
Town Warrant
Annual Town Meeting
April 28, 2008

Hampshire, ss.

To one of the Constables of the Town of Amherst, in said county, Greetings:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify the registered voters of the Town of Amherst of the **Annual Town Meeting** to be held in the Auditorium of the Amherst Regional Middle School in said Amherst at seven-thirty o'clock p.m. on **Monday, the twenty eighth day of April, two thousand and eight**, when the following articles will be acted upon by town meeting members:

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

To see if the Town will hear those reports of Town officers, the Finance Committee, and any other Town boards or committees which are not available in written form.

ARTICLE 2. Transfer of Funds – Unpaid Bills (Select Board)

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.

ARTICLE 3. Optional Tax Exemptions (Select Board)

To see if the Town will authorize a maximum additional exemption of up to 100 percent for taxpayers qualifying for exemption under Chapter 59, Section 5, Clauses 17D, 22, 37A, or 41C of the Massachusetts General Laws.

ARTICLE 4. Personal Property Exemptions (Select Board)

To see if the Town will authorize the maximum exemption of up to \$5,000 for personal property accounts of \$5,000 or less under Chapter 59, Section 5, Clause 54th of the Massachusetts General Laws.

ARTICLE 5. Authorization for Compensating Balances (Select Board)

To see if the Town will accept the provisions of Chapter 44, Section 53F of the Massachusetts General Laws, which authorize the Treasurer to enter into written agreements with banking institutions pursuant to which the Treasurer agrees to maintain funds on deposit in exchange for banking services.

ARTICLE 6. Retirement Assessment (Select Board)

To see if the Town will raise and appropriate \$2,917,009 for the Hampshire County Retirement System assessment.

ARTICLE 7. Regional Lockup Assessment (Select Board)

To see if the Town will raise and appropriate \$31,323 for the Hampshire County Regional Lockup Facility assessment.

ARTICLE 8. FY 08 Budget Amendments (Finance Committee)

A. To see if the Town will amend the budget voted under Article 17 of the 2007 Annual Town Meeting (FY 2008 Operating Budget) to transfer sums of money between General Government, Public Safety, Public Works, Planning, Conservation, and Inspections, and Community Services accounts to balance the FY 2008 Fiscal Year.

B. To see if the Town will amend the action taken under Article 19 of the 2007 Annual Town Meeting (Reserve Fund) and appropriate and transfer a sum of money from Free Cash in the Undesignated Fund Balance of the General Fund.

ARTICLE 9. Town Libraries Revolving Fund (Jones Library Trustees)

To see if the Town will approve the creation of a revolving fund, pursuant to Massachusetts General Laws, Chapter 44, section 53E 1/2, and any other authority, into which library overdue fines will be deposited and used for library operations.

ARTICLE 10. Amherst-Pelham Regional School District Assessment Method (Amherst-Pelham Regional School Committee)

To see if the Town will approve following the existing Amherst-Pelham Regional School District Agreement for allocating the total amount to be contributed by each member town of the District for Fiscal Year 2009 as required by Section VI of the Regional Agreement.

ARTICLE 11. Amherst-Pelham Regional School District Agreement Amendments (Amherst-Pelham Regional School Committee)

A. To see if the Town will vote to approve an amendment to Section X of the Regional Agreement of the Amherst-Pelham Regional School District to shift the cost of providing transportation to elementary school students from the regional budget to the budgets of the elementary school districts served.

B. To see if the Town will vote to approve an amendment to Section VI of the Regional Agreement of the Amherst-Pelham Regional School District to read ‘If the amount of unencumbered surplus funds of the district at the end of any fiscal year exceeds 5.0 percent of the budgeted operating and capital costs for the succeeding fiscal year, an amount at least equal to the amount of such excess shall be applied by the committee to reduce the amounts certified to the participating towns for such succeeding fiscal year in accordance with Section VII.

ARTICLE 12. FY 2009 Operating Budget (Finance Committee)

To see if the Town will adopt a comprehensive operating budget for the ensuing year and raise and appropriate money therefor.

ARTICLE 13. Reserve Fund (Finance Committee)

To see if the Town will raise and appropriate \$100,000 for the Reserve Fund for FY 2009.

ARTICLE 14. Capital Program – Chapter 90 (Joint Capital Planning Committee)

To see if the Town will authorize the expenditure of \$610,000 of Chapter 90 funds for qualifying purposes and further authorize the Treasurer to borrow in anticipation of reimbursement of these funds from the Commonwealth of Massachusetts.

ARTICLE 15. Capital Program – Equipment (Joint Capital Planning Committee)

To see if the Town will appropriate \$1,226,400 to purchase, repair, and/or install new or replacement equipment and determine whether such appropriation shall be met by taxation, by the transfer of available funds, or otherwise and further to authorize the application for and acceptance of any gifts, bequests, or grants.

ARTICLE 16. Capital Program – Buildings and Facilities (Joint Capital Planning Committee)

To see if the Town will appropriate \$143,000 to repair and/or improve buildings and facilities and determine whether such appropriation shall be met by taxation, by the transfer of available funds, or otherwise and further to authorize the application for and acceptance of any gifts, bequests, or grants.

