

**ANNUAL TOWN MEETING MAY 2, 2008-PROCEEDINGS**

The Moderator Kevin G. Rudden called the meeting to order at 7:00pm. The Moderator noted that the warrant had been duly posted and properly served.

Non Residents were allowed into the meeting:  
Michelle Sanford- Upton Town Crier  
Paul Crocetti-Milford Daily News  
Jean Berthold- Assistant Assessor  
Mark Mortimer-Non Registered Resident  
Mark Fisette- Milford Daily News-Photographer  
Robert Mangiaratti- Town Counsel  
Mark Poirier- Deputy Fire Chief  
Ana Maria Vaz-Owner of End Zone  
Christine Kupstas- Treasurer-Collector  
Michael Goodwin-Upton Resident  
Dr. Michael F. Fitzpatrick, Superintendent BVT  
Edward Donagaue-MURSD Financial Officer

The Moderator reviewed the rules and procedures of the meeting. The Board of Selectman Chairman read the dedication of the Town Report and Senior Citizen of the year. The Chairman of Finance Committee, Arthur Holmes read the Finance Committee Report. The Moderator led the audience in the Pledge of Allegiance.

**ARTICLE 2** Voted that any motion or amendment to increase any monetary articles or line items as proposed by The Finance Committee, presented at this Town Meeting shall be OUT OF ORDER unless such motion, or amendment, states the source of funding as being from available free cash, or the line item, or article that will be reduced by the same amount.

**UNANIMOUS VOICE VOTE**

**ARTICLE 3** Voted to fix the salaries and compensations of the elected officials of the Town for FY09 as written on page 3 of the Finance Committee Report.

Moderator	\$100
Board of Selectmen, Chairman	\$2,200
Board of Selectmen, Member	\$2,000
Board of Assessors	\$2,600 each member
Town Clerk	\$40,382.
Highway Surveyor	\$68,607.
Board of Health, Chairman	\$225
Board of Health, Member	\$175
Planning Board, Chairman	\$225
Planning Board, Member	\$175
Park Commissioners	-0-
Tree Warden	\$10.33 per hour
Water Commissioners	-0-
Taft Library Trustees	-0-
Mendon-Upton Regional Library Dist. Trustee	-0-
Mendon-Upton School Comm. Mem.	-0-
Blackstone Valley School Com. Mem.	-0-
Housing Authority Member	-0-

**UNANIMOUS VOICE VOTE**

**ARTICLE 4** Voted to raise and appropriate and transfer from conservation receipts reserved for appropriation - \$10,000 and overlay surplus- \$10,000 to defray charges and expenses of the Town including debt and interest and to provide for a reserve fund for the ensuing year with the exception of the following line items  
193A and 220A1.

**UNANIMOUS VOICE VOTE**

**Line Item 193A**-Insurance -Town Buildings- voted to raise and appropriate \$0 for line item 193A.

**UNANIMOUS VOICE VOTE**

**Line Item 220A1**-Fire Chief Wages- voted to raise and appropriate \$20,000 for line item 220A1.

**MAJORITY VOICE VOTE**

**ARTICLE 5** Voted to appropriate funds provided to the Town by the State under Chapter 90 type money and

such other funds as the Commonwealth of Massachusetts Highway Department may provide and to authorize the Board of Selectmen to enter into contracts with the Massachusetts Highway Department for Chapter 90 type money allocated the Town.

**UNANIMOUS VOICE VOTE**

**ARTICLE 6** Voted to raise and appropriate \$9200 to fund the FY09 portion of the Update Valuation Account.  
**UNANIMOUS VOICE VOTE**

**ARTICLE 7** Voted to raise and appropriate \$10,000 to fund the FY09 portion of the Cyclical Inspection Account.  
**UNANIMOUS VOICE VOTE**

**ARTICLE 8** Voted to establish a revolving fund as recommended by the Board of Selectmen for the Taft Public Library in accordance with M.G.L. Chapter 44 Section 53E ½. The purpose of this fund shall be to replace items lost or damaged by those who borrow materials and to purchase new materials. Receipts to this fund shall be monies paid by borrowers for lost or damaged materials and for overdue fines. The Library Director, with the approval of the Library Board of Trustees, shall be authorized to expend from this fund but at no time exceeding more than the available balance in the revolving fund nor to expend more than six thousand dollars per year.  
**MAJORITY VOICE VOTE**

**ARTICLE 9** Voted to establish a revolving fund as recommended by the Board of Selectmen for the Planning Board in accordance with M.G.L. Chapter 44 Section 53E ½, not to expend more than thirty thousand dollars per year.  
**MAJORITY VOICE VOTE**

**ARTICLE 10** Defeated a motion that the Town permanently transfer care, custody, management and control of the following described land to the Mendon Conservation Commission for the purpose of open space preservation and to authorize the selectmen to execute and record a deed evidencing such transfer:

A parcel of land consisting of approximately 28.17 acres located off Milford Street in the Town of Mendon, and shown as Lot 3 (open space) with an access easement over Lot 2 on a plan entitled "Plan of Property owned by the Town of Mendon, Milford Street and North Avenue, Mendon, Massachusetts", made by Cullinan Engineering date April24, 2008.

