

**RESULTS**  
**ANNUAL TOWN MEETING**  
**April 28, 30, May 5, 12, 14, 19, 21, 28, June 2 and 11, 2008**

The meeting was televised by Amherst Community Television and shown on the government channel.

The 249th Annual Town Meeting was called to order by the Moderator, Harrison Gregg at 7:40 p.m.\* There were 254 town meeting members. 128 checked in and a quorum was declared. The call and the return of the warrant were read by Town Clerk, Sandra J. Burgess.

The Town Moderator was sworn to the faithful performance of his duties. Town meeting members were sworn to the faithful performance of their duties.

The Moderator acknowledged the election of town wide officers, and asked the meeting to remember those current and former town meeting members who had died in the past year. Remembered were: John Dittfach, Caroline Olson, and Ned Markert. Nathaniel Reed and Frederick W. Steinbeck were also remembered for their service to the town as Select Board members.

Town Meeting voted to consider Article 8 at 7:30 p.m. on May 19, 2008.

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

**VOTED unanimously** to hear only 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 4/28/2008.

*Reports were heard from the Town Meeting Coordinating Committee, Comprehensive Planning Committee, and the 250<sup>th</sup> Anniversary Celebration Committee.*

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

**DISMISSED** [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 4/28/2008.

ARTICLE 3. Optional Tax Exemptions (Select Board)

**VOTED unanimously** to 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.

Action taken on 4/28/2008.

ARTICLE 4. Personal Property Exemptions (Select Board)

**VOTED unanimously** to authorize the maximum exemption of up to \$5,000 for personal property accounts of \$5,000 or less under Chapter 59, Section 5, Clause 54<sup>th</sup> of the Massachusetts General Laws.

Action taken on 4/28/2008.

ARTICLE 5. Authorization for Compensating Balances (Select Board)

**VOTED** to 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.

Action taken on 4/28/2008.

ARTICLE 6. Retirement Assessment (Select Board)

**VOTED unanimously** to raise and appropriate \$2,917,009 for the Hampshire County Retirement System assessment.

Action taken on 4/28/2008.

ARTICLE 7. Regional Lockup Assessment (Select Board)

**VOTED** to raise and appropriate \$31,323 for the Hampshire County Regional Lockup Facility assessment.

Action taken on 4/28/2008.

ARTICLE 8. FY 08 Budget Amendments (Finance Committee)

**VOTED** to amend the action taken under Article 17 of the 2007 Annual Town Meeting – Fiscal Year 2008 Operating Budget by increasing the appropriations and the amounts to be raised by taxation for the following accounts by \$254,000: Public Safety by \$184,000 and Public Works by \$70,000, and to meet such increased appropriation by decreasing the appropriation and the amount to be raised by taxation for the following accounts by \$254,000: General Government by \$122,000, Planning, Conservation, and Inspections by \$69,000, and Community Services by \$63,000.

Action taken 5/19/2008.

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

**DISMISSED** [To see if the Town will approve the creation of a revolving fund, pursuant to Massachusetts General Laws, Chapter 44, section 53E ½, and any other authority, into which library overdue fines will be deposited and used for library operations.

Action taken 4/28/2008.

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

**VOTED unanimously** to 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.

Action taken on 4/28/2008.

ARTICLE 11. Amherst-Pelham Regional School District Assessment Method (Amherst-Pelham Regional School Committee)

**A. VOTED unanimously** 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.

Action taken 4/28/2008.

**B VOTED unanimously** 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.

Action taken on 4/28/2008.

ARTICLE 12. FY2009 Operating Budget (Finance Committee)

**PUBLIC SAFETY**

**VOTED** to appropriate \$8,160,644 for Public Safety and to meet such appropriation \$6,362,614 be raised by taxation and \$1,798,030 be transferred from the Ambulance Receipts Reserved for Appropriation Account.

Action taken on 4/28/2008.

*\*A motion made by Ms. Stern to increase Public Safety by \$97,356 was defeated.*

At 10:16 p.m. on April 28, 2008, the meeting voted to adjourn to Wednesday, April 30, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 194 town meeting members were checked in.

\* \* \*

The April 30, 2008 session, adjourned from April 28, 2007, was called to order by the Town Moderator, Harrison Gregg, at 7:39 p.m. 128 town meeting members were checked in.

