

# **TOWN OF STOW**

## **SPECIAL TOWN MEETING**

MONDAY, DECEMBER 12, 2005

7:00 P.M.

HALE MIDDLE SCHOOL  
HUGH MILL AUDITORIUM

## **SPECIAL TOWN ELECTION**

THURSDAY, DECEMBER 22, 2005

7:00 A.M. TO 8:00 P.M.

CENTER SCHOOL AUDITORIUM/GYMNASIUM

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## **WARRANT FOR 2005 SPECIAL TOWN MEETING**

To either of the Constables of the Town of Stow, in the County of Middlesex, GREETINGS:

In the name of the Commonwealth of Massachusetts, you are directed to notify and warn the inhabitants of the Town of Stow, qualified to vote in Elections and Town Affairs, to assemble in

### **HUGH MILL AUDITORIUM AT THE HALE MIDDLE SCHOOL**

In said Town on

**MONDAY, THE TWELFTH DAY OF DECEMBER 2005**

**AT 7:00 P.M.**

Then and there to act on the following Articles, namely:

#### **Article 1. Purchase of Two-Classroom Modular Unit**

To see if the Town will vote to borrow the sum of Two Hundred and Sixty Thousand Dollars (\$260,000.00), or any other sum, for the purpose of purchasing and constructing a two-classroom modular unit, together with any engineering and architectural costs, and any other incidental costs related thereto. Such borrowing is to be undertaken by the Treasurer with the approval of the Selectmen, pursuant to MGL Chapter 44 or as otherwise authorized by law, provided that an affirmative vote on this article shall be null and void and of no further force and effect unless the town approves by an affirmative vote a ballot question to exempt the amount appropriated from the provisions of Proposition two and one-half, so called; or take any other action relative thereto.

(Board of Selectmen)

*The Finance Committee will make a recommendation at Town Meeting.*

#### **Article 2. Purchase of Minute Man Property**

To see if the Town will vote to authorize the Selectmen to acquire by exercising its option to purchase under Chapter 61A of MGL, or to acquire by purchase, gift, eminent domain, or otherwise as provided by MGLs on such terms and conditions as are in the Town's best interest, 114.3 acres, shown as Parcel 22B-3 on map R-18 of the Assessors' Maps of Stow, located off Boxboro Road, known as the so-called Minuteman Property, for one or more of the following uses: siting a school, affordable housing, open space, active and passive recreation,

market rate housing or other municipal uses so long as areas designated for separate uses shall be clearly identified and delineated.

Further, to be undertaken by the Treasurer, with the approval of the Selectmen, to borrow under MGL Chapter 44 or Chapter 44B or as otherwise authorized by law, transfer from available funds, receive from gifts and/or grants, and/or expend the Community Preservation Fund Reserves in accordance with the provision of MGL Chapter 44B, the sum of Four Million Two Hundred Thirty-five Thousand Dollars (\$4,235,000.00), or any other sum, for the acquisition thereof and the costs associated therewith including legal, title, appraisal, engineering, and other costs or fees incidental thereto.

Further, to authorize the Board of Selectmen to enter into such agreements, execute such documents and apply for and accept such state or federal grants as may be available for reimbursement to the Town for these purposes.

Further, to authorize the Board of Selectmen to sell a portion of the land for the development of market rate housing or for other purposes in accordance with Chapters 30B and 44B as applicable, convey part or all of the land to the care, custody and control of the Conservation Committee and/or the Recreation Commission, and/or convey easements and impose conservation restrictions, the proceeds of any conveyances to reimburse the Town for the costs of the acquisition.

Such borrowing is to be undertaken by the Treasurer, with the approval of the Selectmen, provided that an affirmative vote on this article shall be null and void and of no further effect unless the town approves by an affirmative vote a ballot question to exempt the amount appropriated from the provisions of Proposition two and one-half, so called; or take any other action relative thereto.

(Board of Selectmen)

*The Finance Committee will make a recommendation at Town Meeting.*

### **Article 3. Purchase of PreK-5 Elementary School Design Plans**

To see if the Town will vote to borrow the sum of Two Million and Twenty-seven Thousand Dollars (\$2,027,000.00), or any other sum, to be expended on engineering and architectural services for the design development, plans and specifications for the construction of a new preK-5 elementary school and for related and incidental expenses for this project. Such borrowing is to be undertaken by the Treasurer, with the approval of the Selectmen, provided that an affirmative vote on this article shall be null and void and of no further effect unless the town approves by an affirmative vote a ballot question to exempt the amount appropriated from the provisions of Proposition two and one-half; or take any other action relative thereto.

