

**The following is a list of warrant articles and the recommendations of the Board of Selectmen and the Advisory Board for the November 13, 2008 Special Town Meeting.**

		<b>Selectmen</b>	<b>Advisory</b>
<b>Art. 1</b>	Appropriation of tuition cost for student to Agricultural High School		
<b>Art. 2</b>	Borrowing of \$400k – J.R. Briggs Feasibility Study		
<b>Art. 3</b>	Prior year bills		
<b>Art. 4</b>	Appropriation of \$3,677.10 for Town Administrator FY08 Deferred Compensation		
<b>Art. 5</b>	Cushing Academy Trust Fund termination		
<b>Art. 6</b>	To transfer custody of town owned land Map 56, Parcel 52		
<b>Art. 7</b>	Purchase of used front-end loader for DPW		
<b>Art. 8</b>	Costs of snow and ice overrun for FY08		
<b>Art. 9</b>	Replacement of Lake Road water tank		
<b>Art. 10</b>	Tax Collector fee for Written Demand		
<b>Art. 11</b>	Fire & Burglar Alarm System fees for maintenance		
<b>Art. 12</b>	Amendment of Zoning Bylaws Section 5.13 Open Space Residential Development		
<b>Art. 13</b>	To establish Affordable Housing Trust		
<b>Art. 14</b>	Amendment to Zoning Bylaws Section 5 – new Section 5.17 Large Wind Energy Facilities		
<b>Art. 15</b>	Amendment to Zoning Bylaws Section 5 – new Section 5.18 Small Wind Energy Facilities		
<b>Art. 16</b>	Easements Lake Road Bridge		
<b>Art. 17</b>	Land donation for affordable housing		
<b>Art. 18</b>	Land donation for affordable housing		

## PROCEEDINGS OF THE SPECIAL TOWN MEETING

PURSUANT TO THE FOREGOING WARRANT, THE LEGAL VOTERS OF THE TOWN OF ASHBURNHAM MET AT OAKMONT REGIONAL HIGH SCHOOL AUDITORIUM, 9 OAKMONT DRIVE, ASHBURNHAM ON NOVEMBER 13, 2008. DONALD LAWRENCE, MODERATOR PRESIDED AT THE MEETING WHICH WAS CALLED TO ORDER AT 7:00 P.M. WITH A QUORUM PRESENT. MR. LAWRENCE RECOGNIZED THE VETERANS PRESENT. AL HART LED THE PLEDGE OF ALLEGIANCE.

**Article 1.** To see if the Town will vote to raise and appropriate, or appropriate by transfer from available funds, a sum of money to pay tuition costs for an Ashburnham student to attend the Norfolk County Agricultural High School, or act in relation thereto.

*(Requested by the Town Administrator)*

SELECTMEN RECOMMENDATION: YES           ADVISORY RECOMMENDATION: YES

**Article 1 Voted:** On motion of Christopher Gagnon, it was voted to raise and appropriate the sum of \$20,000 to pay tuition costs for an Ashburnham student to attend the Norfolk County Agricultural School.

Majority "Yes"

**Article 2.** To see if the Town will vote to raise and appropriate, by borrowing, the sum of \$400,000 to be expended under the direction of the Ashburnham-Westminster School Building Committee for a feasibility study for the J.R. Briggs Elementary School, located at 96 Williams Road, Ashburnham, Massachusetts, for which the Town may be eligible for a grant from the Massachusetts School Building Authority, (MSBA), which program is a non-entitlement, discretionary program based on need as determined by the MSBA, and which provides that any costs the Town incurs in connection with the feasibility study in excess of any grant approved by and received from the MSBA is the sole responsibility of the Town, provided that no funds shall be spent and no bonds issued unless the Town has voted at an election to exempt this expenditure from the provisions of Proposition 2 ½ so called, or act in relation thereto.

*(Requested by the Ashburnham-Westminster Regional School Committee)*

SELECTMEN RECOMMENDATION: YES           ADVISORY RECOMMENDATION: YES

Article 2 Voted: On motion of Jonathan Dennehy, it was voted to raise and appropriate by borrowing the sum of \$400,000 to be expended under the direction of the Ashburnham-Westminster School Building Committee for a feasibility study for the J.R. Briggs Elementary School, located at 96 Williams Road, Ashburnham, Massachusetts, for which the Town may be eligible for a grant from the Massachusetts School Building Authority, (MSBA), which program is a non-entitlement, discretionary program based on need as determined by the MSBA, and which provides that any costs the Town incurs in connection with the feasibility study in excess of any grant approved by and received from the MSBA is the sole responsibility of the Town, and further, that the expenditure of these funds will be exempt from the Provisions of Proposition 2 ½ , so called.

2/3 Majority "Yes"

**Article 3.** To see if the Town will vote to transfer from available funds a sum of money to pay bills incurred in a prior fiscal year, or act in relation thereto.

*(Requested by the Town Administrator)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 3 Voted:** On motion of Margaret Whitney, it was voted to PASS OVER this article.

Unanimous “YES”

**Article 4.** To see if the Town will vote to appropriate by transfer from available funds the sum of \$3,677.10 to pay the Deferred Compensation for Town Administrator Kevin Paicos for the fiscal year 2008, or act in relation thereto.  
*(Requested by the Board of Selectmen)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 4 Voted:** On motion of Christopher Gagnon, it was voted to raise and appropriate the sum of \$3,677.10 to pay the Deferred Compensation for Town Administrator, Kevin Paicos for the fiscal year 2008.

Unanimous “YES”

**Article 5.** To see if the Town will vote to terminate, in whole or in part, the Cushing Academy Trust Fund and appropriate there from a sum of money to pay for the Town of Ashburnham’s share of debt and/or interest incurred at Oakmont Regional High School, or act in relation thereto.  
*(Requested by the Board of Selectmen and the Town Administrator)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 5 Voted:** On motion of Margaret Whitney, it was voted to PASS OVER this article.

Unanimous “YES”

**Article 6.** To see if the Town will vote to transfer custody of a certain parcel of land located on Lake Road, consisting of approximately 3.3 acres, shown on the Assessors Map 56, Parcel 52, to the Board of Selectmen for the purpose of conveying said property and to authorize the Board of Selectmen to convey said property on such terms and conditions as are in the best interests of the Town, said property being a remainder lot following various conveyances from a parcel acquired by the Town of Ashburnham pursuant to a Final Decree in Tax Lien Case No. 51696 and recorded in the Worcester North District Registry of Deeds at Book 1181, Page 81 and being a portion of the property conveyed by a deed from Indian Chief Shores, Inc. to Gagne Enterprises, Inc., recorded in said Registry in Book 952, Page 493, or act in relation thereto.  
*(Requested by the Board of Selectmen and the Town Administrator)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 6 Voted:** On motion of Jonathan Dennehy, this article needed a 2/3 majority vote. The article LOST with the following vote recorded.

**YES   109                      NO   104**

**Article 7.** To see if the Town will vote to appropriate by transfer from available funds a sum of money for the purchase of a used front end loader for the DPW, or act in relation thereto.

*(Requested by the Town Administrator)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 7 Voted:**      On motion of Christopher Gagnon, it was voted to appropriate by transfer from Ch 90 funds the sum of \$60,000 for the purpose of purchasing a front end loader for the DPW and to authorize the trade-in of any available equipment to offset the cost of this purchase.

Majority “YES”

**Article 8.**      To see if the Town will vote to appropriate by transfer from free cash a sum of money to pay the costs of the snow and ice cost overrun for fiscal year 2008, or act in relation thereto.  
*(Requested by the Town Administrator)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

Article 8 Voted:      On motion of Margaret Whitney, it was voted to appropriate by transfer from Free Cash the amount of \$169,682 to pay the costs of the snow and ice overrun for the fiscal year 2008.

Unanimous “YES”

**Article 9.**      To see if the Town will vote to raise and appropriate, by borrowing, a sum of money for the replacement of the Lake Road water tank, and further to authorize the Town Administrator to apply for and accept any loans or grants associated with this project, or act in relation thereto.  
*(Requested by the Water Commission/DPW Director)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 9 Voted:**      On motion of Jonathan Dennehy, it was voted to authorize the Town Administrator to apply for and accept any loans or grants associated with the repair and/or replacement of the water tank at the intersection of Lake Rd, Lashua Rd., Hastings Rd., and High St.

Majority “YES”

**Article 10.**      To see if the Town will vote to charge, for each written demand issued by the Tax Collector, a fee of \$15 to be added to and collected as part of the tax, as authorized by Massachusetts General Laws Ch.60, Sec. 15, said fee to be effective as of November 15, 2008, or act in relation thereto.  
*(Requested by the Tax Collector)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 10 Voted:**      On motion of Christopher Gagnon, it was voted to charge, for each written demand issued by the Tax Collector, a fee of \$15 to be added to and collected as part of the tax, as authorized by Massachusetts General Laws Ch. 60. Sec. 15, said fee to be effective as of November 15, 2008.

Unanimous “YES”

**Article 11.**      To see if the Town will vote in accordance with G.L. c. 44, Sec. 53E ½ to authorize the Public Safety Communications Revolving Fund; said fund to receive all amounts collected from fire and burglary alarm services provided to Town residents and businesses by the Police and Fire Departments;

said funds to be expended by the Police and Fire Chiefs for the purchase and/or maintenance of public safety communications equipment; and said expenditures shall not exceed \$20,000 unless an increase in such limitation is approved by the Board of Selectmen, or act in relation thereto.

*(Requested by the Town Administrator, Fire Chief and Police Chief)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 11 Voted:** On motion of Margaret Whitney, it was voted to authorize the establishment of a Public Safety Communications Revolving Fund, in accordance with the provisions of MGL Ch. 44, Sec. 53E ½ for FY 2009; said fund to receive all amounts collected from fire and burglary alarm services provided to Town residents and businesses by the Police and Fire Departments; said funds to be expended by the Police and Fire Chiefs for the purchase and/or maintenance of public safety communications equipment; and said expenditures shall not exceed \$20,000 for FY09 unless an increase in such limitation is approved by the Board of Selectmen.

Unanimous “YES”

**Article 12.** To see if the Town will vote to amend the Town’s Zoning Bylaws by deleting Section 5.13, Open Space Residential Development in its entirety and replacing with the following new Section 5.13, Open Space Residential Development; delete Section 3.35 in its entirety; and amend Section 5.15, Major Residential Development, as follows:

***“Section 5.13 Open Space Residential Development***

5.13.1 Introduction

The Planning Board may grant a special permit for an “Open Space Residential Development” (OSRD) in accordance with this by-law in the RA & RB and GB zones, on one or more parcels of land in common ownership, except for parcels located in the Flood Plain District. OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose of the OSRD Bylaw, as stated in § 5.13.2. The land not included in the building lots shall be preserved as Open Space.

5.13.2 Purpose

The purpose of an OSRD is to encourage the preservation of open land by providing an alternative pattern of development through which the following objectives are likely to be met:

- A. Greater flexibility and creativity in the design of residential subdivisions provided that the overall density of the development is no greater than that which is normally allowed in the district;
- B. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources and to encourage a less sprawling form of development that consumes less open land;
- C. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;
- D. The construction of street(s), utilities and public services in a more economical and efficient manner;
- E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;
- F. Promote alternatives to strip residential development lining the roadsides in the town to preserve the unobstructed natural views from roadways;
- G. Promote the development of housing affordable to low and moderate-income families;
- H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;
- I. To protect and enhance the value of real property;
- J. To provide for a diversified housing stock.

5.13.3 Definitions

Affordable Units - Shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as an income eligible household. The affordable restriction shall be approved as to form by Town Counsel, and a right of first refusal upon transfer of such restricted units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.

Basic Maximum Number – The number of dwelling units that would be allowed on a site using the standard Zoning Bylaw Provisions and/or Subdivision Rules and Regulations as determined by a Yield Plan.

Common Open Space - Shall mean any Open Space set aside, dedicated, designated or reserved for use as passive, recreation, conservation, agriculture, forestry, natural buffers, and active recreation as permitted by this by-law. Common Open Space shall be Contiguous Open Space wherever possible and shall not include roadways, parking areas or private yards.

Income Eligible Household – Shall mean a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the Massachusetts Department of Housing and Community Development in guidelines.

Open Space - Shall mean any parcel or area of land or water essentially unimproved or set aside, dedicated, designated or reserved for public or private use and enjoyment of the owners and occupants of an OSRD as permitted by this by-law.