Town Meeting voted the following procedural motions:

To consider the Elementary School and Regional School sections of Article 12 at 7:30 p.m. on Monday, May 5.

To consider Article 26 on Monday, May 19 at 7:35 p.m.

Jeffrey C. Lee, James W. Pistrang, H. Oldham Brooks, Hilda B. Greenbaum, Nancy M. Gordon, and Nonny Burack were sworn in as tellers by the Moderator.

#### **PUBLIC WORKS**

**VOTED** to raise and appropriate \$1,726,974 for Public Works.

Action taken on 4/30/2008.

*\*A motion made by Mr. O'Connor to increase Public Works by \$60,000 was defeated.*

#### **PLANNING/CONSERVATION/INSPECTIONS**

**VOTED YES 121, NO 52** to raise and appropriate \$851,853 for Planning/Conservation/ Inspections.

Action taken 4/30/2008.

*\*Motions were made to decrease Planning/Conservation/Inspections: Mr. Gawle by \$36,861, Mr. Smith by \$80,000, and Ms. Greeney by \$85,843. The Finance Committee motion was voted on first in accordance with Article 1, Section 7, of the Town of Amherst General Bylaws. The Finance Committee motion passed and the three motions to decrease failed by default.*

#### **COMMUNITY SERVICES**

**VOTED** to raise and appropriate \$1,699,567 for Community Services.

Action taken on 4/30/2008.

*\*A motion made by Mr. O'Connor to increase Community Services by \$29,288 was defeated. Tally vote: Yes 65, No 94.*

\* \* \*

At 10:25 p.m. on April 30, 2008, the meeting voted to adjourn to Monday, May 5, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 187 town meeting members were checked in.

\* \* \*

The May 5, 2008 session, adjourned from April 30, 2008, was called to order by the Town Moderator, Harrison Gregg, at 7:42 p.m. 128 town meeting members were checked in.

#### **Procedural Motion**

James Scott was sworn in as teller prior to the tally vote on the procedural motion.

**VOTED** Yes 121, No 69, as amended, that consideration of the Library Services Budget be postponed to 7:30 p.m. on May 12, 2008, and that consideration of the Elementary and Regional School budgets be postponed to Wednesday, May 21, 2008 at 7:30 p.m. and that all other motions under Article 12 be considered in the order in which they appear in the Finance Committee booklet.

*\*A vote on the main motion would have postponed the Library Services budget to May 12, 2008 at 7:30 p.m. and have the Elementary and Regional School budgets considered in the order in which they appear in the Finance Committee booklet.*

## **GENERAL GOVERNMENT**

**VOTED** to appropriate \$6,152,525 for General Government, that the salary of the Moderator be fixed at \$100, that of the Select Board at \$300 each, that of the Elector under the Oliver Smith Will at \$20, and to meet such appropriation \$6,066,737 be raised by taxation and \$85,788 be transferred from the Ambulance Receipts Reserved For Appropriation Account.

Action taken on 5/5/2008.

*\*Motions were made by Mr. O'Connor to increase General Government by \$60,000, and by Mr. Gawle to decrease General Government by \$43,000. The O'Connor amendment was voted on first in accordance with Article 1, Section 7, of the Town of Amherst General Bylaws. The O'Connor amendment was defeated. The Finance Committee motion passed and the Gawle motion to decrease failed by default.*

## **DEBT SERVICE**

**VOTED** to appropriate \$1,446,361 for payment of the Town's General Fund indebtedness, and to meet such appropriation \$1,359,779 be raised by taxation and \$86,582 be appropriated and transferred from the Community Preservation Fund annual revenues.

Action taken on 5/5/2008.

## **LIBRARY SERVICES**

**VOTED** to approve the Library Services operating budget of \$2,128,147, and to raise and appropriate \$1,490,385, appropriate and transfer \$650 from the Herbert B. Adams Fund, and appropriate and transfer \$550 from the R.J.D. Westcott Fund as its share of that budget.

Action Taken on 5/12/2008

*\*O'Connor motion to increase the Library Services operating budget by \$25,000 was defeated. BenEzra motion to increase by \$11,000 was defeated by tally vote: Yes 63, No 117.*

## **ELEMENTARY SCHOOLS**

**VOTED** to raise and appropriate \$20,689,430 for the Amherst Elementary Schools.

Action taken on 5/21/2008.