(Board of Selectmen)

*The Finance Committee will make a recommendation at Town Meeting.*

### **Article 4. Improvements and Construction at Existing School Sites**

To see if the Town will vote to raise and appropriate, appropriate and transfer from available funds or borrow the sum of Ten Million Dollars (\$10,000,000), or any other sum in order to and for the purpose of remodeling, construction, reconstruction, expansion and/or making and extraordinary repairs at the Center and/or Pompositticut Schools, together with any appurtenances thereto and including any and all engineering, architectural, project management and legal costs incidental thereto; provided, however that an affirmative vote shall be null and void and of no further force and effect unless the Town approves a ballot question to exempt the amount appropriated from the provisions of Proposition two and one-half;

In addition an affirmative vote (for this article) shall be null and void and of no further force and effect should an affirmative vote be taken by Town Meeting to purchase the so called "Minuteman Property" AND to appropriate funding for a so called "New School Design", AND the Town approves ballots questions to exempt the amounts appropriated (for purchase of Minuteman Property, and New School Design) from the provisions of Proposition two and one-half, so-called; or take any other action relative thereto.

(Citizens' Petition)

*The Finance Committee will make a recommendation at Town Meeting.*

#### **Article 5. Purchase of Crescent Street Property**

To see if the Town will vote to borrow Two Hundred and Fifty-five Thousand Dollars (\$255,000.00), or any other sum, for the purpose of purchasing 0.25 acres, shown as parcel 2 on Map U-10 of the Assessors' Maps of Stow, located at 13 Crescent Street in order to construct a municipal parking lot and to fund any engineering plans and specifications, construction costs, or other incidental project costs related thereto; to be undertaken by the Treasurer, with the approval of the Selectmen, provided that an affirmative vote on this article shall be null and void and of no further force and effect unless the town approves by an affirmative vote a ballot question to exempt the amount appropriated from the provisions of Proposition two and one-half, so called; or take any other action relative thereto.

(Board of Selectmen)

*The Finance Committee will make a recommendation at Town Meeting.*

#### **Article 6. Adoption of a Right-to-Farm Bylaw**

To see if the Town will vote to amend the General Bylaws, by adding a new Article 15, Right to Farm, to read in its entirety as stated below; or take any other action relative thereto.

(Board of Selectmen)

*The Finance Committee will make a recommendation at Town Meeting.*

### **ARTICLE 15 RIGHT TO FARM**

#### **SECTION 1 LEGISLATIVE PURPOSE AND INTENT**

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations there under 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 Stow 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 By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Stow by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This By-law shall apply to all jurisdictional areas within the Town.

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

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 or lumbering operations;
- raising of livestock including horses;
- keeping of horses as a commercial enterprise; and
- keeping and raising of poultry, livestock, and other domesticated animals for food and other agricultural purposes, including bees.

"Farming" shall encompass activities including, but not limited to, the following:

- operation and transportation of slow-moving farm equipment over roads within the Town;
- control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals;
- application of manure, fertilizers and pesticides;
- conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, 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, management, or sale of the agricultural products; and
- on-farm relocation of earth and the clearing of ground for farming operations.

## **SECTION 2 RIGHT TO FARM DECLARATION**

The Right to Farm is hereby recognized to exist within the Town of Stow. 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. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

## **SECTION 3 DISCLOSURE NOTIFICATION**

Not later than 21 days after the purchase and sale contract is entered into, or prior to the sale or exchange of real property if no purchase and sale agreement exists, for the purchase or exchange of real property, or prior to the acquisition of a leasehold interest or

other possessory interest in real property, located in the Town of Stow, the landowner shall present the buyer or occupant with a disclosure notification which states the following:

“It is the policy of this community 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 or occupants that the property they are about to acquire or occupy 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. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances.”

A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification must be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property. In addition to the above, a copy of this disclosure notification shall be provided by the Town to landowners each fiscal year by mail.

#### **SECTION 4 RESOLUTION OF DISPUTES**

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, in accordance with statute and appropriate bylaws and regulations of the Town. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Board of Selectmen shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame.