#### 5.13.4 Authority

The Planning Board shall act as the Special Permit Granting Authority for OSRD applications. The Planning Board may adopt, and from time to time amend, Rules and Regulations consistent with the provisions of this bylaw and G.L. c. 40A and other provisions of the General Laws, and shall file a copy of said Rules and Regulations with the Town Clerk.

#### 5.13.5 Applicability

- A. Any Major Residential Development, as defined in § 5.15 of the Ashburnham Zoning Bylaw, must be permitted by issuance of a Special Permit from the Planning Board for either Conventional Development or OSRD in accordance with this bylaw. Applicants for a Major Residential Development shall submit both a Preliminary conventional plan and an OSRD sketch plan in accordance with the applicable provisions of this OSRD Zoning Bylaw and § 5.15 of the Zoning Bylaw.
- B. Developments not defined as a Major Residential Development may also apply for an OSRD Special Permit subject to the following criteria:
  - 1. Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel or set of contiguous parcels. The Planning Board may determine that two or more parcels separated by a road or other man-made feature are “contiguous” for the purpose of this section, if they will serve as a singular resource and effectively satisfy the Purpose and Intent of this bylaw as listed in § 5.13.2.
  - 2. Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, § 81P provided, however, an OSRD may also be permitted when the property is held in condominium, cooperative ownership or other form where the property is not subdivided.

#### 5.13.6 Affordable Component

As a condition of the grant of any Special Permit for an OSRD where any such development results in creating ten (10) or more dwelling units, Affordable Units shall be required. One of each ten units allowed under the OSRD approval shall be reserved for construction only of a permanently deed-restricted unit meeting the income eligible household requirements of MGL 40B. See §5.13.16(B) for any allowable increases in permissible density.

#### 5.13.7 Application Procedure and Requirements

The applicants shall submit applications for an OSRD Special Permit in accordance with the Ashburnham Zoning Bylaw and the Rules and Regulations Governing Open Space Residential Design as adopted and amended from time to time by the Planning Board.

#### 5.13.8 Design Process

At the time of the application for the Special Permit, in conformance with § 5.13.8, A-E, 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 and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

- A. Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and 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 archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

- B. 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.
- C. 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 and/or potential future streets, sidewalks, and trails.
- D. Lot Lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

#### 5.13.9 Design Standards

The following Generic and Site Specific Design Standards shall apply to all Sketch Plans for OSRD's and shall govern the development and design process:

##### A. Generic Design Standards

- 1. 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 preferred development scheme.
- 2. 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.
- 3. All open space (landscaped and usable) 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.
- 4. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

##### B. Site Specific Design Standards

- 1. Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation. Calculations for parking spaces in these developments shall be rounded up to the nearest integer where necessary. The Planning Board may choose to modify these requirements during the review process in response to conditions specific to an individual proposal.
- 2. Drainage. The Planning Board shall encourage the use of Low Impact Development techniques that reduce impervious surface and enable infiltration where appropriate.
- 3. Screening and Landscaping. All structural surface storm water management facilities shall be accompanied by a conceptual landscape plan.
- 4. On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.
- 5. Additional Criteria for Multi-family Development:
  - (a) The design and location of the structure(s) on the site shall be consistent with the visual scale and character of single-family development.
  - (b) No more than two (2) bedrooms shall be permitted per multi-family dwelling unit.

#### 5.13.10 Design Criteria

- A. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the common open space.
- B. Residences shall be grouped so that the greatest number of units can be designed to take advantage of solar heating opportunities; so that scenic views and long views remain unobstructed, particularly those seen from roads; so that habitat areas and species listed as endangered, threatened, or of special concern by the Massachusetts Natural Heritage Program shall be protected; and so that historic and prehistoric sites and their environs shall be protected.

- C. In areas greater than twenty (20%) percent slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent possible, to achieve the following objectives;
1. Building sites shall be located so that the silhouettes of structures will be below the ridgeline or hilltop or, if the site is heavily wooded, the building silhouettes shall be at least ten (10) feet lower than the average canopy height of the trees on the ridge or hilltop.
  2. Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures shall be employed so as to minimize significant degradation of the scenic or aesthetic qualities of the site.
  3. The removal of native vegetation shall be minimized.
  4. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.
  5. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding.

#### 5.13.11 Roads

The principal roadway(s) serving the site shall be designed to conform to the standards of the Rules and Regulations of the Planning Board. OSRD shall have access on a public way, a way approved by the Planning Board or a way approved under the Subdivision Control Law.

#### 5.13.12 Open Space Requirements

- A. A minimum of fifty percent (50%) of the site shall be open space. The percentage of this open space that can be wetland shall not exceed the percentage of wetland for the entire site under existing conditions as shown on the Sketch Plan. Percentage is calculated by dividing the total wetland acres by the total site acres. A sample calculation is provided below:

##### Sample Calculation

Existing Conditions:

12-acre site with 3 acres of wetland

$3 \div 12 = 25\%$  wetland coverage

Open Space Requirements:

50% Open Space = 6 acres

Wetland Allowance:

6 acres \* 25% wetland coverage = 1.5 acres

Open Space can be 4.5 acres of upland and 1.5 acres of wetland

- B. Description of Restriction on Open Space

Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing. These restrictions shall be granted in a Conservation Restriction in accordance with G.L. c. 184 Sec. 31 and 32 in perpetuity, to a grantee approved by the Planning Board, a copy of which is filed with the Massachusetts Executive Office of Environmental Affairs recorded in the Northern District Worcester County Registry of Deeds, shall be enforceable by the Town of Ashburnham, and shall provide that such land shall be kept in an open or natural state and not built upon for residential use or developed for accessory uses including parking or roadways.

1. At least seventy (70%) percent of the Common Open Space shall be Contiguous Open Space, unless otherwise approved by the Planning Board.
2. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, aquifer protection, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD and is consistent with state and local level environmental protections.
3. Limited access to common open space may be allowed in the form of a walking or hiking/biking path, the total area of which must be no more than two (2%) percent of the total common open space area.
4. If the OSRD is located in an area currently in agricultural use or containing agricultural soils as determined by the U.S. Soil Conservation Service, the landowner is not required to sell that part of the property, which is to become permanent agricultural open space. Said owner shall, however, convey the development rights of that open space in a Conservation Restriction

pursuant to G.L. c. 184, Sec. 31 & 32, et. seq. filed with the Massachusetts Executive Office of Environmental Affairs and enforceable by the Town of Ashburnham, prohibiting future development of the property.

5. Any wastewater and storm water management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless approved by the SPGA. Open space serving such systems is required to be under the control/ownership of either the developer or homeowners association to allow for maintenance.

#### 5.13.13 Ownership of the Open Space

The open space shall, at the Planning Board's election, be conveyed to:

- A. To the Town of Ashburnham, for a park or open space use if accepted by the Town; or,
- B. A nonprofit organization, the principal purpose of which is the conservation of open space; or,
- C. A corporation, trust, or association owned by the owners of the lots or residential units within the development; or,
- D. Remain under ownership of the original property owner, who has conveyed the development rights to this part of the parcel to the developer who in turn has conveyed an undivided equal interest in these rights to each new homeowner in the development; or,
- E. A new owner, subject to the conditions in §5.13.13 (D), above; or any combination of the above, subject to approval of the Planning Board.
- F. Where applicable, a nonprofit incorporated homeowner's association shall be established requiring membership of each lot owner in the OSRD. The Homeowner's Association shall be responsible for the permanent maintenance of all commonly owned water and septic systems, open space, recreational and thoroughfare facilities, including but not limited to private ways and common driveways. A Homeowner's Association agreement or covenant shall be submitted with the Special Permit application guaranteeing continuing maintenance of such common land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of the Town Counsel and the Planning Board.
- G. In any case when the Common Open Space is not to be conveyed to the Town, the application for an OSRD special permit shall include a description of how and when the Common Open Space shall be preserved in perpetuity. The applicant shall also provide as part of this description, a proposal agreement authorizing and empowering the Town to perform any and all maintenance of the Common Open Space, and any other facilities in common ownership in the event of a failure to comply with Common Open Space preservation plan or agreement and/or any other agreement whether a homeowner's agreement or otherwise, to maintain the Common Open Space and/or any facilities in common ownership, and providing that, if the Town is required to perform any maintenance work, the owners of the lots within the OSRD shall pay the costs thereof and that these costs shall constitute a lien upon those lots until such costs have been paid in full.

#### 5.13.14 Common Driveways

- A. Common driveways serving no more than five (5) residential units may be allowed in the OSRD, provided that they meet one of the following requirements:

The provision of individual driveways to the lots to be served by the proposed common driveway would require curb cuts which are separated by less than sixty (60) feet along the exterior street line;

The provision of individual driveways to the lots to be served by the proposed common driveway would allow no alternative but to cross a "Wetland Resource Area", as defined by G.L. c. 131 Sec. 40, and/or the Town of Ashburnham Wetlands Protection By-law, or to cross any land in the Flood Plain District as described in § 2 of the Town's Zoning By-laws;

One or more alternate individual driveways which would be necessary in the absence of the proposed common driveway would intersect the roadway at a point of insufficient traffic sight distance, as determined by the Planning Board;

The provision of individual driveways to the lots to be served by the proposed common driveway would adversely affect a significant natural feature or vista.

- B. The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.
- C. The common driveway shall not be in excess of five hundred (500) feet in length.
- D. The owners of the properties to be served by the common driveway shall provide evidence to the Planning Board that they have a deeded right to the common driveway.
- E. The common driveway shall provide adequate access and turnaround for vehicles including moving vans, snowplows, ambulances, fire, and police vehicles. To provide such adequate access, the common driveway shall be built to meet standards as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.

- F. All installation of utilities shall meet the requirements as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.
- G. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner that will not cause them to be blocked during heavy snow pack and/or snow removal.
- H. Approval of a common driveway(s) in an OSRD shall be subject to a covenant by and between the developer and the Planning Board recorded in the chain of title and running with the land, on a form approved by the Planning Board, acknowledging that the common driveway approval was granted in consideration of the conditions contained within the Special Permit of an OSRD and the grant of covenant, and that the owner, his heirs, executors, successors and assigns, agree that the common driveway shall never be submitted to Town Meeting for a vote to have it become an accepted street. This paragraph authorizes the Planning Board to accept the covenant on behalf of the Town.
- I. A lot in an OSRD may be served by a Common Driveway only if it meets the requirements of § 5.13.14 of this by-law, and the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan required under § 5.13.5 shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It shall incorporate by reference the document(s), satisfactory to the Town Counsel and the Planning Board, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) must include, at a minimum the following:
  - 1. Specific standards for the maintenance of all structures designed to be requirements of a common driveway Special Permit, including, but not limited to the travel way, drainage system, and signage;
  - 2. Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;
  - 3. Text of proposed easement including the meet's and bounds description;
  - 4. A procedure for the resolution of disagreements.

#### 5.13.15 Reduction of Dimensional Requirements

Applicant may propose to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

- A. Frontage. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw. The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.
- B. Setbacks. Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In no event shall structures be closer than 20 feet to each other. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.

#### 5.13.16 Increases in Permissible Density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number for an OSRD Plan. The density bonus for the OSRD shall not, in the aggregate, exceed thirty percent (30%) of the Basic Maximum Number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

- A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of one (1) additional dwelling unit beyond the Basic Maximum Number may be awarded.
- B. For every two (2) dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income eligible households, one (1) dwelling unit may be added as a density bonus beyond the Basic Maximum Number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

Additional lots allowed under § 5.13.16.B will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home to

the Town or to a public or non-profit housing agency or trust. The permanently deed-restricted affordable home or lot shall not be subject to the growth management provisions of § 5.11.

- C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added to the Basic Maximum Number.

#### 5.13.17 Decision of the Planning Board

##### A. Criteria for Approval.

The Planning Board will review all data and hold a public hearing in accordance with M.G.L.c.40A, § 9. Prior to the close of the public hearing, the Planning Board shall recommend the development plan (either the Yield Plan showing Conventional Development or the Sketch Plan showing OSRD), that it considers the most beneficial to the Town. The Planning Board shall render a decision for an OSRD, based on the following 8 factors below and Section 5.15.4 of the Major Residential Development (MRD) Bylaw. The Board may approve such Plan with or without conditions. The Board shall disapprove both plans only if it finds that either the Conventional Development (Yield Plan) or the OSRD Development (Sketch Plan) is not a good faith design, or that the Plan that the does not conform to the requirements of the OSRD Bylaw. The Board may grant a Special Permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional subdivision of the property and finding that the following eight (8) factors are present:

1. That the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;
2. That the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archaeological resources;
3. That the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
4. That the OSRD reduces the total amount of disturbance on the site;
5. That the OSRD furthers the goals and policies of existing community planning documents including, but not limited to, the Town's Open Space and Recreation Plan, Affordable Housing Plan and EO418 Community Development Plan;
6. That the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. That the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.
8. That the proposed design does not create undo risk to public health, safety and welfare.

