

**ANNUAL TOWN MEETING  
TOWN OF WHATELY  
April 27, 2010**

Pursuant to the within warrant the annual meeting of the Town of Whately held at the Whately Elementary School, 273 Long Plain Road was called to order Tuesday, April 27, 2010 at 7:05 p.m. by Moderator Paul M. Fleuriel, Jr. Town Clerk, Lynn M. Sibley read the Constable's return of the warrant. Virginia Allis acted as checker and assigned voting placards to those voters attending the meeting. Attendance was 116 voters.

Motion was made and seconded to recess the Annual Town Meeting and take up the business of the Special Town Meeting at 7:05. Motion passed. Special Town Meeting minutes are kept separate from these Annual Town Meeting minutes. Annual Town Meeting was reconvened at 7:10 p.m.

Jonathan Edwards explained that the previous practice of making a motion to take up an article and voting on that motion will be eliminated unless someone objected. There were no objections.

The Moderator appointed George Bucala and William Smith as counters. This meeting was being broadcast on Channel 15 as well.

**Article 1.** Upon motion made and seconded, it was

Voted that town accept the Annual Reports of the officers of the Town, and to hear any other reports of the Boards and Committees. (No reports were heard at this time)

**Article 2.** Upon motion made and seconded it was

Voted to authorize the Town Treasurer with the approval of the Board of Selectmen, to borrow money from time to time in anticipation of the revenue of the Fiscal Year beginning July 1, 2010, in accordance with the provisions of General Laws, Chapter 44, Section 4, and to renew any note or notes as may be given for a period of less than one year, in accordance with the provisions of General Laws, Chapter 44, Section 17.

**Article 3.** Upon motion made and seconded, it was

Voted to authorize the Town Treasurer, with the approval of the Board of Selectmen, to enter into compensating balance agreements with banking institutions having their principal offices in the Commonwealth during Fiscal Year 2011, as permitted by General Laws Chapter 44, Section 53F.

**Article 4.** Upon motion made and seconded, it was

Voted that the town apply for, accept, and expend any federal, state or private grant monies on behalf of the Town and authorize the Town Treasurer with the approval of the Board of Selectmen to borrow in anticipation of reimbursement.

**Article 5.** Upon motion made and seconded, it was

Voted that the town authorize revolving funds for certain town departments under Massachusetts General Laws Chapter 44 s. 53 E ½ for the fiscal year beginning July 1, 2010 per the chart in your warrant.

<b>Revolving Fund</b>	<b>Authorized to Spend Fund</b>	<b>Revenue Source</b>	<b>Use of Fund</b>	<b>FY2011 Spending Limit</b>	<b>Disposition of FY11 Fund Balance</b>	<b>Spending Restrictions or Comments</b>
Dog Licensing and Control Revolving Fund	Town Clerk, Animal Control Officer	Dog license fees, fines and late charges	Any lawful expense related to dog licensing, animal control officer operating expenses, or any expense related to the implementation of the town's Dog Control By-law	\$1,000	\$1,000 of balance available for expenditure, remainder to revert to General Fund	Funds may not be spent for the salaries of any full-time employees
Recreation Revolving Fund	Recreation Commission by majority vote of its membership	Sports program registration fees, building and park rental fees, donations and proceeds from fund-raisers	Any lawful expense related to the activities, programs, and facilities operated by the Recreation Commission	\$10,000	Balance available for expenditure	Funds may not be spent for the salaries of any full-time employees
Library Revolving Fund	Trustees of S. W. Dickinson Memorial Library, by majority vote of its membership	Fees from overdue books and videos and fees from copy machine use	Any lawful expense associated with the activities and programs of the S. W. Dickinson Memorial Library	\$1,000	Balance available for expenditure	Funds may not be spent for the salaries of any full-time employees
Public Hearings Revolving Fund	Town Clerk	Fees for costs of public hearings	Costs related to hearings: advertising, recording fees, and other expenses	\$2,500	Balance available for expenditure.	Funds may not be spent for the salaries of any full-time employees
Cordwood Sales Revolving Fund	Tree Warden, Highway Superintendent	Revenues from sale of cordwood.	Purchase of replacement trees on town property.	\$2,500	Balance available for expenditure	Funds may not be spent for the salaries of any full-time employees.
Cemetery Commissioner Revolving Fund	Cemetery Commissioners	Opening Graves Fees	Costs of contractor expenses for digging graves and commissioners expenses for burial	\$1,000	Balance available for expenditure	Funds may not be spent for the salaries of any full-time employees
Trench Permit	Highway Superintendent and Police Department	Trench Permit Fees	Costs of enforcement of Trench Permit Regulation	\$1,000	Balance available for expenditure	Funds may not be spent for the salaries of any full-time employees
Total Spending:				\$19,000		

**Article 6.** Upon motion made and seconded, it was

Voted that the Town fix the salaries or compensation of the elected officers of the town for Fiscal Year 2011 as follows.

	<b>FY11 (1% COLA)</b>
Moderator	\$108.76
Selectmen - Chair	\$1,658.64
Members	\$1,522.69
Town Clerk	\$14,910.37
Assessors - Chair	\$1,658.64
Members	\$1,522.69
Water Commissioners	\$652.58
School Committee	\$319.16
Elector: Oliver Smith Will	\$10.00
Board of Health - Chair	\$788.53
Members	\$652.58
Constables	\$12.33 hr
Cemetery Commissioners - Sextons	\$11.18 hr
Opening Graves Fee	\$500/grave

**Article 7.** Upon motion made and seconded, it was

Voted that the town act on the report of the Finance Committee on the Fiscal Year 2011 budget and vote to raise and appropriate or transfer from available funds the sum of \$4,170,270.19. To meet this amount, the Finance Committee recommends that the amounts shown in the column captioned "FY11 Finance Committee Recommendations" be raised or appropriated or transferred from available funds for individual FY11 department operating purposes, debt service and other town expenses.

	<b>Voted for FY11</b>
<b><u>Gen. Govt.</u></b>	
Selectmen's Office	\$65,264
Legal Counsel	7,400
Audit	
Town Report	2,200
Town Bldg. Oper.	21,230
Town Clerk	22,553
Town Accountant	13,325
Accounting Software Support	1,000
Payroll Preparation	3,147
Acct. Software Conversion	1,000
Treasurer/Collector	41,720
Tax Takings	3,000
Assessors (including revaluation.)	29,563

	<b>Voted for FY11</b>
Planning Board	1,815
Zoning Bd. Appeals	1,268
Finance Comm.	150
Moderator	109
Cons. Comm.	475
Historical Comm.	200
Agricultural Commission	200
Connect CTY	1,800
<b>Sub-Total:</b>	<b>\$217,419</b>
 <b><u>Culture &amp; Rec. Services</u></b>	
Tri-Town Beach	\$4,067
Recreation Comm.	4,450
Cemetery Comm.	4,391
Library	40,982
Council on Aging	8,394.24
Veterans	9,841
<b>Sub-Total:</b>	<b>\$72,125.24</b>
 <b><u>Public Health</u></b>	
Board of Health	\$2,394
Health Agent	13,743
Solid Waste Disposal.	34,067
Hazardous Waste	800
FC Waste Dist.	4,208
<b>Sub-Total:</b>	<b>\$55,212</b>
 <b><u>Public Safety</u></b>	
Fire	\$38,496
Ambulance	23,269
Police	133,317
Quinn Bill Incentive	3,739
Animal Control	2,508
Animal Inspection	432
Emergency Mgt.	932
FC Inspection Program.	53,949
<b>Sub-Total:</b>	<b>\$256,642</b>

**Voted for  
FY11**

**Public Works**

**Highway Dept.**

Salaries	\$105,427
Gen. Highways	71,600
Winter Roads	106,363
Road Machinery	20,955
Garage Maint.	5,680
Trees	6,000
<b>Total Highway Department</b>	<b>\$316,025</b>

**Water Dept.**

Salaries	24,332
Operations	25,970
<b>Total Water Dept.</b>	<b>50,302</b>

**Total Public Works** **\$366,327**

**Ins. & Benefits**

Property & Liability Ins.	\$33,350
Employee Health Ins.	372,414
Medicare & Social Security	20,000
Workers Comp. Ins.	16,150
Life	1,500
Unemployment Ins.	1,000
Retirement	107,685
Police & Fire Insurance	9,883
<b>Sub-Total:</b>	<b>\$561,982</b>

**Unclassified**

Temp. Loan Interest	\$2,000
Reserve Fund	20,000
FR Council of Govt.	16,283
Physicals & Tests	750
Town Vehicles Fuel	27,000
Educational Incentives (T. Clerk)	2,000
<b>Sub-Total:</b>	<b>\$68,033</b>

**Total Town Govt.:** **\$1,597,740.24**

**Schools**

**Elementary** **\$1,428,309**

Frontier Operating	\$856,388
Frontier Transportation	25,064
<b>Total Frontier</b>	<b>\$881,452</b>

	<b>Voted for FY11</b>
<b>Franklin County Tech. School</b>	<b>\$100,418</b>
<b>Smith Vocational Tuition/Transportation</b>	<b>41,390</b>
<b>Total Schools</b>	<b>\$2,451,569</b>
<b><u>Debt</u></b>	
Frontier Bond	54,661
Elementary Roof	66,299.95
<b><i>Sub-Total:</i></b>	<b><i>\$120,960.95</i></b>
<b>Total Operating Budget</b>	<b>\$4,170,270.19</b>

**Article 8.** Upon motion made and seconded, it was

Voted that the town authorize the Frontier Regional School District to establish a capital stabilization fund in accordance with M.G.L. c. 71, Section 16 G ½.

