

SPECIAL TOWN MEETING-APRIL 10, 2012-PROCEEDINGS

The Meeting was called to order at 7:00pm at the Miscoe Hill School by the Moderator, Jay Byer. Non Residents were allowed into the meeting:

Garrett Wante- Fire Dept. Employee
Brandon Moss, Town Counsel
Jena Berthold, Asst. Assessor
Morgan Rousseau- Milford Daily News
Michelle Sanford, Town Crier
Robert Duncan- Boy Scouts
Conor Sweet-Boy Scouts
Coleman Nee- Non voter

The Moderator noted that the warrant had been duly posted and properly served. The Moderator went over the rules and procedures for the meeting.

ARTICLE 1 Voted to transfer \$3,647.58 from Free Cash to pay bills of a prior year.
UNANIMOUS VOICE VOTE

ARTICLE 2 Voted to transfer \$7,526.25 from Free Cash to Town Hall Services
Computer Expenses (line 199F).
UNANIMOUS VOICE VOTE

ARTICLE 3 Voted to transfer \$14,000 from Town Hall Services Expenses (line
item 199B) to
Town Hall Services Utilities (line item 199E).
UNANIMOUS VOICE VOTE

ARTICLE 4 Voted to transfer \$15,000 from Board of Health Trash Disposal (line
item 510C) and \$5,000 from Board of Health Testing-Landfill, Well and
Beach (line item 510F) and \$5,000 from Free Cash to Town Counsel
Expense (line151B).
UNANIMOUS VOICE VOTE

ARTICLE 5 Voted to transfer \$800 from Free Cash to Gas Inspector Expense
(242B).
UNANIMOUS VOICE VOTE

ARTICLE 6 Voted to transfer \$3,950 from Fire Department Expenses (line item
220B), \$7,000 from Free Cash and \$5000 from Snow & Ice (line item
423B) to pay for the yearly rental cost of the temporary trailer for
Public Safety.
UNANIMOUS VOICE VOTE

ARTICLE 7 Voted to transfer \$20,000 from Police Department Quinn Bill Wages
(line item 210A5) and \$10,000 from Police Department Salaries (line
item 210A2) to Police Dept. Overtime (Line 210A3).
UNANIMOUS VOICE VOTE

ARTICLE 8 Voted to transfer \$10,000 from Police Department Quinn Bill Wages
(line item 210A5) to Police Dept. Expense (Line210B).
UNANIMOUS VOICE VOTE

ARTICLE 9 Voted to transfer \$10,000 from Police Department Salaries (line item
210A2) to
Finance Committee Reserve for General Expenses (Line 131C).

UNANIMOUS VOICE VOTE

ARTICLE 10 Voted to transfer \$3,038.75 from Free Cash to Conservation Commission engineering fees (line 165B).

UNANIMOUS VOICE VOTE

ARTICLE 11 Voted to transfer \$800 from Tree Warden Expenses (line item 294B to Tree Warden Salaries & Wages (line 294A).

UNANIMOUS VOICE VOTE

ARTICLE 12 Voted to transfer \$1,000 from Free Cash to Council on Aging Expense (line 541B).

UNANIMOUS VOICE VOTE

ARTICLE 13 Voted to transfer \$37,000 from Stabilization to fund the Mendon Green Community energy efficiency projects and to reimburse Stabilization upon receipt of the final disbursement of Green Communities funds received from the State. **2/3 vote needed**

UNANIMOUS VOICE VOTE

ARTICLE 14 Voted to authorize the Board of Selectmen to execute and deliver a release deed to Michele L. Diodati, for \$1.00, releasing all of the Town's right, title and interest in an easement covering land on the southerly side of Butler Road in Mendon, Worcester County, Massachusetts which is shown as the "50 foot Wide Easement for Possible Future Road" on a Plan entitled "Definitive Plan of Land of Carpenter Hill Estates in Mendon, Mass., record owner and subdivider; Ronald Santoro and Bruce Allen, Trustees for Carpenter Hill Realty Trust, dated August 4, 1987, Scale 1" = 40', drawn by Progressive Land Design, Inc, Hopkinton, Massachusetts, which Plan is recorded with the Worcester County Registry of Deeds, Plan Book 598, Plan 70.

UNANIMOUS VOICE VOTE

ARTICLE 15 Voted to amend this article by adding the number "0" zero after the number 4 in section 2.16. and striking E ½ in Section 10, Fees and adding the letter "G".

MAJORITY VOICE VOTE

ARTICLE 15 Defeated a motion to passover this article.

MAJORITY VOICE VOTE

ARTICLE 15 Voted to delete Mendon Bylaw Chapter XI, sections 1, 1.1 and 1.2, Conservation Commission Fees in its entirety and replace with the following including the changes from the amendment that are shown bolded, underlined and italicized:

Chapter XXVIII
Wetlands Protection By-Law

Section 1.0 *Purpose.*

The purpose of this Chapter is to protect the wetlands, related water sources, and adjoining land areas in the Town of Mendon by controlling activities deemed by the Conservation Commission likely to have an adverse effect, immediate or cumulative, upon wetland values, including but not limited to the following: protection of public or private water supply, protection of groundwater, flood control, erosion and sediment control, storm damage prevention, prevention of water pollution, fisheries, wildlife habitat, rare species habitat and recreational value, (collectively the "Resource Area values protected by this By-Law"). Presumptions of significance contained in 310.CMR 10.00 shall extend to said values.

