TOWN OF MILTON
2010

Special Town Meeting

Monday, February 22, 2010
Milton High School Auditorium
7:30 p.m.

WARRANT

INCLUDING THE REPORT OF THE WARRANT COMMITTEE AND RECOMMENDATIONS ON ARTICLES
as required by Chapter 3, Section 4, of the General Bylaws of the Town
2010

SPECIAL TOWN MEETING WARRANT

Commonwealth of Massachusetts) SS.
County of Norfolk

To any of the Constables of the Town of Milton in said County:

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify and warn the inhabitants of the Town of Milton, qualified to vote in Town affairs, to meet at the Milton High School Auditorium on Gile Road, in said Milton on Monday, the twenty-second day of February next at 7:30 o’clock in the evening, then and there to act upon the following Articles to wit:

Articles 1 through 4

And you are directed to warn said inhabitants qualified as aforesaid to meet at the times and places and for the purposes herein mentioned by posting attested copies of the Warrant in each of the Post Offices of said Town fourteen days at least before the twenty-second day of February and leaving printed copies thereof at the dwelling houses of said Town at least fourteen days before the date.

Hereof fail not and make due return of this Warrant with your doings thereon to the Town Clerk, on or before said twenty-second day of February, next.

Given under our hands at Milton this twentieth day of January, two thousand and ten.

John Michael Shields
Marion V. McEttrick
Kathryn A. Fagan

A True Copy: Attest

Stephen Freeman
CONSTABLE OF MILTON
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WARRANT ARTICLES

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In compliance with the Americans with Disabilities Act, this warrant can be made available in alternative formats. The February 2010 Special Town Meeting, if requested, will be offered by assisted listening devices or an interpreter certified in sign language. Requests for alternative formats should be made as far in advance as possible.

Should you need assistance, please notify the Board of Selectmen at 617-898-4843 or 617-696-5199 TTY.

Smoking and other tobacco use is prohibited in school facilities and outside on school grounds by MGL Chapter 71, Section 37H, “An Act Establishing the Education Act of 1993.” This law applies to any individual at any time.
REPORT OF THE WARRANT COMMITTEE
FOR THE FEBRUARY 2010 SPECIAL TOWN MEETING

You will be asked to consider four articles at this special Town Meeting. One article will ask you to consider the sum that departmental appropriation should be reduced for fiscal year 2010. You will be asked to consider whether to amend the Town’s bylaws to add a new bylaw on blasting permits and requirements. Another article will ask you to consider appropriating $6,200,000 for the construction of a wind turbine to provide energy generation that will offset a portion of the Town’s utility costs. Finally you will be asked to consider amending the Town’s zoning bylaws to add Institutional/Commercial overlay zoning in a Residence C district.

It is no secret that we are in the midst of one of the worst national and international recessions since the Great Depression. The economy has improved and the experts have said that we are out of recession. However this recession was so deep and far reaching that it will take considerable time to fully recover. Unemployment continues at near double digit rates. Real estate values while stabilizing are still significantly lower than they were in the height of the boom years. State tax revenue generated from capital gains will take considerable more time to recover due to all of the unused realized losses from 2007 and 2008.

The Warrant Committee is recommending that the Town reduce fiscal year 2010 appropriations by approximately $240,000. The reason for this is because of the Governor’s cuts to the State’s fiscal year 2010 budget proposed in October. In addition to departmental cuts the Governor has proposed cuts in police education incentive funds and payments in lieu of taxes. If approved by the legislature, these cuts will result in approximately a $240,000 reduction in Milton’s State aid for FY2010. The legislature has yet to act on the Governor’s request but is expected to do so shortly after the special US senatorial election in January.