**Article 9.** Upon motion made and seconded, it was

Voted that the town, pursuant to M.G.L. c. 40, §5B, establish a special purpose stabilization fund, to be known as the Capital Stabilization Fund, for municipal capital purposes.

*2/3<sup>rd</sup>'s vote required. Moderator declared the vote carried. (Vote was unanimous)*

**Article 10.** Upon motion made and seconded, it was

Voted that the town raise and appropriate the sum of \$60,000 to the Capital Stabilization Fund, this sum contingent upon the passage of a Proposition 2 ½ Override as allowed under MGL c. 40 §5B.

*2/3<sup>rd</sup>'s vote required. Moderator declared the vote carried. (Vote was unanimous)*

**Article 11.** Upon motion made and seconded, it was

Voted that the town revise its existing Zoning Bylaws by adopting changes to: Section 171-3. Establishment of Districts, Section 171-4. Zoning Map established, Section 171-8. Table of Use Regulations, Section 171-10. Table of Dimensional Requirements, Section 171-14. Sign regulations, Section 171-17. Site plan review and review of large developments, and Section 171-25. Open space/cluster developments in the form available at Town Meeting labeled Town Meeting Version and dated March 31, 2010 and to adopt a new Official Zoning map dated March 31, 2010 showing the new Agricultural/

Residential 2 District which would increase the minimum lots sizes and frontage requirements and add the Aquifer Protection Overlay Districts. (Changes indicated below- Italics are additions and underlines are deletions.)

*2/3<sup>rd</sup>'s vote required. Moderator declared the vote carried. (Vote was unanimous)*

## ARTICLE II

### Zoning Districts

#### ~ 171-3. Establishment of districts.

For the purpose of this chapter, the Town of Whately is hereby divided into the following districts:

Agricultural/Residential District *1*  
*Agricultural/Residential District 2*  
Commercial District  
Commercial-Industrial District  
Industrial District  
Flood Hazard Overlay District  
*Aquifer Protection Overlay Districts*

#### ~ 171-4. Zoning Map established.

The location and boundaries of these zoning districts shall be as shown on a map titled "Town of Whately Zoning Map," dated *March 31, 2010* [*April 25, 1987*], which is on file with the Town Clerk. The Zoning Map, with pertinent Assessors' maps and all explanatory matter therein, is hereby made a part of this chapter. Zoning district boundaries may be changed only by adoption of an amendment to the Zoning Bylaw.

#### ~ 171-8. Table of Use Regulations.

A. The following Table of Use Regulations is hereby adopted as part of this Zoning Bylaw. The following code shall apply:

Y = Yes, the use is permitted by right in that zoning district.

N = No, the use is not permitted in that zoning district.

SP = The use is allowed in that zoning district only after a special permit has been granted.

*\* = Site Plan Review required (See Section 171.17 for other uses requiring Site Plan Review)*

B.<sup>1</sup> The Table of Use Regulations shall be as follows:

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<sup>1</sup> Editor's Note: Former Subsection B, dealing with uses not listed, was repealed by 2-5-1991 STM, Art. 2. Said Article also redesignated former Subsection D as this Subsection B.

<b>Principal Use</b>	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
<b>Residential Use</b>					
Single-family detached dwellings	Y	Y	Y	N	N
2-Family detached dwellings (see~171-20)	SP	SP	SP	N	N
Multifamily dwelling units (apartments, townhouses and condominiums, if in compliance with ~171-20)	SP	SP	SP	N	N
Converted single-family dwellings (see ~171-21)	SP	SP	SP	N	N
Lodging houses or boardinghouses (not part of a residential dwelling)	SP	SP	SP	SP	SP
Congregate Elderly Housing Facilities (see ~171-23)	SP	SP	SP	N	N
Open Space/Cluster Residential Subdivision Developments (see ~171- 25)	[SP]Y*	Y*	[SP]Y*	N	N
Flexible Residential Development (see ~171-24.2)	Y*	Y*	Y*	N	N
Accessory Apartment (see definitions)	SP	SP	SP	N	N
<b>Agricultural Uses</b>					
Farm, orchard, nursery, market garden, forestry, sugarhouse, greenhouse or other use of land for agricultural, horticultural, floricultural or viticultural production. The use may include retail sale of agricultural products, provided that the major portion of those products have been produced on the premises.	Y	Y	Y	Y	Y
Year-round commercial greenhouses, salesrooms or stands for wholesale or retail sale of horticultural products on 5 acres or more.	Y	Y	Y	Y	Y
Except for commercial piggeries or poultry, the raising or keeping of commercial or noncommercial domestic animals	Y	Y	Y	Y	Y
Year-round commercial greenhouses, salesrooms or stands for wholesale or retail sale of horticultural products, commercial poultry or piggeries on lots of less than 5 acres.	SP	SP	SP	SP	SP
Reservations, wildlife preserves or other conservation areas	Y	Y	Y	Y	Y

<b>Accessory Uses</b>	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Tourist homes/bed-and-breakfast establishments (see ~ 171-22)	SP	SP	SP	SP	SP
Home occupations (see ~ 171-11)	Y	Y	Y	Y	Y
Amateur radio towers or antennas (see ~171-28.3)	SP	SP	SP	SP	SP
<b>Community Facilities</b>					
Churches or other religious organizations	Y	Y	Y	Y	Y
Hospitals/nursing homes	SP	SP	SP	SP	SP
Educational uses exempted from zoning regulation under the Zoning Act, MGL C. 40A, ~ 3	Y	Y	Y	Y	Y
Other educational uses	SP	SP	SP	SP	SP
Municipal or nonprofit cemeteries	SP	SP	SP	SP	SP
Membership lodges or clubs (nonprofit)	SP	SP	Y	SP	SP
Water-powered or wind-powered generators, up to 80 megawatts	SP	SP	SP	SP	SP
Other power plants	N	N	N	N	N
Public utility service stations or facilities, radio or television stations or transmitting facilities, railroad or bus depots or other public utility or communications uses	SP	SP	SP	SP	SP
Municipal administration, fire, police or library buildings	SP	SP	SP	SP	SP
Other municipal or governmental uses	SP	SP	SP	SP	SP
Public Parks, playgrounds or other public recreational facilities	Y	Y	Y	Y	Y
<b>Commercial Uses</b>					
Hotels/motels/inns (on public water only)	SP	SP	SP	SP	SP
Eat-in restaurants, bars or lounges for serving food or drinks inside the building	[N]SP	N	SP	SP	SP
Take-out or drive-in food services	N	N	SP	SP	SP
Professional and business offices, including but not limited to medical, legal, banking, insurance and real estate, unless qualifying as a home occupation (see ~ 171-11)	N	N	Y	Y	SP

<b>Commercial Uses (cont.)</b>	Agriculture/ Residential <b>1</b>	<b>Agriculture/ Residential 2</b>	Commercial	Commercial - Industrial	Industrial
Retail establishments or developments where all sales, display and storage of merchandise is within the building, with a floor area of 10,000 square feet or less	N	<b>N</b>	SP	SP	SP
Retail establishments or developments where all sales, display and storage of merchandise is within the building, with a floor area greater than 10,000 square feet	N	<b>N</b>	N	N	N
Personal and consumer service establishments	N	<b>N</b>	Y	SP	SP
Dry-cleaning establishments or Laundromats	N	<b>N</b>	N	N	N
Car Washes	N	<b>N</b>	N	N	N
Gas stations, sales of motor vehicle fuel or storage and sale of other fuels	N	<b>N</b>	N	N	N
Automotive repair and servicing shops	N	<b>N</b>	SP	SP	SP
Automobiles, vehicles, boats or equipment sales/service	N	<b>N</b>	SP	SP	SP
Veterinary hospital where all animals are kept inside a permanent building	SP	<b>SP</b>	SP	SP	SP
Service and repair shops for appliances, small equipment, office and household items and other similar products, unless Qualifying as a home occupation (see ~ 171-11)	N	<b>N</b>	Y	Y	SP
Business service and supply service establishments (i.e., automobile parts, office equipment, maintenance service), contractors, tradesperson shops or craft workshops conducted entirely within a building, unless qualifying as a home occupation (see ~ 171-11)	N	<b>N</b>	Y	Y	SP
Indoor commercial recreation, including but not limited to bowling alleys and theaters	N	<b>N</b>	SP	SP	SP
Craft workshops involving the use of hazardous materials, where all work is to be conducted within a building	N	<b>N</b>	SP	SP	SP
Newspaper or job-printing establishments	N	<b>N</b>	Y	Y	Y
Outdoor commercial recreation, including but not limited to camping areas and golf courses	SP	<b>SP</b>	SP	SP	SP
Open storage of feed, raw materials, finished goods, lumber or building supplies for commercial sale	N	<b>N</b>	SP	SP	SP

