

RESULTS
SPECIAL TOWN MEETING
November 19, 26 and 28, 2012

The meeting was televised by Amherst Community Television and shown on the Government Channel.

The Special Town Meeting was called to order by the Moderator, Harrison Gregg at 7:15 p.m. There were 245 town meeting members. 123 checked in and a quorum was declared. The call and return of the warrant was read by Town Clerk, Sandra J. Burgess.

The Moderator asked for a moment of silence in memory of former Town Meeting Member Michael Cann who passed away on October 28, 2012.

ARTICLE 1. Reports of Boards and Committees (Select Board)

VOTED unanimously to hear those reports of Town officers, the Finance Committee, and any other Town boards or committees which are not available in written form.

Action taken on 11/19/12

[Reports were given by Andrew Steinberg on behalf of the Regional School District Planning Committee, and by Kay Moran, on behalf of the Finance Committee]

ARTICLE 2. Transfer of Funds – Unpaid Bills (Finance Committee)

VOTED unanimously to DISMISS

(To see if the Town will, in accordance with Chapter 44, Section 64, of the Massachusetts General Laws, appropriate and transfer a sum of money to pay unpaid bills of previous years.)

Action taken on 11/19/12

ARTICLE 3. Other Post Employment Benefits Trust Fund (Finance Committee)

VOTED in accordance with Section 20 of Chapter 32B of the Massachusetts General Laws, to raise and appropriate \$585,342 for the Other Post Employment Benefits (OPEB) Trust Fund.

Action taken on 11/19/12

ARTICLE 4. Transfer to Stabilization (Finance Committee)

VOTED by a declared two-thirds to appropriate and transfer \$1,002,440 from Free Cash in the Undesignated Fund Balance of the General Fund to the Stabilization Fund.

Action taken on 11/19/12

ARTICLE 5. Capital Program – Debt Authorization (Finance Committee)

VOTED by a declared two-thirds to appropriate the sum of \$1,000,000 to pay costs of repairing various roadways throughout the Town and for the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Select Board, is authorized to borrow said amount under and pursuant to Chapter 44, Section 7 of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor.

Action taken on 11/19/12

ARTICLE 6. Multi-Year Solar Agreements (Select Board)

VOTED to authorize the Town Manager to enter into one or more contracts of up to 30 years to act as a host customer for one or more solar projects and further to authorize the Town Manager to enter into one or more power purchase agreements to purchase all or a portion of the electricity production of solar arrays and to enter into agreements with the local utility to participate in the Net Metering program pursuant to the Acts of 2008, c. 169, §78, the so-called Green Communities Act, as may be amended.

Action taken on 11/19/12

ARTICLE 7. Olympia Drive Street Acceptance (Select Board)

VOTED to authorize the Select Board to acquire, by gift, purchase, and/or eminent domain, a permanent easement to use Olympia Drive for all purposes for which public ways are used in the Town of Amherst and permanent drainage, water, sewer, access and/or other easements related thereto, including, without limitation, a water and sewer easement in Authority Way, all as shown on a plan entitled "Roadway Acceptance Plan Olympia Drive and Authority Way, Amherst, MA," dated August 23, 2012, prepared by Doucet & Associates, Inc., and on file with the Town Clerk.

Action taken on 11/19/12

**ARTICLE 8. Community Preservation Act - Open Space Property and Historic Preservation
(Community Preservation Act Committee)**

A.

VOTED by a declared two-thirds to: (1) authorize the Select Board to acquire, by gift, purchase or eminent domain, for open space purposes, all or a portion of the parcel of land on Bay Road containing 20 acres, more or less, identified on Assessors Map 26D as Parcel 40, and described in a deed recorded with the Hampshire Registry of Deeds in Book 8548, Page 305, which land shall be under the care, custody, management and control of the Conservation Commission under the provisions of G.L. c. 40, §8C; (2) appropriate the sum of \$505,000 for the acquisition of said parcel and costs related thereto, of which \$151,500 shall be transferred from the Community Preservation Act Fund Budgeted Reserve and the remaining \$353,500 shall be borrowed in accordance with G.L. c. 44B, §11, and to authorize the Treasurer, with the approval of the Select Board, to issue any bonds or notes that may be necessary for that purpose pursuant to G.L. 44B, §11, G.L. c. 44, and/or any other enabling authority; (3) authorize the Select Board, the Town Manager, and/or the Conservation Commission, as they deem appropriate, to file on behalf of the Town any and all applications under the LAND Program (G.L. c. 132A, §11) and/or any other applications for funds, gifts, grants, under any federal and/or other state program, in any way connected with the scope of this acquisition, and to enter into all agreements and execute any and all instruments as may be necessary or appropriate to effectuate the foregoing acquisition; and, further, (4) authorize the Select Board and/or the Conservation Commission to convey a conservation restriction on said land in accordance with G.L. c. 184, as required by G.L. c. 44B, §12(a).

Action taken on 11/19/12

B.