The Warrant Committee does not believe that this will be the final reduction in local aid for fiscal year 2010. The State’s revenue projections were revised down in October 2009. State revenue collection through December 2009 overall are tracking slightly above the reduced projections. However much of the State’s revenue is determined in the second half of the fiscal year when corporate and individual income taxes are filed. The Warrant Committee believes that these revenues will be the most unstable because of the economy. While no one has a crystal ball to predict the future with total accuracy the Warrant Committee believes that there is a reasonable possibility that State revenues will fall off and the Town will experience a second round of local aid cuts. It is for this reason that the Warrant Committee is recommending that the Town transfer approximately $460,000 from the departmental appropriations to the reserve fund. These funds could then be held in the reserve fund and used to mitigate further local aid reductions for FY2010. The net result of the article would be to reduce departmental appropriations by $700,000 for FY2010.
The question that will obviously arise is why do this now before we know if there will be any further local aid cuts or how much those cuts may be? The reason is that budget cuts become much more difficult and have a much more profound impact on services the later that they occur in the year. It makes more sense to reduce spending now when those spending cuts can be spread over a longer period of time. All of the departments were informed in November that there was a real possibility that appropriations would be reduced by as much as $900,000 (later reduced to $700,000). All of the departments were informed of their share of the potential reduction and urged to take appropriate measures to plan for the likelihood of a reduction.

The Warrant Committee held a joint meeting with the Selectmen and the School Committee in November to discuss the pending and potential local aid cuts for FY2010. While there is agreement among all three boards that local aid will be cut in FY2010 the boards do not agree on the amount. The Warrant Committee’s original proposal was $900,000. The Selectmen believed that $500,000 would be a more appropriate amount. The School Committee was not as much concerned with the amount as they were with a consensus so that they could devise an appropriately fiscal plan.

We received impact statements from all of the major departments based on a reduction of $900,000. It was clear that at $900,000 there would be some impact on services by some departments. Some departments indicated that they would have to cut back temporary help. Other departments projected a reduction in personnel hours. None of the departments indicated that workforce reductions would result. The largest dollar impact would be to the Schools. This year the School District has available to it approximately $1.1 million of semi discretionary Federal Stimulus funds available. These are funds over and above the School’s original budget for FY2010. The purpose of the Stimulus Funds is to save jobs and to make systemic improvements that will benefit future years. The Schools could utilize a portion of these funds to mitigate their share of the reductions. That is not to say that the School District is not impacted by the proposed reductions. Every dollar of Stimulus funds used for appropriation reductions is a dollar that will not be available to make systemic improvements. That is a large lost opportunity to make changes that could potentially allow the School District to operate more efficiently and effectively.

Another factor that must be kept in mind is the FY2011 budget. Even if State revenues keep on target for this fiscal year, the Massachusetts Taxpayers Foundation is predicting in an article published in December 2009 that the State will have a $3 billion structural deficit for FY2011. The reason for this prediction is the large amount of one time revenue that the State has used to balance the FY2010 budget that will simply not be available in FY2011 and the likelihood that new revenue will be available to replace it is remote. The Warrant Committee is currently in the process of reviewing the FY2011 budget. The Committee has asked for
and has received level dollar budgets from all departments. That means a budget for FY2011 that will require no more than the same amount of appropriation as was appropriated in FY2010. That means that departments will be required to absorb salary increases and other inflationary increases in FY2011 within their budgets with no additional funding from the Town. After the initial review of available revenue and fixed costs for FY2011 the level dollar budgets submitted would still leave the Town with a budget deficit of slightly over $1 million. The Committee has predicted a reduction in State Aid for FY2011. It is hoped that the estimated reduction is enough. If not the budget deficit may be higher. To say that FY2011 is going to be a tight fiscal year is an understatement. It would be in the best interest of the Town to have a healthy free cash balance to be able to draw on during the fiscal year if necessary to mitigate inequities and other unforeseen consequences that may result from what will essentially be an under-funded budget. The Town currently has negative free cash. To have a free cash surplus for FY11 one or both of two things must occur. Departments must return unused appropriations or actual revenue must exceed estimated revenue for FY2010. The combination of those two things must be of a magnitude large enough to cover this year’s free cash deficit and the FY09 snow and ice deficit before any free cash surplus can be generated. It does not appear at this point that actual revenues for FY2010 will track significantly above estimated revenues. Therefore if free cash is to be generated it will have to come from departmental restraint in FY2010 expenditures. One advantage of moving $460,000 to the reserve fund is that it will be an unexpended appropriation if additional state aid cuts do not materialize that would help the free cash situation.

