate certain areas within a smart growth zoning district as dedicated perpetual open space through the use of a conservation restriction as defined in section 31 of chapter 184 or other effective means. The amount of such open space shall not be included as developable land area within the smart growth zoning district. Open space may include an amount of land equal to up to 10 per cent of what would otherwise be the developable land area if the developable land would be less than 50 acres, and 20 per cent of what would otherwise be the developable land area if the developable land area would be 50 acres or more.

(c) The zoning for the proposed district may provide for mixed use development.

(d) A smart growth zoning district may encompass an existing historic district or districts. A city or town, with the approval of the department, may establish a historic district in an approved smart growth zoning district in accordance with chapter 40C, so long as the establishment of the historic district meets requirements for such a historic district and does not render the city or town noncompliant with this chapter, as determined by the

department. The historic districts may be coterminous or non-coterminous with the smart growth zoning district. Within any such historic district, the provisions and requirements of the historic district may apply to existing and proposed buildings.

(e) A city or town may require more affordability than required by this chapter, both in the percentage of units that must be affordable, and in the levels of income for which the affordable units must be accessible, provided, however, that affordability thresholds shall not unduly restrict opportunities for development.

(f) With respect to a city or town with a population of fewer than 10,000 persons, as determined by the most recent federal decennial census, for hardship shown, the department may, pursuant to regulations adopted under this chapter, approve zoning for a smart growth zoning district with lower densities than provided in this chapter, if the city or town satisfies the other requirements set forth in this section; provided, however, that such approval shall not be withdrawn solely because, in a future census, the population of the city or town exceeds 10,000.

(g) Any amendment or repeal of the zoning for an approved smart growth zoning district ordinance or by-law shall not be effective without the written approval by the department. Each amendment or repeal shall be submitted to the department with an evaluation of the effect on the city or town's comprehensive housing plan described in section 8. Amendments shall be approved only to the extent that the district remains in compliance with this chapter. If the department does not respond to a complete request for approval of an amendment or repeal within 60 days of receipt, the request shall be deemed approved.

(h) Nothing in this chapter shall affect a city or town's authority to amend its zoning ordinances or by-laws under chapter 40A, so long as the changes do not affect the smart growth zoning district.

Chapter 40R: Section 6. Minimum requirements for smart growth zoning district or starter home zoning district

[Text of section as amended by 2016, 219, Sec. 48 effective January 1, 2017. See 2016, 219, Sec. 140. For text effective until January 1, 2017, see above.]

Section 6. (a) A proposed smart growth zoning district or starter home zoning district shall satisfy the following minimum requirements:

(1) Each proposed district shall be located in an eligible location.

(2) The zoning for each proposed smart growth zoning district shall provide for residential use to permit a mix of housing for families, individuals, persons with special needs and the elderly.

(3) Housing density in a proposed smart growth district shall be at least: 20 units per acre for multi-family housing on the developable land area, 8 units per acre for single-family homes on the developable land area, and 12 units per acre for 2 and 3 family buildings on the developable land area. Housing density in a proposed starter home district shall satisfy the following criteria: (a) the density shall be no less than 4 units per acre of developable land area; (b) the development shall emphasize smart growth principles of development, such as cluster development and other forms of development providing for common open space usable for passive or active recreational activities, or the use of low-impact development techniques; and (c) at least 50 per cent of the starter homes to be developed in a proposed starter home district, excluding accessory dwelling units, must contain 3 or more bedrooms.

(4) The zoning ordinance or by-law for each proposed smart growth zoning district shall provide that not less than 20 per cent of the residential units constructed in projects of more than 12 units shall be affordable housing and shall contain mechanisms to ensure that not less than 20 per cent of the total residential units constructed in each proposed district shall be affordable housing.

(5) The zoning ordinance or by-law for each proposed starter home zoning district shall provide that, as a condition of the increased density permitted in a starter home zoning district, not less than 20 per cent of the residential units created as starter homes shall be affordable to and occupied by individuals and families whose annual income is less than 100 per cent of the area median income as determined by the United States Department of Housing and Urban Development, and shall contain mechanisms to ensure that the required percentage of the total residential units constructed in each proposed starter home district shall meet such affordability requirements, including an affordable housing restriction, as defined in section 31 of chapter 184, that has a term of not less than 30 years.

(6) A proposed smart growth zoning district shall permit infill housing on existing vacant lots and shall allow the provision of additional housing units in existing buildings, consistent with neighborhood building and use patterns, building codes and fire and safety codes.

(7) A proposed smart growth zoning district or starter home zoning district shall not be subject to limitation of the issuance of building permits for residential uses or a local moratorium on the issuance of such permits. In addition, a proposed starter home zoning district shall not be subject to any municipal environmental or health ordinances, bylaws or regulations that exceed applicable requirements of state law or regulation, unless the department of environmental protection has determined that specific local conditions warrant imposition of more restrictive local standards, or the imposition of such standards would not render infeasible the development

contemplated under the comprehensive housing plan, housing production plan or housing production summary submitted as part of the application for such district.

(8) A proposed smart growth zoning district or starter home zoning district shall not impose restrictions on age or any other occupancy restrictions on the district as a whole. This shall not preclude the development of specific projects within a smart growth zoning district that may be exclusively for the elderly, the disabled or for assisted living. Not less than 25 per cent of the housing units in such a project within a smart growth zoning district shall be affordable housing, as defined in section 2.

(9) Housing in a smart growth zoning district or starter home zoning district shall comply with federal, state and local fair housing laws.

(10) A proposed smart growth zoning district or starter home zoning district may not exceed 15 per cent of the total land area in the city or town. Upon request, the department may approve a larger land area if such approval serves the goals and objectives of this chapter.