VOTED by a declared two-thirds to: (1) authorize the Select Board to acquire, by gift, purchase or eminent domain, for open space purposes, the fee to or a conservation restriction on all or a portion of the parcel of land located at Potwine Lane, containing 16 acres, more or less, and being a part of the premises described in a deed recorded with the Hampshire Registry of Deeds in Book 1272, Page 375, which land or restriction shall be under the care, custody, management and control of or held by the Conservation Commission under the provisions of G.L. c. 40, §8C; (2) appropriate the sum of \$163,000 for the acquisition of said parcel and costs related thereto, of which \$48,500 shall be transferred from the Community Preservation Act Fund Budgeted Reserve, \$33,000 shall be transferred from available Community Preservation Act Fund Balance, and the remaining \$81,500 shall be borrowed in accordance with G.L. c. 44B, §11, and authorize the Treasurer, with the approval of the Select Board, to issue any bonds or notes that may be necessary for that purpose pursuant to G.L. 44B, §11, G.L. c. 44, and/or any other enabling authority; (3) authorize the Select Board, the Town Manager, and/or the Conservation Commission, as they deem appropriate, to file on behalf of the Town any and all applications under the Conservation Partnership Grant Program (Chapter 312 of the Acts of 2008) and/or any other applications for funds, gifts, grants, under any federal and/or other state program, in any way connected with the scope of this acquisition, and to enter into all agreements and execute any and all instruments as

may be necessary or appropriate to effectuate the foregoing acquisition; and, further, (4) authorize the Select Board and/or the Conservation Commission to convey, if applicable, a conservation restriction on said land in accordance with G.L. c. 184, as required by G.L. c. 44B, §12(a).
Action taken on 11/19/12

C.

VOTED by a declared two-thirds to: (1) transfer the care, custody, and control of a portion of the North Common, bordered by Boltwood Avenue, Spring Street, South Pleasant Street, and the Main Street parking lot and shown as “North Common” on a plan on file with the Town Clerk, from the board or officer having custody thereof for the purposes for which it is currently held to the Town Manager for recreational purposes under the provisions of G.L. c. 45, §14 and historical preservation purposes under G.L. c. 40, §8D, as the same may be amended, and other Massachusetts statutes related to recreation and historical preservation, to be managed and controlled by the Leisure Services and Supplemental Education (LSSE) Commission and the Historical Commission; (2) appropriate the sum of \$528,907 for the cost of preserving and/or rehabilitating the North Common and any costs related thereto, of which \$15,000 shall be transferred from the Community Preservation Act Fund Balance and the remaining \$513,907 shall be borrowed in accordance with G.L. c. 44B, §11; (3) authorize the Treasurer, with the approval of the Select Board, to issue any bonds or notes that may be necessary for that purpose pursuant to G.L. 44B, §11, G.L. c. 44, and/or any other enabling authority, and, further, (4) authorize the Town Manager, the Historical Commission, and/or the LSSE Commission, as they may deem appropriate, to file on behalf of the Town any and all applications for grants and/or reimbursements from the Commonwealth of Massachusetts under the PARC Grant Program (301 CMR 5.00) and/or others in any way connected with the scope of this article, and enter into all agreements and execute any and all instruments as may be necessary or convenient to effectuate the foregoing project.
Action taken on 11/19/12

**ARTICLE 9. General Bylaw – Ban of EPS Foam In Food Establishments and Town Facilities
(Recycling and Refuse Management Committee)**

VOTED to adopt the following bylaw regarding the use of expanded polystyrene disposable food and beverage containers by food establishments in the Town of Amherst.

SECTION 1 PURPOSE

This bylaw is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the Town.

SECTION 2 EFFECTIVE DATE

This bylaw shall take effect on January 1, 2014.

SECTION 3 FINDINGS

Expanded polystyrene food containers form a significant portion of the solid waste stream going into our landfills. Local landfills are running out of room; our future solid waste may have to be transported hundreds of miles to a landfill at considerable cost.

Expanded polystyrene food containers are not recyclable, nor are they biodegradable. Once buried in our landfills, they will persist for centuries.

Styrene, the key ingredient in expanded polystyrene, was recently added to the National Toxicology Program’s list of carcinogens (U.S. Department of Health and Human Services). Styrene can leach from polystyrene containers into food and beverages.

Many communities in the United States have banned expanded polystyrene food containers, including

Seattle WA, Freeport Maine, Great Barrington MA and Nantucket MA.

Approximately 60% of Amherst food establishments have already stopped using expanded polystyrene food containers.

University of Massachusetts/Amherst, Amherst College, and Hampshire College food services have eliminated single-use expanded polystyrene food containers from their dining halls.

Appropriate alternative products are readily available from the vendors used by local food establishments; cooperative bulk buying arrangements are possible.

Thus, elimination of expanded polystyrene food containers is in the best interest of the health and welfare of Town inhabitants.

SECTION 4 DEFINITIONS

“Disposable Food Service Container” means single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

“Food Establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., shall be considered a Food Establishment for purposes of this bylaw.

“Expanded Polystyrene” (EPS) means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam.

“Polystyrene” means expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term “polystyrene” also includes clear or solid polystyrene which is known as “oriented polystyrene”.

“Prepared Food” means any food or beverage prepared for consumption on the Food Establishment’s premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

“Town Facility” means any building, structure, land or park owned or operated by the Town of Amherst, its agents and departments.

“Town Facility Users” means all persons, societies, associations, organizations or special event promoters who require a permission to use a Town Facility. Town Facility Users also includes concession contracts with the Town, Town-managed concessions, Town-sponsored events and food services provided at the Town’s expense.

SECTION 5 PROHIBITION

A. Except as provided herein, Food Establishments are prohibited from dispensing Prepared Food to customers in Disposable Food Service containers made from Expanded Polystyrene.

B. Town Facility Users are prohibited from dispensing Prepared Food to customers in Disposable Food

Service containers made from Expanded Polystyrene.