Section 2.0 *Definitions. Definitions under this By-Law are consistent with the Wetlands Protection Act and Regulations (310 CMR 10.00) unless otherwise defined below.*

Section 2.1 *Alter* means, without limitation, the following actions when undertaken upon or affecting any of the areas subject to protection under the By-Law and listed in Section 3.0 of these regulations:

- a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing the preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage, or other disturbance of water level or water table;
- d. Dumping, discharging, or filling with any material which may degrade water quality;
- e. Placing of fill, or removal of material that would alter elevation;
- f. Driving of piles, erection, expansion or repair of buildings, or structures of any kind;
- g. Placement of obstructions or objects in water;
- h. Destruction of plant life including cutting or trimming of trees and shrubs;
- i. Changing temperature, biochemical oxygen demand, or other physical or chemical characteristics of any waters;
- j. Any activities, changes, or work which would cause or tend to contribute to pollution of any body of water or groundwater; and
- k. Incremental activities which have, or may have, a cumulative adverse impact on the Resource Areas protected by the By-Law.

Section 2.2 *Area Subject to Flooding* means depressions or closed basins that serve as ponding areas for runoff, snowmelt, heavy precipitation, or high groundwater that has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body as defined in Wetlands Protection Act Regulations (310 CMR 10.57).

Section 2.3 *Area Subject to Protection* means any area specified in Section 3.0 and is used synonymously with the term "Resource Area".

Section 2.4 *Buffer Zone* means that area of land extending 100 feet horizontally from the boundary of a Resource Area specified in Section 3.0 a.

Section 2.5 *Isolated Wetlands* are wet meadows, marshes, swamps, and bogs where the topography is typically low and flat and where soils are annually saturated such that groundwater or flowing or standing surface water provides a significant part of the supporting substrate for a plant community. Isolated wetlands are generally found within depressions and do not border rivers, streams, lakes or other bodies of water or wetlands. The boundary of isolated wetlands is the line within which the vegetation community is substantially characterized by wetland indicator species and within which hydric soils or other indicators of wetland hydrology are present. When vegetation appears to have been altered or is absent, the boundary line is the line within which hydric soils and/or indicators of wetland hydrology are present.

Section 2.6 *No Build Zone* means that portion of the Buffer Zone up gradient of the No Disturb Zone and extending to a line 50 feet from the Resource Area. No buildings or structures shall be permitted in the no build zone.

Section 2.7 *No Disturb Zone* means that portion of the Buffer Zone which extends 25 feet from the edge of the Resource Area. No regulated activity shall be permitted in the no disturb zone.

Section 2.8 *Obstructions or Objects in Water* means, but is not limited to, debris, dams, weirs, sluice gates, docks, bulkheads, pilings, and floats.

Section 2.9 *Pond* means any open body of fresh water at least 2000 square feet or larger which has standing water due to natural causes throughout the year during most years. Man-made retention or detention basins, swimming pools, lined fishponds, and waste water treatment lagoons shall not be considered ponds.

Section 2.10 *Rare Species Habitat* means those areas providing habitat for species of wildlife and /or plants listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife.

Section 2.11 *Resource Area* means any area specified in Section 3.0 and is synonymous with Area Subject to Protection under the By-Law.

Section 2.12 *River* means any naturally flowing body of water that empties to any ocean, lake, pond, or river, and which flows throughout the year.

Section 2.13 *Riverfront Area* means the area within 200 feet of rivers includes perennial streams, lakes or ponds.

Section 2.14 *Stream* means any body of running water, including brooks and creeks, which move in a definite channel in the ground due to the hydrologic gradient and which flows within, into or out of an area subject to protection. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (does not flow throughout the year) or perennial (flows throughout the year most years). A stream is located down gradient of and is hydrologically connected to a wetland.

Section 2.15 *Vernal Pool* means, in addition to scientific definitions found in 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, or landscaped areas, which in most years holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibians, reptiles, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The Mendon Conservation Commission has the discretionary authority to protect a vernal pool when it is shown to provide vernal pool wildlife habitat function despite the lack of official certification by the state.

Section 2.16 *Wetland* is defined in the Wetlands Protection Act, MGL Ch. 131, Sec. 40.