Commercial Uses (cont.)	Agriculture/ Residential <i>I</i>	<i>Agriculture/ Residential 2</i>	Commercial	Commercial - Industrial	Industrial
Adult Entertainment	N	<i>N</i>	N	N	N
Earth Removal	SP	<i>SP</i>	SP	SP	SP
<b>Light Industrial Uses</b>					
Warehouses, wholesale trade and distribution, bulk storage or the storage of materials, merchandise, products or equipment, provided that the use is within an enclosed building and is not hazardous	N	<i>N</i>	SP	SP	Y
Printing, publishing or data processing	N	<i>N</i>	SP	SP	Y
Enclosed assembly, bottling, packaging or finishing plants of nonhazardous materials	N	<i>N</i>	SP	SP	Y
Research and development facilities not involving hazardous materials	N	<i>N</i>	N	N	SP
Other light industrial uses not involving the use of hazardous materials as a principal activity, provided that the use will not be offensive, injurious, noxious or hazardous	N	<i>N</i>	SP	SP	SP
Any industrial or commercial uses which involve the discharge of process wastewater to the ground, except wastewater from personal hygiene and food [Amended 2-5-1991 STM, Art. 2]	N	<i>N</i>	N	N	N
Automobile salvage or junkyards	N	<i>N</i>	N	N	N
Burial, incineration, storage, disposal, collection and treatment of low, medium and high levels of radioactive wastes (see ~ 171-28)	N	<i>N</i>	N	N	N
Permanent sawmills	SP	<i>SP</i>	SP	SP	SP
Temporary sawmills	SP	<i>SP</i>	Y	Y	Y
<b>Nonresidential uses [Added 5-7-1991 ATM, Art. 24]</b>					
Nonresidential uses which manufacture, process, store or dispose of hazardous wastes, except for agricultural uses, in amounts exceeding the minimum threshold amount requiring compliance with Department of Environmental Protection hazardous waste regulation 310 CMR 30	N	<i>N</i>	N	SP	SP

<b>Nonresidential uses [Added 5-7-1991 ATM, Art. 24]</b>	Agriculture/ Residential <b>I</b>	<b>Agriculture/ Residential 2</b>	Commercial	Commercial - Industrial	Industrial
Nonresidential uses, except for agricultural uses, which involve hazardous materials, including but not limited to trucking or busing terminals; golf courses; slaughterhouses; or wood preserving, furniture stripping and refinishing operations	N	<b>N</b>	N	SP	SP
Solid waste landfills, dumps and salvage yards	N	<b>N</b>	N	N	N
Outdoor storage of pesticides	N	<b>N</b>	N	N	N
The commercial dumping of snow contaminated by salt or deicing chemicals	N	<b>N</b>	N	N	N
Stump Dump	SP	<b>SP</b>	SP	SP	SP
Other principal uses where the physical appearance, operation, parking requirements, and traffic impacts closely resemble a use permitted by right or special permit and which shall not have a detrimental impact on adjacent or nearby uses	SP	<b>SP</b>	SP	SP	SP

C. All uses allowed by right or special permit, other than single-family residences, uses and accessory structures, shall require site plan review in accordance with ~ 171-17 of this chapter.

D. Uses allowed in the Planned Industrial District shall be as specified in the Planned Industrial District Regulations, ~ 171-28.1 of this chapter. [Added 2-5-1991 STM, Art. 2]. [Please note that there are currently no areas in Whately which are zoned for Planned Industrial District].

~ 171-10. Table of Dimensional Requirements.

A. The Table of Dimensional Requirements shall be as follows:

	Minimum Lot Area (square feet)	Minimum Frontage (feet)	Front yard (feet)	Rear/Side Yard * (feet)	Maximum Lot Coverage (percent)
<b>Agricultural/Residential District 1:</b>					
Lots with Public Water	40,000	175	50	20	30
Lots without Public Water	60,000	200	50	20	30
<b>Agriculture/Residential District 2:</b>					
<i>Lots with Public Water</i>	<i>80,000</i>	<i>200</i>	<i>50</i>	<i>20</i>	<i>30</i>
<i>Lots without Public Water</i>	<i>120,000</i>	<i>300</i>	<i>50</i>	<i>20</i>	<i>30</i>
<b>Commercial and Industrial Districts</b>					
Commercial and Industrial uses	60,000	200	50	20	50
Noncommercial/Nonindustrial Uses					
Lots with Public Water	40,000	175	50	20	30
Lots without Public Water	60,000	200	50	20	30
Planned Industrial District <small>(see 171-28.1) [Added 2-5-1991 STM, Art. 3]</small>					

*\* Fifty (50) feet side and/or rear yards in new residential subdivisions adjacent to or nearby to farmland may be required to provide a buffer between the residential lot lines and farmland to minimize conflicts between residential and farming activities.*

B. Explanations.

(1) The required minimum frontage shall be measured continuously along one street line between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius.

(2) Front yard requirements shall be 50 feet or the same setback as adjacent lots if less than 50 feet, and shall be measured from the right-of-way line where a plan of the street is on file with the Registry of Deeds or the County Commissioners. In the absence of such a plan, frontage shall be measured from a line 25 feet from and parallel to the center line of such street.

(3) Multifamily structures shall require an additional 20,000 square feet of lot area and an additional 75 feet of frontage for each additional unit in excess of one.

(4) Motels, hotels and commercial lodging and boarding houses shall require a minimum lot size of three acres for the first three units and an additional 10,000 square feet of lot area for each additional unit in excess of three. All motels, hotels and commercial lodging or boarding houses shall be connected to the public water supply system.

(5) [Added 4-25-1989 ATM, Art. 20] "Lot coverage" is defined as follows:

- (a) Sidewalks, roadways, parking areas, driveways or other similar use, all whether paved or unpaved;
- (b) Buildings, whether principal or accessory;
- (c) Structures; or
- (d) Any other areas of a lot rendered impermeable.

## **~ 171-14. Sign regulations.**

A. Purpose. The following sign regulations are intended to allow the identification and location of activities or premises while protecting the visual character of the town and the safety of its residents. Any exterior sign or advertising device hereafter erected or maintained shall conform to the following regulations.

### **B. On-premises signs.**

(1) Any residential dwelling is allowed one sign up to two square feet in area for each family/household residing on the premises, indicating the name of the owner or occupant or the name of the building, or other non-commercial message. Such sign may pertain to a permitted accessory use.

(2) One announcement or bulletin board up to 12 square feet is allowed for a public, educational, charitable or religious organization.

(3) Commercial and industrial uses shall be allowed two signs, one attached to the building and one freestanding, each up to 12 square feet in area. Any commercial message on such signs shall be limited to identification of the firm and the products or services available or produced on the premises.

(4) Businesses sharing a single building are allowed one wall sign up to 12 square feet per establishment. One shared freestanding sign shall also be allowed

for the entire premises, bearing the name of each business located there. Such sign shall not exceed 18 square feet in area.

C. Off-premises signs. Off-premises signs shall be allowed by special permit from the Zoning Board of Appeals only if the Board finds that such signs will serve the public convenience, will not endanger the public safety and will not be detrimental to the neighborhood. Off-premises signs shall only pertain to directional or identification information for businesses located in Whately. Such signs shall not exceed nine square feet in area or 10 feet in height.

D. Temporary signs. Signs of a temporary nature, such as sales promotions, holiday decorations and signs relating to the sale, rental or construction of the premises, are allowed but shall be removed promptly upon completion of the activity to which they relate. Temporary signs shall not exceed nine square feet in area or 10 feet in height.

E. General sign regulations.

(1) No sign shall flash, move or display movement or generate music or an audible message. [Amended 2-5-1991 STM, Art. 5]

(2) Signs may be lighted internally or externally, but illumination of all signs shall be of a white light and shall be shielded or indirect. Signs may be illuminated *only* during the hours of 7:00 a.m. to 7:00 p.m. in the *Agricultural/Residential I & 2* Zoning Districts only. Signs in the Commercial and Industrial District may be illuminated during the hours of 7:00 a.m. to 10:00 p.m. These time limits do not apply to those establishments with normal business hours other than these times. Neon signs are prohibited. Sign lighting shall not be directed onto adjacent property, roadways or upward. [Amended 2-5-1991 STM, Art. 5]

(3) No sign shall be placed closer than 10 feet to a public right-of-way or within any side or rear yard requirement, and it shall not impair pedestrian or vehicular traffic flow or sight.