The Board of Health, except in cases of imminent danger or public health risk, shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

#### **SECTION 5 SEVERABILITY CLAUSE**

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

This bylaw restates the various protections afforded to commercial farms throughout Massachusetts state law, and is intended to educate citizens that farming activities are valued in Stow. Our few remaining commercial farms provide essential components to maintain the character of the town. The notification provisions of the bylaw will enhance awareness relative to the value of agriculture in Stow. There are no new benefits or protections provided in this bylaw beyond those contained in State laws.

#### **Article 7. Establishment of an Agricultural Commission**

To see if the Town will vote to establish an Agricultural Commission. Said Commission shall serve as a facilitator and advocate for encouraging the pursuit of farming and agriculture in

Stow, shall promote agricultural-based economic opportunities in the Town, shall provide dispute resolution services, and shall work with Town officials and boards to promote and protect agricultural interests; or take any other action.

The Commission shall consist of five members appointed by the Board of Selectmen. The initial term of two members shall be three years, of two members shall be two years, and of one member shall be one year. After the initial term, the term of a member shall be three years. A maximum of three associate members may be appointed by the Commission. The term of an associate member shall be one year. Members and associates must be either residents of Stow or a resident of Massachusetts who operates a farm in Stow. The Board of Selectmen shall fill a vacancy based on the unexpired term of the vacancy in order to maintain the cycle of appointments, based on recommendations of the Commission.

Guiding Principles for Commission Appointment: Members and associates should: represent Town geographically, represent the diversity and scale of agricultural businesses, represent the diversity of the Town's population, encourage next generation farmers. The overall intent is to be inclusive not exclusive.

(Board of Selectmen)

*The Finance Committee will make a recommendation at Town Meeting.*

### **Article 8. Zoning Bylaw Amendment – Erosion Control**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8.1.10, by amending Subsection 3, and adding a new subsection 7, to read in their entirety as stated below in subsections (A) and (B) of this article; or to take any other action relative thereto.

(Planning Board)

*The Finance Committee will make a recommendation at Town Meeting.*

**(A) - Amend Section 3.8.1.10, Subsection 3 by replacing the words “areas” with the word “area” and the words “two acres” with the words “one acre”, to read in its entirety as stated below:**

3. No area totaling one acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity or unless within STREETS which are either public or designated on an approved subdivision plan or unless a special permit is approved by the Planning Board on the condition that run-off will be controlled, erosion prevented and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity when such temporary cover would be infeasible.

### **ANNOTATED VERSION**

3. No ~~areas~~ totaling ~~two~~ one acres or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity ~~or unless necessarily incidental to construction on the premises under a currently valid building permit~~ or unless within STREETS which are either public or designated on an approved subdivision plan or unless a special permit is approved by the Planning Board



*on the condition that run-off will be controlled, erosion prevented and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity when such temporary cover would be infeasible.*

**(B) - Amend Section 3.8.1.10 by adding a new Subsection 7 to read in its entirety as stated below:**

7. Before a project disturbs one acre or more of land, either by itself or as part of a larger development; and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board.

**ANNOTATED VERSION**

7. *Before a project disturbs one acre or more of land, either by itself or as part of a larger development; and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board.*

**PLANNING BOARD SUMMARY**

Part (A) of this article proposes to change the Special Permit requirement for areas greater than “two acres” cleared of vegetation to areas greater than “one acre” cleared of vegetation, consistent with the Federal requirement for a National Pollutant Discharge Elimination System (NPDES) permit.

Part (B) of this article proposes to require submission of a copy of the Stormwater Pollution Prevention Plan and Notice of Intent filed with the EPA under the NPDES permit to the Planning Board.

**Article 9. Zoning Bylaw Amendment – Common Drives**

To see if the Town will vote to amend the Zoning Bylaw by amending Section 6.2 by adding a new Subsection 6.2.7 to read in its entirety as stated below; or to take any other action relative thereto.

(Planning Board)

*The Finance Committee will make a recommendation at Town Meeting.*

- 6.2.7 As part of an approved subdivision or special permit granted by the Planning Board, the number of LOTs served by a common drive may be increased to five (5).

**ANNOTATED VERSION**

**6.2.7 As part of an approved subdivision or special permit granted by the Planning Board, the number of LOTS served by a common drive may be increased to five (5).**

**PLANNING BOARD SUMMARY**

The Planning Board believes that the use of common drives should be promoted rather than discouraged. This proposed amendment will increase the number of lots, from 3 to 5, allowed to be served by a common, thereby reducing the number parallel single drives that might otherwise be required, and reducing impervious surface area and site disturbance.