*\*A motion to postpone consideration of the Elementary and Regional School budgets to Wednesday, May 28, 2008, was defeated. Yes 82, No 103.*

*\*\*Motions were made by Michael Ash to increase the Elementary School Budget by \$400,000, and by Nancy Gordon to decrease by \$1,000,000. The Ash amendment was voted on first in accordance with Article 1, Section 7, of the Town of Amherst General Bylaws. The Ash amendment was defeated. The Finance Committee motion passed and the Gordon motion to decrease failed by default.*

## **REGIONAL SCHOOL**

**VOTED** to approve the Amherst-Pelham Regional School District operating and capital budget of \$28,120,995 and to raise and appropriate \$12,395,375 as its share of that budget.

Action taken on 5/21/2008.

*\*A motion to postpone consideration of the Elementary and Regional School budgets to Wednesday, May 28, 2008, was defeated. Yes 82, No 103.*

At 9:50 p.m. on May 21, 2008, the meeting voted to adjourn to Monday, May 28, 2008, at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 191 town meeting members were checked in.

\* \* \*

## **WATER FUND**

**VOTED unanimously** to appropriate \$4,224,006 for the Water Fund and to meet such appropriation \$3,974,006 be made available from Water Fund revenues of the current year and \$250,000 be transferred from Water Fund Surplus.  
Action taken on 5/5/2008.

#### **SEWER FUND**

**VOTED** to appropriate \$3,670,647 for the Sewer Fund and to meet such appropriation \$3,670,647 be made available from Sewer Fund revenues of the current year.

Action taken on 5/5/2008.

*\*A motion made by Mr. Gawle to increase the Sewer Fund by \$37,000 was defeated.*

#### **SOLID WASTE FUND**

**VOTED unanimously** to appropriate \$625,524 for the Solid Waste Fund and to meet such appropriation \$516,300 be made available from Solid Waste Fund revenues of the current year and \$109,224 be transferred from Solid Waste Fund Surplus.

Action taken on 5/5/2008.

#### **TRANSPORTATION FUND**

**VOTED unanimously** to appropriate \$1,010,754 for the Transportation Fund and to meet such appropriation \$912,000 be made available from Transportation Fund revenues of the current year and \$98,754 be transferred from Transportation Fund Surplus.

Action taken on 5/5/2008.

At 10:03 p.m. on May 5, 2008, the meeting voted to adjourn to Monday, May 12, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 204 town meeting members were checked in.

\* \* \*

The May 12, 2008 session, adjourned from May 5, 2008 was called to order by the Town Moderator, Harrison Gregg, at 7:41 p.m. 128 town meeting members were checked in.

Town Meeting voted the following procedural motions:

To consider Article 17, Part C at 7:31 p.m. on May 19, 2008.

To consider Article 20, Part B at 7:30 p.m. on May 28, 2008.

Town Meeting resumed with Article 12 – Library Services

#### **ARTICLE 13. Reserve Fund (Finance Committee)**

**VOTED unanimously** to raise and appropriate \$100,000 for the Reserve Fund for FY 2009.

Action taken on 5/12/2008.

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

**VOTED** to 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.

Action taken on 5/12/2008.

*\*Gawle amendment to restrict use of Chapter 90 for road maintenance and repairs was defeated.*

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

**VOTED** to appropriate \$1,226,400 to purchase, repair, and/or install new or replacement equipment, and to meet such appropriation, \$1,086,400 be raised by taxation, \$32,000 be transferred from Article 21 of the 2005 Annual Town Meeting (Vehicle Washer), \$80,000 be transferred from Article 34 of the

2006 Annual Town Meeting (Marks Meadow Portable Classrooms), and \$28,000 be transferred from Article 31 of the 2007 Annual Town Meeting (Police Station HVAC improvements).  
Action taken on 5/12/2008.

ARTICLE 16. Capital Program – Buildings and Facilities (Joint Capital Planning Committee)  
**VOTED** to appropriate \$143,000 to repair and/or improve buildings and facilities, and to meet such appropriation, \$93,000 be raised by taxation and \$50,000 be transferred from Article 21 of the 2005 Annual Town Meeting (Vehicle Washer).

Action taken on 5/12/2008.