(11) The aggregate land area of all approved smart growth zoning districts and starter home zoning districts in the city or town may not exceed 25 per cent of the total land area in the city or town. The department may approve a larger combined land area if the department determines that such approval serves the goals and objectives of this chapter.

(12) Housing density in any proposed district shall not over burden infrastructure as it exists or may be practicably upgraded in light of anticipated density and other uses to be retained in the district.

(13) A proposed smart growth zoning district or starter home zoning district ordinance or by-law shall define the manner of review by the approving authority in accordance with section 11 and shall specify the procedure for such review in accordance with regulations of the department.

(b) A city or town may modify or eliminate the dimensional standards contained in the underlying zoning in the smart growth zoning district or starter home zoning district ordinance or by-law in order to support desired densities, mix of uses and physical character. The standards that are subject to modification or waiver may include, but shall not be limited to; height, setbacks, lot coverage, parking ratios and locations and roadway design standards. Modified requirements may be applied as of right throughout all or a portion of the smart growth zoning district or starter home zoning district, or on a project specific basis through the smart growth zoning district or starter home zoning district plan review process as provided in the ordinance or by-law. A city or town may designate certain areas within a smart growth zoning district or starter home zoning district as dedicated perpetual open space through the use of a conservation restriction as defined in section 31 of

chapter 184 or such other means as may be created by state law. The amount of such open space shall not be included as developable land area within the smart growth zoning district or starter home zoning district. Open space may include an amount of land equal to up to 10 per cent of what would otherwise be the developable land area if the developable land would be less than 50 acres, and 20 per cent of what would otherwise be the developable land area if the developable land area would be 50 acres or more.

(c) The zoning for a proposed smart growth zoning district may provide for mixed use development.

(d) A smart growth zoning district or starter home zoning district may encompass an existing historic district or districts. A city or town, with the approval of the department, may establish a historic district in an approved smart growth zoning district or starter home zoning district in accordance with chapter 40C, so long as the establishment of the historic district meets the requirements for such a historic district and does not render the city or town noncompliant with this chapter, as determined by the department. The historic districts may be coterminous or non-coterminous with the smart growth zoning district or starter home zoning district. Within any such historic district, the provisions and requirements of the historic district may apply to existing and proposed buildings.

(e) A city or town may require more affordability than required by this chapter, both in the percentage of units that must be affordable, and in the levels of income for which the affordable units must be accessible, provided, however, that affordability thresholds shall not unduly restrict opportunities for development.

(f) With respect to a city or town with a population of fewer than 10,000 persons, as determined by the most recent federal decennial census, for hardship shown, the department may, pursuant to regulations adopted under this chapter, approve zoning for a smart growth zoning district with lower densities than provided in this chapter, if the city or town satisfies the other requirements set forth in this section; provided, however, that such approval shall not be withdrawn solely because, in a future census, the population of the city or town exceeds 10,000 persons.

(g) Any amendment or repeal of a zoning ordinance or by-law affecting an approved smart growth zoning district or starter home zoning district shall not be effective without the written approval by the department. Each amendment or repeal shall be submitted to the department with an evaluation of the effect on the city or town's comprehensive housing plan or housing production plan, if any. Amendments shall be approved only to the extent that the district

remains in compliance with this chapter. If the department does not respond to a complete request for approval of an amendment or repeal within 60 days of receipt, the request shall be deemed approved.

(h) Nothing in this chapter shall affect a city or town's authority to amend its zoning ordinances or by-laws under chapter 40A, so long as the changes do not affect the smart growth zoning district or starter home zoning district.

**2016 Fall Annual Town Meeting
Fine and Performing Arts Center
Natick High School
October 25, 2016
Third Session**

The Third Session of the 2016 Fall Annual Town Meeting was called to order at 7:40 PM by the Town Moderator, Frank W. Foss, who declared a quorum present. The Moderator welcomed residents, taxpayers, town officials, Town Meeting Members and interested parties to the Third Session of 2016 Fall Annual Town Meeting. The Moderator asked that newly elected or appointed members of Town Meeting stand to take the oath of office. There were no new members. The Moderator asked the audience to stand for the Pledge of Allegiance and a moment of silence in recognition of all the men and women serving on our behalf throughout the world.

The Moderator introduced the officials present on the stage and in the well of the auditorium. The following people were present: Diane Packer, Town Clerk; Patrick Hayes, Finance Committee Vice Chair; Bruce Evans, Finance Committee Secretary; Martha White, Town Administrator; John Flynn, Town Counsel; and Richard Jennett, Chair of the Board of Selectmen; Mr. Chenard, Deputy Town Administrator for Operations; and a representative from Option Technologies who will be operating the electronic voting system.

The Moderator reviewed the general rules and procedures of Town Meeting that were accepted at the previous session of this meeting. He indicated that all residents and taxpayers of the town and town officers and employees, whether or not residents, have the same right to speak as Town Meeting Members; however they do not have the right to submit motions for consideration at Town Meeting, nor vote on any matter before Town Meeting. Non-residents may only speak at Town Meeting after approval by Town Meeting Members. The proceedings of Town Meetings shall be governed by ***Town Meeting Time***, the Town of Natick Home Rule Charter, the Natick By-Laws and the General Laws of the Commonwealth of Massachusetts.

No person shall speak upon any article more than once when any other person desires to be heard, nor more than twice on the same question without permission of Town Meeting; and no person shall speak more than ten (10) minutes at one time without permission of Town Meeting. Consistent with the Natick By-Laws, any person having a monetary or equitable interest in any matter under discussion at a Town Meeting, and any person employed by another having such an interest, shall disclose the fact of his/her interest or employment before speaking thereon.