**Article 10. Zoning Bylaw Amendment – Non-conforming Uses and Structures**

To see if the Town will vote to amend the Zoning Bylaw by DELETING the first paragraph of Section 3.9 and the entirety of Section 3.9.1 as currently written and SUBSTITUTING NEW SECTION 3.9 and SECTION 3.9.1 and ADDING NEW SECTIONS 3.9.6 and 3.9.7 as follows; or take any other action relative thereto.

(Planning Board)

*The Finance Committee will make a recommendation at Town Meeting.*

**3.9 NON-CONFORMING USES AND STRUCTURES**

3.9.1 A pre-existing NON-CONFORMING USE or STRUCTURE may continue. However, other than Wireless Service Facilities, which may not be altered or extended unless specifically allowed in Section 3.11 of the Bylaw, no lawful pre-existing NON-CONFORMING USES or STRUCTURES may be extended or altered except in conformance with Sections 3.9.6 and 3.9.7 below. All applications for extensions and/or alterations shall include a scaled floor plan of the STRUCTURE(S) in question showing FLOOR AREA and ground coverage prior to and following the proposed changes in order to determine the degree to which the use has expanded from its original size. All applications for such special permits shall include such information and plans as required for a special permit as required in Section 9.2. Applicants shall also comply with the following site planning standards for “NON-CONFORMING USES or STRUCTURES”:

- 3.9.1.1 (Unchanged)
- 3.9.1.2 (Unchanged)
- 3.9.1.3 (Unchanged)
- 3.9.1.4 (Unchanged)
- 3.9.1.5 (Unchanged)
- 3.9.1.6 (Unchanged)

- 3.9.2 (Unchanged)
- 3.9.3 (Unchanged)
- 3.9.4 (Unchanged)
- 3.9.5 (Unchanged)

**3.9.6 Changes of Use and Limitation on Intensity and Size of Use - Other Than Single or Two-Family Residential Dwellings:**

3.9.6.1 As provided in G. L. c. 40A, sec. 6, a lawfully preexisting nonconforming use and/or structure, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if:

1. said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw;
2. there is a finding by the Board of Appeals that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;
3. that said extension, alteration or change is in accordance with the guidelines noted below; and
4. that the Board of Appeals grants a special permit as provided in Section 9.2.

3.9.6.2 Guidelines for Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures: Recognizing the need to provide guidelines for determining relative impacts upon the Town and the immediate neighborhood from an expansion, alteration or change of preexisting nonconforming uses and structures, and recognizing the basis and consistent principles of zoning with respect to minimizing nonconforming uses and structures, the following shall apply to the review of special permit applications under this Section:

1. the Board of Appeals shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity;
2. the Board of Appeals shall not encourage the expansion of a nonconforming structure or use as measured by either the:
  - a) amount of floor space or land area used, or
  - b) volume of activity, including but not limited to an increase in the intensity of use and/or a change in the nature or purpose of the use;
3. the Board of Appeals shall prohibit the expansion of nonconforming structures and uses unless there will be no demonstrable adverse impacts on abutting properties and those properties that generally characterize the neighborhood or locus within which the expansion is sought, and;
4. the Board of Appeals shall not encourage the expansion of nonconforming structures and uses if the expansion will negatively impact the Town of Stow's ground or surface waterbodies.

3.9.6.3 Table of Presumptively Not More Detrimental Extensions, Alterations, or Changes to Preexisting, Nonconforming Uses and Structures:

An extension, alteration or change to a lawfully preexisting nonconforming use or structure shall be presumed not to be substantially more detrimental to the neighborhood if the guidelines of Section 3.9.6.2 are considered and if the extension, alteration or change also is in compliance with the following:

**TABLE OF PRESUMPTIVELY NOT MORE DETRIMENTAL  
EXTENSIONS, ALTERATIONS, OR CHANGES TO OTHER THAN SINGLE  
OR TWO-FAMILY RESIDENTIAL DWELLINGS**

Issue	Presumptively Allowable Changes, Alterations, or Extensions
If maximum floor area ratio requirements are exceeded and/or minimum open space requirements are not met.	The extension, alteration, or change does not: 1) increase the floor area ratio requirements; 2) decrease the existing floor area ratio and/or; 3) results in an increase of the open space requirements of Section 4.4.
If the structure or use exceeds current parking or loading area requirements.	The requirements of Section 7 of the Zoning Bylaw are met or if the Board of Appeals determines that the existing use and proposed expansion or site conditions do not warrant the number of parking spaces required by Section 7.3.3.
If the structure or use exceeds, or is in violation of, or violates any other provision of the Zoning Bylaw.	The extension, alteration, or change meets the guidelines specified in Section 3.9.6.2 above.