ARTICLE 17. Capital Program – Bond Authorizations (Joint Capital Planning Committee)

A. To see if the Town will appropriate \$420,000 for roof replacement and to make other extraordinary repairs to the Bangs Community Center and to determine whether this amount shall be raised by taxation, transfer, borrowing or any combination of the foregoing, or to take any other action relative thereto.

B. To see if the Town will appropriate \$635,000 to purchase firefighting apparatus and to determine whether this amount shall be raised by taxation, transfer, borrowing or any combination of the foregoing, or to take any other action relative thereto.

C. To see if the Town will amend the actions taken under Article 5 of the Special Town Meeting held on November 5, 2007, and appropriate \$205,000 to pay costs of purchasing portable classrooms for use by the School Department, and for the payment of all other costs incidental and related thereto, which amount shall be expended in addition to the \$195,000 previously appropriated by the Town for this purpose, and to determine whether this amount shall be raised by taxation, transfer, borrowing or any combination of the foregoing, or to take any other action relative thereto.

ARTICLE 18. Community Preservation Act – Affordable Housing (Community Preservation Act Committee)

To see if the Town will vote to amend, in part, the action taken under Article 24 of the 2007 Annual Town Meeting, which, among other things, authorized the appropriation of \$150,000 from the Community Preservation Fund Balance to provide three deferred payment loans to low and moderate income households to purchase homes in Amherst, to instead authorize the use of said funds to provide purchase price buy-down assistance to three first time homebuyers and to acquire affordable housing restrictions meeting the requirements of M.G.L. c.184, §§ 31-33 on each of the homes purchased through the use of such assistance, and further to authorize the Select Board to accept such affordable housing restrictions, sign any instruments and take any other action necessary to carry out this vote.

ARTICLE 19. Community Preservation Act – Affordable Housing (Community Preservation Act Committee)

A. To see if the Town will appropriate and transfer \$150,000 from the Community Preservation Fund estimated annual revenues, reserves or fund balance, or from other available funds,

for the purpose of creating community housing on a parcel of Town-owned land located on Olympia Drive, identified as a certain parcel of land located on Olympia Drive, Amherst, Massachusetts, which parcel is the northwestern portion of the land taken pursuant to an Order of Taking dated July 13, 1987, and recorded in the Hampshire Registry of Deeds in Book 3018, Page 309, also being a portion of Assessors Map 8D, Parcel 20, and containing 13.5 acres, more or less, with said funds to be used to obtain any and all permits and approvals, including, without limitation, a comprehensive permit, necessary or convenient for the development and construction of a housing project on said property, for the design and construction of said housing, and for such other costs and expenses necessary or incidental to the foregoing, which housing shall be subject to an affordable housing restriction meeting the requirements of M.G.L. c.184, §§ 31-33, reserving at least 25% of the units in the development for sale to or rental by low and/or moderate income individuals or households, and further to authorize the Select Board to accept such affordable housing restriction, sign any instruments and take any other action necessary to carry out this vote for Olympia Drive.

B. To see if the Town will appropriate and transfer \$30,000 from the Community Preservation Fund estimated annual revenues, reserves or fund balance or from other available funds for the purpose of creating community housing by assisting the Habitat for Humanity/Amherst College affordable housing construction project on land shown as Parcel 1 on Assessors Map 18A, pursuant to a grant agreement with the Habitat for Humanity and/or Amherst College, and further to authorize the Select Board to enter into said grant agreement, which agreement shall set forth the terms and conditions under which such funds may be expended, provided, however, that said agreement shall include a requirement that the Town be granted an affordable housing restriction on such property meeting the requirements of M.G.L. c.184, §§ 31-33, and further to authorize the Select Board to accept said affordable housing restriction, sign any instruments, and take any other action necessary to carry out this vote.

ARTICLE 20. Community Preservation Act – Historical Preservation (Community Preservation Act Committee)

A. To see if the Town will appropriate \$54,400 from the Community Preservation Fund estimated annual revenues, reserves or fund balance, or from other available funds for the following historic preservation projects:

Woman’s Club Carriage House	\$	8,800
Archival Documents Conservation/Restoration	\$	20,000
575 North East Street (Kimball Farm- year 2 of 5)	\$	25,600

B. To see if the Town will:

1) authorize the Select Board to acquire by gift, eminent domain, or negotiated purchase parcels of land containing 0.55 acres, more or less, designated as Map 14B, Parcels 250-251 of the Town Cadastre, located north of Main Street, from Hills House LLC, to be managed and controlled by the Parks Commission in consultation with the Amherst Historical Commission for historical preservation and passive recreation purposes,

2) raise, borrow and appropriate \$400,000 for the acquisition of said land and to meet such appropriation with funds transferred and/or borrowed in accordance with M.G.L. Chapter 44B, the Community Preservation Act,

3) authorize the Treasurer, with the approval of the Select Board, to issue any bonds or notes that may be necessary for that purpose, as authorized by M.G.L. Chapter 44, or any other enabling authority,

4) authorize the Town Manager or his designee to file on behalf of the Town any and all applications deemed necessary under the Urban Self-Help Act (M.G.L. Chapter 933, Acts of 1977, as amended) or any other applications for funds in any way connected with the scope of this acquisition, and to accept gifts, bequests, and grants from individuals, groups, corporations,

5) authorize the Town Manager and/or the Select Board, as they deem appropriate, to enter into all agreements and execute any and all instruments including the conveyance of perpetual deed restrictions on said properties, in accordance with M.G.L. Chapter 184 as required by Section 12(a) of Chapter 44B as may be necessary on behalf of the Town to effect said purchase, in conjunction with the acceptance by the Historical Commission of historical preservation agreements on the adjacent parcels designated as Map 14B, Parcels 18 and 252.