**MAJORITY VOICE VOTE**

Voted that Town permanently transfer, care, custody, management and control of the following described land to the Town of Mendon Conservation Commission and direct the Board of Selectmen to transfer the land on the 24 acre +/- open space portion delineated as Lot 3A & 3B, on the map, Plan of Land in Mendon, Massachusetts, prepared for the Community Preservation Committee, by Shea Engineering & Surveying Incorporated dated May 1, 2008, of the Town-owned property purchased from LJR Realty Trust and recorded with the Worcester County Registry of Deeds in Book 37146, page 9. The transfer will be effective upon the vote of Town Meeting and the signatures of the Selectmen, and pursuant to the Community Preservation Act, a permanent deed restriction will be placed on the transferred land, with an egress and access envelope on Lot 3B. 2/3 vote needed

**2/3 VOICE VOTE DECLARED BY MODERATOR**

**ARTICLE 11** Voted that upon transfer of Lot 3A & 3B to the Conservation Commission pursuant to the Community Preservation Act, the amount of \$92,952 is to be transferred from the Community Preservation Open Space Account to fund the Lot 3A & 3B, as shown on the map, Plan of Land in Mendon, Massachusetts, prepared for the Community Preservation Committee, by Shea Engineering & Surveying Incorporated dated May 1, 2008, the open space portion of the FY09 Fino Land Debt Exclusion.  
**UNANIMOUS VOICE VOTE**

**ARTICLE 12** Voted to amend the Zoning Map, of Mendon, Massachusetts, date September, 2001, as amended, so that, that portion of the premises located on Hastings Street, shown on the Mendon Assessors Tax Map, Sheet 8, Block 6D, Parcel 1, as being located within the Residential District, be zoned Business District. 2/3 vote needed  
**2/3 VOICE VOTE DECLARED BY MODERATOR**

**ARTICLE 13** Voted to amend the proposed Section XV of the Town of Mendon Zoning By-Laws as follows:  
a.) Section IV-2-D-f: Delete the last sentence reading: "Storm water management structures may be located in the open space and may be counted toward minimum open space requirement."  
b.) Section V-2: Delete the last two sentences reading: House sites may be situated within 50 ft. of open space areas in order to enjoy views of the latter without negatively impacting the former. These buffer arrears can be counted in the open space."  
c.) Section VIII-1: Delete the last sentence reading: "However, no more than 30% of the wetlands shall be counted toward the required open space" and replace it with: In order to provide the greatest flexibility for placement of the number of dwellings allowed by the Yield Plan, the amount

of wetlands counting toward the minimum open space requirements will be proportional to the amount of wetlands in the entire tract. The minimum required area of open space shall not contain a greater percentage of wetlands, as defined in M.G.L. Chapter 131, Section 40, than the percentage of wetlands in the overall tract of land.”

d.) Section IX-1: Replace “3%” with “5%.”

e.) Section IX-4: Delete this section in its entirety.

#### **MAJORITY VOICE VOTE**

Voted to amend the proposed motion as follows:

a.) Section II. Definitions Flag Lot – 2: Delete 2<sup>nd</sup> sentence reading “These should only be used to further achieve the purposes of flexible open space design, not to increase density.”

b.) Section IV-2-D-b: Delete VI and insert VI in its place.

c.) Section V-2: Delete second copy of the sentence “House sites should be located in accordance with the regulations of the Massachusetts Department of Environmental Protection Wetlands Protection Act, Rivers Protection Act, and any additional Town of Mendon regulations.

Voted to amend the Mendon Zoning Bylaws by adding the following Section XV, “Open Space Communities Bylaw”. By adding the underlined text and deleting the crossed out text:

### **OPEN SPACE COMMUNITIES BYLAW**

#### **I. Purpose and Intent**

1. To provide for the public interest by encouraging the permanent preservation of open land for its scenic beauty and to enhance agricultural, forestry, and recreation.
2. To perpetuate the appearance of Mendon’s rural character and traditional New England landscape.
3. To protect the natural environment, including but not limited to aquifers, wetlands, farmland and Priority Habitats.
4. To protect and increase property values that are reflected in the high value that homeowners place on the amenities of open space.
5. To promote the reduction of street construction, town maintenance, site development costs, and to provide public services more efficiently and economically.
6. To promote Low Impact Development practices: smaller lawns to minimize use of pesticides, herbicides, fertilizers and excessive water consumption, and far fewer impervious surfaces to minimize storm water runoff so as to preserve the natural hydrology of the land.
7. Not intended to make undevelopable land developable.