The Moderator made several announcements regarding upcoming community events. He also announced that Special Town Meeting #2 will begin on Tuesday, November 1, 2016. The Moderator said that the meeting would begin with Article 18.

**ARTICLE 18: Dissolve the Natick High School Building Committee
(Superintendent of Schools)**

To see if the Town will vote to dissolve the Natick High School Building Committee, which Committee was created by vote of the 2001 Fall Annual Town Meeting under Article 15, and which Committee's composition and charge were amended at the 2010 Fall Annual Town Meeting under Article 18, and to express gratitude to those who served as members of that Committee, or otherwise act thereon.

Finance Committee Recommendation

By a vote of 13-0-0 on August 30, 2016, the Finance Committee recommends ***Favorable Action*** with regard to the subject matter of Article 18 as presented in the voted recommended motion below.

Motion: (Requires majority vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the High School Building Committee that was created by vote of Fall 2001 Town Meeting under article 15, and that was expanded or extended by subsequent actions of Town Meeting and of the School Committee, is hereby dissolved, having completed its work.

Ms. Amy Mistrot, Chair of the School Committee spoke to this article. ***The main motion under Article 18 passed unanimously (by hand count).***

Moved by Mr. Evans, seconded by Mr. Hayes that the following resolution as read by Ms. Mistrot be adopted: Now be it resolved that The High School Building Committee that was created by a vote of Fall 2001 Town Meeting under Article 15 and that was expanded or extended by subsequent actions of Town Meeting and School Committee is hereby dissolved having completed its work. Fall 2016 Town Meeting hereby expresses its gratitude and that of the Town for the service of the following persons who served as members of the High School Building Committee during its existence: David Albrecht, Rose Bertucci, John Ciccariello, Dirk Coburn, Jim Connolly, Jonathan Freedman, Bob Graham, John Hughes, Bill Hurley, Joseph Keefe, David Margi!, Stephen Meyler, Joseph Naughton, John O'Neil, Mysore Ravindra, Peter Sanchioni, Mark Sereda, Martha White and Bruce Wright. Town Meeting also hereby expresses gratitude for the thoughtful support this project received from the town's state legislative representatives, the Board of Selectmen, the School Committee, the Finance Committee and for the contributions of others too numerous to name individually who contributed to the needs assessment, the design, the planning, the construction, and the project management of the High School that was completed on time and considerably below budget.

The resolution passed unanimously (by hand count).

ARTICLE 25: Amend Zoning By-Laws Regarding Dimensional Requirements (Planning Board)

To see if the Town will vote to amend the Zoning Bylaws with regard to certain dimensional requirements pertaining to single and two-family structures within the Residential General zoning district; or otherwise act thereon.

Finance Committee Recommendation

By a vote of 9-0-0 on September 22, 2016, the Finance Committee recommends ***Favorable Action*** with regard to the subject matter of Article 25 as presented in the voted recommended motion below.

Motion: (Requires two thirds vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the zoning bylaws be amended as follows:

I) In Section IV-B Intensity Regulations by Zoning District, add the following footnote:

bb. Within the RG zoning district, a minimum of 5,000 square feet of lot area is required per dwelling unit for the conversion of a single-family to, or construction of a two-family, for a pre-existing, non-conforming lot or structure.

Mr. Munnich, Chair of the Planning Board spoke to this article. Mr. Richards moved by Mr. Healey to refer the subject matter of Article 25 to the Planning Board. Mr. Richards spoke to the referral motion. ***The motion for referral failed (51-65-2). The main motion under Article 25 passed by two-thirds vote (81-31-4)***

ARTICLE 26: Amend Zoning By-Laws to Add Definition for "Special Care Residence" (Planning Board)

To see if the Town will vote to add a definition for "Special Care Residence" to Article I, Section 200 of the Town of Natick Zoning Bylaw; or otherwise act thereon.

Finance Committee Recommendation

By a vote of 9-0-0 on September 22, 2016, the Finance Committee recommends, ***Referral*** with regard to the subject matter of Article 26 as presented in the voted recommended motion below.

Motion: (Requires majority vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to refer the subject matter of Article 26 to the Planning Board.

The referral motion under Article 26 passed by majority vote (114-1-3).

ARTICLE 27: Amend Zoning By-Laws Regarding Driveways and Parking Dimensions (Planning Board)

To see if the Town will vote to amend the Zoning Bylaws with regard to certain driveways and parking dimensions and applicability; or otherwise act thereon.

Finance Committee Recommendation

By a vote of 12-0-0 on October 4, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 27.

Motion: (Requires two thirds vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to amend Subsection 10. Entrance and Exit Driveways of Section V-D OFF-STREET PARKING AND LOADING REQUIREMENTS of Zoning By Laws to make the following changes:

-In subsection a);

insert after "...not be less than nine (9)" the following: "or more than twenty-one (21)"

insert after "...nor less than thirteen (13)" the following: "or more than twenty-five (25)"

-In subsection b);

insert after "Highway Mixed Use III," the following: "Limited Commercial,"

and after "...shall not be more than"; delete: "forty-five (45)" and insert: "forty (40)"

and after "...right-of -way line and"; delete: "fifty-five (55)" and insert: "fifty (50)"

and insert a new subsection:

"d) Paving shall not be constructed closer than two (2) foot to the side property line extended without a permit issued under IV-A. 6. of these bylaws."

and insert a new subsection:

"e) Except for such portion of a constructed driveway accessing the traveled way, paving shall not be constructed closer than two (2) feet to the front property line.