The Town is one of a handful of municipalities to have explored the harnessing of wind to generate electricity. The Selectmen and the members of the Wind Energy Committee are to be commended for their hard work and dedication in bringing a viable plan that will save the Town several million dollars in energy costs over a twenty year period. As you may remember at last year’s Annual Town Meeting the Town approved an amendment to the zoning bylaws that would allow for the construction of two wind turbines not exceeding 480 feet in height to be constructed on Town owned land. The Town is now at the point of entering the design phase of the project and hopefully to begin construction later this year. Before Town Meeting now is an Article to authorize the Town to borrow money to finance the planning and construction of the project.

A few things have occurred since Town Meeting last May. The Town commissioned an energy consultation firm, KEMA, to prepare a feasibility study and energy generation cash flow projections for the proposed project. That study revealed that it was not feasible to construct two wind turbines on the proposed site. Because of wind flow at the site, one turbine would interfere with the other turbine when the wind was flowing from a certain direction. It was determined that the wind flow from this direction would be significant and would result in one of the turbines being ineffective for significant times. Therefore the Town
has decided to construct one turbine instead of two. The KEMA study projects the total cost of planning and construction to be $6.2 million. The Town has also commissioned Beacon Energy consultants to help the Town with contract negotiations with utility companies, grant proposals and financial consulting.

The Town has recently learned that it will receive a $399,000 grant toward the construction of the turbine. Based on a projected cost of $6.2 million, financed with 15 year bonds issued at 3% the cumulative undiscounted net cash flow after payment of debt service and operating and decommissioning costs over a twenty year period is estimated to be $7.6 million. Twenty years was used as this is the estimated life of a wind turbine. Based on the Town’s current electricity use for Schools and Town owned buildings one wind turbine would generate an amount of energy equal to about 70% of current electricity use. The Town will own the wind turbines but because of the specialized operating needs the Town will contract with a third party to maintain and operate the turbine. The Town will sell the energy that the wind turbine generates to the public utility company. Under state law the utility companies are required to purchase electricity from municipalities at a retail rather than wholesale rate. Please refer to Table 1 in the back of the Warrant for an analysis of the expected revenues and costs of the project.

The Town currently has no bylaw controlling the use and storage of explosive materials within the Town. Under existing Massachusetts State law, 527 CMR Section 13, one must apply to the Town’s fire marshal for a permit. The contractor using or storing the explosives must be duly licensed and comply with State law regarding use and storage. The Article that you will be asked to consider will establish a bylaw that incorporates the provisions of MGL 527CMR §13 and establishes additional standards not embodied in the State Law.

The bylaw will establish a committee consisting of the Fire Chief, Town Engineer and Building Commissioner to be responsible for issuing permits for the use of explosives and enforcement of the bylaw. The bylaw will also establish requirements for a pre-blasting survey, fire department supervision, posting of surety bonds and penalties for violations.

The pre-blasting survey will require the contractor to prepare a written survey of the interior and exterior of existing buildings and structures, including residential and commercial buildings, landscape and retaining walls, detached garages and in-ground swimming pools, within a 500 foot radius of the blasting area. The bylaw will require that the survey record all visible structural defects such as cracks, settlement, and lines out of plumb. A copy of the survey would be required to be on file with the Town Engineer, the Building Commissioner and the Town Clerk.

The bylaw will also require that all blasting is to be supervised on site by an authorized member of the Fire Department and the cost of supervision be paid by
the contractor. The contractor will be required to post a bond with the Town if the blasting will excavate more than a ten cubic yard area. Finally a penalty of $250 per day is imposed for violations of the bylaw.

The Warrant Committee supports this proposed bylaw. The Committee believes that it will add a degree of protection to the Town and affected residents from financial loss. The Committee further believes that the requirement of onsite supervision will provide appropriate protection to mitigate safety concerns that are inherent with the use of explosives.