Section 3.0 *Jurisdiction*. Except as permitted by the Conservation Commission or as provided in this Chapter, no person shall commence to remove, fill dredge, build upon, degrade, discharge into, impact, or otherwise alter the following Resource Areas:

- a. Any freshwater wetlands or any land within 100 feet of freshwater wetlands, including marshes, wet meadows, bogs, swamps, isolated wetlands, vernal pools, banks, or intermittent streams.
- b. Any land within 100 feet of the areas set forth in Section 3. a above;
- c. Any river, perennial stream, lake, or pond greater than 20,000 square feet in size;
- d. Any land within 200 feet of the water bodies set forth in this Section 3.0 c. above;
- e. Any land under any of the waterbodies set forth in this Section 3.0 a and c above; and
- f. Any land subject to flooding or inundation by ground water, surface water, or storm flowage.

Collectively all such wetland Resource Areas and lands abutting any of the aforesaid Resource Areas shall be deemed to be Resource Areas protected by this By-Law whether or not they border surface water.

Section 4.0 *No Disturb Zone*. Except as otherwise provided in this By-Law, no activity is permitted within 25 feet of the delineated edge of Wetland Resource Areas. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawn, depositing yard waste and clearing of vegetation.

Section 5.0 *No Build Zone*. There shall be a No-Build Zone with a minimum depth of 50 feet measured horizontally from the border of any Resource Area, except as otherwise specifically provided in these regulations. Prohibited activities include but are not limited to, construction of any structure, installation of any impervious surface, and any work requiring a building permit. Fences, swing sets and similar play structures may be permitted with the approval of the depth where there are site-specific conditions that, if altered, would not result in degradation of a Resource Area.

Section 6.0 Vernal Pools. The boundary of the Resource Area for Vernal Pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas. Unless compelling evidence is provided to the contrary, no project or activity shall have an adverse effect on a Vernal Pool by altering its topography, soil structure, plant community, composition, hydrologic regime and/or water quality.

Section 7.0 *Exceptions.*

- a. The application and permit required by the By-Law shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water telephone, telegraph or other telecommunications services, or sanitary or storm sewers, provided that written notice has been given to the commission prior to the commencement of work.
- b. The application and permit required by the By-Law shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04. The question of whether land is "land in agricultural use" as defined under the Wetlands Protection Act may be subject to a Request for Determination by the Commission.
- c. The application and permit required by the By-Law shall not be required for emergency projects necessary for the protection of the health and safety of the citizens of Mendon, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or by the Town. Emergency projects shall be any projects certified to be an emergency by the Conservation Commission or its agent.
- d. The applications and permits required by this By-Law shall not be required for existing structures or work in existence prior to the date of adoption of the By-Law.
- e. The application and permit required by the By-Law shall not be required for any minor activities within the buffer zone or riverfront area, provided they meet the requirements outlined herein. Minor activities include but are not limited to:
 - i. Unpaved pedestrian walkways for private use;
 - ii. Plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns;
 - iii. The conversion of impervious to vegetated surfaces, provided erosion controls and sedimentation controls are implemented during construction;
 - iv. Fencing, stonewalls, and stacks of cordwood provided they will not constitute a barrier to wildlife movement and fences to contain livestock are located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
 - v. Mowing of lawns and pruning of pre-existing landscaped areas;
 - vi. Vista pruning, provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
 - vii. Conversion of lawn to uses accessory to existing single family houses, such as decks, sheds, patios, pools, and gardens, provided

- the activity is located 100 feet from the mean high water line within a riverfront area or 50 feet from other resource areas,
- and
- erosion and sedimentation controls are implemented during construction;
- viii. Removal of dead or dying trees that pose a hazard to structures
- or
- public safety;
- ix. Repair of existing structures provided the footprint of the structure does not change and erosion and sedimentation controls are implemented during construction; and,
- x. Activities that are temporary in nature, having negligible impacts, and are necessary for planning and design purposes (e.g. installation of monitoring wells, exploratory borings, sediment sampling and surveying) provided that erosion and sedimentation controls are implemented.

Other than stated in this section, the exceptions provided under the Wetland Protection Act (G.L. Ch. 131 Sec. 40) and regulations (310 CMR 10.00) shall not apply under this By-Law.

Section 8.0 Waiver. The Mendon Conservation Commission, by majority vote, may waive strict compliance with the requirements of this By-Law or the rules and/or regulations promulgated hereunder, where;

- a. Such action is allowed by federal, state, and local statutes
- b. Is in the public interest, and
- c. Is not inconsistent with the purpose and intent of this by-law.

Section 9.0 Procedure.

- a. Request for Determination of Applicability (RDA). The applicant shall submit an RDA to the Conservation Commission if work is in the buffer zone.
 - i. The Conservation Commission will then determine if the work is within a Resource Area. Common activities include, but are not limited to, installing an above or in-ground pool, shed, garage or addition. A determination will be made within 21 days and sent to the Building Department
- b. Notice of Intent (NOI). If the Conservation Commission determines that the work area is within a Resource Area, the applicant must file a Notice of Intent with the Conservation Commission and the Department of Environmental Protection (DEP). The NOI filing shall include the following:
 - i. A complete and accurate description of the site, including the type and boundaries of Resource Areas protected under the Wetlands Protection Act and this By-Law;
 - ii. The proposed work, including all measures and designs proposed to meet the performance standards described in the Wetlands Protection Act Regulations, 310 Code of Massachusetts Regulations (CM R) 10.00 for each applicable resource area;
 - iii. Two copies of the NOI filing which must be received two

weeks

- prior to the public hearing date;
- iv. Two sets of plans and;
- v. A check made out to the Town of Mendon in the amount specified for the project type per the Wetlands Filing Fee Calculation Sheet. This will pay for the public hearing notice that will be placed in the Milford Daily News. Payment is required at the public hearing. The Conservation Commission Administrative Clerk will notify the applicant of the amount once the ad has run in the newspaper.
- vi. The Commission shall commence the public hearing within 21 days from the receipt of a completed permit application, unless an extension is authorized in writing by the applicant.