##### B. Relationship between Concept Plan and Definitive Subdivision Plan

Any Special Permit for a Major Residential Development or any Special Permit for OSRD that is granted a Special Permit and shows a subdivision must be followed by the submittal of a Definitive Subdivision plan in accordance with the Subdivision Rules and Regulations of the Town.

The OSRD Special Permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:

1. An increase in the number of building lots and/or units;
2. A significant decrease in the open space acreage;
3. A significant change in the lot layout or unit placement;
4. A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
5. Significant changes to the storm water management facilities; and/or
6. Significant changes in the wastewater management systems.

- 5.13.18 No endorsement of a plan will be made until the Conservation Commission has completed an Order of Conditions and has been registered with the Northern Worcester County Registry of Deeds and made part of the plans. Any further changes required by the Conservation Commission shall meet the approval of the Planning Board's consulting engineer prior to endorsement.

- 5.13.19 In so far as the OSRD constitutes a subdivision, both the subdivision and special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development as constitute a subdivision shall be required as set forth in the Subdivision Control Law, including the approval of streets and utility systems. A favorable action, which may be made by the Planning Board on a special permit application, shall not, therefore, be deemed either to constitute subdivision approval under the Subdivision Control Law or Rules and Regulations governing the subdivision of land, or imply that such approval will be given.
- 5.13.20 The OSRD Plan shall show compliance with the requirements of this by-law and shall show any other particular features of the OSRD as requested by the Planning Board or required by the applicable Rules and Regulations to enable the Planning Board to determine compliance with this by-law.
- 5.13.21 Waiver of Compliance

The Planning Board, acting as the Special Permit granting authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

- 5.13.22 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.”

Deletion of Section 3.35 in its entirety.

And approve the following amendments to the following sections of Section 5.15, Major Residential Development:

NOTE: All additions are noted in ***bold and italicized*** text. Deletions or alterations to existing text are shown as ~~crossed-out~~ text.

- 5.15.3 Application and Approval. Major Residential Developments shall be allowed only through the Special Permit process set forth in Section 5.13 Open Space Residential Development and this section. Application for Major Residential Developments shall include a ***preliminary*** conventional subdivision development plan and an ***OSRD sketch*** subdivision plan designed per Section 5.13.
- 5.15.4 Decision. The Planning Board shall make a decision for all Major Residential Developments whether or ~~not~~ ***not*** the Plan developed in accordance with Section 5.13 provides a superior alternative in consideration of the criteria set out in Section 5.15.5 below, in which case the Planning Board may require that the development occur in accordance with the plan consistent with Section 5.13. If the Planning Board does not find that the plan consistent with Section 5.13 is superior, the proponent may select whether to pursue development under ***Section 5.15*** or use a ~~traditional~~ ***conventional*** subdivision.
- 5.15.5 Decision Criteria. The Planning Board, in making its decision as to whether to require development in accordance with Section 5.13 or to allow a traditional subdivision, shall evaluate both plans and choose the development method which best meets, in the opinion of the Planning Board, the purpose of this section, ~~the objectives of Section 5.132.1 to Section 5.132.9, and the criteria set forth in Section 5.140.8~~ ***the objectives of Section 5.13.2(A) to Section 5.13.2(J), and the criteria set forth in Section 5.13.17(A).***”

Or act in relation thereto. (*Requested by the Planning Board*)

**Explanation:** The Planning Board is submitting this re-write to the existing Open Space Residential Development (OSRD) Zoning Bylaw after experiencing some difficulty in administering and implementing the existing Bylaw since its passage back in 2004. The Board has also received comments from a number of developers that the existing Bylaw does not offer flexibility as to the housing unit types and lot pattern layouts. This proposed re-write follows the format recommended by Massachusetts Smart Growth Toolkit Model OSRD Bylaw, with relevant sections of the existing Ashburnham OSRD Bylaw kept in as needed.

One of the most important elements of OSRD design is an upfront identification of all the conservation areas on the land proposed for subdivision. Only then are the roads, buildings and lot lines added to the development plan. This process is lacking in the existing OSRD Bylaw, which prevented a greater wooded buffer from being made part of the Lakeside Village OSRD approval. Therefore, a section to add this design process is proposed to be added to the Bylaw.

Other features of the bylaw that are designed to make it easier to administer and implement, as well encourage its use by developers (over a cookie-cutter, conventional subdivision plan) include: a) easier and more consistent calculations of any density units, b) greater simplicity in the definition of what constitutes an affordable unit, c) allowing multi-family units, but only up to 4 units per building and 2 bedrooms per unit (to help minimize impacts from school children on the Town’s budget), d) greater flexibility in lot sizes and e) a better tie of the OSRD Bylaw to the Major Residential Development Bylaw, Section 5.15. For the latter, amendments are required to a few sections of Section 5.15 to make the MRD Bylaw be in sync with the OSRD Bylaw re-write.

SELECTMEN RECOMMENDATION: YES    ADVISORY RECOMMENDATION: YES    PLANNING BD REC: YES

**Article 12 Voted:** On motion of Jonathan Dennehy, it was voted to enact the provisions of article 12 as printed in the warrant to amend the Town's Zoning Bylaws by deleting Section 5.13. Open Space Residential Development in its entirety and replacing with the following new Section 5.13. Open Space Residential Development: delete Section 3.35 in its entirety: and amend Section 5.15, Major Residential Development as follows with amendment in Section 5.13.9 Design Standards, B Site Specific Design Standards, 5 (b) The overall bedroom density will not exceed an average of two (2) bedrooms per unit.

*“Section 5.13 Open Space Residential Development*

5.13.1 Introduction

The Planning Board may grant a special permit for an “Open Space Residential Development” (OSRD) in accordance with this by-law in the RA & RB and GB zones, on one or more parcels of land in common ownership, except for parcels located in the Flood Plain District. OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose of the OSRD Bylaw, as stated in § 5.13.2. The land not included in the building lots shall be preserved as Open Space.

5.13.2 Purpose

The purpose of an OSRD is to encourage the preservation of open land by providing an alternative pattern of development through which the following objectives are likely to be met:

- A. Greater flexibility and creativity in the design of residential subdivisions provided that the overall density of the development is no greater than that which is normally allowed in the district;
- B. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources and to encourage a less sprawling form of development that consumes less open land;
- C. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;
- D. The construction of street(s), utilities and public services in a more economical and efficient manner;
- E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;
- F. Promote alternatives to strip residential development lining the roadsides in the town to preserve the unobstructed natural views from roadways;
- G. Promote the development of housing affordable to low and moderate-income families;
- H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;
- I. To protect and enhance the value of real property;
- J. To provide for a diversified housing stock.

5.13.3 Definitions

Affordable Units - Shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as an income eligible household. The affordable restriction shall be approved as to form by Town Counsel, and a right of first refusal upon transfer of such restricted units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.

Basic Maximum Number – The number of dwelling units that would be allowed on a site using the standard Zoning Bylaw Provisions and/or Subdivision Rules and Regulations as determined by a Yield Plan.

Common Open Space - Shall mean any Open Space set aside, dedicated, designated or reserved for use as passive, recreation, conservation, agriculture, forestry, natural buffers, and active recreation as permitted by this by-law. Common Open Space shall be Contiguous Open Space wherever possible and shall not include roadways, parking areas or private yards.

Income Eligible Household – Shall mean a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the Massachusetts Department of Housing and Community Development in guidelines.

Open Space - Shall mean any parcel or area of land or water essentially unimproved or set aside, dedicated, designated or reserved for public or private use and enjoyment of the owners and occupants of an OSRD as permitted by this by-law.

#### 5.13.4 Authority

The Planning Board shall act as the Special Permit Granting Authority for OSRD applications. The Planning Board may adopt, and from time to time amend, Rules and Regulations consistent with the provisions of this bylaw and G.L. c. 40A and other provisions of the General Laws, and shall file a copy of said Rules and Regulations with the Town Clerk.

#### 5.13.5 Applicability

- A. Any Major Residential Development, as defined in § 5.15 of the Ashburnham Zoning Bylaw, must be permitted by issuance of a Special Permit from the Planning Board for either Conventional Development or OSRD in accordance with this bylaw. Applicants for a Major Residential Development shall submit both a Preliminary conventional plan and an OSRD sketch plan in accordance with the applicable provisions of this OSRD Zoning Bylaw and § 5.15 of the Zoning Bylaw.
- B. Developments not defined as a Major Residential Development may also apply for an OSRD Special Permit subject to the following criteria:
  1. Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel or set of contiguous parcels. The Planning Board may determine that two or more parcels separated by a road or other man-made feature are “contiguous” for the purpose of this section, if they will serve as a singular resource and effectively satisfy the Purpose and Intent of this bylaw as listed in § 5.13.2.
  2. Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, § 81P provided, however, an OSRD may also be permitted when the property is held in condominium, cooperative ownership or other form where the property is not subdivided.

#### 5.13.6 Affordable Component

As a condition of the grant of any Special Permit for an OSRD where any such development results in creating ten (10) or more dwelling units, Affordable Units shall be required. One of each ten units allowed under the OSRD approval shall be reserved for construction only of a permanently deed-restricted unit meeting the income eligible household requirements of MGL 40B. See §5.13.16(B) for any allowable increases in permissible density.

#### 5.13.7 Application Procedure and Requirements

The applicants shall submit applications for an OSRD Special Permit in accordance with the Ashburnham Zoning Bylaw and the Rules and Regulations Governing Open Space Residential Design as adopted and amended from time to time by the Planning Board.

#### 5.13.8 Design Process

At the time of the application for the Special Permit, in conformance with § 5.13.8, A-E, 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 and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

- A. Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and 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 archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.
- B. 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.
- C. 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 and/or potential future streets, sidewalks, and trails.
- D. Lot Lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

#### 5.13.9 Design Standards

The following Generic and Site Specific Design Standards shall apply to all Sketch Plans for OSRD's and shall govern the development and design process:

- A. Generic Design Standards

1. 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 preferred development scheme.
2. 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.
3. All open space (landscaped and usable) 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.
4. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

B. Site Specific Design Standards

1. **Parking.** Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation. Calculations for parking spaces in these developments shall be rounded up to the nearest integer where necessary. The Planning Board may choose to modify these requirements during the review process in response to conditions specific to an individual proposal.
2. **Drainage.** The Planning Board shall encourage the use of Low Impact Development techniques that reduce impervious surface and enable infiltration where appropriate.
3. **Screening and Landscaping.** All structural surface storm water management facilities shall be accompanied by a conceptual landscape plan.
4. **On-site Pedestrian and Bicycle Circulation.** Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.
5. **Additional Criteria for Multi-family Development:**
  - (a) The design and location of the structure(s) on the site shall be consistent with the visual scale and character of single-family development.
  - (b) The overall bedroom density will not exceed an average of two (2) bedrooms per unit.

5.13.10 Design Criteria

- A. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the common open space.
- B. Residences shall be grouped so that the greatest number of units can be designed to take advantage of solar heating opportunities; so that scenic views and long views remain unobstructed, particularly those seen from roads; so that habitat areas and species listed as endangered, threatened, or of special concern by the Massachusetts Natural Heritage Program shall be protected; and so that historic and prehistoric sites and their environs shall be protected.
- C. In areas greater than twenty (20%) percent slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent possible, to achieve the following objectives;
  1. Building sites shall be located so that the silhouettes of structures will be below the ridgeline or hilltop or, if the site is heavily wooded, the building silhouettes shall be at least ten (10) feet lower than the average canopy height of the trees on the ridge or hilltop.
  2. Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures shall be employed so as to minimize significant degradation of the scenic or aesthetic qualities of the site.
  3. The removal of native vegetation shall be minimized.
  4. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.
  5. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding.

5.13.11 Roads

The principal roadway(s) serving the site shall be designed to conform to the standards of the Rules and Regulations of the Planning Board. OSRD shall have access on a public way, a way approved by the Planning Board or a way approved under the Subdivision Control Law.