So that the section now reads:

"10. Entrance and Exit

Driveways

- a) Residence driveways shall not be less than nine (9) or more than twenty-one (21) feet wide at the right-of-way line nor less than thirteen (13) or more than twenty-five (25) feet at the curb line of lots for one or two-family dwellings.
- b) Driveways in Residential Multiple, Downtown Mixed Use, Commercial II, Industrial I, Industrial II, Highway Planned Use, Highway Mixed Use I, Highway Mixed Use II, Highway Mixed Use III, Limited Commercial, and PCD Districts or serving uses allowed in these districts, shall not be more than forty (40) feet wide at the right-of-way line and fifty (50) feet wide at the curb line unless otherwise specified by the Natick Department of Public Works or the Massachusetts Department of Public Works. Each parcel within these districts, or occupied by such use, will be entitled to two (2) driveways where the property has two hundred (200) feet of frontage or less. Additional driveways may be allowed by special permit by the Special Permit Granting Authority for lots with greater than two hundred (200) feet of frontage.
- c) In all districts the entrance and exit driveways will be located so as to provide for safe access and egress to the parcel being served. In addition, evidence that the necessary driveway permits will be issued by either the Natick Department of Public Works for Town-controlled roads or State Department of Public Works for State-Controlled roads must be presented before a building permit may be issued.
- d) Paving shall not be constructed closer than two (2) foot to the side property line extended without a permit issued under IV-A. 6. of these bylaws.
- e) Except for such portion of a constructed driveway accessing the traveled way, paving shall not be constructed closer than two (2) feet to the front property line."

Mr. Munnich, Chair of the Planning Board, spoke to this article. Discussion ensued on the article. *The main motion under article 27 passed by two-thirds vote (94-19-3).*

ARTICLE 28: Construction of a Shade Apparatus Over Picnic Tables at the Community-Senior Center (Jerry L. Pierce, et al)

To see if the Town will vote to appropriate a sum of money for the construction of a suitable shade apparatus over the two picnic tables near the raised gardens at the Community-Senior Center, or otherwise act thereon.

Finance Committee Recommendation

By a vote of 8-0-1 on September 22, 2016, the Finance Committee recommends *Referral* with regard to the subject matter of Article 28 as presented in the voted recommended motion below.

MOTION: (Requires Majority Vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to refer the subject matter of Article 28 to the sponsors.

Ms. White spoke to this article and told Town Meeting that this request has been funded under the capital equipment article. *The main motion under Article 28 passed by majority vote (by hand count).*

ARTICLE 29: Amend the Natick Zoning Bylaw to Create an Assisted Living Option Overlay District (ALOOD). (Richard A. Glaser, et al)

To see if the Town will vote to amend the Natick Zoning Bylaw to create an Assisted Living Option Overlay District (ALOOD) limited to residential zoning districts, including but not limited to:

1. specifying the purpose and objectives of such ALOOD;
 2. setting any and all dimensional and intensity regulations, including requirement for minimum size of any parcel or parcels included in the ALOOD, for such ALOOD;
 3. specifying whether uses within such ALOOD shall require a Special Permit and which Town board shall be the Special Permit Granting Authority;
 4. specifying the authority of the Special Permit Granting Authority to grant waivers or allow modification of dimensional or intensity regulations and the criteria for such waivers and/or modifications;
 5. establishing requirements for the provision of Open Space or Open Space Public Benefit Amenity for any parcel or parcels included in the ALOOD;
 6. establishing such other requirements as the Town deems appropriate for uses allowed within the ALOOD; and
- take any other action consistent with the creation of this ALOOD, or otherwise act thereon.
- Suggested Bylaw provisions:

1. Amend Article I by adding:
Section 110 –PURPOSE OF ASSISTED LIVING OPTION OVERLAY DISTRICT (ALOOD)
Within the purposes expressed in Section 100 of this Bylaw and in General Laws Chapter 40A the particular intent of these Bylaws with respect to establishing an Assisted Living Option Overlay District (ALOOD) is to provide a residential environment within residentially zoned districts that offers supportive services to individuals 55 years of age or older who are unable to live independently in the community, including individuals with specialized needs due to cognitive or other impairments, by offering supervision and/or assistance with basic activities of daily life.
2. Create New section III-K to be added to Zoning Bylaw after the existing Highway Overlay District Sections:

Section III-K ASSISTED LIVING OPTION OVERLAY DISTRICT ("ALOOD")

1. **APPLICABILITY:** The ALOOD shall overlay any parcel or combination of contiguous parcels in common ownership ("ALOOD PARCEL") , approved by Town Meeting to be included in the ALOOD, subject to the following requirements:
 - a. Such ALOOD PARCEL shall be located in a residentially zoned district and consist of at least fifteen (15) contiguous acres.
 - b. Such ALOOD PARCEL shall have a minimum of 100 feet of frontage on a numbered arterial road (Rt.9, Rt.16, Rt. 27, Rt. 135).
 - c. All regulations of the underlying residential zoning district shall apply within the ALOOD except to the extent they are specifically modified or supplemented by other provisions of the ALOOD.
2. **USE AND OTHER ZONING REGULATIONS**
 - a. **Allowed Uses:** In addition to any uses allowed in the underlying residential zoning district, which shall continue to be allowed uses, Assisted Living Residences and Special Care Residences, either as a single use or as combined uses in one or more buildings, shall be allowed uses within the ALOOD subject to the following requirements:

i. An Assisted Living Residence located in the ALOOD shall provide assisted living units consisting of one or more rooms within an Assisted Living Residence providing living facilities for no more than two occupants, including room or rooms for living, sleeping and eating ("ALR Unit").

ii. Both Assisted Living Residences and Special Care Residences may include common areas and community dining facilities, and may provide personal care services, activities of assistance with daily living, and other related programs and services. This may include, but is not strictly limited to, meal care services, beauty salon, sundry shop, and banking and recreational facilities.