#### **II. Definitions**

1. Common Driveway: a private way that provides access to two (2) single family dwellings.
2. Flag Lot: a back lot connected to the road by a driveway that has less than the normally required frontage. ~~These should only be used to further achieve the purposes of flexible open space design, not to increase density.~~
3. Low Impact Development: A technique that incorporates environmentally friendly land use planning through a range of techniques that preserve the natural hydrology of the land. Examples would be rain gardens, swales, shared driveways, bioretention, and alternative landscaping.
4. Open Space Community (OSC): A method of planning residential development that permanently conserves open space while allowing the same number of homes as would be permissible in a conventionally zoned subdivision.
5. Priority Habitat: The geographic extent of Habitat for State-listed Endangered Species as delineated by the Massachusetts Division of Fisheries and Wildlife. If the proposed project falls in any area so designated, the applicant must file directly with the Natural Heritage and Endangered Species Program pursuant to 321 CMR 10.12.
6. Soft Storm Water Management Techniques: Non –structural storm water management techniques that use passive pre-treatment of storm water in conjunction with decentralized recharge to achieve a low impact design that attempts to mimic pre-development hydrologic conditions to the greatest practicable extent.

#### **III. Applicability**

1. As an alternative to conventional development, Open Space Community projects are the preferred form of residential development in the Town of Mendon. To encourage this type of development, Open Space Communities are allowed by right within residential zoning districts after review and approval by the Planning Board. An open space plan that meets with the requirements of this by-law, the additional requirements of any other definitive subdivision requirements specified herein, and the Subdivision Control Law shall go through the same permit and approval process as a conventional subdivision.
2. All other Town of Mendon Zoning Bylaws and Town of Mendon Rules and Regulations for Subdivision of Land and Site Plan Approval apply to applications under this bylaw.
3. The Planning Board shall grant or deny an Open Space Community application based upon the information contained in the Sketch Plan or Conceptual Preliminary Plan, as outlined in IV.2.D below.

#### **IV. Pre-application**

1. A pre-application review meeting between the applicant, the site designer, and the Planning Board is strongly encouraged. Participants could also include consultants, members of the Board of Health and the Conservation Commission. This meeting is to commence discussions with the planning board at the earliest possible stage, to introduce the applicant to the standards and procedures of the bylaw, and to schedule site visits and meetings. At the pre-application review meetings the applicant may outline the proposed development, seek preliminary feedback from the Planning Board, and set a timetable for submittal of a formal application. The Planning Board may engage technical experts, at the applicant's expense, to review the informal plans of the applicant and to facilitate submittal of a formal application.
2. Submittals: In order to facilitate review at this or subsequent meetings, the following submittal materials will be required. These will be in addition to the submittal requirements of the Mendon Planning Board Rules and Regulations.
  - A. Site Context Map. This map shall illustrate the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it shall show various kinds of major resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
  - B. Existing Resources/ Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, the base map shall locate and describe noteworthy resources that could be protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, flood plains, and steep slopes, but may also include mature woodlands, hedgerows, farmland, priority wildlife habitats, historic or architectural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan with a development plan, the parties involved can clearly see where conservation priorities and desired development overlap or conflict. This map is perhaps the single most important document in the design process because it provides the information base on which every major design decision turns.
  - C. Yield Plan/Number of Dwelling Units: The applicant shall submit a yield plan to demonstrate the density potential that would be permitted under a conventional ("grid") subdivision. The number of OSC dwelling units permitted shall not exceed the number that would be permitted under the conventional subdivision plan. The required documentation shall include, without limitation, the following:
    - a) Soil Analysis: The purpose of the soil analysis is to demonstrate that lots shown in the conventional subdivision layout are suitable for subsurface sewage disposal. The soil analysis shall include an analysis of soil maps and other existing information, a site specific soil survey by a qualified soil scientist, and may include some soil testing. The identified lots shall conform to the regulations of the Town of Mendon Board of Health and applicable laws of the Commonwealth of Massachusetts. It is not the intent of this Bylaw to normally require soil testing for each proposed lot shown on a conventional layout. The Planning Board may, however, require testing, at the applicant's expense, of a subset of lots to verify the soil analysis.
    - b) A layout for each conventional lot and supporting technical documentation to clearly demonstrate that each conventional lot can also fully comply with all the applicable laws and regulations pertaining to zoning and subdivision requirements for sewage disposal, water supply, wetlands protection, storm water management, and roadway construction. Each conventional lot shall also fully comply with the regulations of the Natural Heritage Endangered Species Program. (NHESP) Should any part of a lot included in the Yield Plan contain Priority Habitat for Rare and Endangered Species as identified in the latest edition of the Natural Heritage Atlas, the applicant shall include the Letter of Determination from NHESP. This is independent of the requirement to submit a copy of a required Notice of Intent to NHESP for a project located within an Estimated Habitat for Rare Wildlife under Mass. Wetlands Protection Act Regulations.
    - c) The Planning Board reserves the right to require such further documentation or other evidence, as it deems necessary.
  - D. Sketch Plan. (Conceptual Preliminary Plan) This is a preliminarily engineered plan drawn to illustrate initial thoughts about a conceptual layout for greenway lands, house sites, and street alignments. This is the stage where drawings are tentatively illustrated before heavy engineering costs are incurred. These drawings should be prepared by a team that includes a landscape architect and a civil engineer and should be based closely on the Existing Resources Site Analysis Map. The Sketch Plan or Conceptual Preliminary Plan shall follow a four step design process as described below in Section V.