#### 5.13.12 Open Space Requirements

- A. A minimum of fifty percent (50%) of the site shall be open space. The percentage of this open space that can be wetland shall not exceed the percentage of wetland for the entire site under existing conditions as shown on the Sketch Plan. Percentage is calculated by dividing the total wetland acres by the total site acres. A sample calculation is provided below:

##### Sample Calculation

Existing Conditions:

12-acre site with 3 acres of wetland

$3 \div 12 = 25\%$  wetland coverage

Open Space Requirements:

50% Open Space = 6 acres

Wetland Allowance:

6 acres \* 25% wetland coverage = 1.5 acres

Open Space can be 4.5 acres of upland and 1.5 acres of wetland

#### B. Description of Restriction on Open Space

Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing. These restrictions shall be granted in a Conservation Restriction in accordance with G.L. c. 184 Sec. 31 and 32 in perpetuity, to a grantee approved by the Planning Board, a copy of which is filed with the Massachusetts Executive Office of Environmental Affairs recorded in the Northern District Worcester County Registry of Deeds, shall be enforceable by the Town of Ashburnham, and shall provide that such land shall be kept in an open or natural state and not built upon for residential use or developed for accessory uses including parking or roadways.

1. At least seventy (70%) percent of the Common Open Space shall be Contiguous Open Space, unless otherwise approved by the Planning Board.
2. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, aquifer protection, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD and is consistent with state and local level environmental protections.
3. Limited access to common open space may be allowed in the form of a walking or hiking/biking path, the total area of which must be no more than two (2%) percent of the total common open space area.
4. If the OSRD is located in an area currently in agricultural use or containing agricultural soils as determined by the U.S. Soil Conservation Service, the landowner is not required to sell that part of the property, which is to become permanent agricultural open space. Said owner shall, however, convey the development rights of that open space in a Conservation Restriction pursuant to G.L. c. 184, Sec. 31 & 32, et. seq. filed with the Massachusetts Executive Office of Environmental Affairs and enforceable by the Town of Ashburnham, prohibiting future development of the property.
5. Any wastewater and storm water management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless approved by the SPGA. Open space serving such systems is required to be under the control/ownership of either the developer or homeowners association to allow for maintenance.

#### 5.13.13 Ownership of the Open Space

The open space shall, at the Planning Board's election, be conveyed to:

- A. To the Town of Ashburnham, for a park or open space use if accepted by the Town; or,
- B. A nonprofit organization, the principal purpose of which is the conservation of open space; or,
- C. A corporation, trust, or association owned by the owners of the lots or residential units within the development; or,
- D. Remain under ownership of the original property owner, who has conveyed the development rights to this part of the parcel to the developer who in turn has conveyed an undivided equal interest in these rights to each new homeowner in the development; or,

- E. A new owner, subject to the conditions in §5.13.13 (D), above; or any combination of the above, subject to approval of the Planning Board.
- F. Where applicable, a nonprofit incorporated homeowner's association shall be established requiring membership of each lot owner in the OSRD. The Homeowner's Association shall be responsible for the permanent maintenance of all commonly owned water and septic systems, open space, recreational and thoroughfare facilities, including but not limited to private ways and common driveways. A Homeowner's Association agreement or covenant shall be submitted with the Special Permit application guaranteeing continuing maintenance of such common land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of the Town Counsel and the Planning Board.
- G. In any case when the Common Open Space is not to be conveyed to the Town, the application for an OSRD special permit shall include a description of how and when the Common Open Space shall be preserved in perpetuity. The applicant shall also provide as part of this description, a proposal agreement authorizing and empowering the Town to perform any and all maintenance of the Common Open Space, and any other facilities in common ownership in the event of a failure to comply with Common Open Space preservation plan or agreement and/or any other agreement whether a homeowner's agreement or otherwise, to maintain the Common Open Space and/or any facilities in common ownership, and providing that, if the Town is required to perform any maintenance work, the owners of the lots within the OSRD shall pay the costs thereof and that these costs shall constitute a lien upon those lots until such costs have been paid in full.

#### 5.13.14 Common Driveways

- A. Common driveways serving no more than five (5) residential units may be allowed in the OSRD, provided that they meet one of the following requirements:

The provision of individual driveways to the lots to be served by the proposed common driveway would require curb cuts which are separated by less than sixty (60) feet along the exterior street line;

The provision of individual driveways to the lots to be served by the proposed common driveway would allow no alternative but to cross a "Wetland Resource Area", as defined by G.L. c. 131 Sec. 40, and/or the Town of Ashburnham Wetlands Protection By-law, or to cross any land in the Flood Plain District as described in § 2 of the Town's Zoning By-laws;

One or more alternate individual driveways which would be necessary in the absence of the proposed common driveway would intersect the roadway at a point of insufficient traffic sight distance, as determined by the Planning Board;

The provision of individual driveways to the lots to be served by the proposed common driveway would adversely affect a significant natural feature or vista.

- B. The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.
- C. The common driveway shall not be in excess of five hundred (500) feet in length.
- D. The owners of the properties to be served by the common driveway shall provide evidence to the Planning Board that they have a deeded right to the common driveway.
- E. The common driveway shall provide adequate access and turnaround for vehicles including moving vans, snowplows, ambulances, fire, and police vehicles. To provide such adequate access, the common driveway shall be built to meet standards as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.
- F. All installation of utilities shall meet the requirements as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.
- G. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner that will not cause them to be blocked during heavy snow pack and/or snow removal.
- H. Approval of a common driveway(s) in an OSRD shall be subject to a covenant by and between the developer and the Planning Board recorded in the chain of title and running with the land, on a form approved by the Planning Board, acknowledging that the common driveway approval was granted in consideration of the conditions contained within the Special Permit of an OSRD and the grant of covenant, and that the owner, his heirs, executors, successors and assigns, agree that the common driveway shall never be submitted to Town Meeting for a vote to have it become an accepted street. This paragraph authorizes the Planning Board to accept the covenant on behalf of the Town.
- I. A lot in an OSRD may be served by a Common Driveway only if it meets the requirements of § 5.13.14 of this by-law, and the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan required under § 5.13.5 shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It

shall incorporate by reference the document(s), satisfactory to the Town Counsel and the Planning Board, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) must include, at a minimum the following:

1. Specific standards for the maintenance of all structures designed to be requirements of a common driveway Special Permit, including, but not limited to the travel way, drainage system, and signage;
2. Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;
3. Text of proposed easement including the meet's and bounds description;
4. A procedure for the resolution of disagreements.

#### 5.13.15 Reduction of Dimensional Requirements

Applicant may propose to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

- A. Frontage. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw. The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.
- B. Setbacks. Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In no event shall structures be closer than 20 feet to each other. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.

#### 5.13.16 Increases in Permissible Density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number for an OSRD Plan. The density bonus for the OSRD shall not, in the aggregate, exceed thirty percent (30%) of the Basic Maximum Number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

- A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of one (1) additional dwelling unit beyond the Basic Maximum Number may be awarded.
- B. For every two (2) dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income eligible households, one (1) dwelling unit may be added as a density bonus beyond the Basic Maximum Number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

Additional lots allowed under § 5.13.16.B will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home to the Town or to a public or non-profit housing agency or trust. The permanently deed-restricted affordable home or lot shall not be subject to the growth management provisions of § 5.11.

- C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added to the Basic Maximum Number.

#### 5.13.17 Decision of the Planning Board

- A. Criteria for Approval.

The Planning Board will review all data and hold a public hearing in accordance with M.G.L.c.40A, § 9. Prior to the close of the public hearing, the Planning Board shall recommend the development plan (either the Yield Plan showing Conventional Development or the Sketch Plan showing OSRD), that it considers the most beneficial to the Town. The Planning Board shall render a decision for an OSRD, based on the following 8 factors below and Section 5.15.4 of the Major Residential Development (MRD) Bylaw. The Board may approve such Plan with or without conditions. The Board shall disapprove both plans only if it finds that either the Conventional Development (Yield Plan) or the OSRD Development (Sketch Plan) is not a good faith design, or that the Plan that it does not conform to the requirements of the OSRD Bylaw. The Board may grant a Special Permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional subdivision of the property and finding that the following eight (8) factors are present:

1. That the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;
2. That the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archaeological resources;
3. That the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
4. That the OSRD reduces the total amount of disturbance on the site;
5. That the OSRD furthers the goals and policies of existing community planning documents including, but not limited to, the Town's Open Space and Recreation Plan, Affordable Housing Plan and EO418 Community Development Plan;
6. That the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. That the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.
8. That the proposed design does not create undo risk to public health, safety and welfare.

B. Relationship between Concept Plan and Definitive Subdivision Plan

Any Special Permit for a Major Residential Development or any Special Permit for OSRD that is granted a Special Permit and shows a subdivision must be followed by the submittal of a Definitive Subdivision plan in accordance with the Subdivision Rules and Regulations of the Town.

The OSRD Special Permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:

1. An increase in the number of building lots and/or units;
2. A significant decrease in the open space acreage;
3. A significant change in the lot layout or unit placement;
4. A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
5. Significant changes to the storm water management facilities; and/or
6. Significant changes in the wastewater management systems.

5.13.18 No endorsement of a plan will be made until the Conservation Commission has completed an Order of Conditions and has been registered with the Northern Worcester County Registry of Deeds and made part of the plans. Any further changes required by the Conservation Commission shall meet the approval of the Planning Board's consulting engineer prior to endorsement.

5.13.19 In so far as the OSRD constitutes a subdivision, both the subdivision and special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development as constitute a subdivision shall be required as set forth in the Subdivision Control Law, including the approval of streets and utility systems. A favorable action, which may be made by the Planning Board on a special permit application, shall not, therefore, be deemed either to constitute subdivision approval under the Subdivision Control Law or Rules and Regulations governing the subdivision of land, or imply that such approval will be given.

5.13.20 The OSRD Plan shall show compliance with the requirements of this by-law and shall show any other particular features of the OSRD as requested by the Planning Board or required by the applicable Rules and Regulations to enable the Planning Board to determine compliance with this by-law.

5.13.21 Waiver of Compliance

The Planning Board, acting as the Special Permit granting authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.13.22 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.”

Deletion of Section 3.35 in its entirety.

- 5.15.3 Application and Approval. Major Residential Developments shall be allowed only through the Special Permit process set forth in Section 5.13 Open Space Residential Development and this section. Application for Major Residential Developments shall include a preliminary conventional subdivision development plan and an OSRD sketch subdivision plan designed per Section 5.13.
- 5.15.4 Decision. The Planning Board shall make a decision for all Major Residential Developments whether or not the Plan developed in accordance with Section 5.13 provides a superior alternative in consideration of the criteria set out in Section 5.15.5 below, in which case the Planning Board may require that the development occur in accordance with the plan consistent with Section 5.13. If the Planning Board does not find that the plan consistent with Section 5.13 is superior, the proponent may select whether to pursue development under Section 5.15 or use a conventional subdivision.
- 5.15.5 Decision Criteria. The Planning Board, in making its decision as to whether to require development in accordance with Section 5.13 or to allow a traditional subdivision, shall evaluate both plans and choose the development method which best meets, in the opinion of the Planning Board, the purpose of this section, the objectives of Section 5.13.2(A) to Section 5.13.2(J), and the criteria set forth in Section 5.13.17(A).”

Unanimous “YES”

**Article 13.** To see if the Town will vote to accept Chapter 44, Section 55C of the General Laws authorizing the establishment of the Ashburnham Affordable Housing Trust and pursuant thereto, vote to adopt the following bylaw, or act in relation thereto.

#### **Chapter XXVIII: Affordable Housing Trust Fund**

##### **SECTION 1: Name of the Trust**

The trust shall be called the Town of Ashburnham Affordable Housing Trust Fund.

##### **SECTION 2 : Purpose**

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Ashburnham for the benefit of low and moderate-income households. In furtherance of this purpose, the Trustees are hereby authorized, in accordance with the procedures set forth herein, including Article 5<sup>th</sup>, to acquire by gift, purchase or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that all property held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Ashburnham of affordable housing for the purposes for which this Trust was formed.

##### **SECTION 3: Tenure of Trustees**

There shall be a Board of Trustees consisting of not less than five nor more than seven Trustees who shall be appointed by the Board of Selectmen. One of the Trustees shall be the Town Administrator. Only persons who are residents of the Town of Ashburnham shall be eligible to hold the office of Trustee. Trustees shall serve for a term of three years, except that two of the initial trustee appointments shall be for a term of three years, two for two years, and one for one year, and may be re appointed at the discretion of the Board of Selectmen. Any Trustee who ceases to be a resident of the Town of Ashburnham shall cease to be a Trustee hereunder and shall promptly provide a written notification of the change in residence to the Board and to the Town Clerk. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall resign, or for any other reason cease to be a Trustee hereunder before his her term of office expires, a successor shall be appointed by the Board of Selectmen to fill such vacancy provided that in each case the said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk No such appointment shall be required so long as there are five Trustees in office. Upon the appointment of any succeeding Trustee and the filing of such appointment the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

##### **SECTION 4: Meetings of the Trust**

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law G L Chapter 39 Sections 23A 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

##### **SECTION 5: Powers of Trustees**

The Board of Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of G. L. Chapter 44 Section 55C as modified under Chapter 109 of the Acts of 2006.