(4) Freestanding signs may be up to 15 feet in height above the ground, measured from the average ground grade on the premises to the top of the sign.

(5) Signs attached to a building may be either flat against the wall or perpendicular to it but shall not project more than two feet above the eaves line of the building or more than three feet from the vertical plane of the wall. Signs attached to a parapet shall not project above the top of the parapet.

(6) Double-sided signs with equal and parallel faces providing identical information on both sides shall be measured on one side only in determining square footage.

(7) Nonaccessory signs or billboards (general advertising not related to the premises) are prohibited.

(8) Signs may be allowed which are larger in area only under special permit from the Zoning Board of Appeals.

(9) Portable or movable signs may be allowed under a special permit from the Zoning Board of Appeals, provided that such signs are made of wood only, stand on legs and do not exceed four feet in height. [Added 2-5-1991 STM, Art. 5]

## **~ 171-17. Site plan review and review of large developments.**

### **A. Site plan review.**

(1) Purpose. The purpose of site plan review is to further the purpose of this chapter and to ensure that new development is designed in a manner which reasonably protects the visual, environmental and aesthetic qualities of the neighborhood and the town.

(2) Projects requiring site plan review. Any residential, commercial, industrial or institutional use allowed by right or special permit in any district, including subdivisions, shall require site plan review, except that single-family dwellings on individual lots and normal agricultural uses are exempt.

### **(3) Procedures.**

(a) An applicant for site plan review shall file a completed application with the Planning Board, at a regularly scheduled meeting. The application shall include six copies each of an application form, site plan and any narrative documents as necessary. The Planning Board Chairperson shall acknowledge receipt of the plans by signing and dating the application form. A copy of the completed application shall be filed with the Town Clerk by the applicant. The Planning Board shall transmit copies of the application to appropriate Town Boards and municipal officials. This may include the Special Permit Granting Authority if a Special Permit has also been applied for, the Conservation Commission, the Zoning Board of Appeals, the Board of Health, the Historical Commission, the Highway Superintendent, the Fire Chief or the Building Inspector. These Town Boards and municipal officials shall have 45 days from the date the completed application is received from the Planning Board to report to the Planning Board their findings and recommendations. Failure to report in the allotted time shall constitute approval of the application submitted by that Board or municipal official.

(b) The Planning Board shall hold a public hearing within 65 days after the filing of an application and shall take final action on an application for site plan approval within 90 days of the public hearing. Notice and posting of the public hearing shall comply with the provisions of the Zoning Act, MGL C. 40A, ~ 11, regarding notice for public hearings.

(c) No building permits for projects requiring site plan review shall be issued until the Planning Board has approved the site plan or unless the required time period for taking action on a site plan has lapsed without action from the Planning Board.

(d) The Planning Board may adopt and from time to time amend regulations for the submission and approval of site plans.

(e) The Planning Board may waive any of the requirements for site plan submittal and approval if the simplicity or scale of the project warrants such action. The Planning Board may also request any additional information it should need to render a decision.

(f) The Planning Board may expedite the procedure for reviewing site plans for simple projects by holding the public hearing and taking action on the site plan as soon as possible after the filing of an application for site plan review.

(g) Site plan review shall judge the appropriateness of the design of a project. Any question to the appropriateness of the use shall be governed by the Table of Use Regulations or the special permit review process.

(h) For large or complex projects, the Reviewing Board shall have the right to retain a registered professional engineer, planner, designer or other professional to advise the Board regarding any or all aspects of the site plan. The applicant shall be responsible for the costs of such advice.

(i) Written Site Plan Review decisions shall be filed with the Town Clerk.

(4) Submittal requirements.

(a) All site plans shall be prepared by a registered architect, landscape architect or professional engineer.

(b) All site plans shall be on standard sheets of 24 inches by 36 inches and shall be prepared at a sufficient scale to show:

[1] The location and boundaries of the lot, adjacent streets or ways and the location and owners' names of all adjacent properties.

[2] Existing and proposed topography, including contours, the location of wetlands, streams, water bodies, drainage swales, areas subject to flooding [and] unique natural *and cultural* land features *including critical habitat areas identified by the Natural Heritage and Endangered Species Program, wildlife corridors and greenbelt areas identified in the Whately Open Space and Recreation Plan*

*(OSRP), and Priority Heritage Landscapes identified in the Whately Heritage Landscape Inventory Reconnaissance Report (June 2009) and scenic and historic resource areas identified in the OSRP.*

[3] Existing and proposed structures, including dimensions *and proposed lot lines and proposed orientation of building to maximize solar gain and energy conservation.*

[4] The location of *proposed public and private ways,* parking and loading areas, driveways, walkways, access and egress points.

[5] The location and a description of all proposed septic systems, *registered "perc" tests,* water supply, storm drainage systems, utilities and refuse- and other waste-disposal methods.

[6] Proposed landscape features, including the location and a description of screening, fencing and plantings *including non-invasive species.*

[7] The location, dimensions, height and characteristics of proposed signs.

[8] The location and a description of proposed open space or recreation areas *and the location of prime farmland soils or soils of state or local importance, active farmland or prime forestland soils.*

[9] [Added 5-7-1991 ATM, Art. 20] If the applicant is proposing a use which will use, manufacture, process, store, involve or dispose of hazardous wastes or materials, the following information must be submitted as well:

[a] A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.

[b] Those businesses using or storing such hazardous materials shall file a hazardous materials management plan with the Planning Board, Board of Health and Fire Chief, which shall include:

[i] Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures.

[ii] Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.

[iii] Evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Act, 310 CMR 30.

[c] Drainage recharge features and provisions to prevent loss of recharge.

(c) The applicant shall also submit the following information:

[1] Measures to prevent pollution of surface and ground water, increased runoff, changes in groundwater levels and flooding.

[2] Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, enhance aesthetic assets and screen objectionable features from neighbors and roadways.

[3] Control measures to prevent erosion and sedimentation and the sequence of grading and construction activities, installation of control measures and final stabilization of the site.

[4] Estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for both vehicles and pedestrians, showing adequate access to and from the site and adequate circulation within the site.

[5] *Measures to minimize impacts to existing farmland, and agricultural soils classified as prime farmland soils or soils of state or local importance.*

[6] *Measures to minimize impacts to prime forestland, critical habitat areas, and wildlife corridors.*

[7] *Measures to minimize impacts to Priority Heritage Landscapes and scenic and historic resources identified in the OSRP.*

[8] *Other information the Planning Board may reasonably request in order to make a decision.*

(5) Site plan approval. Site plans shall be approved if the Planning Board determines that the site plan satisfactorily complies with the following design criteria where applicable:

(a) The development shall be integrated into the existing terrain and surrounding landscape *and shall include measures to minimize impacts to natural, cultural and scenic resources identified in the site plan.* Building sites shall, to the extent feasible:

[1] Minimize use of wetlands, steep slopes and hilltops.

- [2] Minimize obstruction of scenic views from publicly accessible locations.
- [3] Preserve *important or* unique natural, *scenic* or historical features.
- [4] Minimize tree, vegetation and soil removal.
- [5] Minimize grade changes.
- [6] *Minimize impacts to farmland and prime farmland soils or soils of state or local importance.*
- [7] *Maximize solar orientation for energy conservation or generation.*

(b) Architectural style is flexible but shall be compatible with the character and scale of buildings in the vicinity through the use of building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and to avoid monotony.

(c) Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings.

(d) The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways.

(e) The site plan shall show adequate measures to prevent pollution of surface or ground water, to minimize erosion and sedimentation and to prevent increasing potential for flooding.

(f) Drainage shall be designed so that runoff shall not be increased, groundwater recharge is maximized and neighboring properties will not be adversely affected. Surface water on paved surfaces shall be collected at intervals so that it will not create puddles and obstruct the flow of vehicular or pedestrian traffic.

(g) Electric, telephone, cable television and other such utilities shall be underground where physically and environmentally feasible.

(h) Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened from the neighbor's view.

(i) The site plan shall comply with any zoning requirements for parking, loading, dimensions, environmental performance standards and all other

provisions of this chapter. Before approval of a site plan, the Reviewing Board may request that the applicant make modifications in the proposed design of the project to ensure that the above criteria are met.

B. Review of large developments.

(1) Review required. Wherever any development is proposed, that is allowed by right or special permit according to Section 171-8 Table of Use regulations, in which the total enclosed floor area is over 10,000 square feet, or any development which will require the subdivision of a parcel of land into 10 or more lots, whether a subdivision or not, or the creation of 10 or more dwelling units within one year is proposed, said development shall require the submission of an impact statement to the Planning Board before a building permit is issued. This review will follow the process described below and is required in addition to other requirements of this chapter. The review is designed to prepare the town for the possible impact of a large development and to allow it to recommend modifications calculated to reduce that impact.