The Sketch Plan shall contain the following information:

- a) The existing and proposed topography of the land.
- b) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, water bodies, archeological and historic structures or points of interest, rock out crops, stone walls, cliffs, high points, major land views, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified in primary and secondary resources according to Section ~~V+VI~~. Proposals for all features to be preserved, demolished or altered shall be noted on the Sketch Plan.
- c) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended for public use or to be reserved by deed covenant for use of all

property owners in the subdivision, or parcels of land to be used for any purpose, other than private residential, shall be so designated within the subdivision in a general manner.

- d) Proposed roadway grades
- e) Official soil percolation tests for the purpose of siting wastewater treatment shall be required as determined by the Planning Board, Board of Health, and Conservation Commission.
- f) A narrative prepared by a Massachusetts Certified Professional Engineer proposing systems for storm water drainage and likely impacts on site and to any abutting parcels of land. For example, the narrative will specify whether hard or soft (Low Impact Development) Storm Water Management Techniques will be used and the number of detention/retention basins or infiltrating catch basins. It is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any storm water management structures (detention and retention basins, water quality swales, for example) shall be shown on the plan and accompanied by a conceptual plan. The Planning Board shall encourage the use of non-structural, Low Impact Development Storm water management techniques where appropriate. ~~Storm water management structures may be located in the open space and may be counted toward minimum open space requirement.~~
- g) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan. All proposed landscape and buffer areas should be noted on the plan and generally explained in a narrative.
- h) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, or condominium documents with an accompanying narrative explaining their general purpose.
- i) The Planning Board may waive any requirements in order to achieve the purpose and intent of this bylaw and to enable a better design.

## **V. Design Process**

Applicants are required to demonstrate to the Planning Board that the following design process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect:

1. Identifying Conservation Areas: First, identify and delineate Primary Conservation Areas such as wetlands, stream and riverfront areas, priority wildlife habitat, and flood plains regulated by state or federal law. Second, identify Secondary Conservation Areas including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats, and cultural features such as historic and archeological sites and scenic views. The Potentially Developable Area should consist of land outside of these identified Primary and Secondary Conservation Areas.
2. Locating House Sites: Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community. House sites should be located in accordance with the regulations of the Massachusetts Department of Environmental Protection Wetlands Protection Act, Rivers Protection Act, and any additional Town of Mendon regulations. Since wetlands deserve the highest protection possible, they shall be included in the open space. ~~House sites should be located in accordance with the regulations of the Massachusetts Department of Environmental Protection Wetlands Protection Act, Rivers Protection Act, and any additional Town of Mendon regulations. House sites may be situated within 50 ft. of open space areas in order to enjoy views of the latter without negatively impacting the former. These buffer areas can be counted in the open space.~~
3. Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing streets, sidewalks, and trails. Wetland crossings on land that is officially designated in the latest edition of the Massachusetts Natural Heritage Atlas as Priority Habitat for Rare Species and Estimated Habitat for Rare Wildlife and streets traversing existing slopes over 15% shall be strongly discouraged.
4. Lot Lines: Draw in the lot lines.
5. Lot Yard and Coverage Regulations: See section VII for lot size and density requirements for Open Space Communities.

## **VI. Design Standards**

In addition to the design standards found in the Mendon Planning Board Subdivision Rules and Regulations, the following generic and site-specific design standards shall apply to all sketch plans for OSC's and shall govern the development and design process:

1. Generic Design Standards:
  - A. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, surface water buffers, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a development scheme.
  - B. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.
  - C. All open space shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

- D. The removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable whether these exist on site or on adjacent properties.