iii. The SPGA, in order to approve the Special Permit/Site Plan Approval for an Assisted Living Residence or a Special care Residence, must find that the overall impact of the facility will not substantially derogate from the cumulative impact associated with other uses allowed as a matter of right or by special permit within the zoning district.

b. Intensity, Dimensional and Open Space Regulations

i. Number of Living Units: Any development permitted under the ALOOD Bylaw shall be limited to ten (10) ALOOD units per acre (43,560 S.F.). An ALOOD unit is a patient bed with respect to a Special Care Residence and an ALR Unit with respect to an Assisted Living Residence. For example, a fifteen (15) acre ALOOD PARCEL could have a maximum of one hundred fifty(150) ALR Units, or one hundred (100) ALR Units and a fifty (50) bed Special Care Residence, or a one hundred fifty (150) bed Special Care Residence, or any other combination thereof.

ii. Floor Area Ratio: For any development permitted under the ALOOD Bylaw the floor area ratio (FAR) shall not exceed 0.32.

iii. Open Space: Any development approved under the ALOOD shall provide that a minimum of thirty-three (33%) per cent of the ALOOD PARCEL is retained as permanent Open Space or an Open Space Public Benefit Amenity. At least fifty (50%) percent of the Open Space shall not be wetlands or land subject to seasonal or periodic flooding. The Open Space disposition shall be at the discretion of the SPGA and either retained by the Applicant, deeded to the Town of Natick, or deeded to a non-profit corporation designated by the SPGA. The Open Space shall be permanently restricted as Open Space by way of a deed restriction, conservation restriction or easement. Open Space acreage, whether retained by the Applicant or deeded to a third party in compliance with this Section, shall be considered part of the ALOOD PARCEL for determining zoning compliance of the ALOOD PARCEL under all provisions of the Zoning Bylaw.

iv. Parking Spaces Required: 0.5 spaces per ALR Unit for Assisted Living Residences; 0.75 spaces per patient bed for Special Care Residences.

v. Dimensional regulations: All dimensional regulations of the underlying residential zoning district shall apply within the ALOOD except to the extent they are specifically modified or supplemented by other provisions of this ALOOD Article.

Finance Committee Recommendation

By a vote of 10-0-0 on September 29, 2016, the Finance Committee recommends *Referral* with regard to the subject matter of Article 29.

Motion: (Requires Majority Vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to refer the subject matter of Article 29 to the Planning Board.

Mr. Awkward moved seconded by Ms. Collins to establish an Assisted living Study Committee which shall be appointed by the Moderator. Said committee shall be composed of seven residents appointed for a term expiring on the dissolution of 2017 Spring Annual Town Meeting, or as otherwise extended by a vote of town meeting. The committee's charge shall be to prepare and submit to town meeting a town-wide comprehensive report regarding its study about amending the current zoning bylaws, which may allow for assisted living developments in certain residential, commercial and or industrial zoned districts, or otherwise act thereon.

Mr. Awkward spoke to this motion. Discussion ensued on the amendment to the main motion.

Mr. Everett moved seconded by Mr. Sidney to strike the words "or otherwise act thereon". *The motion to strike the words "or otherwise act thereon" passed by majority vote (by hand count).*

Mr. Williamson moved, seconded by Mr. Philben to amend the amended motion to add the following "Said Committee shall not be limited to the site proposed in Article 30 but shall include any other sites under consideration in town for development of Assisted Living Residences."

The second amendment failed (by hand count). The first amendment failed (54-63-1). The original referral motion under Article 29 passed by majority vote (107-7-2).

ARTICLE 30: Include Certain Parcels of Land on Eliot Street and Everett Street in the Assisted Living Option Overlay District ("ALOOD") (Sally Flagg, et al)

To see if the Town will vote to include certain parcels of land located on Eliot Street and Everett Street within the Assisted Living Option Overlay District, specifically those parcels of land identified on Assessor's Map number 72 as parcels 39C, 39E, 39I, 39K and 41, intending to describe all of that land contained in deeds recorded in Middlesex South District Registry of Deeds in book 12792, page 120 (parcel 39E and 39C), book 48268, page 575 (parcel 39I), book 59285, page 131 (parcel 39K), and book 45620, page 250 (parcel 41), and excepting therefrom the land described in book 60812, page 376, all as more particularly described on a Plan entitled "Assisted Living Option Overlay District" (Assessors Map 72, lots 39C, 39E, 39I, 39K & 41) 309 and 311 Eliot Street, Natick Massachusetts, by McKenzie Engineering Group, Inc. attached hereto as Exhibit A and the narrative description attached hereto as Exhibit B, or otherwise act thereon.