1. With the approval of the Board of Selectmen to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation, or other public or private entity, including without limitation, grants of funds or other property tendered to the trust in connection with provisions of any zoning by law or any other by law;

2. With the approval of the Board of Selectmen, to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
3. With the approval of the Board of Selectmen and Town Meeting to sell, lease, exchange, transfer, or convey any real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to trust real property as the Trustees deem advisable notwithstanding the length of any such lease or contract;
4. With the approval of the Board of Selectmen, to sell, lease, exchange, transfer, or convey any personal property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to trust personal property notwithstanding the length of any such lease or contract;
5. With the approval of Town Counsel, to execute, acknowledge and deliver deeds, assignments, transfers pledges, leases, covenants, contracts, promissory notes, releases and other instruments, sealed or unsealed, necessary proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
6. To employ advisors and agents such as accountants, appraisers, and lawyers as the trustees deem necessary;
7. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the trustees deem advisable;
8. With the approval of the Board of Selectmen, to participate in any reorganization, recapitalization merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution, to vote any securities or certificates of interest, and to consent to any contract, lease, mortgage, purchase or sale of property by or between any corporation and any other corporation or person;
9. With the approval of the Board of Selectmen, to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the trustees may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board, with the approval of the Board of Selectmen, may deem necessary and appropriate;
10. To carry property for accounting purposes other than acquisition date values;
11. With the approval the Board of Selectmen and the approval of Town Meeting by a two thirds majority vote, to incur debt, to borrow money on such terms and conditions and from such sources as the trustees deem advisable, and to mortgage and pledge trust assets as collateral;
12. With the approval of the Board of Selectmen to disburse trust funds for the purpose of making loans or grants in furtherance of the creation or preservation of affordable housing in Ashburnham upon such terms as the Trustees shall deem most appropriate to carry out such purposes;
13. To make distributions or divisions of principal in kind;
14. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property either in total or partial satisfaction of any indebtedness or other obligation and subject to the provisions of G L Chapter 44, Section 55C, to continue to hold the same for such period of time as the board may deem appropriate;
15. To manage or improve real property and with the approval of the Board of Selectmen and Town Meeting, to abandon any property which the trustees determine not to be worth retaining;
16. To hold all or part of the trust property uninvested for such purposes and for such time as the trustees may deem appropriate; and
17. To extend the time for payment of any obligation to the trust.

#### **SECTION 6: Funds Paid to the Trust**

Notwithstanding any general or special law to the contrary all moneys paid to the trust in accordance with any zoning by law, exaction fee, or private contribution shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and these funds need not be further appropriated to be expended. All moneys remaining in the trust at the end of any fiscal year remain trust property.

#### **SECTION 7: Acts of Trustees**

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

#### **SECTION 8: Liability**

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of G. L. Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G L Chapter 268A.

#### **SECTION 9: Taxes**

The Trust is exempt from G L Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

#### **SECTION 10: Custodian of Funds**

The Town Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities.

#### **SECTION 11: Governmental Body**

The Trust is a governmental body for purposes of Sections 23A 23B and 23C of G. L. Chapter 39.

#### **SECTION 12: Board of the Town**

The Trust is a board of the Town for purposes of G. L. Chapter 30B and Section 15A of G. L. Chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments, and public instrumentalities of the town shall be exempt from said Chapter 30B.

**SECTION 13: Duration of the Trust**

This Trust shall be of indefinite duration until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

**SECTION 14:**

The Board of Selectmen may authorize the Trustees to execute, deliver, and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

**SECTION 15: Titles**

The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

The Board of Selectmen for themselves and their successors, hereby acknowledge and agree to the terms of this Trust, and the Trustees named hereunder, hereby acknowledge and agree for themselves and their successors to hold the trust property for the purposes hereof in trust for the benefit of all of the Inhabitants of the Town of Ashburnham, Massachusetts, in the manner and under the terms and conditions set forth herein.

(Submitted by the Ashburnham Affordable Housing Committee)

**Explanation:** An Affordable Housing Trust is an important tool for a community working to preserve and create affordable housing. It serves as a repository for funds approved for housing purposes and is overseen by a board of trustees who ensure the funds are used as intended. Residents should be aware that the Affordable Housing Committee did originally submit a Warrant Article to create an Affordable Housing Trust for the May 2007 Annual Town Meeting. The Selectmen did not support putting the Warrant Article, as written at that time, on the Town Meeting Warrant.

A concern of the Selectmen's was lack of oversight by the Selectmen and Town Meeting Voters related to spending of Town funds and dealings involving real estate. Thus, the Affordable Housing Committee surveyed around a dozen Massachusetts municipalities who had already created an Affordable Housing Trust. The Committee came across a model from the Town of Andover that provides checks and balances on a number of important fiscal and real estate issues that requires either Board of Selectmen or Town Meeting Approval. The Selectmen also suggested to the Committee that they draft a set of Bylaws. Therefore, the Ashburnham Affordable Housing Committee is now submitting this Affordable Housing Trust Warrant Article for passage that addresses the Selectmen's concerns and also includes the Trust Fund Bylaws.

Municipalities are authorized under M.G.L. Chapter 44, Section 55C to create a Municipal Affordable Housing Trust. Also the State Legislature passed Chapter 109 of the Acts of 2006, which amended M.G.L. Chapter 44, Section 55C, to allow municipalities to adopt only certain sections of Ch. 44 §55C, thus more control can now legally be provided to the Selectmen and Town Meeting. This provision is consistent with the proposed Ashburnham Affordable Housing Trust and the Governing Bylaws that have been submitted for the Fall 2008 Special Town Meeting.

The Affordable Housing Committee realizes that the Housing Trust will have to explore a wide range of possible fundraising options in order to capitalize the Trust Fund. Both public and private sector resources will have to be sought out. Donations by Ashburnham residents into the Housing Trust fund have been found to be eligible for federal income tax deductions. The vehicle of an Affordable Housing Trust can respond quickly to market opportunities for land acquisition or building purchase.

SELECTMEN RECOMMENDATION: YES    ADVISORY RECOMMENDATION: YES

**Article 13 Voted:**    On motion of Christopher Gagnon, it was voted to accept Chapter 44, Section 55C of the General Laws authorizing the establishment of the Ashburnham Affordable Housing Trust and to adopt the following bylaw as printed in the warrant except that references to "Chapter XXVIII" throughout shall be amended to read "Chapter XXIX" and the following amendment to Section 5: Powers of Trustees

2.        With the approval of the Board of Selectmen **and Town Meeting**, to purchase and retain real or personal property, including without restriction investments that field a high rate of income or no income."

## **Chapter XXIX: Affordable Housing Trust Fund**

### **SECTION 1: Name of the Trust**

The trust shall be called the Town of Ashburnham Affordable Housing Trust Fund.

### **SECTION 2: Purpose**

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Ashburnham for the benefit of low and moderate-income households. In furtherance of this purpose, the Trustees are hereby authorized, in accordance with the procedures set forth herein, including Article 5<sup>th</sup>, to acquire by gift, purchase or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that all property held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Ashburnham of affordable housing for the purposes for which this Trust was formed.

### **SECTION 3: Tenure of Trustees**

There shall be a Board of Trustees consisting of not less than five nor more than seven Trustees who shall be appointed by the Board of Selectmen. One of the Trustees shall be the Town Administrator. Only persons who are residents of the Town of Ashburnham shall be eligible to hold the office of Trustee. Trustees shall serve for a term of three years, except that two of the initial trustee appointments shall be for a term of three years, two for two years, and one for one year, and may be re appointed at the discretion of the Board of Selectmen. Any Trustee who ceases to be a resident of the Town of Ashburnham shall cease to be a Trustee hereunder and shall promptly provide a written notification of the change in residence to the Board and to the Town Clerk. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall resign, or for any other reason cease to be a Trustee hereunder before his her term of office expires, a successor shall be appointed by the Board of Selectmen to fill such vacancy provided that in each case the said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk No such appointment shall be required so long as there are five Trustees in office. Upon the appointment of any succeeding Trustee and the filing of such appointment the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

### **SECTION 4: Meetings of the Trust**

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law G L Chapter 39 Sections 23A 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

### **SECTION 5: Powers of Trustees**

The Board of Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of G. L. Chapter 44 Section 55C as modified under Chapter 109 of the Acts of 2006.

1. With the approval of the Board of Selectmen to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation, or other public or private entity, including without limitation, grants of funds or other property tendered to the trust in connection with provisions of any zoning by law or any other by law;
2. With the approval of the Board of Selectmen and Town Meeting, to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
3. With the approval of the Board of Selectmen and Town Meeting to sell, lease, exchange, transfer, or convey any real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to trust real property as the Trustees deem advisable notwithstanding the length of any such lease or contract;
4. With the approval of the Board of Selectmen, to sell, lease, exchange, transfer, or convey any personal property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to trust personal property notwithstanding the length of any such lease or contract;
5. With the approval of Town Counsel, to execute, acknowledge and deliver deeds, assignments, transfers pledges, leases, covenants, contracts, promissory notes, releases and other instruments, sealed or unsealed, necessary proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
6. To employ advisors and agents such as accountants, appraisers, and lawyers as the trustees deem necessary;
7. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the trustees deem advisable;
8. With the approval of the Board of Selectmen, to participate in any reorganization, recapitalization merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution, to vote any securities or certificates of interest, and to consent to any contract, lease, mortgage, purchase or sale of property by or between any corporation and any other corporation or person;
9. With the approval of the Board of Selectmen, to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the trustees may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board, with the approval of the Board of Selectmen, may deem necessary and appropriate;
10. To carry property for accounting purposes other than acquisition date values;
11. With the approval the Board of Selectmen and the approval of Town Meeting by a two thirds majority vote, to incur debt, to borrow money on such terms and conditions and from such sources as the trustees deem advisable, and to mortgage and pledge trust assets as collateral;
12. With the approval of the Board of Selectmen to disburse trust funds for the purpose of making loans or grants in furtherance of the creation or preservation of affordable housing in Ashburnham upon such terms as the Trustees shall deem most appropriate to carry out such purposes;

13. To make distributions or divisions of principal in kind;
14. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property either in total or partial satisfaction of any indebtedness or other obligation and subject to the provisions of G L Chapter 44, Section 55C, to continue to hold the same for such period of time as the board may deem appropriate;
15. To manage or improve real property and with the approval of the Board of Selectmen and Town Meeting, to abandon any property which the trustees determine not to be worth retaining;
16. To hold all or part of the trust property uninvested for such purposes and for such time as the trustees may deem appropriate; and
17. To extend the time for payment of any obligation to the trust.

**SECTION 6: Funds Paid to the Trust**

Notwithstanding any general or special law to the contrary all moneys paid to the trust in accordance with any zoning by law, exaction fee, or private contribution shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and these funds need not be further appropriated to be expended. All moneys remaining in the trust at the end of any fiscal year remain trust property.

**SECTION 7: Acts of Trustees**

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

**SECTION 8: Liability**

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of G. L. Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G L Chapter 268A.

**SECTION 9: Taxes**

The Trust is exempt from G L Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

**SECTION 10: Custodian of Funds**

The Town Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities.

**SECTION 11: Governmental Body**

The Trust is a governmental body for purposes of Sections 23A 23B and 23C of G. L. Chapter 39.

**SECTION 12: Board of the Town**

The Trust is a board of the Town for purposes of G. L. Chapter 30B and Section 15A of G. L. Chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments, and public instrumentalities of the town shall be exempt from said Chapter 30B.

**SECTION 13: Duration of the Trust**

This Trust shall be of indefinite duration until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

**SECTION 14:**

The Board of Selectmen may authorize the Trustees to execute, deliver, and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

**SECTION 15: Titles**

The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

The Board of Selectmen for themselves and their successors, hereby acknowledge and agree to the terms of this Trust, and the Trustees named hereunder, hereby acknowledge and agree for themselves and their successors to hold the trust property for the purposes hereof in trust for the benefit of all of the Inhabitants of the Town of Ashburnham, Massachusetts, in the manner and under the terms and conditions set forth herein.

Majority “YES”

**Article 14.** To see if the Town will vote to amend the Town’s Zoning Bylaws by amending Section 5, Special Regulations, by inserting the following new Section 5.17, Large Wind Energy Facilities, and

inserting Section 3.27 and Section 3.27(a), to the Schedule of Use Regulations, or act in relation thereto. *(Requested by the Planning Board)*

## 5.17 Large Wind Energy Facilities

### 5.17.1 Purpose

The purpose of this bylaw is to provide by special permit for the construction and operation of wind facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources of the Town of Ashburnham and provide adequate financial assurance for decommissioning.