## **VII. Standards and Dimensional Requirements**

The Planning Board encourages applicants to modify lot size, shape and other dimensional requirements for lots within an Open Space Community subject to the following limitations:

1. Minimum lot size:
  - Single family: 20,000 square feet
  - Front and rear lot measurements shall not be less than 100 feet. The Planning Board may waive these requirements where it is determined that a lesser amount, as in the case of flag lots, common driveways, and lots fronting on a cul-de-sac, furthers the purpose and intent of this bylaw. If it is the case that flag lots and common driveways do further the purpose and intent of this bylaw, they may be utilized, where appropriate, on a limited basis.
  - Driveways shall be wholly contained within said lot frontage.
2. Lots shall not have frontage on a street other than a street created by the Open Space Community.

## **VIII. Open Space Requirements**

1. Quantity: A minimum of 60% of the site shall be open space. Since wetlands deserve the highest protection possible, they shall be included in the open space. ~~However, no more than 30% of the wetlands shall be counted toward the required open space. In order to provide the greatest flexibility for placement of the number of dwellings allowed by the Yield Plan, the amount of wetlands counting toward the minimum open space requirements will be proportional to the amount of wetlands in the entire tract. The minimum required area of open space shall not contain a greater percentage of wetlands, as defined in M.G.L. Chapter 131, Section 40, than the percentage of wetlands in the overall tract of land.~~

2. The open space shall be planned as large contiguous areas whenever possible. Long thin strips should be avoided unless necessary to connect other significant areas. Such open space may be separated by roads constructed within the conservation area.

## **IX. Permissible Uses of Open Space**

Open space shall be used solely for recreation, conservation, outdoor education, and/or agriculture purposes by Mendon residents. Where appropriate, multiple use of open space is encouraged. If several uses are proposed, the plans shall specify what uses will occur in what areas. The proposed use of open space shall be specified in the application. The Planning Board shall have the authority to approve or disapprove particular uses of open space.

1. Accessory Structures: Up to ~~3%~~ 5% of the open space may be set aside for construction of structures and facilities accessory to the proposed use of the open space including parking. Non-paved surfaces should be used where possible.
2. Natural State: Use of open space shall be determined by the priorities of the bylaw. For example, if open space land contains Priority Habitat for Rare and Endangered Species, it is not suitable for a baseball field and should be allowed to remain undisturbed. In some cases no use is the best use.
3. Recreation Lands: Where appropriate to the topography and natural features of the site, the Planning Board may allow that at least 10% of the open space or three acres (whichever is less) shall be of a shape, slope, location, and condition to provide an informal field for group recreation or community gardens.
4. ~~Leaching Facilities: Subject to the approval of the Board of Health, or as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or water bodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development. No portion of open space containing components of a sewage disposal system shall count toward the open space requirements.~~

## **X. Monumentation:**

Where boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of open space.

## **XI. Ownership Options:**

At the developer's option and subject to approval by the planning board, all areas to be protected open space shall have a conservation restriction as specified below in Section XII and shall be:

1. Conveyed to the town:
  - A. Land left in its natural state or used for passive recreation or outdoor education shall be placed under the care, custody and control of the Conservation Commission.
  - B. Land used for a park, playing field, or other active recreational use shall be placed under the control of the Parks Department, or other appropriate town entity in accordance to Article 97, Land Disposition Policy, of the Massachusetts Constitution, or
2. Conveyed to a non-profit organization, the principal purpose of which is conservation or preservation of open space. Such organization shall be acceptable to the town as a bona fide conservation organization, and/or
3. Conveyed to a corporation, homeowners association or trust owned or to be owned jointly or in common by the owners of lots or units within the Open Space Community. If such corporation or trust is utilized, ownership thereof shall pass with the conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for

maintenance expenses to each lot and unit. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

4. Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens, or other encumbrances.

## **XII. Maintenance of Open Space**

1. In the case of a homeowner's association, corporation or trust, maintenance shall be permanently guaranteed. The corporation or trust shall provide for mandatory assessments for maintenance expenses to each lot. Each such corporation or trust shall be deemed to have assented to allow the Town to perform maintenance of the open space and facilities, if the trust or corporation fails to complete such maintenance.
2. The owner of each lot shall be deemed to have assented to the Town filing a lien against each lot in the development for the full cost of such maintenance, which lien shall be released upon payment of same.
3. Any proposed open space shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and shall be maintained in a manner which will ensure its suitability for its intended purposes.
4. In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance

## **XIII. Permanent Restriction**

All open space shall have a permanent conservation restriction or agricultural preservation restriction in accordance with M.G.L. c 184 Section 31, approved by the Planning Board and Board of Selectmen. Depending upon the ownership of the open space, these restrictions shall be enforceable by the Town or an outside non-profit organization, the principal purpose of which is conservation or preservation of open space. In all cases of ownership, these restrictions shall also conform to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services; shall be recorded to ensure that such land shall be kept in an open and natural state and not be built for residential use, or developed for accessory uses such as parking or roadways except as permitted by this bylaw and approved by the Planning board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restrictions shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan.