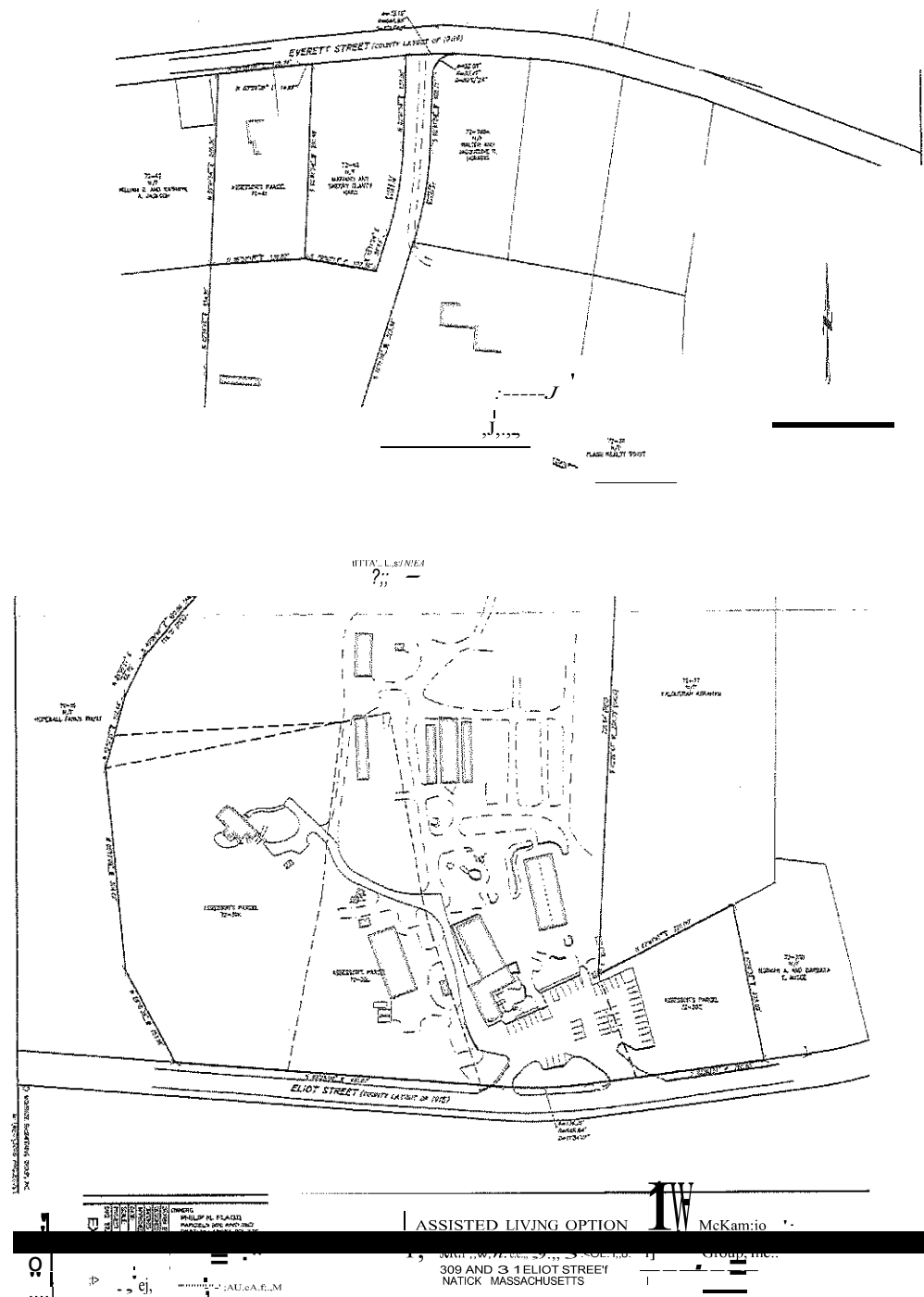


EXHIBIT B

ALOOD PARCEL LEGAL DESCRIPTION

A parcel of rand situated on the northerly side of Eliot Street and the southerly side of Everett Street in the town of Natick, Middlesex County, Massachusetts being more particularly described as follows:

BEGINNING at a point on the northerly right of way line of said Eliot Street, beingthe southeasterly corner of the land herein described;
thence along said Northerly right of way !lne the following 3 courses;
S 82°40'51" W a distance of 260.65';
thence with a curve turning to the right with an arc length of 184.31' and a radius of 546.64';
thence N 85°25'09" W a distance of 481.67';
thence N 28°16'39" W a distance of 153.96';
thence N 05°17'09" W a distance of 304.07';
thence N 15°12'21" E a distance of 112.64';
thence N 26°09'21" E a distance of 65.70';
thence N 40°09'46" E a distance of 120.00';
thence N 0°02'34" E a distance of 339.46';
thence N 02°51'16" E a di.mince of 154.81';
thence N 02°41'54" E a distance of 285.00' to the southerly right of way line of said Everett Street;
thence along said southerly right of way line the following 2 courses;
N 84°06'06" E a distance of 125.74';
thence N 85°26'36" E a distance of 14.89';
thence S 02°41'54" W a distance of 291.43';
thence S 79°50'13" E a distance of 107.36';
thence N 18°11'54" E a distance of 56.69';
thence with a curve turning to the left with an arc length of 133.18' and a radius of 492.31';
thence N 02°41'54" E a distance of 137.00';
thence with a curve tuming to the right with an arc length of 73.19' and a radius of 648.98';
thence with a reverse curve tu ming to the left with an arc length of 52.08' and a radius of 33.45';
thence S 02°41'54" W a distance of 108.71';
thence with a curve turning to the right with an arc length of 144.00' and a radius of 532.31';
thence S 18°11'56" W a distance of 323.38';
thence N 87°59'45" E a distance of 195.86';
thence S 85°59'42" E a distance of 64.00';
thence S 65°24'03" E a distance of 158.94';
thence s 0250'47" W a distance of 726.75';
thence N 62°41'41" E a distance of 225.00';
thence S 10°51'32" E a distance of 233.99' to the POINT OF BEGINNING;
containing an area of 18.48 acres more or less.

The above described parcel of land comprises Assessor's Ma p number 72; parcels 39C, 39E, 39I, 39K and 41 intending to describe all of that land contained in deeds recorded in the following books:

book 12792, page 120 (parcel 39E and 39C}
book 48268, page 575 {parcel 39I)
book 59285, page 131 (parcel 39K)
book 45620, page 250 {parcel 41)
excepting therefrom the land described In book 60812, page 376

being also shown on a plan entitled "Assisted Living Option Overlay District Parcel (Assessor's Ma p 72,.Lot 39C, 39E, 39I, 39K & 41) 309 and 311Eliot Street Natick, Massachusetts" dated August 12, 2016 by Mckenzre Engineering Group, Inc.