SECTION 6 DEFERMENTS

- A. Upon written application, the Board of Health, after a public hearing, may defer application of this Bylaw for a Food Establishment for a one year period, upon a showing by the Food Establishment that the conditions of this Bylaw would cause undue hardship. For purposes of this Bylaw, an “undue hardship” is a situation unique to the Food Establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that Food Establishment.
- B. A Food Establishment granted a deferment by the Town must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.
- C. A deferment granted in accordance with this Section may be extended for no more than one additional one year period, upon written application to the Board of Health at least two months prior to the expiration of the first deferment period and upon a showing that the circumstances justifying the deferment continue to exist.
- D. A deferment application shall include all information necessary for the Town to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Board of Health may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.
- E. The Board of Health may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the public health and further the interests of this Bylaw.
- F. Deferment decisions are effective immediately and final.

SECTION 7 ENFORCEMENT

- A. The Health Department or its designee shall inquire on an annual basis regarding any food establishment’s compliance with this bylaw as a condition for renewal of the establishment’s food service permit.
- B. The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15, may suspend or revoke the food service permit for any establishment failing to comply with this bylaw.
- C. The Health Department or its designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Health Department or its designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any vendor’s premises to verify compliance in accordance with applicable law.
- D. The Health Department may enforce this by-law or enjoin violations thereof through any lawful process, and the election of one remedy by the Health Department shall not preclude enforcement through any other lawful means.
- E. Penalties and Fines for Violations
Violations of this ordinance may be enforced as follows:

1. This bylaw shall be enforced by the Health Department or its designee, including the Department of Public Works. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall be subject to the following penalties:

For the first violation, the Health Department or its designee, upon determination that a violation has occurred, shall issue a written warning notice to the food establishment which will specify the violation and the appropriate penalties in the event of future violations.

Thereafter, the following penalties shall apply:

(a). A fine of one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.

(b). A fine of two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.

2. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

3. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars.

Action taken on 11/19/12

(A motion was made to change the implementation date to July 1, 2013. Motion to amend was defeated)

At 9:52 p.m. on November 19, 2012 the meeting voted to adjourn to 7:00 p.m. in the auditorium of the Amherst Regional Middle School. 179 town meeting members were checked in.

There were 244 town meeting members; 123 town meeting members constitute a quorum. The Constable reported a quorum at 7:11 pm and the November 26, 2012 session was called to order by the Town Moderator, Harrison Gregg at 7:12 p.m.

On a motion made by Jonathan O'Keeffe town meeting voted to consider Article 15 immediately following Article 11.

ARTICLE 10. Zoning Bylaw – Public Water Supply Protection (Planning Board)

VOTED unanimously to amend Section 3.1, Restricted Uses – All Districts, and Section 3.24, Watershed Protection (WP) District, by adding the language in *bold italics*, as follows:

A. Amend Section 3.1 by adding a new Section 3.14, as follows:

3.14 Development Near Public Water Supply Sources

Notwithstanding any other provision of this Zoning Bylaw, in all zoning districts, any use of land located within Zones I, II, and III for a public water supply well, wellfield, or spring, or within Zones A, B, and C of a surface public water supply source shall be subject to the provisions of 310 CMR 22, including 310 CMR 22.20A-20G and 22.21, as amended, and all such Amherst Board of Health regulations as may apply.

B. Amend Section 3.24, Watershed Protection(WP) District, by adding a new Section 3.2439,

as follows:

The following are restricted or prohibited, as the case may be, in the WP District, except as part of normal agricultural operations: . . .

3.2439 *Any uses of land or related activities specifically restricted or prohibited under 310 CMR 22, including 310 CMR 22. 20A-20G and 22.21, as amended, and all such Amherst Board of Health regulations as may apply.*

Action taken on 11/26/2012

ARTICLE 11. Zoning Bylaw – Lodging or Boarding House Definition (Planning Board)

VOTED by a declared two-thirds to amend Article 12, Definitions, of the Zoning Bylaw, by adding the language in *bold italics*, and enumerating and renumbering the remaining sections in order, as follows:

12. *Lodging or boarding house: A residential use housed in a single dwelling or in part of a dwelling where no fewer than six (6) but not more than ten (10) unrelated persons are let or sublet lodging in private rooms or quarters not constituting dwelling units for definite periods of time, and where there are no overnight stays by transient guests. The building shall be occupied by the owner of the property or the manager of the use. Meals may or may not be provided, but only one common kitchen facility shall exist and no meals shall be provided by the establishment to members of the general public not lodged in the establishment. Lodging or boarding houses shall not include hotels, motels, inns, sorority, fraternity and cooperative residences, dormitories, or convalescent homes, nursing homes, rest homes, or group residences licensed or regulated by agencies of the Commonwealth. Lodging or boarding houses shall abide by all applicable state and local laws and regulations governing lodging houses, boarding houses, or rooming houses.*

Action taken on 11/26/2012

Hilda Greenbaum, Nancy Gordon, Nonny Burack, James Pistrang, Jeffrey Lee, and James Scott were sworn in as Tellers.

ARTICLE 12. Zoning Bylaw – Single Family Dwelling (Planning Board)

DEFEATED Tally Vote Yes 69, No 102

[To see if the Town will amend Section 3.320 and Article 12 of the Zoning Bylaw by deleting the ~~lined-out~~ language, adding the language in *bold italics*, and re-enumerating sections, as follows:

A. Amend Section 3.320 as follows:

3.320 Single family detached dwellings

3.320.0 Class I single family dwelling

R-O

R-LD R-N R-VC R-G R-F B-G B-L B-VC B-N COM OP LI PRP FPC

Y Y Y Y N N N N N N N N N

Standards & Conditions

A Class I single family dwelling shall be a single dwelling unit which serves as the principal residence for: 1) a household including at least one (1) owner living on the premises as their principal residence, or 2) a household renting the dwelling and consisting of an individual, or a group of related persons as defined under Section 12.141. A Class I single family detached dwelling shall be eligible to be occupied by accessory lodgers, boarders, roomers, or bed and breakfast lodgers under the provisions of Article 5.