One of the most controversial issues that this Town has seen in several years is the proposed amendment to the Town’s Zoning Bylaws that would provide for a commercial / institutional development in a Residence C district. The proposed zoning bylaw was written specifically for the proposed development of property owned by Temple Shalom on Blue Hill Avenue; however it would also apply to any other Milton resident that met all of the requirements of the proposed bylaw. It should be noted that because of the many restrictions embodied in the proposed document there are only two other properties in the Town that could qualify under the proposed bylaw. Those properties are St Mary’s School and all of the property collectively owned by St Elizabeth’s Church.

There are two issues involved. The first issue is whether the Town should consider allowing nonresidential development in a residential neighborhood. The second is the issue of the proposed development of the Temple Shalom property. Although they are intertwined they are separate issues. The passage of the zoning bylaw will not necessarily allow the Temple Shalom to develop their site. Development of the site will require both the passage of the proposed bylaw and the issuance of a special permit by the Planning Board. The special permit will require a 4/5 vote of the Planning Board. The Warrant Committee considered both issues in reaching its decision to recommend in favor of this Article.

The Planning Board has held several public hearings as well as soliciting public comments at several of its meetings on this issue. The Warrant Committee has devoted three meetings to the proposed bylaw including one meeting that we solicited comments from and asked questions of all concerned parties. This is clearly a difficult issue and one which a unanimous consensus was not reached. The Planning Board was split three to two in favor of the bylaw. The Warrant Committee was split seven to three in favor of the bylaw. The Warrant Committee in reaching its decision considered the potential impact to the community of the institutional / commercial development weighed against the other potential uses of the property, the safeguards embodied in the proposed bylaw to protect residents and their property, the general attitude of the residents of the Town regarding commercial development in residential zones, the potential revenues and potential expenses implicit in the differing uses of the property, the desire to maintain a place of worship in the Town for the Town’s Jewish residents and the degree of control that the Town would have over the development of the property.
In the opinion of the Warrant Committee the most likely potential use of the property if not developed as a commercial property would be rental housing developed under the guidelines of Massachusetts General Law 40B. While the most desirable use of the property in terms of impact to the neighborhood would be single family homes the Committee believes that such a use would be economically unfeasible for potential developers. The Committee also believes that such a use would not allow the Temple to remain in the area and likely not allow the Temple to remain in the Town. The Warrant Committee believes that affordable housing within the Town of Milton is desirable. However the Committee believes that it is in the best interest of the Town to manage and control how affordable housing is developed. The Committee believes that the potential development of the Temple property as affordable housing would not allow the Town sufficient control to ensure that the development would add value to the community and the Town. The Warrant Committee was informed that, in a worst case scenario in terms of density, a development under MGL 40B would allow for the development of approximately 100 residential housing units on the site. In the Committee’s opinion such a 40B development would adversely affect property values in the neighborhood. It is not clear that a tastefully designed commercial development as proposed with appropriate traffic mitigation would adversely affect property values. The Planning Board under the proposed bylaw has the control necessary to ensure that any development that takes place will be tasteful and appropriate to the neighborhood. The Committee believes that the proposed bylaw has sufficient safeguards to allow for the mitigation of added traffic and other factors that could pose safety concerns and affect property values.

The Committee reviewed with the Planning Board the comments received from a Planning Board questionnaire distributed last year. Of interest to the Committee were the questions that pertained to the resident attitude toward commercial development in residential areas within the Town. Based on the summary of responses to those questions it appears that the residents of the Town that responded are generally in favor of considering commercial development in residential areas. It was also clear that the respondents would not support commercial development in their neighborhood. It is not clear from the responses if residents support the consideration of commercial development because of its positive impact on residential real estate taxes in the Town or if they believed that commercial development in residential areas could be desirable and beneficial to the Town as a whole.

The Warrant Committee considered potential revenue and expenses to the Town under different development scenarios. Information from the Assessors Department indicates that commercial development will generate more tax revenue than any other form of residential development. However, the difference between tax revenue from commercial and tax revenue from a dense affordable housing development would be negligible. Costs associated with development of the property include education costs, public works costs and public safety costs.
There are unquestionably significantly more municipal costs associated with a residential development than a commercial development. Additional education costs would not exist under a commercial development. Public works expenses such as snow plowing, refuse collection and maintenance of public roads would not be affected by commercial development. Most public safety costs are fixed within a relative range. It is unclear if the addition of 100 residential housing units would result in additional public safety costs. Most additional public safety costs associated with commercial developments can be passed on to the owner of the commercial property.