ARTICLE 21. Community Preservation Act – Open Space (Community Preservation Act Committee)

A. To see if the Town will appropriate \$20,000 from the Community Preservation Fund annual revenues or available funds for appraisals and surveys to support the purchase of Agricultural Preservation Restrictions (APR’s), Conservation Restrictions (CR’s) and fee acquisitions of land.

B. To see if the Town will appropriate \$20,000 from the Community Preservation Act Fund annual revenues or available funds for appraisals, surveys, wetlands delineations and associated studies to support the purchase of land for recreation in Amherst.

C. To see if the Town will appropriate \$100,000 from the Community Preservation Fund annual revenues or available funds for the purchase of an Agricultural Preservation Restriction in South Amherst (Map 23B, Parcel 30), and to meet such appropriation accept gifts, bequests, and grants from individuals, groups, corporations and;

To authorize the Select Board to acquire an Agricultural Preservation Restriction in South Amherst (Map 23B, Parcel 30) and, upon the tender of a grant from the Commonwealth of Massachusetts under the Agricultural Preservation Program, to authorize the Select Board to convey an interest in such Agricultural Preservation Restriction to the Commonwealth of Massachusetts to be held in common with the Town.

D. To see if the Town will appropriate \$2,500 from the Community Preservation Act Fund annual revenues or available funds for an appraisal of property located easterly of South East Street, owned by Levi Nielsen Co., Inc. and identified on the Town cadastre at parcels 17D-24 consisting of 6.69 acres more or less and parcel 17D-21 consisting of .73 acres more or less.

E. To see if the Town will appropriate \$35,000 from the Community Preservation Fund annual revenues for the purchase of land for open space purposes located easterly of South East Street, owned by Levi Nielsen Co., Inc. and identified on the Town cadastre at parcels 17D-24 consisting of 6.69 acres more or less and parcel 17D-21 consisting of .73 acres more or less and;

To authorize the Select Board to acquire by gift or negotiated purchase parcels of land containing 7.0 acres, more or less, designated as Map 17D, Parcels 24 and 21.

ARTICLE 22. Community Preservation Act Committee – Kimball House (Community Preservation Act Committee)

To see if the Town will appropriate \$50,000 from the Community Preservation Fund Open Space Reserve to fulfill the compensation agreement with the Commonwealth of Massachusetts for the Kimball House Historic Preservation Restriction.

ARTICLE 23. Community Preservation Act Committee – Administrative and Reserve Fund (Community Preservation Act Committee)

To see if the Town will appropriate \$151,500 from the Community Preservation Fund annual revenues or available funds for reasons listed below:

- | | |
|---|-----------|
| A. For administrative expenses | \$ 1,500 |
| B. To reserve to a Budgeted Reserve Fund for future appropriations | \$150,000 |

ARTICLE 24. Community Preservation Act Ballot Question for November, 2008 State Election (Select Board)

To see if the Town will amend the actions taken under Article 2 of the Special Town Meeting held on February 12, 2001, and under Article 38 of the Annual Town Meeting held on May 1, 2006, to increase from one and a half percent to at most, three percent, the surcharge authorized thereunder, and to place on the ballot for the November 4, 2008 State Election a question regarding acceptance of such amended surcharge, all as provided in M.G.L. c.44B, §§ 3 and 16(a).

ARTICLE 25. Zoning Amendment - Density Calculation (Planning Board)

To see if the Town will add a new Section 4.12 and amend Sections 4.3231, 4.330, and 4.520 of the Zoning Bylaw by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

A. Add a new Section 4.12, as follows:

4.12 *If the calculation of maximum density of lots or units for any development method referencing this section results in a figure including a fraction equal to 0.5 or greater, then the figure shall be rounded up to the nearest whole number. If the fraction is less than 0.5, the figure shall be rounded down to the nearest whole number. Dimensional requirements established for building lots in the applicable zoning district(s) and under the applicable development method shall remain in full force and effect, and shall not be altered by the provisions of this section.*

B. Amend Sections 4.3231, 4.330, and 4.520, as follows:

4.3231 The maximum density of a cluster subdivision, except for an affordable cluster, shall not exceed the allowed density for a standard subdivision in any zoning district, said density to be calculated by taking the parcel area, subtracting 10% of that area and dividing that number by the minimum lot area of the zoning district in which the parcel is located. *See Section 4.12.* In addition, it is the intention of this Section that the cluster subdivision not result in more lots than would be approved for a standard subdivision under a Definitive Subdivision Plan, *except as may otherwise be authorized under this Bylaw.*