### **Severability**

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw. 2/3 vote needed

### **HAND COUNT**

**YES 70**

**NO 24**

**ARTICLE 14** Voted to raise and appropriate \$5000 for Police Department State/Federal General Matching Grants.

**UNANIMOUS VOICE VOTE**

**ARTICLE 15** Voted to transfer \$108,000 from the Capital Expenditure Account to purchase a loader in Fiscal Year 2009.

**UNANIMOUS VOICE VOTE**

**ARTICLE 16** Voted to amend the proposed Mendon Zoning Bylaws Section XVI, Sign Bylaw, to replace Section VIII, Paragraph E, to read "Real Estate Signs: Three signs advertising the sale, rental, or lease of real estate shall be allowed. Three Additional open house signs shall be permitted. Open house signs shall be displayed only on the day of the event.

**MAJORITY VOICE VOTE**

Voted to amend the proposed Mendon Zoning Bylaws Section XVI, Sign Bylaw,

Section VIII- F- Yard and Garage Sale Signs by adding a new sentence at the end to read "In the case of a dead end street or cul-de-sac, a second sign may be allowed."

Section XI- F by adding the words "and some Yard and Garage Sale signs"(Section VIII. A., E., and F.) after the words some Real Estate Signs.

Section IV-A-a- replace the sentence "This setback should include sidewalks" with "This setback is allowed to include sidewalks within its measurement."

Section III-B-c add at the end of the sentence " , which Sign Committee shall provide an opinion on the application within 30 days."

**UNANIMOUS VOICE VOTE**

Voted to indefinitely postpone this article.

**MAJORITY VOICE VOTE**

**ARTICLE 17** Voted to Passover this article.

**UNANIMOUS VOICE VOTE**

**ARTICLE 18** Voted to Passover this article.

**UNANIMOUS VOICE VOTE**

**ARTICLE 19** Voted to transfer \$20,000 from the Stabilization Account to the FY09 Fire Department New Equipment (line item 220D), to purchase required turnout equipment.

**UNANIMOUS VOICE VOTE**

**ARTICLE 20** Defeated a motion to Amend Chapter XVI, Section 7 of the Town of Mendon By-laws by adding the following road to those designated as Scenic Roads: Washington Street. 2/3 vote needed

**MAJORITY VOICE VOTE DECLARED BY MODERATOR**

**ARTICLE 21** Motion made to amend the proposed Mendon Zoning By-Laws by adding the following Section XVII, "Adult Entertainment Overlay District", in the following sections:

Section VI, Paragraph 1), the last 9 words of the 1<sup>st</sup> sentence to read "nor less than 300 feet away from any residential building."

And replace Section VI, Paragraph 2) to read "A minimum 50 foot vegetated buffer containing adequate screening shall be provided between an adult entertainment establishment and other abutters of any designation, including public and private ways. Structures associated with the proposed use shall be located a minimum of 100 feet from the center street line."

**MAJORITY VOICE VOTE**

Add "Milford Street" after "and 49" as shown in Section V, paragraph 1.

**MAJORITY VOICE VOTE**

Delete Item 1), a-g of Section VIII. Expiration or Lapse of Special Permit.

**UNANIMOUS VOICE VOTE**

Add the words "or other areas" after the two (2) words "Recreational Areas" in Section VI, 1) d.

**UNANIMOUS VOICE VOTE**

Add the words M.G.L. Chapter 40A, after the words "referred to in" in Section VIII, 1 d.

**UNANIMOUS VOICE VOTE**

Defeated a motion to indefinitely postpone Article 21 of the Mendon Town Meeting May 2, 2008.

**MAJORITY VOICE VOTE**

Voted to amend the Mendon Zoning Bylaws by adding the following Section XVII, "Adult Entertainment Overlay District, as amended. By adding the underlined text and deleting the crossed out text:

**2/3 VOICE VOTE DECLARED BY MODERATOR**

**ADULT ENTERTAINMENT OVERLAY DISTRICT**

**I. AUTHORITY**

This section is enacted pursuant to M.G.L. Chapter 40A, Section 9A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution.

**II. PURPOSE AND INTENT**

The purpose of this Adult Entertainment Overlay District section of the Town of Mendon Zoning Bylaws is to address and mitigate the secondary effects of adult entertainment establishments. Secondary effects impact the health, safety and general welfare of the Town of Mendon and its inhabitants. These effects include increased crime, and adverse impacts on public health, the business climate, the property values of residential and commercial property and the quality of life.