(2) Site plans and impact statements.

(a) A detailed site plan of the subdivision or development shall be prepared in accordance with the submittal requirements of the site plan review or special permit sections of this chapter.

(b) The site plan must be accompanied by an impact statement which details the probable effects of the subdivision or development on the following aspects of concern to the town:

- [1] Attendance at public schools.
- [2] Increases in vehicular traffic.
- [3] Changes in the number of legal residences.
- [4] Provision of housing for town residents and for persons of low and moderate income.
- [5] Increases in municipal services.
- [6] Load on public utilities or future demand for them.
- [7] Public safety.
- [8] Changes in tax revenue.
- [9] Changes in surface drainage.

- [10] Increased consumption of groundwater.
- [11] Increased refuse disposal.
- [12] Pollution of water and air.
- [13] Land erosion or loss of tree cover *or farmland or farmland soils.*
- [14] Disturbance of other aspects of the natural ecology.
- [15] Blocking of views.
- [16] Harmony with the character of surrounding development.
- [17] Impact on historic, *natural, cultural or scenic* resources.

(3) Review process.

(a) The Planning Board will review both the site plan and the impact statement, giving weight to the factors in Subsection B(2) above, as they affect the future of the town and of the neighborhood adjacent to the site. It may ask for further information where necessary to review the application adequately and may make recommendations for modifications to the development as it thinks proper to protect the town. Approval must be granted, however, if all other provisions of this chapter are met.

(b) One copy of an impact statement submitted to the Planning Board as required by Section 171-17.B. Review of large developments, shall forthwith be forwarded to the Zoning Board of Appeals for its review. The Zoning Board of Appeals shall submit an advisory report to the Planning Board within 45 days from the date of application. Failure to respond within 45 days shall be deemed a lack of objection by the Zoning Board of Appeals. The Planning Board shall consider the Zoning Board of Appeals comments in its decision regarding the review of large developments.

## **~ 171-25. Open space/cluster developments.**

A. General description. An "open space/cluster development" shall mean a *[single-family]* residential development in which the houses are clustered together into one or more groups on the lot and separated from each other and adjacent properties by undeveloped land.

B. Purpose. The purpose of cluster development is to allow for a flexible design in residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the district *unless a density bonus is granted in accordance with 171-25H*. The intention is to:

- (1) Promote a more efficient use of land in harmony with its natural features.
- (2) Encourage a less sprawling form of development that consumes less open land.
- (3) Encourage the permanent preservation of open space, agricultural lands and other natural resources.
- (4) Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- (5) Promote single-family housing at a more affordable cost.
- (6) Maintain the character of the town and surrounding residential areas.

C. Applicability. The Planning Board may *approve a Site Plan* [grant a special permit] for the construction of an open space/cluster development [in any district] subject to the regulations and conditions set forth under this section.

D. Procedures.

- (1) Preapplication review.
  - (a) To promote better communication and to avoid misunderstanding, applicants are encouraged to submit a preliminary plan for review by the Planning Board prior to the application for *site plan approval* [a special permit]. Such preliminary plans shall comply with the Town of Whately Subdivision Control Regulations.
  - (b) The Planning Board approval of a *site plan* [special permit] *in accordance with 171-17* [hereunder] shall not substitute for compliance with the Subdivision Control Law [Act] nor oblige the Planning Board to approve a related definitive plan for subdivision nor reduce any time periods for Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for submission of a combined site analysis/development plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act.

(c) A site analysis/development plan shall be submitted to the Planning Board with the application **for site plan approval [a special permit]. [Following approval of special permit a]**. A definitive plan shall be submitted to the Planning Board, consistent with its Subdivision Regulations and in substantial conformity with the approved site analysis/development plan.

(2) Application. Applicants for **Site Plan Review [a special permit]** for an open space/cluster development shall submit four copies of an application, and a site analysis/development plan.

(3) Site analysis/development plan. The site analysis/development plan shall be prepared by an interdisciplinary team to include a registered professional engineer, registered land surveyor and registered architect or landscape architect. The site analysis/development plan shall be drawn at a scale of one inch equals 40 feet, shall be on standard sheets of 24 inches by 36 inches and shall include the following information:

- (a) The location and boundaries of the site.
- (b) The existing and proposed topography, at two-foot contour intervals, and the location of existing wetlands, water bodies, watercourses, one-hundred-year floodplain elevations and other natural features.
- (c) Identification of existing vegetative cover and land uses.
- (d) Existing structures, wells, septic systems, sewer lines, waterlines, utilities and drainage.
- (e) Soil types, based on the Soil Conservation Service Soil Survey and on-site soil boring logs, approximate depth to groundwater, location and results of percolation tests and other subsurface tests.
- (f) Proposed uses of land and buildings.
- (g) Proposed lot lines, streets, parking areas, walkways, drainage and utilities and existing and proposed easements.
- (h) The general location and description of proposed public waterlines, private wells, public sewer lines or septic systems.
- (i) The location and description of proposed **Protected Open Space [common open space]**, parks and other community uses.
- (j) A proposed landscaping plan and grading plan.
- (k) A narrative statement:

[1] Capability of soils to support the proposed development without danger of groundwater or surface water pollution and proposed measures to prevent such pollution.

[2] Measures to prevent soil erosion, increased runoff and flooding.

[3] Proposed design features intended to integrate the proposed development into the existing landscape and enhance aesthetic assets.

[4] Drainage calculations.

[5] Projected traffic flow patterns.

[6] The total number of building lots.

(1) Additional information:

[1] Materials indicating the landowner's interest in the land to be developed, the form of organization proposed to own and maintain the common land, the substance of covenants and grants of easements to be imposed upon the use of land and structures and a development schedule.

[2] If necessary to determine compliance with the requirements or intent of this section, the Planning Board may require further engineering or environmental analysis, to be prepared at the expense of the applicant.

(4) Review by other boards. Forthwith upon receipt of the application and required site analysis/development plans, the Planning Board shall transmit one copy each to the Board of Health and the Conservation Commission, who shall submit written comments to the Planning Board within 45 days of the application date. Failure to comment within 45 days shall be deemed a lack of objection to the proposed project.

E. Minimum requirements.

(1) The minimum area of land required for a cluster development shall be 10 acres, and the parcel(s) shall be held in single ownership or control at the time of application.

(2) The maximum number of lots [dwellings] for the development shall not exceed that which is normally allowed in the district under a conventional plan unless a density bonus is granted in accordance with 171-25-H.

(3) The development shall include single-family dwellings or two-family dwellings only.

(4) Each lot shall have adequate access on a public or private way.

(5) Each lot shall comply with the minimum dimensions required in this section.

(6) Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.

(7) [At least 35% of the total parcel of land shall be set aside as common, undeveloped land, not including wetlands, floodplains, slopes greater than 25% and roadways.] *At least forty percent (40%) of the total parcel shall be permanently protected as agricultural, forested land, or other open space ("Protected Open Space"). The minimum required Protected Open Space shall not include wetlands and related resource areas, water bodies, all areas with slopes of 25% or greater, 100-year floodplains, existing permanently protected open space, and all other areas determined by the Board of Health to be unsuitable for on-site sewage disposal ("Land with Environmental Constraints"). To the extent possible the preserved land shall form a contiguous tract to enable continued farming or forestry operations. Land with Environmental Constraints may be included in the Protected Open Space subject to a Conservation Restriction in perpetuity if it increases the amount of Protected Open Space beyond the 40% minimum amount (e.g. agricultural or forested land equals 40% of the total parcel plus Land with Environmental Constraints equals 10% of the total parcel resulting in Protected Open Space of 50% of the total parcel). The Planning Board may grant a waiver to reduce the minimum required percentage of protected agriculture or forested land to thirty-five percent (35%) of the total parcel if at least sixty percent (60%) of the total lot area is permanently protected and no more than twenty-five percent (25%) of the total lot area is composed of wetlands and related resource areas, floodplains, or land with slopes greater than 25%. Existing permanently protected open space, roadways and accessory uses shall not count towards the sixty percent (60%) of permanently Protected Open Space.*

(8) All residential structures and accessory uses within the development shall be set back from the boundaries of the development by a buffer strip of at least 50 feet in width, to be kept in a natural or landscaped condition.

(9) There shall be an adequate, safe and convenient arrangement of pedestrian circulation, facilities, roadways, driveways and parking. There shall be no parking in the buffer strip.

(10) The design of roads, utilities and drainage shall be functionally equivalent to the standards contained in the Planning Board's Subdivision Control Regulations insofar as reasonably applicable, but the Board may vary those standards to meet the particular needs of the cluster development.

(11) *Reserved for Future Use.* [No cluster development shall be approved unless the applicant can show to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater from the proposed cluster development than would be expected from a conventional subdivision with single-family houses on lots meeting the normal lot size requirements located on the same parcel. The burden of proof shall be on the applicant.]