3.320.1 Class II single family dwelling

R-O

R-LD R-N R-VC R-G R-F B-G B-L B-VC B-N COM OP LI PRP FPC

SP SP SP SP N N N N N N N N N N

Standards & Conditions

A Class II single family dwelling shall be a single dwelling unit where no owner occupies the dwelling unit as their principal residence and the premises is rented to ~~and~~ or occupied exclusively by a household of unrelated persons residing together, as defined in Article 12.

No dwelling unit under this use category may be occupied by a total of more than four (4) unrelated persons.

A Class II single family dwelling shall not be eligible to be occupied by accessory lodgers, boarders, roomers, or bed and breakfast lodgers under Article 5.

The Special Permit Granting Authority shall require the ongoing services of a qualified professional property management company, the presence of an on-site resident manager, or similar provision for proper management of the rental use as a condition of approval.

1. *Name(s) and contact information shall be provided for the owner, any responsible rental property management entity, and at least one on-site resident.*
2. *A management plan as defined in the Rules and Regulations adopted by the Special Permit Granting Authority, shall be included as an integral part of any application. Also included shall be a Response Plan describing the concrete steps to be taken by the property owner or management in response to complaints about the operation of the use or the conduct of the tenants.*
3. *In the R-G and R-VC Districts, a Special Permit granted under this section shall lapse upon any change in ownership of the subject property, and the Special Permit Granting Authority may impose a review of compliance with Special Permit conditions at such intervals as it deems reasonable.*

B. Amend the following subsection of Article 12, as follows, renumbering the remaining sections in order:

12. Dwelling Unit, *Single Detached*: A single family dwelling *residential building*, containing one (1) *dwelling* unit, which provides complete independent living facilities *for a household and is detached from and unconnected to other dwelling units.*]

Action taken 11/26/2012.

[Motion under this article also sought to add the following paragraph under the proposed Standards and Conditions of Section 3.320.0 (Class I Single Family Dwelling)

A single dwelling unit, as defined under this section, may be rented to a household of unrelated persons, not to exceed a total of four (4) persons, for a continuous period not to exceed one (1) year during which the owner is absent for reasons of illness, catastrophe, professional or academic scheduling, or other temporary reasons which do not affect their basic indices of principal residence. However, no such rental may occur more than once during any five (5) year period without obtaining a Special Permit under Section 3.320.1.]

ARTICLE 13. Zoning Bylaw – Two Family Dwellings (Planning Board)

VOTED by a declared two-thirds to amend Section 3.321 and Article 12, Definitions, of the Zoning Bylaw by deleting the ~~lined-out~~ language, adding the language in ***bold italics***, and re-enumerating sections, as follows:

A. Amend Section 3.321, as follows:

3.321 Two family detached dwelling (***duplex***)

[For Sections 3.3210 and 3.3211 below, inclusive]

Except as may otherwise be authorized under this section, a two family detached dwelling (duplex) shall have an external appearance and footprint compatible in terms of design with those of single family detached dwellings in the surrounding neighborhood. In all districts, the Special Permit Granting Authority or Permit Granting Board, as applicable, shall apply the provisions of Sections 3.2040 and 3.2041 to any construction, renovation, or expansion resulting in the creation of a new two family detached dwelling or the addition of a single new dwelling unit to an existing single family residence such that a two family detached dwelling (***duplex***) is created.

Where the two dwelling units are arranged side by side, said units shall either: 1) share a significant portion of at least one common wall or floor abutting habitable space, or, 2) the Special Permit Granting Authority or Permit Granting Board, as applicable, may allow a duplex where the two units do not share a common wall abutting habitable space but are instead connected structurally and continuously by a shared foundation, walls, and roof. The Special Permit Granting Authority or Permit Granting Board may make such an allowance only upon a determination that the design of the proposed duplex is compatible with the architecture and building and site layout of other residential buildings in the surrounding neighborhood.

3.3210 Owner occupied duplex

R-O R-LD	R-N	R-VC	R-G	R-F	B-G	B-L	B-VC	B-N	COM	OP	LI	PRP	FPC
SP (N)	SP (N)	SPR	SPR	N	N	N	N	SPR	N	N	N	N	N

Standards & Conditions

For an owner occupied duplex, one (1) or both of the dwelling units serve as the principal residence of one or more owner(s) of the property.

3.3211 Non-owner occupied duplex

R-O R-LD	R-N	R-VC	R-G	R-F	B-G	B-L	B-VC	B-N	COM	OP	LI	PRP	FPC
SP (N)	SP (N)	SP	SP	N	N	N	N	SP	N	N	N	N	N

Standards & Conditions

For a non-owner occupied duplex, one (1) or both dwelling units are rented and neither unit serves as the principal residence of one or more owner(s) of the property. No dwelling unit under this use category may be occupied by a total of more than four (4) unrelated persons.

The Special Permit Granting Authority shall require the ongoing services of a qualified professional property management company, the presence of an on-site resident manager, or similar provision for proper management of the rental use as a condition of approval.

1. *Name(s) and contact information shall be provided for the owner, any responsible rental property management entity, and at least one on-site resident.*
2. *A management plan as defined in the Rules and Regulations adopted by the Special Permit Granting Authority, shall be included as an integral part of any application. Also included shall be a Response Plan describing the concrete steps to be taken by the property owner or management in response to complaints about the operation of the use or the conduct of the tenants.*
3. *In the R-G and R-VC Districts, a Special Permit granted under this section shall lapse upon any change in ownership of the subject property, and the Special Permit Granting Authority may impose a review of compliance with Special Permit conditions at such intervals as it deems reasonable.*

B. Amend the following subsection of Article 12, as follows, renumbering the remaining sections in order:

12. Dwelling Unit, *Two Family Detached* (Duplex): A *single residential* building containing two (2) dwelling units, arranged *vertically* one above the other, or *horizontally* side by side, each with a separate entrance.