- c. Order of Conditions. The Commission, after public hearing, may issue or deny an Order of Conditions, i.e., a permit, for the activities requested. If it issues an Order of Conditions, the Commission shall impose conditions that it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected Resource Areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities. The Commission is empowered to deny a request for an Order of Conditions for failure to meet the requirements of this ordinance; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the Resource Area values protected by this ordinance; and where no conditions are adequate to protect those values. Lands within twenty-five (25') feet of Resource Areas protected by this By-Law are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.

- i. If the project is approved, an Order of Conditions, will be issued based on the findings within 21 days from the date of completion of the hearing.
 - a. Orders of Condition shall be filed and registered at the Worcester County Registry of Deeds by the applicant.
 - b. A copy of the registered Order must be given to the Conservation Commission.
 - c. The Order is valid for three years. It may be extended for up to three years if a valid Order is in effect.
 - d. The Order of Conditions and Extension Permit must be recorded with the Worcester County Registry of Deeds. A copy of the registered Order and the Extension Permit must be given to the Conservation Commission.

d. *Certificate of Compliance.* Once the work is completed, the applicant or his engineer must request a Certificate of Compliance. The engineer shall submit an As Built drawing as well as confirm in writing that the work has been completed in accordance with the Order. The majority of the Commission must sign and issue either a partial or complete Certificate of Compliance. It is the applicant's responsibility to record the Certificate of Compliance with the Worcester County Registry of Deeds. The applicant must provide the Conservation Commission with a copy of the recorded Certificate. There will be a fee of \$50 for re-issuance of Certificates of Compliance.

Section 10 Fees.

- a. At the time of a permit application, Request for Determination of Applicability, Notice of Resource Delineation, or other request, the applicant shall pay the filing fee, as specified in the Regulations of the Commission, to the Town of Mendon to be put into an account established pursuant to G.L. c. 44, Sec. 53 ~~E1/2~~ G, which account may be drawn upon by the Commission as necessary to carry out the provisions of this by-law. Accordingly, the combined filing fees of all applicants are pooled for uses directly related to the By-Law, including salaries, administration, office supplies, enforcement, postage, and miscellaneous costs.
- b. The Commission, in its discretion, is authorized to require an applicant to pay a consultant fee for the reasonable costs and expenses borne by the Commission in its consideration of the application. These expenses may

include, but are not limited to, Resource Area survey and delineation, analysis of Resource Area values, including wildlife habitat evaluations, hydrogeological and drainage analysis, and hydric soil testing. Consultant fees may be deposited into the same account as described above.

- c. These fees are in addition to those required by the Massachusetts Wetlands Protection Act.

Section 11 *Right of Entry*. The Commission or its agent may enter upon privately owned property for the purpose of carrying out its duties under this By-Law and may make or cause to be made such examination or survey as deemed necessary.

Section 12 *Self Imposed Hardship*. The Commission views any adjacent properties or properties located nearby, which are under common ownership, as part of a cumulative Resource Area impact, such that the maximum 5,000 square feet of alteration that may be allowed under certain conditions under the Wetlands Protection Act, or the proposed degree of alteration of the Resource Area under the By-Law applies to the entire area. The applicant or property owner is advised to prevent situations where they have created their own hardship by not carefully considering all likely impacts to areas subject to the Wetlands Protection Act or the By-Law. In the case of limited project proposals, proposed roadways or driveways shall be designed to provide access to all areas of the proposed site without relying upon the possibility of future wetlands crossings. The Commission shall consider any future crossings or impacts proposed to be self-imposed and will not grant further crossings or alterations in subsequent filings on a lot-by-lot basis for any project.

Section 13 *Enforcement*.

The Commission shall have the authority to enforce this By-Law, its regulations and orders by violation notices, enforcement orders and non-criminal citations under MGL Ch. 40 s. 21 D. Any person who violates provisions of this By-Law may be ordered to restore the property to its original condition or take other action deemed necessary to remedy such violations, or may be fined or both.