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

**A. VOTED by a declared two-thirds** to appropriate \$420,000 to pay costs of roof replacement and other extraordinary repairs to the Bangs Community Center, and to meet such appropriation the Treasurer, with the approval of the Select Board, is authorized to borrow \$420,000 in accordance with Massachusetts General Laws Chapter 44, Section 7, Clause (3A), or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor.

Action taken on 5/12/2008.

**B. VOTED** to raise and appropriate \$635,000 for the purchase of firefighting apparatus.

Action taken on 5/12/2008.

**C. VOTED by a declared two-thirds** to amend the actions taken under Article 5 of the Special Town Meeting held on November 5, 2007, and appropriate \$105,000 to pay costs of purchasing portable classrooms for the use of 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 for this purpose, and to meet this appropriation, the Treasurer, with the approval of the Select Board, is hereby authorized to borrow said amount under and pursuant to Chapter 44, Section 7(9) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore.

Action taken 5/19/2008.

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

**VOTED unanimously** 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.

Action taken on 5/12/2008.

At 9:58 p.m. on May 12, 2008, the meeting voted to adjourn to Wednesday, May 14, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 188 town meeting members were checked in.

\* \* \*

The May 14, 2008 session, adjourned from May 12, 2008 was called to order by the Town Moderator, Harrison Gregg, at 7:44 p.m. 127 town meeting members were checked in.

Town Meeting voted to postpone consideration of Article 24 to May 21, 2008, after the Elementary and Regional School budgets.

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

**A. VOTED unanimously as amended** to appropriate and transfer \$150,000 from the Community Preservation Fund estimated annual revenues, 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.

Action taken on 5/14/2008

**B. VOTED unanimously as amended** to appropriate and transfer \$30,000 from the Community Preservation Fund estimated annual revenues, 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.

Action taken 5/14/2008.

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

**A. VOTED as amended** to appropriate \$54,400 from the Community Preservation Fund estimated annual revenues, 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

Action taken on 5/14/2008.

**B. VOTED as amended** to:

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) appropriate \$270,000 for the acquisition of said land, and to meet such appropriation, appropriate and transfer \$81,000 from the Community Preservation Fund annual estimated revenues, with the additional \$189,000 to be borrowed in anticipation of receipt of a grant from the Commonwealth of Massachusetts, pursuant to G.L. c. 44, s. 6A.

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.

Action taken on 6/11/2008.

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

**A. VOTED unanimously** to appropriate and transfer from the Community Preservation Fund estimated annual revenues \$20,000 for appraisals and surveys to support the purchase of Agricultural Preservation Restrictions (APR's), Conservation Restrictions (CR's) and fee acquisitions of land.

Action taken on 5/14/2008.

**B. VOTED** to appropriate and transfer from the Community Preservation Fund estimated annual revenues \$20,000 for appraisals, surveys, wetlands delineations and associated studies to support the purchase of land for recreation in Amherst.

Action taken on 5/14/2008.

**C. VOTED** to appropriate and transfer from the Community Preservation Fund estimated annual revenues \$80,000 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 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 convey an interest in such Agricultural Preservation Restriction to the Commonwealth of Massachusetts to be held in common with the Town.

Action taken on 5/14/2008.

**D. DEFEATED** [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.]

Action taken on 5/14/2008.

**E. DISMISSED** [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.]

Action taken on 5/14/2008.

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

**VOTED** to 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.

Action taken on 5/14/2008.

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

**A. VOTED** to appropriate and transfer from the Community Preservation Fund estimated annual revenues \$1,500 for administrative expenses.

Action taken on 5/14/2008.

**B. DISMISSED** [To reserve to a Budgeted Reserve Fund for future appropriations]

Action taken on 5/14/2008.

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

**VOTED Yes 92, No 71** to 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 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).

Action taken on 5/28/2008.

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

**VOTED by a declared two-thirds** to 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.

Action taken on 5/14/2008.

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

**DEFEATED Yes 63, No 117** [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).]

Action taken on 5/19/2008.

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

**VOTED, as amended, by a declared two-thirds** to 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 off-street parking is not required for selected uses within the MP District.*

### **B. To amend Section 3.2, as follows:**

#### SECTION 3.2 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 off-street parking is not required for selected uses within the MP District.*

##### **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.**

Action taken on 5/14/2008.

*\*Motion to refer back to Planning Board was defeated.*

At 10:01 p.m. on May 14, 2008, the meeting voted to adjourn to Monday, May 19, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 163 town meeting members were checked in.