**3.9.7 Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures.**

3.9.7.1 As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or structure accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that:

1. the proposed alteration, extension or structural change itself conforms to the requirements of the present Bylaw, and does not intensify any existing non-conformities or result in any additional non-conformities, in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made; or
2. the proposed alteration, extension or structural change itself does not conform to the requirements of the present Bylaw, and does intensify existing non-conformities or results in additional non-conformities, in which event a Petition for Special Permit must be made to the Board of Appeals, and the Board of Appeals must find that:

- a) there is no substantial increase in the nonconforming nature of said structure;  
and
- b) such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

3.9.7.2 In determining the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,” the following shall apply to the review of applications subject to this provision to alter, reconstruct extend or structurally change a preexisting nonconforming single- or two-family residential structure:

1. The Board of Appeals must make a determination as to the particular respect or respects in which the existing structure or lot does not conform to the requirements of the present Bylaw;
2. Should the Board of Appeals conclude that the proposed change would substantially increase the nonconforming nature of the structure or lot, the applicant will not be entitled to the issuance of a special permit;
3. If the Board of Appeals determines, that the proposal will not substantially increase the nonconforming nature of the structure or the lot, the applicant will also be required to show that the change will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood;
4. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood, the special permit sought will be denied unless the Board of Appeals determines that a special permit can be approved with conditions that would make the change substantially not more detrimental, in which case the Board of Appeals may approve a special permit with such conditions.
5. For the purposes of this Section, determination of “substantially more detrimental to the neighborhood” shall include consideration of and impacts to, the general and immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, reconstructed, extended or structurally changed structure. Additionally, a determination whether an altered, reconstructed, extended or structurally changed structure will be “substantially more detrimental to the neighborhood” shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues.

#### ***ANNOTATED VERSION***

#### ***3.9 NON-CONFORMING USES and STRUCTURES***

~~***A pre-existing, NON-CONFORMING USE or STRUCTURE may continue. However:***~~

- 3.9.1 **A pre-existing NON-CONFORMING USE or STRUCTURE may continue.**  
**However,** Other than Wireless Service Facilities, which may not be altered or extended unless specifically allowed in Section 3.11 of the Bylaw, no **lawful** pre-existing, NON-

CONFORMING USES or STRUCTURES may be extended or altered except in conformance with Sections 3.9.6 and 3.9.7 below. ~~upon application for a special permit and a finding by the Board of Appeals that such change is not substantially more detrimental to the neighborhood than the existing non-conforming use. The extent of the NON-CONFORMING USE of a STRUCTURE may be increased up to one hundred (100) percent of the FLOOR AREA and the extent of the NON-CONFORMING USE of the land may be increased up to twenty-five (25) percent of the ground area. These limits may be further extended upon special permit granted by the Board of Appeals.~~ All applications for extensions and/or alterations shall include a scaled floor plan of the STRUCTURE(S) in question showing FLOOR AREA and ground coverage prior to and following the proposed changes in order to determine the degree to which the use has expanded from its original size. All applications for such special permits shall include such information and plans as required for a special permit as required in Section 9.2. Applicants shall also comply with the following site planning standards for "NON-CONFORMING USES or STRUCTURES":

- 3.9.1.1 *It shall comply with the parking requirements of the Parking Section of this Bylaw, except as superseded by 3.9.1.4., 3.9.1.5. and 3.9.1.6. below;*
- 3.9.1.2 *It shall comply with the SIGN section of this Bylaw;*
- 3.9.1.3 *It shall comply with the General Use Regulations section of this Bylaw;*
- 3.9.1.4 *No parking, BUILDING or outdoor storage facility of materials or products shall be closer than 35 feet from the side or rear LOT line, nor closer than 50 feet from the STREET LINE;*
- 3.9.1.5 *Parking and outdoor storage of materials or products shall be screened from the view of abutting properties and the view from public ways by vegetative screens, opaque fencing or topography; and*
- 3.9.1.6 *There shall be sufficient space and provision on site for the maneuvering of vehicles so as to allow loading and unloading of materials and products without impeding the flow of traffic along public ways or blocking pedestrian sidewalks, paths and rights of way.*
- 3.9.2 *If said NON-CONFORMING USE has been changed to a more restricted use, it shall not again be changed to a less restricted use.*
- 3.9.3 *If the NON-CONFORMING USE is discontinued or abandoned for a period of two (2) years or more, it shall not be re-established except upon a special permit granted by the Board of Appeals.*
- 3.9.4 *A non-conforming single or two-family DWELLING or agricultural STRUCTURE which has been damaged or removed may be rebuilt or restored at the same location and again used as previously, provided that the owner shall start operations for restoring and rebuilding on said premises within twelve (12) months after such damage or removal and reconstruction is completed and occupancy begun within two (2) years of start of restoration except upon a special permit for a longer period of time granted by the Board of Appeals.*
- 3.9.5 *An amendment to the Zoning Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such bylaw required by Section 5, but shall*

*apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the non-conforming nature of said structure. In cases involving construction, such construction shall be carried through to completion continuously and expeditiously. If such construction has ceased for a period of two or more years, it shall be considered abandoned, and exemptions from zoning bylaw amendments shall cease to apply.*

3.9.6 *Changes of Use and Limitation on Intensity and Size of Use - Other Than Single or Two-Family Residential Dwellings:*

3.9.6.1 *As provided in G. L. c. 40A, sec. 6, a lawfully preexisting nonconforming use and/or structure, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if:*

1. *said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw;*
2. *there is a finding by the Board of Appeals that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;*
3. *that said extension, alteration or change is in accordance with the guidelines noted below; and*
4. *that the Board of Appeals grants a special permit as provided in Section 9.2.*

3.9.6.2 *Guidelines for Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures: Recognizing the need to provide guidelines for determining relative impacts upon the Town and the immediate neighborhood from an expansion, alteration or change of preexisting nonconforming uses and structures, and recognizing the basis and consistent principles of zoning with respect to minimizing nonconforming uses and structures, the following shall apply to the review of special permit applications under this Section:*

1. *the Board of Appeals shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity;*
2. *the Board of Appeals shall not encourage the expansion of a nonconforming structure or use as measured by either the:*
  - a) *amount of floor space or land area used, or*
  - b) *volume of activity, including but not limited to an increase in the intensity of use and/or a change in the nature or purpose of the use;*

3. the Board of Appeals shall prohibit the expansion of nonconforming structures and uses unless there will be no demonstrable adverse impacts on abutting properties and those properties that generally characterize the neighborhood or locus within which the expansion is sought, and;
4. the Board of Appeals shall not encourage the expansion of nonconforming structures and uses if the expansion will negatively impact the Town of Stow's ground or surface waterbodies.

3.9.6.3 Table of Presumptively Not More Detrimental Extensions, Alterations, or Changes to Preexisting, Nonconforming Uses and Structures:

An extension, alteration or change to a lawfully preexisting nonconforming use or structure shall be presumed not to be substantially more detrimental to the neighborhood if the guidelines of Section 3.9.6.2 are considered and if the extension, alteration or change also is in compliance with the following:

TABLE OF PRESUMPTIVELY NOT MORE DETRIMENTAL EXTENSIONS, ALTERATIONS, OR CHANGES TO OTHER THAN SINGLE OR TWO-FAMILY RESIDENTIAL DWELLINGS

<u>Issue</u>	<u>Presumptively Allowable Changes, Alterations, or Extensions</u>
<u>If maximum floor area ratio requirements are exceeded and/or minimum open space requirements are not met.</u>	<u>The extension, alteration, or change does not:</u> 4) <u>increase the floor area ratio requirements;</u> 5) <u>decrease the existing floor area ratio and/or;</u> 6) <u>results in an increase of the open space requirements of Section 4.4.</u>
<u>If the structure or use exceeds current parking or loading area requirements.</u>	<u>The requirements of Section 7 of the Zoning Bylaw are met or if the Board of Appeals determines that the existing use and proposed expansion or site conditions do not warrant the number of parking spaces required by Section 7.3.3.</u>
<u>If the structure or use exceeds, or is in violation of, or violates any other provision of the Zoning Bylaw.</u>	<u>The extension, alteration, or change meets the guidelines specified in Section 3.9.6.2 above.</u>

3.9.7 Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures.