The provisions of this section have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this Section (Overlay District) to restrict or deny access to adult entertainment establishments or to sexually oriented matter or materials that is protected by the Constitutions of the United States and the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this Section to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials, as described in M.G.L. Chapter 272, inclusive, and Chapter 119, Section 63.

### III. DEFINITIONS:

Adult entertainment Establishment shall include any of the following: an Adult Bookstore, an Adult Motion Picture Theater, an Adult Video Store, and an Establishment which displays live nudity for its patrons.

For the purposes of this By-Law, the terms *Adult Bookstore*, *Adult motion picture theater*, *Adult paraphernalia store*, *Adult video store* and *Establishment which displays live nudity* are as defined in M.G.L. Chapter 40a, Section 9A.

*Substantial or significant portion of its stock*: Greater than 10% of the subject establishments' inventory stock, or 10% of the subject premise's gross floor area, or 300 square feet, whichever is less.

### IV. APPLICABILITY

This Overlay District zoning applies to all Adult Entertainment Establishments, as defined in this section. Any existing Adult Entertainment Establishment located outside of the overlay district, as described in this Section, may continue to operate in the same location until the next expiration of their license/permit. Existing Adult Entertainment Establishments located within the overlay district, as defined in this Section, shall apply for a special permit within 90 days of the effect of this section.

### V. ESTABLISHMENT OF ADULT ENTERTAINMENT OVERLAY DISTRICT & RELATIONSHIP TO UNDERLYING DISTRICTS

The Adult Entertainment Overlay District is described as follows: Lots number 41, 43, 47 and 49 Milford Street, as shown on the Assessors Tax Map, Town of Mendon, Map 9, revised January 2008.

The Adult Entertainment Overlay District is established as a district that overlays the underlying districts, so that any parcel of land lying in an Adult Entertainment Overlay District shall also lie in one or more of the other zoning districts. All requirements of the underlying zoning districts remain in full force and effect, except as superseded by the specific overlay district regulations.

### VI. SPECIAL PERMIT STANDARDS FOR ADULT USES

Adult entertainment enterprises may be allowed in the Overlay District only by Special Permit granted by the Board of Appeals. No Special Permit may be granted by the Board of Appeals for an Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, or Adult Live Entertainment Establishment unless the following conditions and limitations are satisfied in addition to all other zoning conditions:

- 1) No adult entertainment establishment shall be located less than 500 feet from a child care facility, park, playground, recreational areas or other areas where large numbers of minors regularly travel or congregate, another Adult Use, or any establishment licensed under the provisions of M.G.L. Chapter 138, Section 12, nor less than ~~300~~ 500 feet from any residential building. The distances shall be measured by a straight line from the closest exterior wall of the building or establishment premises on which the Adult Use is to be located to the nearest exterior wall of any residence building.
- 2) A minimum 50 foot vegetated buffer containing adequate screening ~~appropriate to the character of the area and the intensity of the use~~, shall be provided between an adult entertainment establishment and other abutters of any designation, including public and private ways. Structures associated with the proposed use shall be located a minimum of 100 feet from any street line.
- 3) No material depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G. L. Chapter 272, Section 31, shall be displayed in the windows of, or on the building of, any Adult Entertainment Establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.
- 4) In addition to complying with any Mendon bylaws concerning signs, sign content shall identify the name of the establishment only and shall contain no advertisement in addition to the identification of the use. Only one identification sign to be mounted on the building wall face shall be allowed for an adult use, with maximum 16 square feet of sign area. All other signs, whether on the exterior of the building, or visible from the exterior of the building are prohibited.
- 5) No merchandise or services prohibited as obscene or indecent under any federal or Massachusetts law or regulation or found to be obscene by any superior or higher federal or state court shall be disseminated or available therein.
- 6) Appearance of buildings for adult entertainment shall be consistent with the appearance of buildings in similar (but not specifically "adult") use in Mendon, not employing unusual color or building design, which would attract attention to the premises. All building openings, entries, and windows shall be screened in such a way as to prevent visual access of the public to the business area of the Adult Entertainment Establishment. A six (6) foot high solid fence or a landscaped buffer of evergreen trees or shrubs six (6) feet high at the time of planting shall be provided and maintained along the side and rear property lines.
- 7) No more than one structure to be used for adult entertainment shall be located on any one lot.
- 8) No Adult Entertainment special permit shall be issued to any person convicted of violating the provisions of section sixty-three of chapter one hundred and nineteen or section twenty-eight of chapter two hundred and seventy-two.