- a. Criminal and Civil Penalties. Any person who violates any provision of this Bylaw, valid regulation, or the terms or conditions in any permit or order prescribed or issued hereunder, shall be subject to a fine not to exceed \$300.00 for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- b. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Mendon may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.. 40, s. 21D. The Conservation Commission of the Town of Mendon shall be the enforcing entity. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- c. The Commission may seek remedies authorized under the Wetlands Protection Act including instituting a civil action seeking injunctive relief, penalties up to \$25,000 per day, and access to the site. The Commission may also seek under the Act criminal enforcement including penalties up to \$25,000.00 dollars per day. The Commission may also seek enforcement by the Massachusetts Department of Environmental Protection, which may include investigation and enforcement by the Attorney General, and/or administrative penalties.

Section 14 *Burden of Proof*. The applicant for an Order of Conditions shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the Resource Area protected by this By-Law. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient

cause for the Commission to deny a permit or grant an Order of Conditions with conditions.

Section 15 *Violations Defined.* Each day a violation exists constitutes a separate violation. Violations include, but are not limited to:

- a. Refusal or failure to comply with a local wetlands permit;
- b. Failure or refusal to observe a particular condition or time specified in a local wetlands permit;
- c. Refusal or failure to complete work described in a local wetlands permit, whether or not such failure causes damage to the interests protected by the ordinance; and
- d. Refusal or failure to obtain a valid local wetlands permit prior to conducting an activity subject to regulation under the By-Law

Section 16 *Appeals.* A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, s. 4.

Section 17 *Severability.* If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

Section 18 *Rules and Regulations.* The Commission shall be authorized to promulgate Rules and Regulations (“Regulations”) to effectuate the purposes of this Bylaw at a meeting for which one week’s notice has been provided in a newspaper of general circulation in the Town. Such Regulations shall take effect upon filing with the Town Clerk. Failure by the Commission to promulgate such Regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. The Commission may waive any provision of its rules and regulations when it is not deemed appropriate to enforce them.

MAJORITY VOICE VOTE

Article 16 Voted to amend the Mendon Zoning Bylaws by adding Section 2.07 entitled Wireless Communication Facilities to Article II:

Section 2.07 Wireless Communications Facilities

(a) Purpose and Intent. The purpose of this Section is to regulate wireless communications facilities such that these services may be provided with the minimum harm to the public health, safety, and general welfare by:

- (i) Protecting the general public from hazards associated with wireless communications facilities.
- (ii) Minimizing visual impact, including views from scenic roads as designated in Mendon By-Laws, Chapter XVI, Section 7, from wireless communications facilities.
- (iii) Minimizing adverse impact on local property values.
- (iv) Improving the ability of the carriers to maximize coverage while minimizing adverse impact on the community.

(b) Definitions.

(i) Wireless Communications Facility: All equipment, devices, buildings, structures, fixtures, and appurtenances with which a wireless communications service carrier broadcasts, transmits, and/or receives the radio-frequency waves which carry their services, including any accessory facilities such as sheds, which are related to the operation, maintenance, and use of the wireless communications facility, and all locations of said facilities or any part thereof.

(ii) Carrier: Any individual or entity that provides wireless service.

(iii) Antenna: A device by which electromagnetic waves are sent and/or received.

(iv) Repeater: A small receiver/relay transmitter designed to provide service to areas which are not able to receive adequate coverage from the primary sending and receiving site in a wireless communications network.

(v) Tower: A structure, framework, or monopole, that is designed to support wireless communications transmitting, receiving, and/or relaying, antennas and/or equipment.

(vi) Co-location: The practice of installing the antennas of more than one communications carrier on one structure.

(vii) Setback: The area on the ground within a prescribed radius from the base of the tower.

(viii) Radio Frequency Emissions: The electromagnetic emissions from wireless communications facilities.

(c) Special Permit. A wireless communications facility may be allowed by a special permit in all zoning districts in accordance with, and subject to, the requirements and regulations of Sections 1.06 and 2.07 of the Town of Mendon Zoning By-Law. The Planning Board shall act as the Special Permit Granting Authority for wireless communications facilities in the Town of Mendon.

(d) Applicability and Exemptions. This Section applies to any wireless communications facility.

(i) The following specific uses are exempt from this Wireless Communication Facilities By-Law:

- 1) Satellite dishes or antennas used exclusively for residential use;
- 2) Police, fire, ambulance and other public emergency dispatch;
- 3) Citizen band radio; and
- 4) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC provided that the tower is not used or licensed for any other purpose and the tower is removed upon loss or termination of said FCC license. Notwithstanding the foregoing, any structure for federally licensed amateur radio operators in excess of the height limitations set forth in Section 2.01 of this Zoning Bylaw may be permitted subject to site plan review by the Planning Board and must be set back from all property lines a distance no less than one and a quarter times the height of the structure. No such structure may exceed seventy (70) feet in height.

(ii) A non-exempt wireless communications facility or repeater facility that shares a tower or other structure with any exempt facility listed above shall not be considered exempt from this by-law for any reason.

(iii) Legally pre-existing wireless communications facilities may be reconstructed, expanded and/or altered in all zoning districts subject to a special permit granted by the Planning Board, provided that they conform to all of the requirements set forth in Section 2.07 of this Zoning By-Law.