Action taken on 11/26/2012

ARTICLE 14. Zoning Bylaw – Converted Dwellings (Planning Board)

VOTED by a declared two-thirds to amend Section 3.3241 and Article 12, by reorganizing sections, deleting the ~~lined-out~~ language and adding the language in *bold italics*, as follows:

A. Amend Section 3.3241, as follows:

3.3241 Converted dwelling
(see ~~Section 12.07~~
Article 12, Definitions)

R-O R-LD	R-N	R-VC	R-G	R-F	B-G	B-L	B-VC	B-N	COM	OP	LI	PRP	FPC
SP (N)	SP (N)	SP	SP	N	SPR	SP	SP	SP	N	N	N	N	N

Standards & Conditions

1. An existing residence, a structure attached to an existing residence, or a detached structure, may be converted into a dwelling unit or units provided all other zoning requirements which would apply to converted dwellings are met.
2. *A converted dwelling use may involve the conversion of a one or more structures on a given property but shall not result in exceed the a total number of dwelling units on the lot exceeding what would otherwise be allowed on the lot under the provisions of Table 3, Dimensional Regulations, for the zoning district(s) in question. Further, † the total number of dwelling units on a given property shall not exceed 4 in the R-G, R-VC, R-N, R-O, and R-LD districts and shall not exceed 6 in the R-VC, R-G, B-G, B-L and B-VC districts. Conversion in the Aquifer Recharge Protection (ARP) or Watershed Protection*

(WP) overlay districts shall not be permitted.

3. In the B-L, B-VC and B-N districts, the ~~Zoning Board of Appeals~~ **Special Permit Granting Authority** shall issue a Special Permit in accordance with the provisions of this section only after finding ***that the converted dwelling use would be mutually compatible with existing uses and structures, and with uses and structures permitted on adjacent parcels*** the subject parcel in the nonresidential district would not be adversely affected by the multiple dwelling use and that the uses permitted in the district would not be noxious to the multiple dwelling use.
4. There shall be no significant change in the exterior of the building, except that the ~~Zoning Board of Appeals~~ **Special Permit Granting Authority or Permit Granting Board** may authorize modification or alteration of a building if such modification or alteration does not substantially change the building's character or its effect on the neighborhood or on property in the vicinity.
5. ***Except as hereinafter provided, no converted dwelling use shall involve the*** ~~Demolition and removal of the an existing structure proposed for conversion shall not be permitted.~~

Conversion may involve an entire residential structure, except that no more than twenty percent (20%) of the gross square footage of resulting habitable space in any converted dwelling use, whether in one or more buildings, may result from new building footprint as well as demolition and subsequent reconstruction of an existing structure, including structural elements or foundation. An exception shall be that up to forty percent (40%) of gross square footage of resulting habitable space may be permitted, including no more than 20% of new building footprint with the remainder being the result of demolition and reconstruction with salvaged and new building materials, when it is determined by the Special Permit Granting Authority or Permit Granting Board that two (2) or more of the following criteria are met:

- a. ***The conversion addresses urgent and compelling issues of public safety or health.***
- b. ***The conversion results in the creation of a minimum of one (1) dwelling unit that is fully handicapped accessible under the provisions of the AAB and ADA.***
- c. ***The conversion results in the creation of a minimum of one (1) dwelling unit permanently affordable under the provisions of Sections 15.12 or 15.13, and is eligible to be counted on the Commonwealth's 40B Subsidized Housing Inventory (SHI) under the provisions of 760 CMR 50.03 (2) (a) and (b) as amended.***
- d. ***The conversion is predominantly the result of sustainable construction practices, including but not limited to significant improvements in energy efficiency, retention or reuse of significant amounts of existing structural members and architectural elements, and solar orientation and design.***
- e. ***If the conversion is proposed for one or more historic buildings which are: 1) on a property listed on, or 2) within an area listed on, or 3) are eligible for listing on the National Register of Historic Places, or 4) have been determined by the Historical Commission to be historically significant under Section 13.4 of this Bylaw, then the proposed conversion of historic portions of the building(s) in question shall***

conform to the National Park Service standards and guidelines for Rehabilitation of an historic building.