{Client Rles/312116/0001/BYLAW/0378S038.DOCX;l}

Finance Committee Recommendation

By a vote of 10-0-0 on September 29, 2016, the Finance Committee recommends *Referral* with regard to the subject matter of Article 30.

Motion: (Requires Majority Vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to refer the subject matter of Article 30 to the Planning Board.

The motionfor referral under Article 30 passed by majority vote (90-21-0).

ARTICLE 31:Amend the Natick Zoning Bylaw to Create a Transitional Overlay Option Plan (TOOP) (Steven Levinsky, et al)

To see if the Town will vote to amend the Zoning By Laws of the Town of Natick, by adding thereto in Section III thereof, a new Subsection A.7, that would create and establish a zoning overlay district to be known as the Transitional Overlay Option Plan (TOOP) for the purpose of allowing a transitional re-development of properties located along the Major Arterial Roadways of the Town, or act on anything relating thereto.

Finance Committee Information For Town Meeting Members

On the advice of Town Counsel, the Finance Committee did not hear the above item.
The text presented above as a 'warrant article' is not the same as the language filed by the citizen petitioners.

Motion: (Requires Majority Vote)

Moved by Mr. Freedman, seconded by Mr. Awkward to take no action on the subject matter of Article 31.

The motion to take no action on Article 31 passed by majority vote (by hand count).

ARTICLE 32: Include Certain Parcels of Land Located on the Southerly Side of East Central Street, the Easterly Side of Lincoln Street, the Easterly and Westerly Side of Wilson Street and the Westerly Side of Grant Street in the Transitional Overlay Option Plan (TOOP) (Steven Levinsky, et al)

To see if the Town will vote to designate those parcels of land, located on the southerly side of East Central Street, the easterly of Lincoln Street, the easterly and westerly side of Wilson Street and the westerly side of Grant Street and being on shown on Assessors Map 44, as Lots 180, 181, 182, 195, 196, 197, 216 and 217, as a Transitional Overlay Option Plan (TOOP) District in accordance with Section III -A.7 of the Natick Zoning By-laws, or act on anything related thereto.

Finance Committee Information For Town Meeting Members

On the advice of Town Counsel, the Finance Committee did not hear the above item.
The text presented above as a 'warrant article' is not the same as the language filed by the citizen petitioners.

Motion: (Requires Majority Vote)

Moved by Sidney, seconded by Mr. Awkward to take no action on the subject matter of Article 32.

The motion to take no action on Article 32 passed by majority vote (by hand count).

Ms. Ostroff moved, seconded by Ms. Foss to further postpone consideration of the subject matter of Article 14 to Thursday, November 3rd. *The motion passed by majority vote (by hand count).*

Mr. Connolly moved, seconded by Mr. Sidney that when we adjourn tonight that we adjourn to Tuesday, November 1". *The motion passed unanimously (by hand count).*

ARTICLE 33: Amend the Town of Natick By-laws to Ban the Use of Polystyrene (Robert Rowe, et al)

To see what action the town will take to amend the Town of Natick By-laws with respect to banning the use of polystyrene (also known by its trademarked name, Styrofoam) for single-use food containers, beverage containers, and trays, or otherwise act thereon.

Finance Committee Recommendation

By a vote of 8-4-0 on September 6, 2016, the Finance Committee recommends *Referral* with regard to the subject matter of Article 33.

Motion: (Requires Majority Vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to refer the subject matter of Article 33 to the Board of Health and the sponsors.

The referral motion under Article 33 passed by majority vote (by hand count).

ARTICLE 34: Acquisition of 218 Speen Street (Robert Rowe, et al)

To see what action the town will take to acquire a parcel of land whose address is 218 Speen Street, or negotiate a conservation easement to restrict its use or otherwise act thereon. The said parcel of land is a square-shaped wooded area behind the current golf driving range whose boundary begin at the maintenance shed on the golf driving range by 29 Kelsey Road. The boundary runs north along a property line shared with Sherwood Village to Surrey Lane. The property line then runs east along Surrey Lane and Buckingham Road. Finally, the property line

runs from the last house on Buckingham Road back to the maintenance shed. The property size is roughly 2.5 acres.

Finance Committee Recommendation

By a vote of 12-0-0 on September 6, 2016, the Finance Committee recommends *No Action* with regard to the subject matter of Article 34.

Motion: (Requires Majority Vote)

Moved by Mr. Evans, seconded by Mr. Hayes that the Town vote to take no action with regard to the subject matter of Article 34.

The motion to take no action under Article 34 passed by majority vote (by hand count).

Mr. Sidney moved seconded by Ms. Collins to adjourn. *The motion to adjourn passed by majority vote. The meeting adjourned at 9:27 PM until Tuesday, November 1, 2016 at 7:30 PM.*

A record of the Third Session of
2016 Fall Annual Town Meeting
October 25, 2016

ZLZAJL 1/1

Diane Packer, Town Clerk

Current Modifications and Waivers Language

Section III – I Assisted Living Residences (ALR)

“Modifications and Waivers: The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, provided that it makes a specific finding in writing that a waiver and/or modification will not create conditions that are substantially more detrimental to the neighborhood in which the parcel is located than if the waiver and/or modification were not granted. “

Key Requirements Rules and Regulations (See Section III-I and Section IV – B)
{Currently everyone of the following can be ignored in the entirety.}

Purpose: 55 years or older who are unable to live independently
Maximum of 2 Bedrooms per unit
Maximum of 10 % accessory uses
Maximum Number of Units: 30 units per acre
Contribution to Affordable Housing Trust Fund of \$ 5.00 per square foot

and the underlying zone regulations that apply:

In the RG Zone for example:
Minimum of 12,000 sq. ft. lot
Minimum 100 feet frontage
Minimum lot depth of 100 feet
Minimum 30 foot front yard setback
Minimum 12 foot side yard setback
Minimum 25 foot rear yard setback
Maximum % Building Coverage – 30%
Maximum Building Height – 3 stories or 40 feet

As additional examples, see height limit of 2 stories or 30 feet and maximum building coverage of 30 % in the C-II district and 50 feet and 60% in the Downtown Mixed Use zone.