(e) Consistency with Federal Law. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:

(i) They do not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

(iii) They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

(f) Design Requirements and Performance Standards. All wireless communication facilities erected, installed and/or used shall comply with the following design requirements and performance standards:

(i) Shared Use: Shared use of towers by wireless communication carriers is required unless such shared use is shown by substantial evidence to not be feasible.

(ii) Height: The maximum allowed height of a tower shall be 150 feet.

(iii) Wireless communication facilities located on a structure shall not exceed ten feet in height above the roof-line of the structure, unless the Planning Board finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roof line, such as water tanks, the height of the wireless communication facilities shall not exceed ten feet above the highest point of the structure.

(iv) Co-Location: In the event that the Planning Board finds that co-location is preferable in order to conform to the intent and purpose of this By-Law, then towers shall be designed to accommodate the maximum number of presently interested users that is technologically practical. In addition, if the number of proposed users is less than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.

(v) Proximity to Existing Residence: Towers shall be located a minimum of five hundred (500) feet from all existing residential dwellings and any proposed dwelling for which a building permit or subdivision approval has issued. This regulation is not intended to prohibit the later development of residential dwellings within 500 feet of a tower, provided that no such development shall be permitted within the setback.

(vi) Setback: A tower shall be set back from the property lines of the lot on which it is located by a distance equal to one and a half times the overall vertical height of the tower and any attachments. With the exception of wireless communications facilities related to the operation, maintenance, or use of said tower, no construction shall be permitted within the setback. In the case of any questions concerning lot lines, the Planning Board may make the set back determinations.

(vii) Screening Requirements: All exterior wireless communication facilities shall be painted, colored, molded, installed or otherwise screened to minimize their visibility to abutters, adjacent streets, views from scenic roads, and residential neighborhoods. Wireless communications facilities visible against a building or structure shall be colored to blend with such building or structure. Wireless communications facilities visible against the sky or other background shall be colored or screened to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or *building line*. Existing on-site vegetation shall be preserved to the maximum extent feasible.

(viii) Fencing: The area around the base of the Tower shall be enclosed within a fence with a locked gate, and a key to such gate shall be provided to emergency response personnel. Fencing shall be compatible with the scenic character of the Town and shall not be of razor wire and shall be subject to the approval of the Planning Board.

(ix) Lighting: Lighting shall be limited to that required by the Federal Aviation Administration.

(x) Parking: There shall be a minimum of one parking space provided for each wireless communication facility, to be used for parking in connection with the maintenance of the site, and not for the permanent storage of vehicles or other equipment, or any other purpose. To the extent said wireless communication facility includes any building(s) then, in addition to the parking required above, parking shall be required in accordance with Section 2.03 of the Zoning By-Law.

(xi) Access: For proposed tower sites, the width, grade, and construction of the access road shall be designed so that emergency response vehicles can get to the tower and wireless communications facility accessory buildings, and shall be designed to provide proper storm drainage.

(g) General Requirements:

(i) No wireless communications facility may be erected, installed, used, reconstructed, altered and/or expanded except upon the issuance of a special permit by the Planning Board and approval under Site Plan Review as set forth in Section 4.02 of the Zoning By-Law and subject to all of the provisions of this Zoning By-Law. It is recommended to the applicant to undertake both the Special Permit and Site Plan Review procedures concurrently in order to expedite the permitting process. Multiple applicants for the same site/facility are also encouraged provided there is one lead applicant responsible for all submissions and further provided that no application shall be considered complete and filed until all the applicants have complied with all of the submission requirements.

(ii) All owners and operators of land used in whole or in part for a wireless communications facility and all owners and operators of such wireless communications facility shall, as a continuing condition of installing, constructing, erecting and using a wireless communications facility, permit other Federal Communications Commission licensed entities seeking to operate a wireless communications facility, to install, erect, mount and use compatible wireless communication equipment and fixtures on the equipment mounting structure on reasonable commercial terms provided that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing wireless communication facility, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional wireless communication equipment or fixtures.

(iii) New facilities shall be considered by the Planning Board only upon a finding by the Planning Board that:

1) The use of repeaters to provide adequate coverage without requiring new towers is not feasible;
2) The applicant has used reasonable efforts to locate or co-locate its proposed wireless communication facilities on existing or approved facilities; and
3) That the applicant either was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e. the height, structural integrity, weight bearing and wind-resistant capacity of the existing or approved facility), and radio frequency engineering (i.e. height, coverage area etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequency engineering perspectives. A report discussing this information entitled "New Wireless Data Transfer Feasibility Study" is to be submitted to the Planning Board as part of any special permit submission.

(iv) The Planning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney and/or other qualified professional to assist the Board in its deliberations.

(v) A wireless communications facility may be located on the same lot by special permit with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this By-Law.

(h) Criteria for Granting Special Permit: Applications for special permits may be denied if the Planning Board finds that the petitioner does not meet or address the requirements of this Zoning By-Law, including Section 2.07 and Section 1.06, and M.G.L. c.40A, §9.

(i) When considering an application for a wireless communications facility, the Planning Board shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences.