6. The proposed conversion shall be suitably located in the neighborhood in which it is proposed, as deemed appropriate by the ~~Zoning Board of Appeals~~ ***Special Permit Granting Authority***. The conversion, if in a residential district, shall either: a) be located in an area that is close to heavily traveled streets, close to business, commercial and educational districts, or already developed for multi-family use; or b) be from one to two units, one of which shall be and shall remain owner-occupied, which shall be made a condition of any Special Permit issued in such an instance.
7. The dwelling units shall be connected to the public sewer. However, the ~~Zoning Board of Appeals~~ ***Special Permit Granting Authority*** may authorize, with the approval of the Board of Health, the conversion of a structure to allow an increase from one dwelling unit to two dwelling units on a lot serviced by a septic system.
8. The ~~Zoning Board of Appeals~~ ***Special Permit Granting Authority*** may modify the dimensional requirements of Table 3, to, one time only for any parcel, allow a conversion under Section 3.3241 that would add one (1) additional unit, only if it finds the modification would be in accordance with the provisions of Section 9.22. ***In those zoning districts where two family detached (duplex) dwellings are not permitted, conversion of a non-conforming single family detached dwelling may result in two (2) or more dwelling units under the applicable permit.***
9. No detached structure shall be converted under the provisions of Section 3.3241 unless it ***abides by the provisions of Condition 5. above and upon completion*** ~~has an exterior footprint of~~ ***provides*** at least ~~500~~ ***350*** square feet ***of habitable space.***
10. A management plan as defined in the Rules and Regulations adopted by the ~~Zoning Board of Appeals~~ ***Special Permit Granting Authority***, shall be included as an integral part of any application.
11. A landscape plan appropriate for the project shall be included in the application.
12. Converted dwellings in the R-O and the R-LD districts shall provide a minimum of 2,000 sq. ft. of usable open space per dwelling unit for the use of occupants. Converted dwellings in the R-N district shall provide a minimum of 1,000 sq. ft. of usable open space per dwelling unit.
13. ***For any converted dwelling use in the R-G, R-VC, R-N, R-O and R-LD districts, the Special Permit Granting Authority shall require as a condition of the granting of a Special Permit the ongoing services of a qualified professional property management company, the presence of a qualified on-site resident manager, or similar provision for appropriate management of the rental use.***

B. Amend Article 12, as follows, enumerating the amended section and renumbering the remaining sections in order:

- 12.___ ***Converted Dwelling: A use containing one or more dwelling units created predominantly through the conversion of existing residential or non-residential space, where said units are located*** in or attached to an existing residence of ten or more years of age, or a detached structure

constructed prior to 1964, located on a lot where at least one dwelling unit lawfully existed prior to the conversion. ***A converted dwelling use may include portions of dwelling units created through new construction, but no new dwelling unit in a converted dwelling use may be created as a result of new construction alone Proposed multi-unit residential uses not meeting the thresholds established for the conversion of existing space shall be considered to be the residential use category most closely corresponding to the total number of new dwelling units they include and the nature of the use, as determined by the Zoning Enforcement Officer or Special Permit Granting Authority or Permit Granting Board, as applicable.***

Action taken on 11/28/2012

[Vincent O'Connor made a motion to remove the changes proposed for Paragraph 9 so that it would remain as it currently exists. The motion was defeated.]

ARTICLE 15. Zoning Bylaw – Residential Zoning Definitions (Planning Board)

VOTED by a declared two-thirds to amend Article 12, Definitions, by deleting the ~~lined-out~~ language, adding the language in ***bold italics***, and re-numerating the amended sections in order, as follows:

12.____ ***Dwelling Unit: A single residential unit providing complete independent living facilities for a household of one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.***

12.14 Family (***Household***):

12.140 An individual residing in one dwelling unit; or

12.141 A group of persons related by marriage, ***civil union***, blood, ~~and/or~~ adoption, ***guardianship, or other duly authorized custodial relationship*** residing together in one dwelling unit; or

12.142 A group of unrelated individuals, not to exceed 4, residing cooperatively in one dwelling unit. In this instance, an accessory use as described in Sections 5.010 and 5.011 is not permitted.

12.143 A group of individuals, regardless of relation, residing in congregate or similar group housing for the elderly or disabled, in half-way houses, or in other group residential uses authorized and operated under state and federal law.

12.____ ***Habitable Space: The gross square footage of the enclosed interior space of a residential building or dwelling, which space is used or intended to be used for living, sleeping, cooking, or eating purposes. Includes within any single dwelling unit any rooms containing toilets, bathtubs or showers, as well as any laundries, pantries, foyers, communicating corridors, closets and storage spaces, but excluding any such spaces where they are used in common with other dwelling units.***

12.____ Owner-Occupant(s): One or more natural persons who, in their individual capacity as distinct from any representative capacity, own(s) a whole or undivided interest in fee simple of certain real property and at least one of whom occupies a dwelling unit thereon as his or her principal residence (***see definition***).

12.____ ***Residence, Principal: The primary residence of an individual, family (as defined in this Bylaw), or property owner, i.e., the home where an owner, and the owner's family if applicable, resides as the primary dwelling; provided however, that no person shall hold***

concurrent rights in more than one (1) principal residence, as set forth under MGL Ch. 188, Section 1, as amended. Regular or periodic interruptions in residency shall not be considered to change the status of principal residency where such interruptions are the result of illness, catastrophe, professional or academic scheduling, or other temporary reasons for absence which do not affect basic indices of residency. For the purposes of this Bylaw, principal residency shall be determined by the Zoning Enforcement Officer or the Permit Granting Board or Special Permit Granting Authority, as may be applicable, based upon a preponderance of evidence, including but not limited to the following indices of residency and address, as applicable: declaration of homestead, filing of state and federal income taxes, voter registration, annual street list, driver's license, motor vehicle registration, mortgage, mailing address, and telephone listing (if any).

12.____ *Resident Manager: A live-in resident of a rental residential use qualified and responsible for implementation of the property management plan and for managing and coordinating the maintenance, housekeeping, and administrative duties for the rental units under their charge.*

Action taken on 11/26/1012

[Motions were made by Vincent O'Connor to delete the definition of Resident Manager and James Oldham to add "/or" preceding "administrative duties for the rental units under their charge." In the definition for Resident Manager. Both motions were defeated]

At 10:05 p.m. on November 26, 2012, the meeting voted to adjourn to Wednesday, November 28, 2012 at 7:00 p.m. in the auditorium of the Amherst Regional Middle School. 181 town meeting members were checked in.

David Mullins and Alex Krogh-Grabbe were sworn as tellers prior to the beginning of Town Meeting.