This is certainly not an issue to be taken lightly. Town Meeting’s vote either in favor or against on this bylaw will have an impact on the community surrounding Temple Shalom and the Town as a whole for years to come. The one thing that we do know is that the use of the property is going to change. What that change will be in large part will be determined by this Town Meeting.

Respectfully submitted,

January 19, 2010

Tom Hurley, Chair
Maurice (Moe) Mitchell, Secretary
   Ewan Innes
   Leroy Walker
   Barbara Martin
   Kevin Chase
   John Folcarelli
   Omar Sanchez
   George Mandell
   Jean H. Powers
   Raj Pathak
   Eric Kelley
   Michael Zullas
   John Ahonen
   Henry Bell
   Helen Kiddy, Clerk
**ARTICLE 1** To see if the Town will vote to reduce the following appropriations voted by Milton Town Meeting in May, 2009 by the articles referenced in the table below and voted by Milton Town Meeting in October 2009 by Article 1 for the twelve month period beginning July 1, 2009:

<table>
<thead>
<tr>
<th>Department</th>
<th>Current Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schools</td>
<td>Article 28</td>
</tr>
<tr>
<td></td>
<td>$ 32,976,036</td>
</tr>
<tr>
<td>Police</td>
<td>Article 16</td>
</tr>
<tr>
<td></td>
<td>$ 5,843,968</td>
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<tr>
<td>Fire</td>
<td>Article 16</td>
</tr>
<tr>
<td></td>
<td>$ 4,482,001</td>
</tr>
<tr>
<td>Public Works</td>
<td>Article 19</td>
</tr>
<tr>
<td></td>
<td>$ 4,114,694</td>
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<tr>
<td>MEMA</td>
<td>Article 16</td>
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<td></td>
<td>$ 13,424</td>
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<tr>
<td>Inspectioonal Services</td>
<td>Article 16</td>
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<td>$ 322,611</td>
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<tr>
<td>Board of Appeals</td>
<td>Article 18</td>
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<td>$ 32,171</td>
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<tr>
<td>Board of Health</td>
<td>Article 24</td>
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<td>$ 164,396</td>
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<tr>
<td>Board of Assessors</td>
<td>Article 17</td>
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<td>$ 211,624</td>
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<tr>
<td>Central Business Office</td>
<td>Article 17</td>
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<td>$ 341,730</td>
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<tr>
<td>Conservation Commission</td>
<td>Article 18</td>
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<td>$ 2,499</td>
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<tr>
<td>Historical Commission</td>
<td>Article 18</td>
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<td>$ 2,234</td>
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<td>Information Technology</td>
<td>Article 17</td>
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<td>$ 236,708</td>
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<tr>
<td>Law</td>
<td>Article 17</td>
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<td>$ 142,437</td>
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<td>Personnel Board</td>
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<td>$ 44,546</td>
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<td>Planning Board</td>
<td>Article 18</td>
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<td>$ 15,499</td>
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<td>Selectmen</td>
<td>Article 17</td>
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<td>Town Clerk</td>
<td>Article 17</td>
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<td>Treasurer-Collector</td>
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<td>Warrant Committee</td>
<td>Article 18</td>
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<tr>
<td>Veterans Benefits</td>
<td>Article 17</td>
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<td></td>
<td>$ 23,030</td>
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<tr>
<td>Cemetery</td>
<td>Article 26</td>
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<td>$ 685,415</td>
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<td>Council on Aging</td>
<td>Article 18</td>
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<td>Library</td>
<td>Article 25</td>
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<td>$ 991,455</td>
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<td>Parks and Recreation</td>
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RECOMMENDED that the Town vote to increase the appropriation for the reserve fund voted by Milton Town Meeting in May, 2009 by Article 32 from $349,380 to $807,893 and reduce the following appropriations voted by Milton Town Meeting in May, 2009 by the articles referenced in the table below and voted by Milton Town Meeting in October 2009 by Article 1 for the twelve month period beginning July 1, 2009:

<table>
<thead>
<tr>
<th>Department or Item</th>
<th>Meeting Vote</th>
<th>Current Appropriation</th>
<th>Reduction</th>
<th>Revised Appropriation</th>
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<td>$977,667</td>
</tr>
<tr>
<td>Parks and Recreation - General Expense</td>
<td>Article 27</td>
<td>$359,404</td>
<td>($10,863)</td>
<td>$348,541</td>
</tr>
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</table>

COMMENT: At the February Special Town Meeting in February 2009, the committee proposed a reduction of around 10% of our expected local aid (some $895,000). The vast majority of which would be made up from the use of reserves and the remainder (some $350,000) being cut from the “big four” budgets. We are in a similar situation this year. The committee has been watching the State financial picture closely this year and has been as proactive as possible in discussing the potential scenarios with the Selectmen and department heads to provide as much notice and direction as possible. It is clear that there will be further cuts to State budget this year, the question is when and how much. Last year
the state cut significant funding in the last month of the year; it is entirely possible that they may do the same this year. In 2009, we had the ability to use a significant amount of reserves to patch the funding gap. That option is not available to us this year, and to ensure fairness in distributing the cuts, the same proportional formula used in the October Special Town Meeting was used to prepare this round of departmental budget cuts. The committee has discussed the cuts to departmental budgets with the Selectmen and the School Committee and requested and received impact statements from other town departments. The proposed method of making the cuts and then dealing with subsequent state funding cuts has also been reviewed with Town Council and the Department of Revenue to ensure that it is a practicable solution to dealing with the fluctuations and vagaries of the State local aid picture.

**ARTICLE 2**  To see if the Town will vote to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection L to Section III:

L. **Institutional/Commercial Development**

In a Residence C district on a lot which has at least 500 feet of frontage on a state highway, which contains at least 150,000 square feet, and which contains tax-exempt uses in a building deemed too large for its uses, the Planning Board may grant a special permit for an institutional/commercial planned unit development (“Institutional/Commercial Development”) for a building to contain a tax exempt use or tax-exempt uses and for two buildings to contain certain commercial uses upon satisfaction of all requirements specified in this subsection and upon such other requirements, terms and conditions deemed necessary or appropriate by the Planning Board as specified in the special permit. As used in this subsection the word “lot” shall include two or more adjacent lots existing on January 1, 2010 only if those lots have been owned in common ownership by a tax-exempt institution for at least 10 years immediately prior to January 1, 2010. The purpose of this subsection is the creation of a vibrant, community-friendly, walkable marketplace and neighborhood meeting place which, in association with tax-exempt uses, will benefit the immediate neighborhood and the community at large.

1. **Application Requirements:** The application for a Special Permit for Institutional/Commercial Development shall be made jointly by the primary tax-exempt institution and by the developer of the commercial buildings and signed by them. The application shall contain a written narrative describing the development and its uses and include 7 copies of the following:

   (a) **Existing Conditions Plan.** An existing conditions plan showing: existing topography of the land with two foot contours; delineated wetlands; major site features such as trees, wooded areas, rock ridges and outcroppings; water bodies; stone walls; buildings; paved areas; driveway openings and any other significant features.
(b) **Site Plan.** A site plan showing the layout, materials and dimensions of all proposed buildings, structures, loading docks, loading areas, driveways, parking areas, walls, curbs, sidewalks, walkways and landscaped areas.

(c) **Grading Plan.** A grading plan showing the proposed grading with two foot contours, all proposed cuts and fills, all retaining walls with elevation drawings and specification of their construction and materials.

(d) **Drainage Plan.** A drainage plan and drainage report detailing drainage calculations for all elements of site drainage, including the storm water system.

(e) **Utility Plan.** A utility plan showing the construction and location of all utilities, including electric, gas, water and sewer, telephone/cable and their connection to their respective systems.

(f) **Landscape Plan.** A landscape plan to scale including specific landscaping features, trees, shrubs, grass, ground cover, lighting, fences, walls, playgrounds, open spaces, at least 3 bicycle racks and amenities in landscaped areas. The plan shall indicate areas of landscape and individual trees to be preserved and protected and the size and species of new trees and plantings. The landscape plan shall be prepared by a Massachusetts licensed landscape architect.