#### 5.17.1(A) Applicability

This section applies to all utility-scale and on-site wind facilities with capacity greater than 60Kw proposed to be constructed after the effective date of this section. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate(s) capacity.

Any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment shall require a special permit.

#### 5.17.2 Definitions

Utility-Scale Wind Facility: A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

On-Site Wind Facility: A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

Large Wind Energy Facilities: Any utility-scale wind facility or on-site wind facility that generates 60 kilowatts of rated nameplate(s) capacity or greater on a lot.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

Special Permit Granting Authority: The Planning Board, acting as the Special Permit Granting Authority, (SPGA), shall grant a Special Permit for large wind energy facilities as provided for in this bylaw.

Substantial Evidence: Such evidence as a reasonable mind might accept as adequate to support a conclusion.

Wind Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Wind Monitoring or Meteorological Tower: A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

Wind Turbine: A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

### 5.17.3. General Requirements

#### 5.17.3(A) Special Permit Granting Authority

No wind facility over 60 kilowatts of rated nameplate(s) capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a permit from the special permit granting authority. The construction of a wind facility over 60 kilowatts of rated nameplate(s) capacity shall be permitted within the Large Wind Energy Facility Zoning Overlay District subject to the issuance of a Special Permit and provided that the use complies with all requirements set forth in sections 5.17, 3, 4, 5 and 6. All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the special permit granting authority finds in writing that:

- (1) the specific site is an appropriate location for such use;
- (2) the use is not expected to adversely affect the neighborhood;
- (3) there is not expected to be any serious hazard to pedestrians or vehicles from the use;

- (4) no nuisance is expected to be created by the use; and
- (5) adequate and appropriate facilities will be provided for the proper operation of the use.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

#### 5.17.3(B) Large Wind Energy Facility Overlay District

The Large Wind Energy Facility Overlay District is established over all the zoning districts of the Town of Ashburnham, except the following parcels: Map 28 Parcels 1 & 2 and Map 29 Parcels 8-13. The Large Wind Energy Facility Overlay District is located and bounded as shown on a map entitled "Large Wind Energy Facility Zoning Overlay District", Ashburnham, MA prepared by the Town Planner, dated November 13, 2008, and on file with the offices of the Town Clerk, Zoning Enforcement Officer and Town Planner.

#### 5.17.3(C) Compliance with Laws, Bylaws and Regulations

The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

#### 5.17.3(D) Proof of Liability Insurance

The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

#### 5.17.3(E) Site Control

At the time of its application for a special permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

#### 5.17.4 General Siting Standards

##### 5.17.4(A) Freestanding Large Wind Energy Facility Height

Wind facilities shall be no higher than 400 feet above the current grade of the land, provided that wind facilities may exceed 400 feet if:

- (1) the applicant demonstrates by substantial evidence that such height reflects industry standards for a similarly sited wind facility;
- (2) such excess height is necessary to prevent financial hardship to the applicant, and
- (3) the facility satisfies all other criteria for the granting of a special permit under the provisions of this section.

##### 5.17.4(B) Rooftop Large Wind Energy Facility Height.

Rooftop Large Wind Energy Facilities shall not extend more than ten (10) feet above the ridgeline of the structure to which it is attached.

##### 5.17.4(C) Setbacks

Wind turbines shall be set back a distance equal to 1 times the overall blade tip height of the wind turbine from the nearest existing abutting residential or commercial structure and 100 feet from the nearest property line and private or public way.

##### 5.17.4(C)(1) Setback Waiver

The special permit granting authority may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a special permit under the provisions of this section.

#### 5.17.5 Design Standards

##### 5.17.5(A) Color and Finish

The special permit granting authority shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.

#### 5.17.5(B) Lighting and Signage

##### 5.17.5(B)(1) Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

##### 5.17.5(B)(2) Signage

Signs on the wind facility shall comply with the requirements of the town's sign regulations, and shall be limited to:

- (a) Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- (b) Educational signs providing information about the facility and the benefits of renewable energy.

##### 5.17.5(B)(3) Advertising

Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

##### 5.17.5(B)(4) Utility Connections

Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

#### 5.17.5(C) Appurtenant Structures

All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

#### 5.17.5(D) Support Towers

Monopole towers are the only type of support for the Wind Facilities that shall be approved.

#### 5.17.6 Safety, Aesthetic and Environmental Standards

##### 5.17.6(A) Emergency Services

The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the special permit granting authority. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

##### 5.17.6(A)(1) Unauthorized Access

Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access.

##### 5.17.6(B) Shadow/Flicker

Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses through either siting or mitigation.

##### 5.17.6(C) Noise

The wind facility and associated equipment shall conform with the provisions of the Department of Environmental Protection's, (DEP) Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Special Permit Granting

Authority agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:

- (a) Increases the broadband sound level by more than 10 dB(A) above ambient, or
- (b) Produces a “pure tone” condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

The special permit granting authority, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

#### 5.17.6(D) Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and bylaws.

#### 5.17.6(E) Rooftop Wind Energy Facilities Installation

Wind facilities sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code. Certification by an Engineer Licensed by the State of Massachusetts shall be required.

#### 5.17.7 Monitoring and Maintenance

##### 5.17.7(A) Facility Conditions

The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

##### 5.17.7(B) Modifications

All material modifications to a wind facility made after issuance of the special permit shall require approval by the special permit granting authority as provided in this section.

#### 5.17.8 Abandonment or Decommissioning

##### 5.17.8(A) Removal Requirements

Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

- (1) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
- (2) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
- (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The special permit granting authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

##### 5.17.8(B) Abandonment

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the special permit granting authority. The special permit granting authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility.

##### 5.17.8(C) Financial Surety

The special permit granting authority may require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the special permit granting authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment. The Planning Board may require an Annual Report on the working and operating condition of the wind energy facility(ies).

#### 5.17.9 Term of Special Permit

A special permit issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the special permit granting authority upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the special permit granting authority acts. At the end of that period (including extensions and renewals), the wind facility shall be removed as required by this section.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

#### 5.17.10 Application Process & Requirements

##### 5.17.10(A) Application Procedures

###### 5.17.10(A)(1) General

The Planning Board shall adopt an application form, fee schedule and rules and regulations in accordance with the provisions of this bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this bylaw.

###### 5.17.10(A)(2) Application

Each application for a special permit shall be filed by the applicant with the Town Clerk pursuant to section 9 of chapter 40A of the Massachusetts General Laws.

##### 5.17.10(B) Required Documents

###### 5.17.10(B)(1) General

The applicant shall provide the special permit granting authority with 17 copies of the application, plans and documents. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

###### 5.17.10(B)(2)

Name, address, phone number and signature of the applicant, as well as all co- applicants or property owners, if any.

###### 5.17.10(B)(3)

The name, contact information and signature of any agents representing the applicant.

###### 5.17.10(B)(4)

Documentation of the legal right to use the wind facility site, including the requirements set forth in 5.17.10(C)(2) of this section.

##### 5.17.10(C) Siting and Design

The applicant shall provide the special permit granting authority with a description of the property which shall include:

###### 5.17.10(C)(1) Location Map

Copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.

###### 5.17.10(C)(2) Site Plan

A one-inch equals 200 feet (1"=200') plan of the proposed wind facility site, with contour intervals of no more than 10 feet, showing the following:

- (A) Property lines for the site parcel and adjacent parcels within 300 feet.
- (B) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind facility to each building shown.
- (C) Location of all roads, public and private on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent.
- (D) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.
- (E) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.
- (F) Location of viewpoints referenced below in 5.17.10(C)(3) of this section.

#### 5.17.10(C)(3) Visualizations

The special permit granting authority shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

- (A) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views).
- (B) All view representations will include existing, or proposed, buildings or tree coverage.
- (C) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc...).

#### 5.17.10(D) Landscape Plan

A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

#### 5.17.10(E) Operation & Maintenance Plan

The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility. The Applicant shall attempt to implement Low Impact Development Techniques to manage stormwater, in accordance with the Low Impact Development General Bylaw.

#### 5.17.10(F) Compliance Documents

If required under previous sections of this bylaw, the applicant will provide with the application:

- (1) a description of financial surety that satisfies 5.17.8(C) of this section,
- (2) proof of liability insurance that satisfies Section 5.17.3(B) of this section,
- (3) certification of height approval from the FAA,
- (4) a statement that satisfies Section 5.17.6(C), listing existing and maximum projected noise levels from the wind facility.

#### 5.17.10(G) Independent Consultants

Upon submission of an application for a special permit, the special permit granting authority will be authorized to hire outside consultants, pursuant to section 53G of chapter 44 of the Massachusetts General Laws.

#### 5.17.11 Waiver of Compliance

The Planning Board, acting as the Special Permit Granting Authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.17.12 Validity

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

3.2 Schedule of Use Regulations

Use	R-A	R-B	G-B	LI-A	LI-B	B	V-C	I	W	WSP
3.27 Wind Energy Facilities										
a. Large Wind Energy Facilities, only when the requirements and conditions of §5.17 have been met.	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP

**Explanation:** The Planning Board has submitted a total of two (2) Zoning Bylaws related to the permitting of Wind Energy Facilities for this Fall 2008 Special Town Meeting. The proposed Bylaw above, addresses “Large Wind Energy Facilities” which are defined as any wind facility that generates 60 kilowatts of power or greater on a lot, and would add a new Section 5.17 to the Zoning Bylaw (The second article is the Small Wind Energy System Zoning Bylaw). Such facilities would be allowed by a Special Permit approval process, and would be subject to a set of design and siting criteria.

The Planning Board working with the Town Planner developed the Wind Energy Facility Zoning Bylaw(s) after generally favorable feedback received at a Planning Board sponsored Public Forum regarding Wind Facilities Zoning Bylaws back in February 2008. With the Board and the Town Planner aware of rising energy costs and the impact on Town residents, environmental costs associated with continued use of fossil fuels, national security issues with continued reliance on foreign oil (especially Middle East and Venezuela) and that the Commonwealth of Massachusetts is supporting development of wind power as a form of alternative energy, led to the idea of developing Wind Energy-related Zoning Bylaws.

The Commonwealth of Mass and the “Massachusetts Technology Collaborative (MTC)” have prepared Wind Energy Resource Maps for New England. A review of the MTC Wind Energy Resource Maps indicate that given Ashburnham’s hilly topography, especially with Mt. Watatic, Mt. Hunger, Little Watatic Mt., Russell Hill and Jewell Hill, significant areas of the Town are identified to be economically feasible for the location of wind energy facilities.

Around the same time as the February 2008 Public Forum, the Planning Board and Town Planner became aware of the Municipal Light Department interest in wind energy. Stan Herriott has been working with the UMass Renewable Energy Resource Laboratory and the Massachusetts Municipal Wholesale Electric Co on trying to locate a wind energy facility in Ashburnham. The Town of Ashburnham is identified as the community having most land area (24.27 square miles) with winds >= 6.5meters/second (the wind speed it becomes economical to site a large wind energy facility) of any Massachusetts municipality with a Municipal Light Department. Construction of a wind energy facility may not be allowed unless adequate Zoning is in place.

The Planning Board and Town Planner made use of a Model Large Wind Energy Bylaw prepared by the Mass. Executive Office of Environmental Affairs and the Division of Energy Resources. However, the Model Bylaw was edited accordingly, when the Planning Board and Town Planner felt the Model’s proposed standards should be changed to be in the better interest of the Town of Ashburnham, reflect local conditions, and to encourage the development of Wind Power in Ashburnham. The Bylaw contains general siting standards for height and setbacks; design standards for color and lighting; and safety, aesthetic and lighting standards

One significant difference is that the State Model Bylaw recommends Towns to allow such facilities, subject to the identified standards, anywhere in Town. However, because of the Mt. Watatic area being designated as an “Important Bird Area” by Mass Audubon, the Planning Board and Town Planner have proposed a “Large Wind Energy Facility Zoning Overlay District” which includes most of the Town of Ashburnham, except a number of parcels around Mt. Watatic.

SELECTMEN RECOMMENDATION: YES ADVISORY RECOMMENDATION: YES PLANNING BD REC: YES

**Article 14 Voted:** On motion of Margaret Whitney, it was voted to enact the provisions of article 14 as printed in the warrant to amend the Town’s Zoning Bylaws by amending Section 5, Special Regulations, by inserting the following new Section 5.17, Large Wind Energy Facilities, and inserting Section 3.27 and Section 3.27(a), to the Schedule of Use Regulations.