There were 243 town meeting members. 123 town meeting members constitute a quorum. The Constable reported a quorum at 7:10 p.m. and the November 28, 2012 session of the November 19, 2012 Special Town Meeting was called to order by the Town Moderator, Harrison Gregg at 7:16 p.m.

Town Meeting resumed with Article 14.

ARTICLE 16. Petition - Zoning Bylaw – Two Family Detached Dwelling (Maurianne Adams et al) DEFEATED Yes 99, No 56 – Motion failed to achieve a two-thirds majority.

[To see if the Town will vote to amend Section 3.321 of the Amherst Zoning Bylaw by adding the language in **boldface** and by deleting the language in ~~strikethru~~ as follows:

3.321 Two-family detached dwelling.

In all districts, the Special Permit Granting Authority or Permit Granting Board, as applicable, shall apply the provisions of Sections 3.2040 [**General Design Review Principles**] and 3.2041 [**Design Review Standards**] to any construction ~~renovation or expansion resulting in the creation of a new two family detached dwelling. or the addition of a single new dwelling unit to an existing single family residence such that a two family detailed dwelling is created.~~ **Any renovation or expansion or addition to an existing dwelling that results in the creation of a two-family dwelling shall be considered a converted dwelling and permitted under Section 3.3241]**

Action taken on 11/28/2012

[A motion was made by Chris Riddle to refer the article to the Planning Board. Motion to refer was defeated.

Results reflect the vote taken on the motion as presented by the petitioner. It should be noted that the original language in 3.321 of the Zoning Bylaw had been amended earlier in this town meeting by approval

of Article 13]

**ARTICLE 17. Petition - Zoning Bylaw – Converted Dwelling Standard and Conditions
(Maurianne Adams et al)**

VOTED by a declared two-thirds to amend paragraph 5 of Section 3.3241 of the Amherst Zoning Bylaw by adding the words in **boldface** and by deleting the words, phrases, sentences, or section in ~~strikethrough~~ as follows:

Section 3.3241 Converted Dwelling – Standards and Conditions

5. The proposed conversion shall be suitably located in the neighborhood in which it is proposed, as deemed appropriate by the Zoning Board of Appeals. The conversion, if in a residential district shall either: 1) be located in an area that is close to heavily traveled streets, close to business, commercial and educational districts, or already developed for multi-family use **and shall require owner-occupancy or a resident manager in one of the units**; or b) be from one to two units. **In both instances one unit** ~~of which~~ shall be and shall remain owner-occupied, **a requirement** which shall be made a condition of any Special Permit issued ~~in such an instance~~

Action taken on 11/28/2012

ARTICLE 18. Petition - Zoning Bylaw – Replacement of Previously Existing Structure or Structure Containing Dwelling Units (Maurianne Adams et al)

VOTED to refer to Planning Board.

Action taken on 11/28/2012

[To see if the Town will vote to amend the zoning bylaw by adding the following section:

Section 3.15 Replacement of Previously Existing Structure or Structure Containing Dwelling Units

No permit shall be granted to reconstruct, rebuild or replace a residential structure which has been demolished, or destroyed other than by .an Act of God, with: a) more residential units than previously legally existed on a lot, or b) a residential structure consisting of more residential square footage than previously existed on a lot; except, that after a finding by the Historical Commission that a residential structure lacks historical, architectural, or geographic significance following a public hearing conducted in accordance with Article 13, the Planning Board may grant a special permit to replace that residential structure with one that has more residential square footage if it finds that the replacement structure meets all bylaw requirements including those of Section 10.38 and is consistent with the scale and architecture of the existing streetscape; except, that no such permit shall issue for the replacement of a residential structure with more square footage than previously existed on a lot in an area under consideration by a Local Historic District Committee appointed by the Select Board in accordance with the provisions of the Massachusetts General Laws.]

[Warrant article sought to add Section 3.14. Discovered to be an error and corrected/amended to Section 3.15 on the floor of town meeting.]

**ARTICLE 19. Petition – General Bylaw – Nuisance House Bylaw Change
(Maurianne Adams et al)**

Amherst Representative Town Meeting having found that:

1 . the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst has been adversely affected by the unusually large number of violations of law at or near residential rental premises with absentee ownership, committed by the residents of such properties and their guests, that

require the frequent attention of the town's police, ambulance, and other services, thereby straining the town's financial capacity and ability to respond to calls for assistance from others; and,

2. the owners and managers of these rental properties have failed to exercise control over them in a responsible manner, allowing disruption to neighborhoods and undue expense to the Town;

VOTED to amend its General Bylaws "Nuisance House" by adding the language in **boldface** and deleting the underlined language as follows:

Purpose

In accordance with the Town of Amherst's Home Rule Authority, and to protect the health, safety, and welfare of the inhabitants of the Town, this bylaw shall permit the Town to impose liability on owners, **rental property managers** and other responsible persons for the nuisances and harm caused by loud and unruly gatherings on private property and shall discourage the consumption of alcoholic beverages by underage persons at such gatherings.

§1. Definitions

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means all liquids intended for human consumption as a beverage which contain one half of one percent or more of alcohol by volume at sixty degree Fahrenheit, including malt beverages.

Eviction means actively trying to evict a tenant from a premise by delivery of a notice to quit and subsequent court proceedings, if a tenant fails to vacate the premises.

Gathering is a party, gathering, or event, where a group of persons have assembled or are assembling for a social occasion or social activity.

Legal Guardian means (1) a person who, by court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.

Underage Person means any person under twenty-one years of age.

Parent means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

Premises means any residence or other private property, place, or location, including any commercial or business property.

Property owner means the legal owner of record as listed by the tax assessors records.