4.330 The Planning Board may authorize a greater number of building lots than would be allowed by the density requirements of Section 4.3231 or Section 4.327 only if a minimum of 10% of the total dwelling units in the development are affordable units as herein defined. In no event shall the Board authorize a greater number of building lots than 120% of the maximum number of lots otherwise allowed under the applicable development method. For the purpose of this calculation, 10% of the total parcel size shall be subtracted for road allowance prior to calculating the maximum density normally allowed. *See Section 4.12.*

4.520 The maximum density allowed in an Open Space Community Development shall be calculated as follows:

1. Determine the Net Parcel Area by subtracting 75% of the area of all Unbuildable Land Area from the total parcel acreage. Unbuildable Land Area shall consist of the combined acreage of all wetlands, FPC District and 100-year floodplain areas. 100-year floodplain areas shall consist of those areas so designated on federal flood insurance maps.
2. Subtract 8% of the Net Parcel Area for roadways, parking and utilities.
3. Divide the remaining buildable land area by the minimum lot area required in the applicable zoning district(s).
4. Multiply the resulting lot count by 1.2 (120%) to derive the maximum density. *See Section 4.12.*
5. Where no lots are to be provided in an OSCD, the maximum density resulting from this calculation shall serve as the total base dwelling unit count.

ARTICLE 26. Zoning Amendment - 500-502 Sunderland Road (Planning Board)

To see if the Town will amend the Official Zoning Map to change the zoning district designation on Assessors Map 2A, Parcels 51 and 52 from Outlying Residence (R-O) and Low Density Residence/Farmland Conservation overlay (RLD/FC) to Village Center Residence (R-VC).

ARTICLE 27. Zoning Amendment - Municipal Parking District (Planning Board)

To see if the Town will amend the Official Zoning Map and Sections **2.04, 3.2, and 7.4** of the Zoning Bylaw, by deleting the ~~lined out~~ language and adding the language in ***bold italics***, as follows:

A. To amend Section 2.04, as follows:

2.04 ~~Educational~~ ***Special*** Districts

ED Educational

ED zoning allows any use of land and buildings which may legally be carried on by, or under the auspices of, the college or university which owns or manages the property. It is intended that the Educational District only include land which is owned or managed by Amherst College, Hampshire College, or the University of Massachusetts.

MP Municipal Parking

The MP District is an overlay district intended to include selected areas of the downtown General Business (B-G) District and abutting General Residence (R-G) District. Within the MP District, a wide range of permitted retail, service, commercial, and residential uses shall be exempted from the requirement to provide off-street parking spaces. It is the policy of the Town of Amherst to encourage dense multi-use development in its Town Center. Toward that end, provision of adequate off-street parking to support development within the MP District is assumed to be a public responsibility.

B. To amend Section 3.2, as follows:

SECTION 3.20 SPECIAL DISTRICTS REQUIREMENTS

3.26 ~~{RESERVED FOR FUTURE USE}~~ *Municipal Parking District*
See Section 7.4 of this Bylaw for Purpose and Requirements

C. To amend Section 7.4, as follows:

SECTION 7.4 MUNICIPAL PARKING ~~ZONE~~ *DISTRICT*

7.40 *General*

The Municipal Parking District is an overlay district and shall be superimposed on other districts established by this Bylaw. Restrictions and prohibitions of land use in the underlying district shall remain in full force and shall not be modified by the conditions of the MP District unless superseded by the restrictions and prohibitions of the MP District.

7.41 *Establishment of District*

The Municipal Parking District shall consist of those geographic areas shown for this district on the Official Zoning Map. This District is configured to include those lands which constitute the developed core of the downtown business area and immediately abutting residential areas.

7.42 *Purpose*

The purpose of this district is to encourage the dense development of mixed-use buildings and pedestrian spaces in Amherst Town Center. Toward that end, provision of necessary off-street parking for the majority of uses within the MP District is assumed to be a public responsibility.

7.43 *Regulation*

Notwithstanding the other provisions of ~~this~~ *Section 7.0*, off-street parking spaces need not be provided for any *principal or related accessory uses under the following categories of Section 3.3, Use Chart: Residential Use (Section 3.32), Retail Business or Consumer Service Use (Section 3.35), and any Commercial or Research and Industrial Use (Section 3.37), or any Residential Use (Section 3.32) excepting fraternities, sororities, dormitory, hotel or motel, which is located within the "Municipal Parking Zone" District as herein defined. The "Municipal Parking Zone" shall consist of that portion of the area now or subsequently designated as a General Business District, which lies within the following bounds: The following uses shall be required to meet the parking requirements of this Bylaw within the MP District: dormitory or similar college residence hall, hotel or motel, inn, and all other principal and accessory uses under other categories of Section 3.3, Use Chart.*

- ~~On the north: Kellogg Ave., and an extension of its center line to the west;~~
- ~~On the east: Churchill St. and an extension of its center line to the north and south;~~
- ~~On the south: College Street and an extension of its center line to the west;~~
- ~~On the west: North and South Prospect Streets.~~

C. To add the Municipal Parking overlay district to the Official Zoning Map.

ARTICLE 28. Zoning Amendment - Design Review Districts (Planning Board)

To see if the Town will amend the Official Zoning Map and Sections 2.04 and 3.2 of the Zoning Bylaw, by deleting the ~~lined out~~ language and adding the language in *bold italics*, as follows:

A. To amend Section 2.04, as follows:

2.04 ~~Educational~~ *Special Districts*

ED Educational

ED zoning allows any use of land and buildings which may legally be carried on by, or under the auspices of, the college or university which owns or manages the property. It is intended that the Educational District only include land which is owned or managed by Amherst College, Hampshire College, or the University of Massachusetts.