(12) All structures which require plumbing shall be connected to a public sanitary sewer, if available, or to an individual or communal septic system at no expense to the municipality. *With the Definitive Subdivision Plan, the applicant shall submit a septic system design prepared by a Registered Professional Engineer and approved by the Board of Health, in conformance with Title 5 of the State Environmental Code, and a plan illustrating the location of water supply wells with the application. Cluster development may utilize shared systems designed, installed and maintained in accordance with the State Environmental Code Title 5, 310 CMR. Such shared systems may be located within the residential common open space or the buffer strip. Septic Systems shared or otherwise shall be located outside of all agricultural land supporting farming operations. [Each communal septic system serving the development shall not exceed sewage flow of 1,500 gallons per day (as determined under Title 5, Section 15.02, of the State Environmental Code). Septic systems shall be placed in the development to maximize the distance between systems and shall be placed within common open areas rather than on individual lots.]*

F. Dimensional and density requirements.

(1) Lot sizes shall not be less than  $1/2$  (50%) of the minimum lot size normally required in the district, but in no case less than 20,000 square feet per lot.

(2) In no instance shall a designated lot have less than 100 feet of frontage on a public or private way.

(3) [Minimum front, rear and side yard setbacks may be reduced from those normally required in the district.] *The Front Yard setback shall not be less than 20 feet for all principal and accessory structures. Side and Rear Yard setbacks shall not be less than 10 feet for all principal and accessory structures, except that attached single family dwelling units may be laid out with one side having no Side Yard setback (zero setback). The other Side Yard of an attached single family unit (the nonattached side) shall be at least 10 feet. Nonattached single family units shall have a minimum Side Yard setback of 10 feet. The maximum height of dwelling units and structures shall be 35 feet. To minimize conflict with agricultural operations, all residential lot lines shall be located at least one hundred (100) feet from agricultural activities. This area shall be made up of a buffer strip of trees or open space.*

(4) *In a Cluster Development, the maximum number of building lots will be determined as follows:*

(a) *The maximum number of lots permitted within a Cluster Development in the Agricultural/ Residential District 2 shall be one building lot for each 120,000 square feet of the net developable acreage of the cluster development tract for areas without public water and one building lot for each 80,000 square feet of the net developable acreage of the cluster development tract for areas with public water. The maximum number of lots permitted within a Cluster Development in the Agricultural/ Residential District 1 District shall be one building lot for each 60,000 square feet of the net developable acreage of the cluster development tract for areas without public water and one building lot for each 40,000 square feet of the net developable acreage of the cluster development tract for areas with public water. Net developable acreage is determined by subtracting all wetlands and resource areas, all areas with slopes of 25% or greater, 100-year floodplains, existing permanently protected open space, 10% of the total development tract for roads and drainage and all areas determined by the Board of Health to be unsuitable for on-site sewage disposal.*

(b) *All wetlands and resource areas shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40 and its regulations 310 CMR 10.00.*

(c) *Under the supervision of the Board of Health, and in conformance with Title 5, percolation tests shall be conducted for all lots in the total acreage of the property that would be developed in a standard subdivision layout. The area of these lots which is determined to be not suitable for on-site sewage disposal shall be subtracted from the net developable acreage of the total parcel.*

G. **Protected Open Space** [Common open space requirements].

(1) All land not devoted to dwellings, accessory uses, roads or other development shall be set aside as common land for recreation, conservation or agricultural uses which preserve the land in essentially its natural condition.

(2) Further subdivision of **Protected Open Space** [common open land] or its use for other than the above-listed uses, except for easements for underground utilities and septic systems, shall be prohibited. Structures or buildings accessory to recreation, conservation or agricultural uses may be erected but shall not exceed *the lesser of 5% or 1 acre* [coverage] of such **Protected Open Space** [common open land].

(3) Such **Protected Open Space** [common open land] shall be either:

(a) Conveyed to a corporation or trust owned or to be owned by the owners of lots within the development; if such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;

(b) Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space; or

(c) Conveyed to the Town of Whately, at no cost, and may be accepted by it for a park or open space use. Such conveyance shall be at the option of the town and shall require the approval of the voters at the town meeting.

*(d) The Planning Board, at the request of Applicant, may grant a Special Permit to have the Protected Open Space retained by a private individual or a trust owned by private individuals provided that both the interests of the residents of the Cluster Development and the interests of the Town will be protected as outlined in the requirements of the Conservation Restriction or the Agricultural Preservation Restriction. Such Special Permit shall meet the requirements of Section 171-31 Special Permits of the Zoning Bylaws and other requirements to be determined by the Planning Board. A Conservation Restriction shall be placed on the Protected Open Space.*

(4) *[In any case where such land is not conveyed to the town, a restriction enforceable by the town shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.] Such Protected Open Space shall be covered by a recorded restriction enforceable by the Town, providing that such land shall be kept in an open, natural or undeveloped state, or that it shall be preserved for exclusively agricultural purposes. Any such land proposed as Protected Open Space may be served by suitable access for purposes of passive recreational use, forest management, or agricultural cultivation. The area to be preserved as Protected Open Space shall be made subject to a perpetual restriction of the type described in M.G.L. Chapter 184 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town of Whately. To ensure this, a Conservation Restriction in accordance with M.G.L. Chapter 184 or a comparable Conservation Restriction acceptable to the Planning Board and Town Counsel that assures permanent protection shall be imposed on the Protected Open Space. Such Conservation Restriction shall be recorded in the Registry of Deeds by the applicant at the time the approved Definitive Plan is submitted to the Registry of Deeds for recording unless an extension is granted in writing by the Planning Board. The Conservation Restriction placed on the Protected Open Space shall be held by the Conservation Commission of the Town of Whately, a suitable State Agency, or by a non-profit conservation land trust the principal purpose of which is the conservation or preservation of open space. Any fees associated with the holding and enforcement of the Conservation Restriction by an entity such as a non-profit conservation land trust will be the responsibility of the Applicant or Homeowners Association as agreed to in writing prior to the recording of the Conservation Restriction.*

*The applicant shall notify the Planning Board in writing within ten (10) days after the Conservation Restriction and the Definitive Plan, as approved and endorsed, have been recorded at the Franklin County Registry of Deeds and, in the case of registered land, with the recorder of the Land Court, of such recording, noting book, page number and date of recording. The purpose of the Conservation Restriction will be to clearly identify the uses and restrictions which apply to the Protected Open Space in order to protect the value of the property within the development.*

(5) If the *Protected Open Space [common open land]* is to be conveyed to the lot owners within the development, ownership and maintenance of such land shall be permanently assured through an incorporated nonprofit homeowners' association, covenant or other land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. Such land agreement documents shall be submitted with the development plan and shall be subject to approval by the Planning Board and Town Counsel.

(6) Such covenants shall specify that each lot owner shall have an equal say in determining the affairs of the organization, that costs shall be equally allocated to each lot and that the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.

(7) Such covenants *of the homeowner's association* shall provide that, in the event that the organization established to own and maintain the *Protected Open Space [common open land]* or any successor organization fails to maintain the *Protected Open Space [common open land]* in reasonable order and condition, in accordance with the site analysis/development plan, the town may, after notice to the organization and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the *Protected Open Space [common open land]* from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the town shall be assessed ratably against the properties within the development and shall become a charge on said properties and that such charge shall be paid by the property owners within 30 days after receipt of a statement therefor.

H. *Creating a subdivision development using the cluster approach is often less expensive for the developer as roads are shorter and utilities are grouped together. Thus, Whately's provision of a cluster development option should be considered an incentive unto itself. However, to further encourage cluster development the following "point incentive system" has been developed. A development plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the development plan, the bonus point total.*

- (1) Any development that increases the amount of land permanently preserved by 5% above the 40% requirement earns 10 points. Each additional 5% increase in preserved land results in an additional 10 points. Such land above the 40% minimum requirement may include Land with Environmental Constraints such as floodplains.
- (2) For protected farmland, sale of the farmland to a person or entity currently engaged in farming, or lease of the farmland for five or more years to a person or entity engaged in farming, and/or creation of a homeowners association and dedicated resources to be provided to that association for the establishment and maintenance of a community farm or gardens, earns 10 points.
- (3) For protected forestland, a binding arrangement to ensure that the forest is managed in such a way as to qualify for "green certification" by the Forest Stewardship Council or other comparable organization acceptable to the Planning Board, earns 10 points.
- (4) A cluster plan that protects at least 10 acres of land in one contiguous tract earns 5 points; a plan that protects at least 20 acres in one contiguous tract earns 10 points.
- (5) A cluster plan that protects land in a tract that is contiguous to an already protected area so as to increase the area of working agricultural land, forest, or wildlife habitat earns 10 points.
- (6) For forestland, wetlands, water bodies or other natural areas supporting high-quality wildlife habitat, implementation of a significant ecological restoration project earns 15 points. Examples include: removal of a small dam or other barrier to aquatic organism passage, replacement of a preexisting sub-standard stream culvert, restoration of eroding stream banks, restoration of riparian areas, removal of non-native invasive species or mitigation of a preexisting source of water pollution.
- (7) A development plan that screens structures from view from a public way as evidenced by cross sections of the definitive plan at a scale of 1 inch = 10 feet earns 5 points or a planting plan which includes sufficient trees and plantings to improve the visual character of the development earns 5 points or if both are provided such plan can receive a total of ten points.
- (8) Architectural designs for the single or two-family structures that match the current character of the area earn 10 points. Architectural elevation drawings of the single or two-family homes must accompany the site plan to be eligible to receive points in this category.
- (9) A development plan that provides recreational opportunities for residents of Whately by providing access to walking trails or other passive forms of recreation via an easement will earn 10 points.