**5.17 Large Wind Energy Facilities**

5.17.1 Purpose

The purpose of this bylaw is to provide by special permit for the construction and operation of wind facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources of the Town of Ashburnham and provide adequate financial assurance for decommissioning.

#### 5.17.1(A) Applicability

This section applies to all utility-scale and on-site wind facilities with capacity greater than 60Kw proposed to be constructed after the effective date of this section. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate(s) capacity.

Any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment shall require a special permit.

#### 5.17.2 Definitions

Utility-Scale Wind Facility: A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

On-Site Wind Facility: A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

Large Wind Energy Facilities: Any utility-scale wind facility or on-site wind facility that generates 60 kilowatts of rated nameplate(s) capacity or greater on a lot.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

Special Permit Granting Authority: The Planning Board, acting as the Special Permit Granting Authority, (SPGA), shall grant a Special Permit for large wind energy facilities as provided for in this bylaw.

Substantial Evidence: Such evidence as a reasonable mind might accept as adequate to support a conclusion.

Wind Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Wind Monitoring or Meteorological Tower: A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

Wind Turbine: A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

#### 5.17.3. General Requirements

##### 5.17.3(A) Special Permit Granting Authority

No wind facility over 60 kilowatts of rated nameplate(s) capacity shall be erected, constructed, installed or modified as provided in this section without first obtaining a permit from the special permit granting authority. The construction of a wind facility over 60 kilowatts of rated nameplate(s) capacity shall be permitted within the Large Wind Energy Facility Zoning Overlay District subject to the issuance of a Special Permit and provided that the use complies with all requirements set forth in sections 5.17, 3, 4, 5 and 6. All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the special permit granting authority finds in writing that:

- (1) the specific site is an appropriate location for such use;
- (2) the use is not expected to adversely affect the neighborhood;
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Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

#### 5.17.3(B) Large Wind Energy Facility Overlay District

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The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

#### 5.17.3(D) Proof of Liability Insurance

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- (b) Produces a "pure tone" condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

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by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

The special permit granting authority, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

#### 5.17.6(D) Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and bylaws.

#### 5.17.6(E) Rooftop Wind Energy Facilities Installation

Wind facilities sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code. Certification by an Engineer Licensed by the State of Massachusetts shall be required.

#### 5.17.7 Monitoring and Maintenance

##### 5.17.7(A) Facility Conditions

The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

##### 5.17.7(B) Modifications

All material modifications to a wind facility made after issuance of the special permit shall require approval by the special permit granting authority as provided in this section.

#### 5.17.8 Abandonment or Decommissioning

##### 5.17.8(A) Removal Requirements

Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

- (1) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
- (2) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
- (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The special permit granting authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

##### 5.17.8(B) Abandonment

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the special permit granting authority. The special permit granting authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility.

##### 5.17.8(C) Financial Surety

The special permit granting authority may require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the special permit granting authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment. The Planning Board may require an Annual Report on the working and operating condition of the wind energy facility(ies).

#### 5.17.9 Term of Special Permit

A special permit issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the special permit granting authority upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the special permit granting authority acts. At the end of that period (including extensions and renewals), the wind facility shall be removed as required by this section.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

#### 5.17.10 Application Process & Requirements

##### 5.17.10(A) Application Procedures

###### 5.17.10(A)(1) General

The Planning Board shall adopt an application form, fee schedule and rules and regulations in accordance with the provisions of this bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this bylaw.

###### 5.17.10(A)(2) Application

Each application for a special permit shall be filed by the applicant with the Town Clerk pursuant to section 9 of chapter 40A of the Massachusetts General Laws.

##### 5.17.10(B) Required Documents

###### 5.17.10(B)(1) General

The applicant shall provide the special permit granting authority with 17 copies of the application, plans and documents. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

###### 5.17.10(B)(2)

Name, address, phone number and signature of the applicant, as well as all co-applicants or property owners, if any.

###### 5.17.10(B)(3)

The name, contact information and signature of any agents representing the applicant.

###### 5.17.10(B)(4)

Documentation of the legal right to use the wind facility site, including the requirements set forth in 5.17.10(C)(2) of this section.

##### 5.17.10(C) Siting and Design

The applicant shall provide the special permit granting authority with a description of the property which shall include:

###### 5.17.10(C)(1) Location Map

Copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.

###### 5.17.10(C)(2) Site Plan

A one-inch equals 200 feet (1"=200') plan of the proposed wind facility site, with contour intervals of no more than 10 feet, showing the following:

(A) Property lines for the site parcel and adjacent parcels within 300 feet.

(B) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind facility to each building shown.

(C) Location of all roads, public and private on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent.

(D) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.

(E) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.

(F) Location of viewpoints referenced below in 5.17.10(C)(3) of this section.

#### 5.17.10(C)(3) Visualizations

The special permit granting authority shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

(A) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views).

(B) All view representations will include existing, or proposed, buildings or tree coverage.

(C) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc...).

#### 5.17.10(D) Landscape Plan

A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

#### 5.17.10(E) Operation & Maintenance Plan

The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility. The Applicant shall attempt to implement Low Impact Development Techniques to manage stormwater, in accordance with the Low Impact Development General Bylaw.

#### 5.17.10(F) Compliance Documents

If required under previous sections of this bylaw, the applicant will provide with the application:

(1) a description of financial surety that satisfies 5.17.8(C) of this section,

(2) proof of liability insurance that satisfies Section 5.17.3(B) of this section,

(3) certification of height approval from the FAA,

(4) a statement that satisfies Section 5.17.6(C), listing existing and maximum projected noise levels from the wind facility.

#### 5.17.10(G) Independent Consultants

Upon submission of an application for a special permit, the special permit granting authority will be authorized to hire outside consultants, pursuant to section 53G of chapter 44 of the Massachusetts General Laws.

#### 5.17.11 Waiver of Compliance

The Planning Board, acting as the Special Permit Granting Authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

#### 5.17.12 Validity

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

3.2 Schedule of Use Regulations

	Use	R-A	R-B	G-B	LI-A	LI-B	B	V-C	I	W	WSP
3.27	Wind Energy Facilities										
	a. Large Wind Energy Facilities, only when the requirements and conditions of §5.17 have been met.	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP

2/3 Majority “YES”

**Articles 15.** To see if the Town will vote to amend the Town’s Zoning Bylaws by amending Section 5, Special Regulations, by inserting the following new Section 5.18, Small Wind Energy Systems, and inserting Section 3.27(b) to the Schedule of Use Regulations, or act in relation thereto. *(Requested by the Planning Board)*

**Section 5.18, Small Wind Energy Systems**

5.18.1 Purpose

The purpose of this Bylaw is to provide criteria which will help the Town of Ashburnham evaluate a small wind project. The criteria will be utilized by Building Inspectors charged with issuing building permits for small wind energy systems. Any proposed non-conforming small wind energy systems will be addressed through a special permit process under the review of the special permit granting authority.

The small wind energy systems bylaw should provide cities and towns with a streamlined and efficient administrative permitting process to allow for responsibly sited small wind systems.

5.18.1(A) Applicability

This section applies to small wind systems no greater than 60 kilowatts in total to the lot of rated nameplate(s) capacity proposed to be constructed after the effective date of this section.

5.18.2 Definitions

**Building Inspector:** The inspector of buildings, building commissioner or local inspector, or, if there are none in a town, the Board of Selectmen, or person or board designated by local ordinance or bylaw charged with the enforcement of the Zoning Bylaw.

**Building Permit:** A building permit is a required approval of a project by the building inspector which is consistent with the local, state and federal building codes. In addition, the permit must meet the criteria set forth under the local zoning bylaws regarding small wind energy systems.

**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Special Permit:** A permit provided by the special permitting authority for nonconforming small wind systems (e.g. a small wind system that does not meet the criteria for small wind systems set forth by the Building Inspector).

**Special Permit Granting Authority:** The Special Permit Granting Authority shall be the Planning Board, by this section for the issuance of special permits to construct and operate small wind energy systems.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a “nameplate” on the equipment.

**Small Wind Energy System:** All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity of 60 kW or less.

**Wind Turbine:** A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

5.18.3 General Requirements

#### 5.18.3(A) Building Inspector Issued Permit

No small wind energy system shall be erected, constructed, installed or modified as provided in this section without first obtaining a building permit from a licensed building inspector from the Town of Ashburnham. All such wind energy systems shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts.

Such permits may also impose safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the small wind energy system, should they occur.

#### 5.18.3(B) Special Permit Granting Authority

If the proposed small wind energy system does not satisfy the criteria of the building permit set forth under the adopted bylaws then the applicant must seek review and petition the Special Permit Granting Authority for a Special Permit. The Special Permit will provide for a variance from the prescribed bylaw requirements. This variance from the building permit criteria will only be applicable to that specific non-conforming project.

#### 5.18.3(C) Compliance with Laws, Bylaws and Regulations

The construction and operation of all such proposed small wind energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications, and FAA aviation requirements.

#### 5.18.3(D) Utility Notification

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### 5.18.3(E) Temporary Meteorological Towers (Met Towers)

Met towers shall be permitted under the same standards as a small wind system, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of 3 years after which an extension may be granted.

Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

#### 5.18.4 General Siting Standards

##### 5.18.4(A) Freestanding Small Wind Energy System Height

Small Wind Energy Facilities shall be no higher than 160 feet, provided that such wind energy facilities may exceed 160 feet if granted a Special Permit from the Planning Board based on:

- (1) the applicant demonstrating by substantial evidence that such height reflects industry standards for a similar sited wind facility.
- (2) demonstration that such excess height is necessary to prevent financial hardship to the applicant, and
- (3) the facility satisfies all other criteria for the granting of a Building Permit, or for a Special Permit, if required.

##### 5.18.4(B) Rooftop Small Wind Energy System Height

Rooftop Small Wind Energy Facilities shall not extend more than ten (10) feet above the ridgeline of the structure to which it is attached.

##### 5.18.4(C) Setbacks

Wind turbines shall be set back a distance equal to the total height of the wind turbine from all abutting inhabited structures, overhead utility lines, public road or right of way and at least 5 feet from property boundaries.

###### 5.18.4(C)(1) Setback Waiver

The Building Inspector may reduce the minimum setback distance if written permission is granted by the entity with care and control over the affected asset.

#### 5.18.5 Design Standards

##### 5.18.5(A) Appearance, Color and Finish

The wind generator and tower shall remain painted or finished the non-reflective color or finish that was originally applied by the manufacturer, unless approved in the building permit.

## 5.18.5(B) Lighting and Signage

### 5.18.5(B)(1) Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration.

Lighting of other parts of the small wind energy system, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

### 5.18.5(B)(2) Signage and Advertising

Signs and advertising shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility and shall defer to the requirements of the Town of Ashburnham sign regulations.

## 5.18.6 Safety, Aesthetic and Environmental Standards

### 5.18.6(A) Unauthorized Access

Wind turbines or other structures part of a small wind energy system shall be designed to prevent unauthorized access.

### 5.18.6(B) Noise

The small wind energy system and associated equipment shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable.

### 5.18.6(C) Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and is otherwise prescribed by applicable laws, regulations, and bylaws.

### 5.18.6(D) Rooftop Wind Energy Facilities Installation.

Wind facilities sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code. Certification by an Engineer Licensed by the State of Massachusetts shall be required.

## 5.18.7 Monitoring and Maintenance

### 5.18.7(A) System Conditions

The applicant shall maintain the small wind energy system in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

## 5.18.8 Abandonment or Decommissioning

### 5.18.8(A) Removal Requirements

Any small wind energy system which has reached the end of its useful life or has been abandoned shall be removed.

A small wind energy system shall be considered abandoned when it fails to operate for one year. Upon a Notice of Abandonment issued by the Building Inspector, the small wind energy system owner will have 30 days to provide sufficient evidence that the system has not been abandoned or the Town of Ashburnham shall have the authority to enter the owner's property and remove the system at the owner's expense.