DR Design Review

The DR District is an overlay district intended to include the General Business (B-G) District, and the abutting Limited Business (B-L) districts. The purpose of the DR

District is to support the success and vitality of Amherst's Town Center by assuring that the historic character, aesthetic character, and functional quality of the design of Town Center buildings and sites are protected and enhanced. The DR District corresponds to those areas where the exterior design of new development or alterations requiring permits is subject to review by the Design Review Board.

TCDR Town Common Design Review

The TCDR District is an overlay district intended to include the Amherst Town Common and sites within 150 feet of the Common, as measured from the outside edges of the curbs bordering the three sections of the Common, parking lots and interior road ways. The purpose of the TCDR District is to protect and enhance of the design of the historic Town Common and that of the surrounding buildings and landscapes. The TCDR District corresponds to those areas where the exterior design of new development or alteration on or within the vicinity of the Town Common is subject to review by the Design Review Board.

B. To amend Section 3.2, as follows:

SECTION 3.2 SPECIAL DISTRICTS REQUIREMENTS

3.20 Design Review *Districts*

3.200 *General*

The Design Review District (DR) and Town Common Design Review District (TCDR) are overlay districts and shall be superimposed on other districts established by this Bylaw. Restrictions and prohibitions of land use in the underlying district shall remain in full force, and shall not be modified by the conditions of the DR or TCDR Districts unless superseded by the restrictions and prohibitions of said districts.

3.2000 *Establishment of Districts*

The Design Review District (DR) and Town Common Design Review District (TCDR) shall consist of the geographic areas shown for these districts on the Official Zoning Map.

~~3.200~~ **3.2001 Purpose**

The purpose of this section *and these districts* is to preserve and enhance the Town's cultural, economic and historical resources by providing for a detailed review of all changes in land use, the appearance of structures and the appearance of sites which may affect these resources. The review procedures are intended to:

- 1) Enhance the social and economic viability of the Town by preserving property values and promoting the attractiveness of the Town as a place to live, visit and shop;
- 2) Encourage the conservation of buildings and groups of buildings that have aesthetic or historic significance;
- 3) Prevent alterations that are incompatible with the existing environment or that are of inferior quality or appearance; and
- 4) Encourage flexibility and variety in future development.

3.201 Design Review Board [NO CHANGE]

3.202 Reviewable Actions

The following types of actions shall be subject to review by the Design Review Board and shall be subject to the design standards herein.

3.2020 Actions in the ~~Downtown B-G & B-L~~ DR Districts

All new structures, alterations or additions to existing structures, changes in outdoor land use or changes in site design which require a building permit, Site Plan Review, Special Permit or Variance and which affect the exterior architectural appearance of a building or site shall be subject to review by the Design Review Board, provided that the action occurs within the General Business (B-G) District or abutting Limited Business (B-L) zoning districts.

3.2021 ~~Exterior actions within 150 feet of the Town Common~~
Actions in the TCDR District

Any construction, alteration, demolition or removal that affects the exterior architectural appearance of a building or site shall be subject to review by the Design Review Board provided that the site is on or within 150 feet of the Amherst Town Common, as measured from the outside edges of the curbs bordering the three sections of the Common's *greenspace*, parking lots and interior road ways inclusive.

Exterior architectural appearance shall be defined as the architectural character and general composition of the exterior of a building, including but not limited to the kind, color and texture of building materials, including paint color, and the type, design and character of all windows, doors, light fixtures, signs, awnings, utility and ventilation structures and all other appurtenant elements.

The appearance of a site shall be defined as the character, layout and general composition of the site, including but not limited to the kind, color and texture of such materials as plantings, paving, benches, site lighting, free-standing signs, utility structures and all other appurtenant elements.

3.2022 Actions by Town Government [NO CHANGE]

C. To add the Design Review (DR) and Town Common Design Review (TCDR) overlay districts to the Official Zoning Map.

ARTICLE 29. Petition – Zoning Bylaw – Steep Slopes (O'Connor)

“To see if the town will vote to amend the Amherst Zoning Bylaw by adding the following to the appropriate place in Section 12 ‘Definitions’ and renumbering succeeding sections as necessary:

Steep Slopes: Notwithstanding any other provision of this Bylaw, no portion of any parcel which has a slope of more than 15%, except a lot existing as of February 1, 2008 for a one- or two-family dwelling or for a permitted subdividable dwelling, shall toward meeting any dimensional requirement of this Bylaw except frontage.”