### VII. SPECIAL PERMIT SUBMISSIONS AND APPROVAL

In addition to any requirements as required by the Town of Mendon by-laws, zoning by-laws, building regulations or licensing requirements, Special Permit applications for approval in the overlay district shall contain the following information:

- 1) A site plan showing appropriate distances between the proposed or existing adult Entertainment establishment and any residential zoning district, public or private school, public park or recreation area, group day care center, family day-care center, or any other Adult Entertainment establishment(s). The site plan shall also show locations and sizes of buildings, set backs, signage, landscape design and buffers.

- 2) In addition to the site plan requirements, all applicants for a Special Permit for Adult Entertainment shall submit the following additional information:
  - a) Name and address of all legal owners of the establishment and the property, as well as the manager of the proposed establishment.
  - b) In the event a corporation, partnership, trust or other entity is listed, the names and addresses of all persons having a fee, equity and/or security interest, ownership interest and/or beneficial interest in such establishment must be listed. The applicant/owner must disclose if they have been convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or Chapter 272, Section 28.
  - c) The total number of employees, or proposed number of employees.
  - d) Proposed security precautions
  - e) Full description of the intended nature of the business
  - f) In the case of live adult entertainment, submission and approval of the nature of the live entertainment, proximity of entertainers to patrons, behavioral restrictions, and security plans must be obtained.
  
- 3) In approving a Special Permit, the Special Permit Granting Authority may attach such conditions, limitations, and safeguards as are deemed necessary to protect the immediate area and the Town, provided however that no such conditions in fact prohibit the use of the property for the use intended. Conditions of approval may include but are not limited to the following:
  - a) Street, side or rear setbacks greater than the minimum required by law
  - b) Requirement of screening or parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other means.
  - c) Modification of the exterior features or appearances of the structure.
  - d) Limitation of the size, number of occupants, method or time of operation, or extent of facilities.
  - e) Regulation of number, design and location of access drives or other traffic features.
  - f) Requirement of off-street parking or other special features beyond the minimum required by this or other applicable ordinances.
  - g) Limiting the hours of operation

#### VIII. EXPIRATION OR LAPSE OF SPECIAL PERMIT

- ~~1) The Special Permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises:
 
  - ~~a) Unlawful sexual activity;~~
  - ~~b) Gambling;~~
  - ~~c) Drug use;~~
  - ~~d) Violent crimes;~~
  - ~~e) Offenses against children;~~
  - ~~f) Repeated public disturbances requiring intervention by the Police; and~~
  - ~~g) any other illegal activities~~~~
  
- 1) A Special Permit issued under this section shall lapse upon any one of the following occurrences:
  - a) There is a change in the location of the adult use;
  - b) There is a sale, transfer or assignment of the business or the license;
  - c) There is any change in legal or beneficial ownership or management of the applicant
  - d) Special permit granted under this section shall lapse within two years, and including such time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

#### IX. SEVERABILITY

If any section or portion of this bylaw is ruled invalid, such ruling shall not affect the validity of the remainder of the bylaw, which provisions shall remain in full force and effect.

#### **2/3 VOICE VOTE DECLARED BY MODERATOR**

**ARTICLE 22** Voted to authorize the Board of Selectmen to enter into a lease/purchase agreement for up to four years for the acquisition of a new Fire Department Ambulance and to transfer \$35,000 from the Ambulance Reserve Account for the purpose of funding the first year of said lease/purchase agreement. The remaining years will be paid from the Ambulance Reserve Account.

**UNANIMOUS VOICE VOTE**

**ARTICLE 23** Motion to amend the article by adding the words “or other funds from other sources” after the words “matching grant”.

Voted to amend this article by adding the words “or funds from other sources” after matching grant.

**UNANIMOUS VOICE VOTE**

Voted to transfer the sum of \$129,850 to be used as matching funds for the Massachusetts Preservation Project Fund Grant to repair the Town Hall roof, with \$100,000 from the Community Preservation Historical Preservation Account and \$29,850 from the Community Preservation Budgeted Reserve account, contingent on the Town receiving approval on the matching grant from the Massachusetts Preservation Project Fund Grant proposal submitted on February 22, 2008.

**UNANIMOUS VOICE VOTE**

**ARTICLE 24** Voted to place a permanent Massachusetts Historical Commission Preservation Restriction on the building known as the Town Hall or Harrison Hall.

**MAJORITY VOICE VOTE**

**ARTICLE 25** Voted to transfer \$25,000 from Stabilization to the East Hartford Ave. Engineering Account Engineering account. 2/3 vote needed

**2/3 VOICE VOTE DECLARED BY THE MODERATOR**

The warrant was dissolved at 12:30am. The tellers for the evening were Laura Taylor, Diane Harper, Patricia Ghelli, Kathryn Rich and Nancy Fleury. The officer for the meeting was Edward Pokornicki. There were 174 voters in attendance.

A true copy. Attest:

Margaret Bonderenko  
Town Clerk