\* \* \*

The May 19, 2008 session, adjourned from May 15, 2008, was called to order by the Town Moderator, Harrison Gregg, at 7:42 p.m. 127 town meeting members were checked in.

Town Meeting resumed with Article 8 which was postponed from April 28, 2008, and continued with Article 17, Part C, which was postponed from May 19, 2008, and Article 26 which was postponed from April 30, 2008.

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

**VOTED, as amended, by a declared two-thirds** to 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 greenspace, as measured from the outside edges of the curbs bordering the three sections of the Common, parking lots and interior roadways inclusive. 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.**

Action taken on 5/19/2008.

ARTICLE 29. Petition – Zoning Bylaw – Steep Slopes (O'Connor)  
**VOTED** to refer Article 29 to the Planning Board for future action.

[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 count toward meeting any dimensional requirement of this Bylaw except frontage.”]*

Action taken on 5/19/2008.

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

**VOTED unanimously** to refer the proposed section 15.14 to the Planning Board and the Leisure Services Commission for future action. [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 fire 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.”]***

Action taken on 5/19/2008.

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

**VOTED** to 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. VOTED, as amended, by a declared two-thirds** to 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***.

Action taken under **Motion I** on 5/19/2008.

**B. VOTED** to amend Section 4.1, as follows:

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.~~

Action taken under **Motion II** on 5/19/2008.

**VOTED** to refer Section 4.12 of Part B of the Article to the Planning Board and Disability Access Advisory Committee.

**[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.]**

Action taken under **Motion III** on 5/19/2008.

**C. VOTED by a declared two-thirds** to 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.

Action taken under **Motion I** on 5/19/2008.

**D. VOTED by a declared two-thirds** to 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.

Action taken under **Motion I** on 5/19/2008.

**E. VOTED, as amended, by a declared two-thirds** to 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 forty-nine percent (49%) 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, e 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.***

Action taken under **Motion IV** on 5/19/2008

*\*Motion made by Ms. Gray in terms of Part E was defeated. Ms. Gray's amended motion would have returned to the original article language of "a minimum of fifty percent (50%) of affordable units" under Section 15.10.*

At 10:29 p.m. on May 19, 2008, the meeting voted to adjourn to Wednesday, May 21, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 191 town meeting members were checked in.

\* \* \*

The May 21, 2008 session, adjourned from May 19, 2008, was called to order by the Town Moderator, Harrison Gregg, at 7:40 p.m. 127 town meeting members were checked in.

Town Meeting resumed with consideration of Article 12 – Elementary Schools and Regional School.

\* \* \*

The May 28, 2008 session, adjourned from May 21, 2008, was called to order by the Town Moderator, Harrison Gregg, at 7:43 p.m. 127 town meeting members were checked in.

Town Meeting voted, Yes 90: No 46, to postpone consideration of Article 20 B until after Article 47.

Town Meeting voted to consider Article 40 after Article 24.

ARTICLE 32. Petition – Zoning bylaw – Main/Dickinson/High Rezoning (O’Connor)

**VOTED unanimously** to refer Article 32 back to the Planning Board.

Action taken on 5/28/2008.

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

**VOTED** to request that the Planning Board, working with any other appropriate boards, committees or departments, develop and propose a new Town by-law which would minimize the short term and the long term negative impact construction has on the environment; and that in developing such a proposal, the Planning Board use the LEED (Leadership in Energy and Environmental Design) standards and the MA-CHPS (Massachusetts Collaborative for High Performance Schools) standards and other third-party rating systems as guidelines, said by-law to apply to all newly constructed and all major renovations to Town buildings, and to all newly constructed private commercial, office and multiple-residence buildings.

Action taken on 5/28/2008

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

**DISMISSED** [“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.”]

Action taken on 6/2/2008.

ARTICLE 35. Petition – 250<sup>th</sup> Anniversary Celebration Committee Appropriation (Wagner/Roberts)

**VOTED** to raise and appropriate the sum of \$25,000 for use by the 250<sup>th</sup> Anniversary Celebration Committee in commemoration of the Town’s two hundred fiftieth anniversary.

Action taken on 6/2/2008.

ARTICLE 36. Petition – Transfer from Free Cash to Stabilization Fund (Gawle)

**VOTED** to refer Article 36 to the Finance Committee. [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.]

Action taken on 6/2/2008.