(10) If all houses are certified as Energy Star (or its equivalent) Homes, 10 points will be earned (to be secured by a covenant). Homes in cluster plans for Senior Housing pursuant to 171-25 H.(12) below will only receive 5 points.

(11) If a minimum of 20% of the dwelling units will be affordable and will be made available for a minimum of thirty (30) years via sale, lease, or deed restrictions to persons or families qualifying as low or moderate income as defined by the Department of Communities & Development of the Commonwealth and such unit(s) count towards the 10% requirement of Chapter 40B, then 20 points will be earned.

(12) A cluster plan that provides senior housing (age 55 and over) can earn 20 points if all the following requirements are met:

- a.) The occupancy of units in the Cluster Development shall be restricted to those 55 years of age or older;
- b.) There shall be 2 or fewer bedrooms in each unit;
- c.) Units should incorporate renewable energy technologies such as solar hot water heaters and all units should be Energy Star rated;
- d.) At least 20% of the dwelling units must be available for rent, for a minimum of thirty (30) years, or for sale, in perpetuity, via a deed restriction to seniors qualifying as low or moderate income households as defined by the Department of Communities & Development of the Commonwealth and such units must count towards the 10% requirement of Chapter 40B; and
- e.) At least 50% of the units must be handicapped accessible.

A development plan will earn points and a building lot bonus above the basic number of building lots allowed under Section 171-25 F. (4) as follows:

Bonus Points	Building Lot Bonus	Example – 10 Lot Subdivision
40	10%	1 Bonus Lot – 1-2 dwellings
50	20%	2 Bonus Lots – 2-4 dwellings
60	30%	3 Bonus Lots – 3-6 dwellings
70	40%	4 Bonus Lots – 4-8 dwellings
80+	50%	5 Bonus Lots – 5-10 dwellings

If the point total results in a building lot bonus of a fractional number less than .5, the bonus building lot total will be rounded down to the next lowest whole number. The total number of bonus building lots under this section cannot exceed 50% of the maximum number of building lots allowed before the addition of bonus units.

[Criteria for approval. Approval of an open space/cluster development special permit shall be granted only if the Planning Board determines that

(1) The general special permit criteria in ~ 171-31 of this chapter have been complied with.

(2) The requirements of this section have been complied with.

(3) The plan is superior to a conventional one in preserving open space for conservation, scenic resources, recreation or agriculture and in protecting the natural features of the land.

(4) The plan allows for more efficient provision of streets, utilities and other public services.]

I. [Further ] *Other* requirements [upon approval].

(1) There shall be no amendments or changes to site analysis/development plan without review and approval from the Planning Board.

(2) No lot within an approved open space/cluster development may be further subdivided so as to increase the number of lots, and a notation to this effect shall be shown on any definitive plan of a subdivision and on the approved site analysis/development plan, if not a subdivision under the Subdivision Control Law.

**Article 12.** Upon motion made and seconded, it was

Voted that the town revise its existing Zoning Bylaws by adopting changes to Section 171-24. Flag Lots and Section 171-37. Terms defined, in the form available at Town Meeting labeled Town Meeting Version and dated March 31, 2010. Changes as below – additions italicized and deletions are underlined.

*2/3<sup>rd</sup>'s vote required. Moderator declared the vote carried. (Vote was unanimous)*

## **~ 171-24.1 Flag lots.**

The Zoning Board of Appeals may issue a special permit for the creation of up to one flag lot with reduced frontage, provided that the following requirements are complied with:

A. A flag lot may only be created by subdividing one lot which was in existence at the time of the adoption of this Flag Lot Bylaw amendment [Added April 27, 1987], which conforms to all of the provisions of the Zoning Bylaw except that the original lot from which the flag lot is created has not had contiguous land in common ownership sufficient to create a standard lot with the normal frontage requirements since the date of the adoption of this Flag Lot Bylaw Amendment.

B. *[Reserved for future use.] For minimum lot size and other dimensional requirements, a flag lot shall be considered to be in the district where it has its street frontage, except if any portion of the flag lot other than the access strip is in the Aquifer Protection District then the flag lot shall meet the minimum lot size requirements for the Aquifer Protection District.*

C. No lot eligible for flag lot development shall be subsequently subdivided so as to create more than one flag lot.

D. The lot shall be used for single-family purposes only.

E. The flag lot shall have a minimum street frontage of not less than 40 feet and an access width of not less than 40 feet from the front lot line to the principal structure. The front lot shall meet all of the zoning dimensional requirements normally required in the district.

F. No more than two flag lots may be adjacent to each other at the street line.

G. The area of each flag lot, excluding the access strip, shall be at least double the minimum lot area required in the district. In the Aquifer Protection District the area of each flag lot, excluding the access strip, shall be at least three (3) acres.

H. The width of the lot where the principal building is to be constructed shall equal or exceed the distance normally required for street frontage in that district.

I. Front, rear and side yards must equal or exceed those normally required in the district.

J. The grade, length and location of access driveways shall be constructed and maintained to provide:

(1) Adequate access and turnaround for vehicles, including sanitary and emergency vehicles, year round.

(2) A width of at least 15 feet with drainage and culverts where necessary. Driveways longer than 1,000 feet are discouraged and the Planning Board may require passing turnouts depending on the length and design of the proposed driveway.

(3) A maximum grade of 12%.

(4) A distance no closer than 10 feet to any abutting property line.

(5) Approval from the Highway and Fire Departments.

(6) No parking areas or structures shall be allowed in the strip.

K. There shall be maintained or kept a naturally occurring or a planted vegetated buffer zone between any flag lot and any front lot sufficient to provide privacy between the two lots.

L. Plans submitted to the Zoning Board of Appeals under this section shall be the same as the plans submitted to the Planning Board under the Subdivision Control Law and shall include the statement, "Lot \_\_\_\_\_ is a flag lot; building is permitted only in accordance with the special permit flag lot provisions of the Whately Zoning Bylaw."

M. The Planning Board shall not endorse any plan under the Subdivision Control Law for the purpose of creating a flag lot unless the plan depicts both the flag lot and the front lot from which the flag lot was created and unless the plan has been granted a special permit from the Zoning Board of Appeals.

## ARTICLE VII

### Definitions

#### ~ 171-37. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

**ABANDONMENT** -- The cessation of a non-conforming use or structure as indicated by the visible or otherwise indicated intention to discontinue a non-conforming use or structure.

**ACCESSORY APARTMENT** -- *an additional dwelling unit consisting of no more than four rooms and no more than 800 square feet of living area in a pre-existing single-family home. An Accessory Apartment may also be located in a pre-existing accessory structure such as a garage or barn provided there is no expansion of square footage of the accessory structure. The Accessory Apartment shall be occupied by no more than two people. The owner of the property shall permanently occupy the principal or accessory residence. Adequate off-street parking shall be provided and parking shall be to the side or rear of the principal structure to the maximum extent possible.*

**ACCESSORY BUILDING OR USE** -- A subsidiary building not attached to any principal building, or a use customarily incidental to, and located on the same lot with the principal building or use.

**CONGREGATE ELDERLY HOUSING** -- A building or buildings arranged or used for the residence of persons age 55 or older, with some shared facilities and services.

CONTAMINATION or POLLUTION -- Any substance introduced to water which exceeds Massachusetts drinking water standards, guidelines or health advisories or any substance detected in quantities determined by the Department of Environmental Protection to negatively impact public health. [Added 5-7-1991 ATM, Art. 23]

DWELLING -- A building or portion of a building used exclusively for the residence of one or more families.

DWELLING UNIT -- A building or portion of a building providing separate and complete living facilities for one family.

FAMILY -- An individual residing in one dwelling unit, a group of persons related by blood, marriage or adoption or a group of not more than four individuals not so related residing in one dwelling unit.