ARTICLE 30. Petition – Zoning Bylaw – Inclusionary Zoning (O'Connor)

“To see if the town will vote to amend the Amherst Zoning Bylaw by adding to Bylaw Section 15.0 ‘Intent and Purpose’ and Section 15.10 as follows, by adding to Article 15 ‘Inclusionary Zoning’ as Sections 15.13 and 15.14 the following, and by renumbering as necessary exiting sections (additions in ***boldface italic***, deletions in ~~strike thru~~):

Section 15.0 Intent and Purpose The purpose of this Article is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community, by maintaining and increasing the supply of affordable ***and accessible*** housing in the Town of Amherst ***that includes active and passive on-site recreational facilities, or as an alternative to the provision and permanent maintenance of such recreational facilities, the payment into a Town of Amherst Recreational Capital Fund of a \$5,000 per unit development impact fee.***

Section 15.10. All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units, ***50% of which shall be countable for the purposes of the Commonwealth’s 40B Subsidized Housing Inventory or its successor***, at the following minimum rates:

Section 15.13 All housing units except those located on the second floor or above in residential developments requiring a special permit and resulting in five or more new dwelling units shall be

front-door accessible – built to standards that allow unimpeded entry by a person in a wheelchair. In developments, required to provide five or more fully accessible units, the special permit granting authority may require that an equal or larger number of units shall, except for kitchen facilities, be built as ground-floor accessible.

Section 15.14 Every application for a residential development requiring a special permit and resulting in five or more new housing units shall be referred to the LSSE Director and Commission of the Town of Amherst for their recommendations regarding the nature, extent and maintenance requirements of such on-site recreational facilities as would be consistent with national or regional standards, which recommendations shall take into account existing recreational facilities near the residential development’s proposed location within the town. The LSSE Director and Commission shall have 35 days from their receipt of such referral to submit their comments to the special permit granting authority.”

ARTICLE 31. Inclusionary Zoning (Planning Board Alternative to Petition) (Planning Board)

To see if the Town will amend Sections 3.32, 4.1, 10.323, 11.230, and Article 15 of the Zoning Bylaw by deleting the ~~lined out~~ language and adding the language in ***bold italics***, as follows:

A. Amend Section 3.32 as follows:

SECTION 3.32 RESIDENTIAL USES

See Article 4 for *Cluster Development*, Planned Unit Residential Development and ~~Cluster Development~~ *Open Space Community Development*. See Section 4.1 for all residential developments resulting in the creation of five (5) or more new dwelling units.

B. Amend Section 4.1, as follows:

SECTION 4.1 GENERAL DEVELOPMENT STANDARDS

The four Development Methods listed in Section 4.0, Overview, ***and all residential land uses resulting in the creation of five (5) or more new dwelling units***, shall be undertaken in accordance with the following General Standards:

- 4.10 All Developments in the Town shall conform to the Design Standards and Required Improvements set forth in the Rules and Regulations Governing the Subdivision of Land, ~~and~~ the Street and Site Work Construction Standards of the Town, ***and all other applicable Town roadway and utility policies and regulations***, as amended.
- 4.11 ***Where building lots are required or proposed, The lot frontage of lots shall be on existing or proposed minor or secondary streets, whether public or private statutory ways, as such streets are defined by the Amherst Planning Board's Rules and Regulations Governing the Subdivision of Land except as provided for in Section 4.4214 and Section 4.534.***
- 4.12 ***All new ground floor dwelling units shall have at least one primary entrance that is fully handicapped accessible under the provisions of Massachusetts Architectural Access Board regulations (521 CMR), as amended.***
- 4.13 ***Facilities for active or passive recreation shall be provided in an amount not less than 1,000 square feet per dwelling unit and permanently maintained on site for the use and benefit of the residents. Such facilities shall not include any drives or parking space, laundry drying area, required side or rear yards, or land within the FPC District or wetlands as determined by the Conservation Commission. Such facilities may include, but are not limited to, contiguous open space kept available for play, tot lots, play structures, gardens, hiking/jogging trails, tennis or basketball courts, or similar facilities. A minimum of 25 percent (25%) of any facilities provided shall be developed as fully handicapped accessible. As an alternative to the direct provision of recreation facilities, the Special Permit Granting Authority of Permit Granting Board may allow payment of a fee of not less than \$ _____ * per new dwelling unit.***

[* Equal to the average cost of constructing 1,000 sq. ft. of recreation facility.]

C. Amend Section 10.323, as follows:

10.323 Upon receipt of an application for a Special Permit, the Special Permit Granting Authority shall transmit copies of the application and plans to appropriate Town boards and officials which may include: the Building Commissioner, Planning Director, Town Engineer, Fire Chief, Conservation Director, Board of Health, Historical Commission,

Public Transportation Committee, *Leisure Services Commission*, and others as necessary. These boards and officials shall have thirty-five (35) days to report to the Special Permit Granting Authority their findings and recommendations. Failure to report in the allotted time shall constitute approval by that board or official of the application submitted.

D. Amend Section 11.230, as follows:

11.230 The Planning Board shall transmit copies of the application and site plan to appropriate Town Boards, and departments which may include: the Town Engineer, Fire Chief, Conservation Department, Building Commissioner, Board of Health, Historical Commission, Public Transportation Committee, *Leisure Services Commission*, and others as necessary. These Boards and departments shall have thirty-five (35) days to report to the Planning Board their findings and recommendations. Failure to report in the allotted time shall constitute approval by that Board or Department of the application submitted.