(ii) Conditions: The Planning Board shall impose, in addition to any reasonable conditions supporting the objectives of Section 1.06 of the Zoning By-Law, such applicable conditions as it finds appropriate to safeguard the neighborhood or otherwise serve the purpose of Section 2.07 herein, including, but not limited to screening, buffering, lighting, fencing, modification of the external appearance of the structures, limitation upon the size, method of access or traffic features, parking, removal or cessation of use, or other requirements. Such conditions shall be imposed in writing with the granting of a special permit. As a minimum, the following conditions shall apply to all grants of special permit issued pursuant to this Section:

1) The WCF's and the site shall be designed compatible with the surrounding area, and, without limitation, shall be subject to the provisions of Section 4.02, Site Plan Review. The WCF's and the site (which shall include without limitation all driveways and access roads) shall be maintained in good condition and repair at all times, and in compliance with all applicable local, state, and federal rules, standards, bylaws, regulations and laws, including those promulgated by the Federal Communications Commission and Federal Aviation Administration. The Planning Board and/or Building Inspector may require evidence of such compliance, at the applicant's/owner's sole cost and expense, at any time.

2) Removal of Abandoned Towers and Facilities. Any wireless communications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such tower and facility shall remove same within ninety (90) days of receipt of notice from the Planning Board notifying the owner of such abandonment. If such tower or facility is not removed within said ninety (90) days, the Planning Board may cause such tower or facility to be removed at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

3) For all towers, the applicant shall provide a performance bond or other security from a surety authorized to do business in Massachusetts and satisfactory to the Planning Board, in an amount equal to the cost of removal of any and all wireless communications facilities from the premises and for the repair of such premises and restoration to the condition that the premises were in at the onset

of the lease, said amount to be determined at the discretion of the Planning Board by either the applicant's engineer or professional hired by the Planning Board at the applicant's expense. The amount of the bond shall be the total estimate of restoration costs and anticipated fees (in today's dollars) by the applicant's engineer, plus an annual increase of three percent for the term of the lease. The term of the bond shall be for the full term of any lease plus twelve months. The Town must be notified of any cancellation or change in the terms or conditions in the bond.

4) For all towers, an Agreement must be executed whereby the user will allow the installation of the Town of Mendon wireless communications devices, equipment, fixtures, and related appurtenances, on the tower at the most advantageous location reasonably necessary to promote public health, safety or welfare, as determined by the Town, at no cost to the Town, and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower, or with any Town controlled wireless communications facilities.

5) For all towers located on non-municipal property, a clause must be inserted in any lease that unconditionally permits the Town or contractors hired by the Town to enter the premises, at any time, where upon towers are located, if any Town-wide or Town-controlled wireless communications are located thereon.

6) For all towers located on municipal property, a Certificate of Insurance for liability coverage in amounts determined by the Board of Selectmen must be provided naming the Town as an additional insured.

7) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the Town harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the user.

8) All applicants shall be required to file annually on or before February 1st with the Mendon Planning Board a complete list of all wireless communication facility locations in the Town then used by the applicant, including any facilities mounted on the interior of a building or structure.

(iii) The special permit shall lapse in two years unless substantial use or construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board before the two years has expired. Such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. This two-year period does not include such time as required to pursue or await the determination of an appeal from the granting of this special permit.

(iv) Any extension, replacement, addition, erection, installation, reconstruction, alteration and/or expansion of a wireless communications facility, or any portion thereof, or any change, extension, or expansion of use, shall be subject to an amendment of the existing special permit, following the same review and procedure, and subject to the same conditions and requirements, as for an original grant of a special permit.

(v) Prior to the commencement of any construction, or construction related activities such as clearing, the applicant shall provide a recorded copy of a restrictive covenant in form satisfactory to and approved by the Planning Board, prohibiting any construction (with the exception of construction related to the approved wireless communications facilities) within or on any area of land contained in the setback for so long as the lot continues to be used for wireless communications facilities.

(i) Severability: If any Section of this by-law is ruled invalid by any authority or a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the By-Law. **2/3 vote needed**
2/3 VOTE DECLARED BY MODERATOR

ARTICLE 17 **Voted to amend this article by adding the following section:**
[vii] Motor vehicle service stations meeting requirements of Article VI, Special Provisions, Section 6.01 entitled, Motor Vehicle Service Stations, shall be exempt from CHAPTER XI, Section 9 of the town of Mendon General Bylaws.
MAJORITY VOICE VOTE

Article 17 **Voted to amend the Mendon Zoning By-Laws by adding Article VI entitled Special Provisions, Section 6.01 Motor Vehicle Service Stations:**

(a) Purpose.

(i) To provide for public safety;

(ii) To mitigate adverse effects on surrounding properties, including the visual impact: and

(iii) To protect the environment.

(b) Definitions.

The following definitions shall be applicable to the terms used in this Section. Terms used herein that are not defined shall have those meanings ascribed to them in Section 1.02.