3.9.7.1 As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or structure accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that:



1. the proposed alteration, extension or structural change itself conforms to the requirements of the present Bylaw, and does not intensify any existing non-conformities or result in any additional non-conformities, in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made; or
2. the proposed alteration, extension or structural change itself does not conform to the requirements of the present Bylaw, and does intensify existing non-conformities or results in additional non-conformities, in which event a Petition for Special Permit must be made to the Board of Appeals, and the Board of Appeals must find that:
  - a) there is no substantial increase in the nonconforming nature of said structure;
  - and
  - b) such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

3.9.7.2 In determining the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,” the following shall apply to the review of applications subject to this provision to alter, reconstruct extend or structurally change a preexisting nonconforming single- or two-family residential structure:

1. The Board of Appeals must make a determination as to the particular respect or respects in which the existing structure or lot does not conform to the requirements of the present Bylaw;
2. Should the Board of Appeals conclude that the proposed change would substantially increase the nonconforming nature of the structure or lot, the applicant will not be entitled to the issuance of a special permit;
3. If the Board of Appeals determines, that the proposal will not substantially increase the nonconforming nature of the structure or the lot, the applicant will also be required to show that the change will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood;
4. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood, the special permit sought will be denied unless the Board of Appeals determines that a special permit can be approved with conditions that would make the change substantially not more detrimental, in which case the Board of Appeals may approve a special permit with such conditions.
5. For the purposes of this Section, determination of “substantially more detrimental to the neighborhood” shall include consideration of and impacts to, the general and immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, reconstructed, extended

or structurally changed structure. Additionally, a determination whether an altered, reconstructed, extended or structurally changed structure will be “substantially more detrimental to the neighborhood” shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues.

#### **PLANNING BOARD SUMMARY**

This article proposes to authorize the Building Inspector to issue a Building Permit, without the need for a Special Permit, for Lawful Preexisting Nonconforming Single or Two-Family Residential Structures, if a proposed alteration, extension or structural change conforms to the requirements of the present Bylaw and does not intensify any existing non-conformities or result in any additional non-conformities. This article also proposes to define guidelines for the Zoning Board of Appeals to consider in Special Permit Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures, and to determine the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,”

## **Article 11. Town Election**

To vote by ballot on December 22, 2005 at Center School Auditorium/Gymnasium in said Town of Stow the following questions:

### **Question 1. Purchase of Two-Classroom Modular Unit**

Shall the Town of Stow be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to fund the engineering and architectural services for the design development, plans and specifications, purchase and construction of a two-classroom modular school unit and to fund any incidental expenses related thereto?

### **Question 2. Purchase of Minute Man Property**

Shall the Town of Stow be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to acquire by purchase, gift, eminent domain, or otherwise as provided by Massachusetts General Laws, 114.3 acres, shown as parcel 22B-3 on map R-18 of the Assessors' Maps of Stow, located off Boxboro Road, known as the so-called Minute Man property, for one or more of the following purposes: siting a school; affordable housing; market rate housing; open space; active and passive recreation; or other municipal uses; and to fund any of the costs incidental to said acquisition?

### **Question 3. Purchase of PreK-5 Elementary School Design**

Shall the Town of Stow be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to fund engineering and architectural services for the design development, plans and specifications for the construction of a new preK-5 elementary school and to fund any incidental expenses related thereto?

### **Question 4. Improvements and Construction at Existing School Sites**

Shall the Town of Stow be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond(s) to be issued in order to finance the re-modeling, construction, reconstruction, expansion or making of extraordinary repairs at the Center and/or Pompositticut Schools, together with any appurtenances and including any and all engineering, architectural, project management and legal and other related costs incidental thereto?

### **Question 5. Purchase of Crescent Street Property**

Shall the Town of Stow be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to fund the purchase of 0.25 acres, shown as parcel 2 on Map U-10 of the Assessors' Maps of Stow, located at 13 Crescent Street for the purpose of building a municipal parking lot and to fund any engineering plans and specifications, construction costs, or other incidental project costs related thereto?

And you are directed to serve this warrant by posting copies attested by you calling same at the Town Building and at each of at least seven (7) other public places at least fourteen (14) days before the time of holding said meeting.

Hereof, fail not and make due return of the warrant with your doings thereon to the Town Clerk or Selectmen on or before the time of said meeting.

Given under our hands this fifteenth day of November in the year 2005.

BOARD OF SELECTMEN

Edward R. Perry, Jr., Chairman  
John Clayton, Jr.  
Stephen Dungan  
Carole Makary  
Janet Wheeler