E. Amend the following subsections of Article 15, as follows:

15.0 Intent and Purpose

The purpose of this Article is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community, by maintaining and increasing the supply of affordable *and accessible* housing in the Town of Amherst

15.10 All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing at the following minimum rates:

<u>Total Development Unit Count</u>	<u>Required Affordable Unit Provision</u>
1-9 units	None*
10-14 units	Minimum one (1) dwelling unit
15-20 units	Minimum two (2) dwelling units
21 units	Minimum 12% of total unit count

* While provision of affordable units is not required for developments containing 1-9 units under this section, the Bylaw encourages affordability and provides for incentives. See Sections 4.33 and 4.55.

Where two or more units are required to be provided under this section, a minimum of fifty percent (50%) of affordable units shall be eligible and countable for the purpose of the Commonwealth's 40B Subsidized Housing Inventory (SHI) or its successor. For developments of 21 or more total units, Calculation of the number of total affordable units or the number of SHI-eligible units shall, if the required percent of the total results in a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5.

15.11 Affordable and *accessible* dwelling units provided under Section 15.10 shall be counted as meeting the requirements for ~~affordability density bonuses under the provisions of Section 4.55, 0.0 (Open Space Community Developments)~~ *Density Bonuses, of this Bylaw.*

ARTICLE 32. Petition – Zoning Bylaw – Main/Dickinson/High Rezoning (O'Connor)

“To see if the Town will amend the Official Zoning Map to change the zoning designation for the following parcels, all on Assessor’s Map 14B:

Parcel 28 - Rezone from R-G to B-VC, contingent upon town meeting voting to authorize the Select Board to accept a restrictive covenant foregoing some uses allowed in the B-VC District;

Parcels 59 and 128 - Rezone from COM to B-VC

Parcel 66 - Rezone from R-G to B-VC, contingent upon town meeting voting to authorize the Select Board to accept a restrictive covenant limiting future use of the property to the current use;

Parcels 129, 130 and 234 – Rezone from COM to R-G

Parcel 131 - Rezone the northerly portion of the parcel excluding the portion subtended by the frontage on Railroad Street from R-G to B-VC”

ARTICLE 33. Petition - Request Planning Board to Develop Zoning Bylaw Amendment – Meet LEED (Weyl)

“To see if the Town will vote to request that the Planning Board develop an amendment to the Amherst Zoning Bylaw that would require the following building projects to meet LEED (Leadership in Energy and Environment Design) standards:

- A. All newly constructed Town buildings and all major renovations of Town buildings.
- B. All newly constructed commercial and office buildings.
- C. All newly constructed multiple residence buildings.”

ARTICLE 34. Petition – Amend Town Government Act or Adopt a Bylaw – Criteria for Town Property Use (Jolly/Roberts)

“To see if the Town will adopt a bylaw, amend the Amherst Town Government Act, or take other action requiring the Selectboard to establish criteria for the use of Town property by community organizations, and to act on requests for such use.”

ARTICLE 35. Petition – 250th Anniversary Celebration Committee Appropriation - \$25,000 (Wagner/Roberts)

“To see if the Town will raise and appropriate the sum of \$25,000 for use by the 250th Anniversary Celebration Committee in commemoration of the Town’s two hundred fiftieth anniversary.”

ARTICLE 36. Petition – Transfer of \$2,524,533 from Free Cash to Stabilization Fund (Gawle)

“To see if the town will transfer the sum of \$2,524,533 from the certified free cash account to the stabilization fund or take any vote or votes relative thereto.”

ARTICLE 37. Free Cash (Finance Committee)

To see if the Town will appropriate and transfer a sum of money from Free Cash in the Undesignated Fund Balance of the General Fund to balance the 2009 Fiscal Year.

ARTICLE 38. Stabilization Fund (Finance Committee)

To see if the Town will raise and appropriate a sum of money to the Stabilization Fund.

ARTICLE 39. Bylaw – Rescind Recombinant DNA Bylaw (Board of Health)

To see if the Town will vote to amend Article III of the General Bylaws by striking the section entitled “Application of Recombinant DNA Technology” in its entirety.

ARTICLE 40. Bylaw – Nuisance House (Select Board)

To see if the Town will vote to amend the General Bylaws of the Town by adding the following bylaw, “Nuisance House”, to Article II, Prohibitions:

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 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 drunkenness, 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.

§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* as set forth in G.L. c.138, §34.

§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* as set forth in subsection (a) of this Section.

(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 to any property owner listed on the Town of Amherst property tax assessment records and shall advise the 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 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 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 may also be assessed.

- (a) The person or persons who own 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. The one year time period for violations for a property shall pertain only to the same residents occupying the property who have had the prior violation(s). New residents shall start a new time cycle of one year should they violate the bylaw.
- (b) The person or persons residing on or otherwise in control of the property where such gathering took place.
- (c) The person or persons who organized or sponsored such gathering.
- (d) All persons attending such gatherings who engage in any activity resulting in the *public nuisance*.

§7. Regulations

The Board of Selectmen is hereby authorized to promulgate regulations to implement this bylaw

§8. 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:

Second offense:

Third and subsequent offense:

The Town of Amherst 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.

§9. 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.

Sources

City of San Diego, California, Social host ordinance.