(i) Motor Vehicle Service Station: Premises or any portion thereof devoted to retail sales and on-premises dispensing of fuels, oils and lubricants.

(ii) Gas Pump: A pump in a service station that draws gasoline from storage tanks. A gas pump may service up to two vehicles, one on each side of the pump.

(iii) Canopy: The structure covering the pump islands.

(iv) Convenience Store: A retail store used accessory to the Motor Vehicle Service Station that primarily sells staple groceries and snacks and may include other items of necessity and convenience.

(c) All Motor Vehicle Service Stations shall require a Special Permit issued in accordance with Section 1.06 and shall be subject to Site Plan Review in accordance with Section 4.02. No Special Permit shall be granted by the Planning Board unless all of the following conditions are also met:

(i) There shall be no more than four (4) Gas Pumps.

(ii) The following shall apply to any proposed Canopies:

1) The aggregate size of the canopies shall not be more than 2,200 square feet.

2) No Canopy shall exceed 60 feet in length unless a greater length is authorized by the Planning Board.

(iii) Striping, neon, and illuminated panels are not permitted on buildings or on any Canopy.

(iv) The design elements of the building and Canopy shall be aesthetically compatible and shall incorporate New England style architectural design.

(v) No building or structure shall be located closer than fifty (50) feet to any residentially zoned lot or any lot used for residential purposes.

(vi) No Motor Vehicle Service Station shall be allowed in a Residential District,

[vii] Motor vehicle service stations meeting requirements of Article VI, Special Provisions, Section 6.01 entitled, Motor Vehicle Service Stations, shall be exempt from CHAPTER XI, Section 9 of the town of Mendon General Bylaws. 2/3 vote needed

2/3 Vote Declared by Moderator

Article 18 Voted to Passover this article due to a procedural defect. (The article wasn't printed in

full in the Town Crier, which would be a violation of our Bylaws, not giving sufficient notice.)

UNANIMOUS VOICE VOTE

ARTICLE 19 Defeated a motion to add the following paragraphs:

In Section 2.06, delete (h) (ii) and replace with a new (h) (ii) as follows: No sign will be a Billboard except those temporary off-premises signs specifically permitted under Section 2.06 (g) and the sponsor signs located on the existing inside area of municipal properties that are used for the benefit of local non-profit youth organizations.

In Section 2.06, in the first line, strike (ii) and replace it with (iv) in both instances.

UNANIMOUS VOICE VOTE

Article 19 Voted to Passover this article.

UNANIMOUS VOICE VOTE

Article 20 Voted to amend this article by adding the following words:
, and the Resource Areas under Section 3a. and c. of Chapter 28 of the Mendon General By-Laws after the words MGL Chapter 40, Section 8C.

MAJORITY VOICE VOTE

Article 20 Defeated a motion to delete #3, which states "In Section 3.04 (g) (i) move the last sentence: "Drive ways shall be wholly contained within said lot frontage."

MAJORITY VOICE VOTE

Article 20 Voted to amend the Mendon Zoning By-Laws by making the following changes to Article III including the changes from the amendment which are shown, bolded, italicized and underlined:

1. In Section 3.04 Open Space Communities (e) (ii), delete the last sentence;
2. In Section 3.04 (g) (i) in the first sentence, replace the word "measurements" with "lines";

3. In Section 3.04 (g) (i) move the last sentence: "Drive ways shall be wholly contained within said lot frontage", to come directly after the first sentence;
4. In Section 3.04 delete (h) (i) in its entirety and replace with the following:
Quantity: A minimum of 55% of the site shall be open space. Since wetlands deserve the highest protection possible, large contiguous wetland areas shall be preserved as open space. Wetlands may count toward the minimum open space area requirement provided, however, that no more than 50% of the calculated minimum area required for open space may be wetland, as defined in M.G.L. Chapter 131, Section 40, **and the Resource Areas under Section 3a. and c. of Chapter 28 of the Mendon General By-Laws.**

UNANIMOUS VOICE VOTE

Article 21 Voted to amend the Mendon Zoning By-Laws by deleting Article V, Section 5.02 Affordable Housing Overlay district. 2/3 vote needed

UNANIMOUS VOICE VOTE

The warrant was dissolved at 9:50pm. There were 55 voters in attendance.
The officer on duty was James Walckner. The tellers for the meeting were
Nancy Fleury and Kathryn Rich.

A true copy. Attest:

Margaret Bonderenko
Town Clerk

And you are directed to serve this Warrant, by posting up attested copies thereof at three or more public places in said Town, 14 days at least before the time of holding said meeting.

HEREOF FAIL NOT, and make due return of this Warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting, as aforesaid.

Given under our hands this 12th day of March in the year of our lord two thousand twelve.

_____ **Selectmen of Mendon**

A True copy. Attest:

_____ **Constable**

Worcester, ss.

PURSUANT TO THE WITHIN WARRANT, I have notified and warned the inhabitants of the Town of Mendon by posting up attested copies of the same at:

Town Hall; _____; _____

_____ **days before the date of the meeting, as within directed.**

_____, **Constable**