## 5.18.9 Permit Process, Requirements & Enforcement

### 5.18.9(A) Permit Requirements

#### 5.18.9(A)(1) Documents

The building permit application shall be accompanied by deliverables including the following:

#### 5.18.9(A)(1)(a) A plot plan showing:

- (i) Property lines and physical dimensions of the subject property within 2 times the total height from the tower location.



b. Small Wind Energy Systems. * Allowed by-right (Y) only when the criteria and requirements of §5.18 have been met. Otherwise such systems shall be allowed only by a Special Permit, per §5.18.3(B).	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*
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**Explanation:** This Bylaw is the second of two Wind Energy-related Zoning Bylaws submitted for this Town Meeting. This second bylaw addresses “Small Wind Energy Systems” which are defined as any wind facility, or facilities, that generate no greater than 60 kilowatts in total to a lot. More background information about what led to the development of the Wind Energy Zoning Bylaws is provided in the Explanation section of the Large Wind Energy Facilities Zoning Bylaw Warrant Article.

The Planning Board and Town Planner made use of a Model Small Wind Energy Systems Zoning Bylaw, prepared by the Mass. Executive Office of Environmental Affairs (EOEA) and the Division of Energy Resources. However, the Model Bylaw was edited accordingly, when the Planning Board and Town Planner felt the Model’s proposed standards should be changed to be in the better interest of the Town of Ashburnham, reflect local conditions, and to encourage the development of Wind Power in Ashburnham.

One significant difference between the “Small Wind Energy System” and the Large Wind Energy Facilities” is that small wind energy systems would be allowed by a Building Permit review and approval process, so long as the design and siting criteria outlined in the Bylaw are met. Any such small wind energy system that would not conform to the criteria would be subject to a Special Permit review and approval process by the Planning Board.

Small wind energy systems would be allowed anywhere in Town, subject to either the Building Permit or Special Permit review and approval process. The Bylaw contains standards and criteria related to: height and setbacks; design standards for color, lighting and signage; and safety, aesthetic and environmental standards.

SELECTMEN RECOMMENDATION: YES    ADVISORY RECOMMENDATION: YES    PLANNING BD REC: YES

**Article 15 Voted:** On motion of Jonathan Dennehy, it was voted to enact the provisions of article 15 as printed in the warrant to amend the Town’s Zoning Bylaws by amending Section 5, Special Regulations, by inserting the following new Section 5.18, Small Wind Energy Systems, and inserting Section 3.27(b) to the Schedule of Use Regulations.

**Section 5.18, Small Wind Energy Systems**

5.18.1 Purpose

The purpose of this Bylaw is to provide criteria which will help the Town of Ashburnham evaluate a small wind project. The criteria will be utilized by Building Inspectors charged with issuing building permits for small wind energy systems. Any proposed non-conforming small wind energy systems will be addressed through a special permit process under the review of the special permit granting authority.

The small wind energy systems bylaw should provide cities and towns with a streamlined and efficient administrative permitting process to allow for responsibly sited small wind systems.

5.18.1(A) Applicability

This section applies to small wind systems no greater than 60 kilowatts in total to the lot of rated nameplate(s) capacity proposed to be constructed after the effective date of this section.

5.18.2 Definitions

**Building Inspector:** The inspector of buildings, building commissioner or local inspector, or, if there are none in a town, the Board of Selectmen, or person or board designated by local ordinance or bylaw charged with the enforcement of the Zoning Bylaw.

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**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Special Permit:** A permit provided by the special permitting authority for nonconforming small wind systems (e.g. a small wind system that does not meet the criteria for small wind systems set forth by the Building Inspector).

Special Permit Granting Authority: The Special Permit Granting Authority shall be the Planning Board, by this section for the issuance of special permits to construct and operate small wind energy systems.

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Small Wind Energy System: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity of 60 kW or less.

Wind Turbine: A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

### 5.18.3 General Requirements

#### 5.18.3(A) Building Inspector Issued Permit

No small wind energy system shall be erected, constructed, installed or modified as provided in this section without first obtaining a building permit from a licensed building inspector from the Town of Ashburnham. All such wind energy systems shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts.

Such permits may also impose safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the small wind energy system, should they occur.

#### 5.18.3(B) Special Permit Granting Authority

If the proposed small wind energy system does not satisfy the criteria of the building permit set forth under the adopted bylaws then the applicant must seek review and petition the Special Permit Granting Authority for a Special Permit. The Special Permit will provide for a variance from the prescribed bylaw requirements. This variance from the building permit criteria will only be applicable to that specific non-conforming project.

#### 5.18.3(C) Compliance with Laws, Bylaws and Regulations

The construction and operation of all such proposed small wind energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications, and FAA aviation requirements.

#### 5.18.3(D) Utility Notification

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer’s intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### 5.18.3(E) Temporary Meteorological Towers (Met Towers)

Met towers shall be permitted under the same standards as a small wind system, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of 3 years after which an extension may be granted.

Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

### 5.18.4 General Siting Standards

#### 5.18.4(A) Freestanding Small Wind Energy System Height

Small Wind Energy Facilities shall be no higher than 160 feet, provided that such wind energy facilities may exceed 160 feet if granted a Special Permit from the Planning Board based on:

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Rooftop Small Wind Energy Facilities shall not extend more than ten (10) feet above the ridgeline of the structure to which it is attached.

#### 5.18.4(C) Setbacks

Wind turbines shall be set back a distance equal to the total height of the wind turbine from all abutting inhabited structures, overhead utility lines, public road or right of way and at least 5 feet from property boundaries.

##### 5.18.4(C)(1) Setback Waiver

The Building Inspector may reduce the minimum setback distance if written permission is granted by the entity with care and control over the affected asset.

#### 5.18.5 Design Standards

##### 5.18.5(A) Appearance, Color and Finish

The wind generator and tower shall remain painted or finished the non-reflective color or finish that was originally applied by the manufacturer, unless approved in the building permit.

##### 5.18.5(B) Lighting and Signage

###### 5.18.5(B)(1) Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration.

Lighting of other parts of the small wind energy system, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

###### 5.18.5(B)(2) Signage and Advertising

Signs and advertising shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility and shall defer to the requirements of the Town of Ashburnham sign regulations.

#### 5.18.6 Safety, Aesthetic and Environmental Standards

##### 5.18.6(A) Unauthorized Access

Wind turbines or other structures part of a small wind energy system shall be designed to prevent unauthorized access.

##### 5.18.6(B) Noise

The small wind energy system and associated equipment shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable.

##### 5.18.6(C) Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and is otherwise prescribed by applicable laws, regulations, and bylaws.

##### 5.18.6(D) Rooftop Wind Energy Facilities Installation.

Wind facilities sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code. Certification by an Engineer Licensed by the State of Massachusetts shall be required.

#### 5.18.7 Monitoring and Maintenance

##### 5.18.7(A) System Conditions

The applicant shall maintain the small wind energy system in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

#### 5.18.8 Abandonment or Decommissioning

##### 5.18.8(A) Removal Requirements

Any small wind energy system which has reached the end of its useful life or has been abandoned shall be removed.

A small wind energy system shall be considered abandoned when it fails to operate for one year. Upon a Notice of Abandonment issued by the Building Inspector, the small wind energy system owner will have 30 days to provide sufficient evidence that the system has not been abandoned or the Town of Ashburnham shall have the authority to enter the owner's property and remove the system at the owner's expense.

#### 5.18.9 Permit Process, Requirements & Enforcement

##### 5.18.9(A) Permit Requirements

###### 5.18.9(A)(1) Documents

The building permit application shall be accompanied by deliverables including the following:

###### 5.18.9(A)(1)(a) A plot plan showing:

- (i) Property lines and physical dimensions of the subject property within 2 times the total height from the tower location.
- (ii) Location, dimensions, and types of existing major structures on the property
- (iii) Location of the proposed wind system tower, foundations, guy anchors and associated equipment.
- (iv) The right-of-way of any public road that is contiguous with the property;
- (v) Any overhead utility lines;

###### 5.18.9(A)(1)(b)

Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed)

###### 5.18.9(A)(1)(c)

Tower foundation blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

###### 5.18.9(A)(1)(d)

Tower blueprint or drawing signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

###### 5.18.9(A)(2) Fees

The application for a building permit for a small wind energy system must be accompanied by the fee required by the Building Commissioner.

###### 5.18.9(A)(3) Expiration

A permit issued pursuant to this bylaw shall expire if:

- (a) The small wind energy system is not installed and functioning within 24-months from the date the permit is issued; or,
- (b) The small wind energy system is abandoned.

##### 5.18.9(B) Violations

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this bylaw or with any condition contained in a building permit issued pursuant to this bylaw. Small wind energy systems installed prior to the adoption of this bylaw are exempt.

##### 5.18.9(C) Administration and Enforcement

- (a) This bylaw shall be administered and enforced by the Building Commissioner, or his/her designee.
- (b) The Building Commissioner may enter any property for which a building permit has been issued under this bylaw to conduct an inspection to determine whether the conditions stated in the permit have been met.

##### 5.18.9(D) Penalties

Any person who fails to comply with any provision of this bylaw or a building permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by applicable law.

#### 5.18.10 Waiver of Compliance

The Planning Board, when acting as the Special Permit Granting Authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.18.11 Severability

The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

**3.2 Schedule of Use Regulations**

Use	R-A	R-B	G-B	LI-A	LI-B	B	V-C	I	W	WSP
3.27 Wind Energy Facilities										
b. Small Wind Energy Systems. * Allowed by-right (Y) only when the criteria and requirements of §5.18 have been met. Otherwise such systems shall be allowed only by a Special Permit, per §5.18.3(B).	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*

Unanimous “YES”

**Article 16.** To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift or otherwise as provided by the Massachusetts General Laws on such terms and conditions as are in the Town’s best interest for highway, drainage, water and sewer purposes, various interests in certain land located on Lake Road in the area of the Lake Road Bridge, including but not limited to such permanent and temporary easements as are necessary for the installation, use, inspection, improvement, maintenance and repair of a highway to widen a portion of Lake Road, and for the installation, use, inspection, improvement, maintenance and repair of drainage pipes and all appurtenances relating to and for said systems, as shown on the Lake Road Over Watatic Lake Outlet, on file in the Town Clerk’s office, and to raise and appropriate or transfer from available funds the sum of \$1,500 to pay for such acquisitions, or act in relation thereto.

*(Requested by the DPW Director)*

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 16 Voted:** On motion of Christopher Gagnon, it was voted to authorize the Board of Selectmen to acquire by purchase, gift or otherwise as provided by the Massachusetts General Laws on such terms and conditions as are in the Town’s best interest for highway, drainage, water and sewer purposes, various interests in certain land located on Lake Road in the area of the Lake Road Bridge, including but not limited to such permanent and temporary easements as are necessary for the installation, use, inspection, improvement, maintenance and repair of a highway to widen a portion of Lake Road, and for the installation, use, inspection, improvement, maintenance and repair of drainage pipes and all appurtenances relating to and for said systems, as shown on the Lake Road Over Lake Watatic Outlet, on file in the Town Clerk’s office, and to appropriate from free cash the sum of \$1,500 to pay for such acquisitions.

Unanimous “YES”

**Article 17.** To see if the Town will vote to transfer the care, custody, and control of 56,628 square feet of land located on South School Street, identified as Parcel 57 on Assessor’s Map 59, as conveyed to the Town by treasurer’s deed recorded with the Worcester Northern District Registry of Deeds, Book 1245, Page 409, as held by the Board of Selectmen for general municipal purposes, to the Board of Selectmen for the purpose of renting, conveying, or otherwise disposing of said property, and to authorize the Board of Selectmen to set aside the described land for the construction of one or more permanently affordable

units in accordance with Department of Housing and Community Development (DHCD) requirements, and to issue a Request for Proposals (RFP) for development of said affordable units.  
(Requested by the Ashburnham Habitat Committee)

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 17 Voted:**      On motion of Margaret Whitney, it was voted to PASS OVER this article.

Unanimous “YES”

**Article 18.**      To see if the Town will vote to transfer the care, custody, and control of 10,000 square feet of land located on 57 Ashby Road, identified as Parcel 33 on Assessor’s Map 33, as conveyed to the Town by treasurer’s deed recorded with the Worcester Northern District Registry of Deeds, Book 4016, Page 117, as held by the Board of Selectmen for general municipal purposes, to the Board of Selectmen for the purpose of renting, conveying, or otherwise disposing of said property, and to authorize the Board of Selectmen to set aside the described land for the construction of one or more permanently affordable units in accordance with Department of Housing and Community Development (DHCD) requirements, and to issue a Request for Proposals (RFP) for development of said affordable units.  
(Requested by the Ashburnham Habitat Committee)

SELECTMEN RECOMMENDATION: YES      ADVISORY RECOMMENDATION: YES

**Article 18 Voted:**      On motion of Jonathan Dennehy, it was voted to PASS OVER this article.

Unanimous “YES”

Meeting adjourned at 9:15 P.M.

Respectfully submitted,

Linda A. Ramsdell  
Town Clerk