Public Nuisance means a gathering of persons on any premises in a manner which constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood. Unlawful conduct includes, but is not limited to excessive noise, excessive pedestrian and vehicular traffic, obstruction of public streets by crowds or vehicles, illegal parking, public urination, the service of alcohol to underage persons, fights, disturbances of the peace, and litter.

Response costs are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering as set forth in a schedule of costs established by the Board of Selectmen.

Rental Property Manager or Management organization.

Any person or organization acting on behalf of a rental housing owner or owners to screen and place tenants, collect rent, security deposits and other fees, maintain and secure rental housing property, or any

or all of the above.

§2. Consumption of Alcohol by Underage Persons Prohibited in Public Place, Place Open to Public, or Place Not Open to Public

Except as permitted by state law, it is unlawful for any underage person to:

- (a) consume at any public place or any place open to the public any alcoholic beverage; or
- (b) consume at any place not open to the public any alcoholic beverage, unless in connection with the consumption of the alcoholic beverage the underage person is being supervised by his or her parent or legal guardian.

§3. Hosting, Permitting, or Allowing a Public Nuisance or Party, Gathering, or Event Where Underage Persons Consuming Alcoholic Beverages Prohibited

- (a) It is the duty of any person having control of any premises who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages by any underage person at the gathering. Reasonable steps include, but are not limited to, controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of persons attending the gathering by inspecting driver's licenses or other government-issued identification cards to ensure that underage persons do not consume alcoholic beverages while at the gathering; and supervising the activities of underage persons at the gathering.
- (b) A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order by the Police requiring the gathering to be disbanded and citation and/or arrest of any persons under any applicable provision of local or state law.
- (c) It is unlawful for any person having control of any premises to knowingly host, permit or allow a gathering to take place at said premises where at least one underage person consumes an alcoholic beverage, provided that the person having control of the premises either knows an underage person has consumed an alcoholic beverage or reasonably should have known that an underage person consumed an alcoholic beverage and the person having control of said premises failed to take all reasonable steps to prevent the consumption of an alcoholic beverage by an underage person.
- (d) This Section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between an underage person and his or her parent or legal guardian as set forth in G.L. c.138, §34.
- (e) This Section shall not apply to any Massachusetts Alcoholic Beverages Control Commission licensee at any premises regulated by the Massachusetts Alcoholic Beverage Control Commission.

§4. Mailing of Notice to Property Owner.

Notice of response by police or other local officials to a gathering shall be mailed **by the Amherst Police Department** to any property owner listed on the Town of Amherst property tax assessment records **and the rental housing manager or management organization, advising them property owner** that the third such response on the same premises within a one year period, as measured from the date of the first notice, shall result in liability of the property owner **and rental housing manager or management organization** for all penalties associated with such response as more particularly described below.

§5. Persons Liable for a First and Second Response to a Gathering Constituting a Public Nuisance.

If the police department is required to respond to a gathering constituting a public nuisance on the premises, the following persons shall be jointly and severally liable for fines as set forth below. Response costs **shall may** also be assessed.

- (a) The person or persons residing on or otherwise in control of the property where such gathering took place.
- (b) The person or persons who organized or sponsored such gathering.
- (c) All persons attending such gatherings who engage in any activity resulting in the public nuisance.

§6. Persons Liable for a Third and Subsequent Response to a Gathering Constituting a Public Nuisance.

If the police department is required to respond to a gathering constituting a public nuisance on the premises more than twice in any one year period, as measured from the date of the first response, the following persons shall be jointly and severally liable for fines as set forth below. Response costs **shall** may also be assessed.

(a) The person or persons who own **and/or manage** the property where the gathering constituting the public nuisance took place, provided that notice of the first and second responses has been mailed to the owner of the property as set forth herein and the gathering occurs at least fourteen (14) days after the mailing the second such notice. The owner of the property shall not be held responsible for any violation and penalties if they are actively trying to evict a tenant from the property.

- (b) The person or persons who organized or sponsored such gathering.
- (c) All persons attending such gatherings who engage in any activity resulting in the public nuisance.

§7. Enforcement

This bylaw shall be enforced by criminal complaint in the District Court. Violations shall be punishable by a fine of \$300.00. In the alternative it may be enforced by the noncriminal disposition process of M.G.L. c.40 Section 21D. For the purpose of noncriminal enforcement, the enforcing persons shall be any police officer of the Town of Amherst. If enforced pursuant to noncriminal disposition, the following fines shall apply:

- First offense: \$300
- Second offense: \$300
- Third and subsequent offense: \$300

The Town of Amherst **shall** ~~may~~ additionally seek administrative costs and response costs associated with enforcement of Sections 2 and 3, through all remedies or procedures provided by state or local law.

Sections 2 and 3 shall not limit the authority of police officers to make arrests for any criminal offense arising out of conduct regulated by Sections 2 and 3, nor shall they limit the Town of Amherst or the Commonwealth of Massachusetts' ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of Sections 2 and 3.

§8. Local Authority and Severability

No provision of this bylaw shall apply where prohibited or preempted by state or federal law.

If any provision of this ordinance, or the application thereof to any person or circumstances, is declared invalid, that invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application, to this end the provisions of this ordinance are severable.

Action taken on 11/28/2012

[Language existing in the Nuisance House Bylaw was inadvertently omitted from the Petitioner's article. The omitted language was included in the motion presented to Town Meeting.]

The business of the warrant having been completed, the meeting voted to dissolve at 10:09 p.m. on November 28, 2012. 154 town meeting members were checked in.

Attest:
Sandra J. Burgess
Town Clerk