ARTICLE 37. Free Cash

**VOTED** to appropriate and transfer \$425,000 from Free Cash in the Undesignated Fund Balance of the General Fund to balance the 2009 Fiscal Year.

Action taken on 6/2/2008.

ARTICLE 38. Stabilization Fund (Finance Committee)

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

Action taken on 6/2/2008

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

**VOTED** to amend Article III of the General Bylaws by striking the section entitled “Application of Recombinant DNA Technology” in its entirety.

Action taken on 6/2/2008.

*\*Motion made by Mr. Mudgett to refer this article to the Board of Health and Select Board was defeated.*

ARTICLE 40. Bylaw – Nuisance House (Select Board)

**VOTED Yes 127, No 34 as amended** to adopt the Nuisance House Bylaw as printed in the warrant. [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. 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 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 5/28/2008.

At 10:03 p.m. on May 28, 2008, the meeting voted to adjourn to Monday, June 2, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 172 town meeting members were checked in.

\* \* \*

The June 2, 2008 session, adjourned from May 28, 2008, was called to order by the Town Moderator, Harrison Gregg, at 7:44 p.m. 127 town meeting members were checked in.

Town Meeting voted to consider Article 20B at 7:30 p.m. on Wednesday, June 11, 2008.

Town Meeting resumed with consideration of Article 34.

#### ARTICLE 41. Easement – University Drive (Select Board)

**DISMISSED** [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”.]

Action taken on 6/2/2008.

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

**VOTED unanimously** to 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.

Action taken on 6/2/2008.

#### ARTICLE 43. Street Acceptance – Rosemary Street and Lilac Lane

**VOTED unanimously as amended** to accept as a Town Way Rosemary 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.

Action taken on 6/2/2008

#### ARTICLE 44. Street Acceptance – Eveningstar Drive 0 Select Board)

**DISMISSED** [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.]

Action taken on 6/2/2008.

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

**VOTED** to 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.

Action taken on 6/2/2008.

ARTICLE 46. Bylaw – Right to Farm

**VOTED unanimously as amended** to adopt a new bylaw entitled “Right to Farm” as recommended by the Agricultural Commission

## AMHERST RIGHT-TO-FARM BYLAW

### Section 1. Legislative Purpose and Intent

The purpose and intent of this Bylaw is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97 of the Articles of Amendment of the Massachusetts Constitution and all state statutes and regulations thereunder, including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9; Chapter 111, Section 125A; and Chapter 128, Section 1A. We the citizens of Amherst restate and republish these rights pursuant to the Town’s authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution (“Home Rule Amendment”). This General Bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Amherst by allowing agricultural uses and related activities and promoting efficient conflict resolution with abutters and Town agencies.

### Section 2. Definitions

The word “farm” shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of agriculture. The words “farming” or “agriculture” or their derivatives shall include, but not be limited to the following:

- farming in all its branches and the cultivation and tillage of the soil;
- dairying;
- production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- growing and harvesting of forest products upon forest land, and any other forestry, lumbering, or tree-growing operations;
- raising of livestock including horses;
- keeping of horses as a commercial enterprise;
- keeping and raising of poultry, swine, cattle, sheep, cavies (such as rabbits) ratites (such as emus, ostriches, and rheas) and camelids (such as llamas, alpacas, and camels), and other domesticated animals for food and other purposes, including bees and fur-bearing animals;

- production and processing of crops for biofuels for the purpose of generating alternative energy;
- operation and transportation of all farm equipment over roads within the town;
- harvest of crops according to generally accepted agricultural practices
- control of pests including, but not limited to, insects, weeds, predators, and disease organisms of plants and animals;
- tillage, cultivation, and application of manure, fertilizers, and pesticides;
- conducting agriculture-related educational activities;
- conducting farm-based recreational activities, provided that the activities are related to marketing the agricultural output or services of the farm;
- processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
- maintenance, repair, or storage of seasonal equipment or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, land management activities, or sale of the agricultural products;
- on-farm relocation of earth, and the clearing of ground for farming operation including burning brush in accordance with Massachusetts agricultural fire permit regulations (310 CMR 7.07); and
- construction and use of farm structures and facilities for the purpose of: storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products; housing of livestock; processing of animal wastes and agricultural products; season extension or hydroponic production of agricultural products; sale of agricultural products; or use by farm labor; construction and maintenance of fences; all as permitted by local and state building codes and regulations.