Note: Assisted Living Residences have no bonus density provisions.

Section 320 Highway Overlay District

“329.2 Modifications and Waivers: The Planning Board may modify and/or waive strict compliance with one or more of the standards, regulations and objectives set forth in these Highway Overlay District regulations, provided that it makes a specific finding, in writing, that a waiver and/or modification will not create conditions which are substantially more detrimental to the existing

site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted. The Planning Board shall not grant a waiver of the FAR regulations set forth in Section 324, except with respect to redevelopment projects which retain all or any part of prior- existing structures. (Art. 5, S.T.M. #2, 10/10/00)”

Key Requirements Rules and Regulations (See Section III-I and Section IV – B) which apply the regulations of the underlying zone to the various Highway Overlay Districts.

Highway Overlay District has affordable housing requirements.

{Presently everyone of these regulations – except FAR provisions for the RC, MC and HC districts- can be waived or modified in their entirety. However, there is nothing that clearly prevents modifications and/or waivers in the RCP district from bypassing FAR provisions and granting additional density through a dimensional modification and or waiver mechanism. }

Note: Highway Overlay Districts have Bonus Density provisions.

Section III-A.6 B Housing Overlay Option Plan I and II (HOOP I and II)

“7. MODIFICATIONS AND WAIVERS

The SPGA may modify and/or waive strict compliance with one or more of the regulations in any of the HOOP districts provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted, and further that such waiver and/or modification is necessary in order to encourage the creation of Affordable Housing units.”

Key Requirements Rules and Regulations:

Purpose: To create additional affordable housing. See Section I subsection 108 for further purpose language.

Maximum number of units: net land area divided by 2,500 sq. ft. for HOOP I and by 3,500 for HOOP II.

Affordable Housing: At least 15% of total units

Minimum of 15,000 sq. ft. lot for HOOP I and 20,000 sq. ft. lot for HOOP II

Minimum 100 feet frontage

Minimum lot depth of 75 feet

Minimum 10 foot front yard setback

Minimum 5 foot side yard setback

Minimum 5 foot rear yard setback

Maximum % Building Coverage – 40%

Maximum Building Height – 40 feet

Minimum Open Space: 35 % for HOOP I and 45 % for HOOP II

{Presently everyone of these regulations can be waived or modified in their entirety.}

Note: HOOP I and II have Bonus Density provisions

Section III – J Historic Preservation

7. Requirements]

7.4 Intensity Regulations: The SPGA may, for new construction, modify the dimensional requirements for the district by up to 10%.

8. Modification and Waivers. Except as specifically stated in this Section IIIJ, the SPGA may modify and/or waive strict compliance with one or more of the regulations of the Districts in which a Historic Preservation project is located provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted, and further that such waiver and/or modification is necessary in order to encourage the preservation of the historic building.

Key Requirements Rules and Regulations (See Section III-J)

3. Permitted Uses Any use permitted as of right or under a Special Permit in the District as set forth on the Table of Use Regulations may be undertaken on a parcel to which this Section III-J is to be applied; however the SPGA may grant a Special Permit to allow the following additional uses:

1. Town Houses
2. Apartment House
3. Home Occupation / Customary Home Occupation

See Use Regulations Schedule III – A 2

Number of dwelling units – Net Usable Land Area divided by 3,500

{Presently this regulations can be waived or modified in its entirety.}

Section III- J does not appear to specify any dimensional regulations.

{Presently everyone of these regulations would appear be waived or modified in their entirety.}

Section III-A.6 C Smart Growth Overlay (SGO)

11.3 Waivers. Except where expressly prohibited herein, upon the request of the Applicant, the Plan Approval Authority may waive the dimensional and other requirements of this Section 7.1c in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SGO District, or if it finds that such waiver will allow the Project to achieve the density, Affordability, mix of uses, and/or physical character allowable under this Section. The PAA is not obligated to render such waivers if it deems the project does not provide sufficient reason or benefit to the community.

Key Requirements Rules and Regulations (See Section III-A.6)

7. SITE PLAN DIMENSIONAL AND DENSITY REQUIREMENTS

7.1 List of Requirements. Notwithstanding anything to the contrary in this Zoning Bylaw, the density and dimensional requirements applicable in the SGO District are as follows:

- a) Pursuant to the requirements of this Section, an Applicant may construct in the SGO District any combination of single-family residential units, 2-3 family residential units, and multi-family residential units. A "Multi-family residential unit" is any structure containing four or more residential units.
- b) Density: The maximum number of dwelling units allowed in the SGO District shall be:

- i) Single-family residential units: 8 units per acre.
- ii) 2-3 family residential units: 12 units per acre.
- iii) Multi-family residential units: 27.6 units per acre.

Under state law MGL Chapter 40 R, these provisions cannot be changed without approval of the Secretary of DHCD.

c) INTENSITY REGULATIONS

Continuous frontage: 40 feet

Minimum depth: 100 feet

Minimum front-yard setback: 25 feet

Minimum side-yard setback: 15 feet

Minimum rear-yard setback: 15 feet

Minimum setback from rail right of way: Zero feet

Maximum building coverage: 40%

Maximum building height: 40 feet

Minimum open space: 35%