GROUNDWATER -- All waters found beneath the surface of the ground. [Added 5-7-1991 ATM, Art. 23]

HAZARDOUS MATERIAL -- Any substance with such physical or infectious characteristics as to pose a potential hazard to existing or potential water supplies or to human health. "Hazardous materials" include, but are not limited to, toxic chemicals, heavy metals, radioactive or infectious wastes, acids and alkalis, pesticides, petroleum products, herbicides, organic solvents and thinners. [Added 5-7-1991 ATM, Art. 23]

HAZARDOUS WASTE -- Any waste material hazardous to human health or the environment as designated by the United States Environmental Protection Agency under 40 CFR 261 and the Regulations of the Massachusetts Hazardous Waste Management Act, MGL C. 21c. [Added 5-7-1991 ATM, Art. 23]

JUNK or SALVAGE YARD -- An open-air (not enclosed in a structure with an impermeable floor) land use which includes the abandonment, collection, processing, purchase, receipt, storage or sale of scrap or discarded goods, materials, machinery or other type of junk. Exceptions to this definition shall be recycling stations for glass, paper, plastic, aluminum, tin and other items as the Board of Health shall be deemed to be recyclable and safe to the immediate environment, including groundwater; leaf and yard waste composting facilities; state-licensed transfer stations; and architectural component facilities. [Added 5-7-1991 ATM, Art. 23]

LOT -- A parcel of land, with definite boundaries, described and recorded on a plan or deed in the Franklin County Registry of Deeds.

LOT COVERAGE -- The area of a lot occupied by structures, walkways, drives, parking or other impervious surfaces. [Added 2-5-1991 STM, Art. 6]

LOT FRONTAGE -- The portion of a lot coinciding with a street line, providing both rights of access and potential vehicular access across the lot line to a potential building site. The street upon which the lot has frontage must be determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Whately Subdivision Regulations.<sup>2</sup> The portion of a lot coinciding with a discontinued road or a road appearing only on paper does not constitute "frontage." Similarly, the portion of a lot coinciding with a road deemed by the Building Inspector, in consultation with the Planning Board, to be impassable does not provide "frontage." In determining whether or not a road is passable, the Building Inspector and the Planning Board shall consider such factors as: the condition of the road bed and the surface of the road, whether the road contains obstructions, whether the road is navigable by ordinary passenger vehicles, whether the road is navigable by emergency vehicles and other appropriate factors.

MOBILE HOME -- A movable or portable dwelling unit on a chassis, designed for connection to utilities when in use and designed with or without the necessity of a permanent foundation for year-round living.

MULTIFAMILY DWELLING -- A building containing more than two dwelling units and not classified as a one- or two-family dwelling.

PRINCIPAL USE -- The primary purpose for which land or a building is designed, arranged, maintained or occupied.

SINGLE-FAMILY DWELLING -- A detached building containing one dwelling unit.

*STRUCTURE -- Anything constructed or erected, the use of which requires a fixed location on the ground, including swimming pools having a capacity of four thousand (4,000) gallons or more and mobile homes. Satellite television or reception dishes shall be deemed "structures" and shall comply with applicable setback and other zoning requirements. Structures are subject to the height requirements of these zoning bylaws.*

TRAILER OR RECREATIONAL VEHICLE -- A portable dwelling eligible to be registered and insured for highway use and designed to be used for travel, recreational and vacation use, but not for permanent residence; including equipment commonly called "travel trailers," pickup coaches or campers, motorized campers and tent trailers, and recreational vehicles, but not including mobile homes.

TWO-FAMILY DWELLING (DUPLEX) -- A detached building containing two dwelling units.

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<sup>2</sup>Editor's Note: See Ch. 234, Subdivision of Land.

WAY, ROAD or STREET -- A public way; a way which the Town Clerk certifies is maintained and used as a public way; a way shown on an approved and endorsed subdivision plan in accordance with the Subdivision Control Law; or a way in existence at the time the Subdivision Control Law was adopted by the town. The way shall have, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic and utilities for the proposed use of the land abutting the way.

**Article 13.** Upon motion made and seconded, it was

Vote to add a new Section, Section 171-24.2 Flexible Development for Small Residential Projects in the form available at Town Meeting labeled Town Meeting Version and dated March 31, 2010. Changes as below.

*2/3<sup>rd</sup>'s vote required. Moderator declared the vote carried. (Vote was unanimous)*

## ~ 171-24.2 Flexible Development for Small Residential Projects

*A. Flexible Development is an optional development device for residential development, not requiring a Special Permit, designed to encourage efficient use of Whately's topography and to preserve unique natural and cultural features while maintaining the overall density allowed through the Town's zoning.*

*B. Any parcel in the Agricultural/ Residential District may be divided into not more than ten (10) lots and built upon under the following alternative area and frontage requirements:*

*(1) The average frontage for all building lots created shall be no smaller than the minimum required under Section 171-10 Table of Dimensional Requirements, but individual lots may have frontage of as little as 60% of that requirement.*

*(2) The number of building lots created shall be no more than would have been allowed according to Section 171-10 Table of Dimensional Requirements for that zoning district.*

*(3) Individual lot area per unit may be as little as 80% of the minimum lot size required in Section 171-10 Table of Dimensional Requirements provided that the average lot size of all lots in the development meets the required minimum lot size. If one or more lots are reduced in size, others must be increased to compensate for the reduction. (For example, if one lot is reduced to 80% of the minimum lot size, another lot must be increased to 120% of the minimum lot size).*

*(4) Opting to develop under this method does not remove the developer's obligation to conform to all other rules and laws pertaining to construction or subdivision.*

*(5) The ANR or Subdivision Plan creating the lots shall be endorsed by the Planning Board as Approved for Flexible Development in addition to receiving the endorsement or approval required under the Subdivision Control Law.*

*(6) No further increase in the number of lots shall be allowed through subsequent land division and this restriction shall be recorded on relevant plans and deeds.*

**Article 14.** Upon motion made and seconded, it was

Voted that the town authorize the Board of Assessors to transfer from Free Cash certified as of July 1, 2009 the sum of **\$120,000** to reduce the tax levy for FY2011.

**Article 15.** Upon motion made and seconded, it was

Voted that the town accept G. L. c. 64L, §2(a) to impose a local meals excise tax of .75 percent.

**Article 16.** Upon motion made and seconded, it was

Voted that the town amend its local room occupancy excise under G. L. c 64G, § 3A from 4 percent to the rate of 6 percent.

**Article 17.** Upon motion made and seconded, it was

Voted that the town appropriate or reserve from the **Community Preservation Commission** annual revenues in the amounts recommended by the Community Preservation Committee for committee administrative expenses, community preservation projects and other expenses in fiscal year 2011, with each item to be considered a separate appropriation:

**Appropriations:**

From FY 2011 estimated revenues for Committee Administrative Expenses       **\$ 6,300**

**Reserves:**

From FY 2011 estimated revenues for Historic Resources Reserve               **\$ 12,600**  
From FY 2011 estimated revenues for Community Housing Reserve           **\$ 12,600**  
From FY 2011 estimated revenues for Open Space Reserve                   **\$ 12,600**  
From FY 2011 estimated revenues for Budgeted Reserve                       **\$ 80,000**

**Article 18.** Upon motion made and seconded, it was

Voted that the town amend the vote taken at the August 7, 1973 Special Town Meeting under Article 7 to read: That the Town designate Chestnut Plain Road *including North Street*, Haydenville Road and Conway Road as Scenic Roads in accordance with Chapter 40, Section 15C of the Massachusetts General Laws. (Amendments are bold and italicized)

**Article 19.** Upon motion made and seconded, it was

Voted that the town add the Town of Leverett as a member of the Franklin County Solid Waste Management District (“District”) and therefore amend Article I Paragraph 4 of the Franklin County Solid Waste Management District Agreement pursuant to Article VII of said Agreement by adding “Leverett” to the list of District municipalities, subject to the following terms:

The Town of Leverett shall be admitted as a member of the District, effective July 1, 2010, by paying a one-time membership fee to the District of \$4,550 plus an annual assessment of \$4,624 for Fiscal Year 2011 and all future assessments based upon the same assessment formula applied to all other District member municipalities and shall comply with all other provisions of the District Agreement.

**Article 20.** Upon motion made and seconded, it was

Voted that the town amend the charge for each written Demand issued by the Town Collector from a fee of \$5.00 to a fee of \$15.00, such sum to be added to and collected as part of the tax, as authorized by MGL Chapter 60, Section 15, effective as of July 1, 2010.

The Moderator recognized Carl Brooks from the Whately Grange who invited attendees to the Memorial Day festivities on May 30, 2010. The day will begin with a church service open to all at 10:00 a.m. at the Whately Congregational Church, followed at 11:00 a.m. by a parade and program. In case of rain, the program will be held at the Whately Elementary School.

The Moderator also acknowledged Jonathan Edwards who recognized Anita Husted who was this year’s dedicatee of the Annual Town Report.

Upon motion made and seconded, it was voted that we adjourn without date at 9:10 p.m.

A true copy,

Attest:

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Lynn M. Sibley, CMC, CMMC  
Town of Whately