### Section 3. Right to Farm Declaration

The Right to Farm is hereby recognized to exist with the Town of Amherst, in recognition of the benefits of farming to the neighborhood, community and society in general. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. The benefits and protections of this Bylaw are intended to apply exclusively to those agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm Bylaw shall be deemed as acquiring any interest in land, or imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning bylaw. This Bylaw does not supersede local, state or federal laws or regulations or private covenants.

### Section 4. Effective Date

This Bylaw shall be effective upon approval by the Massachusetts Attorney General and the publication and posting as required by law.

### Section 5. Disclosure Notification to Real Estate Buyers

In order to allow prospective purchasers to make informed decisions prior to a real estate transaction and to promote harmony between farmers and their new neighbors after a transaction, the Town of Amherst requests selling landholders and/or their agents (and assigns) provide written notice to prospective purchasers substantially as follows:

“It is the policy of the Town of Amherst to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers that the property they are about to acquire lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Purchasing, and henceforth occupying land within Amherst means that one should expect and accept such conditions as a normal and necessary aspect of living in Amherst.”

Written notification may occur in one of several ways including but not limited to a disclosure form, addendum to a Purchase and Sale Agreement and should include an acknowledgement by the buyer that they have received notification.

Within 30 days after this Bylaw becomes effective the Select Board shall make available for use by selling landowners or their agents (and assigns) copies of example written notifications.

Within 30 days after this Bylaw becomes effective the Select Board shall prominently place in the town hall the above disclosure.

#### Section 6. Resolution of Disputes

Any person having a complaint about a farm or farming activity or practice is encouraged to seek an amicable solution through resolution directly with the owner or operator of the farm at issue. Such person may also, notwithstanding the pursuit of other available remedies, file such complaint with the Town Manager. The Town Manager will forward the complaint to the Agricultural Commission, and other board or officer deemed appropriate. The Agricultural Commission will seek an amicable resolution through facilitating discussion between the parties, and will report back to the Town Manager on the outcome within a reasonable time frame.

#### Section 7. Severability Clause

If any part of this Bylaw is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this bylaw. The Town of Amherst hereby declares the provisions of this Bylaw to be severable.

Action taken on 6/2/2008.

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

**VOTED** 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.  
Action taken on 6/2/2008.

At 9:25 p.m. on the 2<sup>nd</sup> day of June 2008, the meeting voted to adjourn to Wednesday, June 11, 2008 at 7:30 p.m. in the auditorium of the Amherst Regional Middle School. 168 town meeting members were checked in.

\* \* \*

The June 11, 2008 session, adjourned from June 2, 2008, was called to order by the Town Moderator, Harrison Gregg, at 7:42 p.m. 127 town meeting members were checked in.

Town Meeting resumed with consideration of Article 20, Part B.

\* \* \*

The business of the warrant having been completed, town meeting voted to dissolve at 8:32 p.m. on June 11, 2008. 172 town meeting members were checked in.

Attest:

Sandra J. Burgess  
Town Clerk

*\*Historical Note:*

*The Moderator announced that this Annual Meeting, heretofore designated the Two Hundred Forty-Ninth would henceforth be recognized as the Two Hundred Fiftieth. Research by Elizabeth Sharpe, President of the Amherst Historical Society, has established that Amherst's first Annual Meeting as an independent district was held on March 19, 1759 with Ebenezer Dickinson as moderator; this Meeting, 249 years later, is therefore the Two Hundred Fiftieth Annual Meeting.*

*Among other business, the 1759 meeting:*

- *Elected officers, including selectmen, treasurer, constables, surveyors, tything men, fence viewers, hog reeves.*
- *Voted that "hogs rung & Yoakt According to Law may run at Large".*
- *Voted to "Hire Six Bulls for the District Service this Year".*
- *Voted "the Select men to Hire said Bulls".*
- *Set the salary for the minister at 66 pounds plus 15 pounds for firewood.*
- *Raised 20 pounds for schooling for the year.*

*Amherst continued to call itself a district until 1776 when, for the first time, the minutes refer to the Town of Amherst. According to Planning Director Jonathan Tucker, recognition as a Town was not officially granted by the Commonwealth until 1788.*