Town of Amherst, Massachusetts, Keg licensing bylaw.

Town of Hadley, Massachusetts, Keg licensing bylaw.

Town of Narragansett, Rhode Island, Party house nuisance ordinance.

ARTICLE 41. Easement - University Drive (Select Board)

To see if the Town will authorize the Select Board to acquire, by gift, purchase or eminent domain, temporary and permanent easements, and to dispose of excess temporary and permanent easements, for roadway construction and roadway safety improvements along a section of University Drive; all in accordance with a plan entitled "Preliminary Plan for Reconstruction and Related Work on University Drive in the Town of Amherst" prepared by Stantec, April 4, 2008, which is on file in the office of the Town Clerk. Easement areas are shown in Table 1 entitled "Parcel Summary Sheet".

ARTICLE 42. Street Acceptance – Moody Field Subdivision (Select Board)

To see if the Town will accept as a Town Way Moody Field Road as laid out by the Select Board and shown on plans of land filed with the Town Clerk, and authorize the Select Board to take by eminent domain, purchase or otherwise any fee, appurtenant rights, easements or other interest in land therefor, no appropriation being required.

ARTICLE 43. Street Acceptance – Rosemarie and Lilac Streets (Select Board)

To see if the Town will accept as a Town Way Rosemarie Street and Lilac Lane as laid out by the Select Board and shown on plans of land filed with the Town Clerk, and authorize the Select Board to take by eminent domain, purchase or otherwise any fee, appurtenant rights, easements or other interest in land therefor, no appropriation being required.

ARTICLE 44. Street Acceptance – Eveningstar Drive (Select Board)

To see if the Town will accept as a Town Way Eveningstar Drive as laid out by the Select Board and shown on plans of land filed with the Town Clerk, and authorize the Select Board to take by eminent domain, purchase or otherwise any fee, appurtenant rights, easements or other interest in land therefor, no appropriation being required.

ARTICLE 45. Sewer Easement Adjustment - West Street (Select Board)

To see if the Town will abandon a certain sewer and drainage easement taken over the property of Hampshire College referenced in the Order of Taking recorded in Book 1543, Page 549 of the Hampshire County Registry of Deeds, and to acquire by purchase, gift or eminent domain for the construction of a sewer main, drainage and general utility purposes an easement shown in the plan entitled, "Easement Plan of Land in Amherst, Massachusetts Surveyed for the Inhabitants of the Town of Amherst," dated February 15, 2008, drawn by Heritage Surveys, Inc.

ARTICLE 46. Bylaw – Right to Farm (Agricultural Commission)

To see if the Town will vote to adopt a new bylaw entitled "Right to Farm" as recommended by the Agricultural Commission, a copy of which is available for inspection at the Town Clerk's Office.

ARTICLE 47. Bylaw – False Alarm Fees (Select Board)

To see if the Town will vote to amend the General Bylaws of the Town by adding the following Bylaw, "False Alarm Fees", to Article IV:

FALSE ALARM FEES

Any residence, school, municipal building or place of business which has an alarm system connected directly to the Police Department or connected indirectly to said Department through a private alarm company (each of which will be hereinafter referred to as a "monitored system"), shall be

charged a fine for all responses by the Department to such buildings when the response is caused by: (1) the activation of the monitored system through mechanical failure, malfunction, improper installation, or negligence of the user of an alarm system or his employees or agents; or (2) the activation of the monitored system requesting, requiring or resulting in a response on the part of the Police Department when, in fact, there has been no unauthorized intrusion, robbery or burglary, or attempted threat. For the purposes of this bylaw, activation of a monitored system for the purposes of testing with prior approval by the Police Department, or by an act of God, including, but not limited to, power outages, hurricanes, tornadoes, earthquakes and similar weather or atmospheric disturbances shall not be deemed to be a false alarm. A fine for violation of this bylaw may be assessed against the owner or tenant of the residence or place of business.

Penalties for violation of this bylaw shall be as follows, successive responses to be counted within any twelve month period:

First three responses	Warning
Fourth response	\$ 50.00
Fifth response	\$ 75.00
Sixth response	\$100.00
Seventh response	\$150.00
Eighth and subsequent responses	\$200.00

This section may be enforced pursuant to the noncriminal disposition method as contained in M.G.L. Chapter 40, Section 21D. Enforcing persons shall be police officers.

You are hereby directed to serve this call by posting attested copies thereof at the usual places:

Prec. 1	North Amherst Post Office	Prec. 6	Fort River School
Prec. 2	North Fire Station	Prec. 7	Crocker Farm School
Prec. 3	Marks Meadow School	Prec. 8	Munson Memorial Library
Prec. 4	Amherst Post Office	Prec. 9	Wildwood School
Prec. 5	Town Hall	Prec. 10	Campus Center, UMass

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said meeting.

Given under our hands this seventh day of April, 2008.

Gerald S. Weiss
Anne S. Awad
Alisa V. Brewer
Stephanie J. O'Keeffe
Diana B. Stein
Select Board

Hampshire, ss.

April 9, 2008

In obedience to the within warrant, I have this day as directed posted true and attested copies thereof at the above designated places, to wit:

Willie J. Wheeler
Constable, Town of Amherst