(g) **Elevations.** Elevations of all buildings to scale, showing each side of each building in all material detail and the appearance of the buildings viewed from outside the site. The elevations shall set out the height and width of the buildings and their major elements such as windows, doorways, and arcades and shall be accompanied by descriptions by the architect of the designs of the buildings and their compatibility with each other and the immediate neighborhood. The elevations shall include roof plans for each building showing the construction, materials, slope, dormers, gables and major rooftop equipment (screened from view from outside the site so as to provide noise buffering).

(h) **Traffic Study.** A traffic study establishing traffic volumes on the state highway and neighboring streets which will receive additional traffic as a result of the development. The study shall show the existing volumes and projected volumes once the development is operational and five years thereafter. The study shall reliably determine the number of vehicle trips to the various buildings in the site, hourly, daily, weekly and monthly. The study shall reliably determine the number of cars to be parked on site by users of the various buildings at peak and non-peak periods. The study shall reliably determine the adequacy of the proposed on site driveway system to handle projected traffic at peak periods. The study shall reliably determine measures reasonably necessary
for the state highway to serve users of the proposed development without occasioning delays to other users. Such measures may include a traffic signal and a stacking lane for left turns. The study shall reliably determine measures which will mitigate the adverse effects of increased traffic on neighboring streets attributable to the development. Such measures shall include any actions which are recommended for the Town to take at the developer’s expense in order to mitigate adverse traffic effects attributable to the development. The traffic study shall be prepared by a Massachusetts licensed traffic engineer.

(i) **Noise Study.** A noise study which shall reliably document the noise impacts produced by proposed activities on site, their audibility to nearby residents and to employees and users of the development and measures proposed to mitigate all significantly adverse noise impacts. Particular attention shall be paid to the noise produced by trucks and their warning horns and the anticipated specific impacts on residents during the hours when trucks will be operating in the development. The noise study shall set out reasonable measures to be taken to keep noise emitted by activities in the development as low as reasonably possible, especially in the early morning and evening hours.

(j) **Property Values Analysis.** A reliable analysis as to the effect that the development, at the one-year anniversary of completion of construction, will have had on real estate property values of real property within 500 feet of a lot line of the development. In the event that the analysis projects a decrease of real estate property values attributable to the development on this date, measures to mitigate this impact shall be included in the analysis.

(k) **Signs.** A signage plan showing the number, size, type, and location of signs for the uses and activities in the development, including the signs controlling and directing traffic inside the development.

2. **Buildings and Their Uses:** In an Institutional/Commercial Development there shall be the following requirements for buildings:

(a) **Institutional Building.** One building (the “institutional building”) shall contain one or more of the non-profit, tax-exempt uses conducted on the lot on January 1, 2010; this building shall contain no more than 15,000 square feet of gross floor area (excluding the area of a sub-grade basement) and cover no more than 7,500 square feet of ground area.

(b) **Pharmacy.** The second building shall contain no more than 13,100 square feet of gross floor area (excluding the area of a sub-grade basement and a mezzanine up to 6,500 square feet used exclusively for storage and excluding the area of a drive-through structure used exclusively for the order and pick-up of prescriptions). This building shall con-
tain a use as a pharmacy or drug store. Such a use involves a type of convenience store which contains a pharmacy, including provision for drive through order and pick-up of prescriptions (the “pharmacy”). The pharmacy may include a small clinic serving general health needs of the public on a non-reserved basis, but no addiction services shall be provided at the clinic. No alcoholic beverages (except as may be prescribed by a doctor) shall be sold in the pharmacy, and no food or drink shall be sold for consumption on the premises. If services, other than services normally incident to a pharmacy, are to be provided, the services shall be described in the application and specific provision for such services shall be made in the special permit.

(c) Market. The third building shall contain no more than 10,000 square feet of gross floor area (excluding the area of a sub-grade basement and a mezzanine of up to 5,000 square feet used exclusively for storage) shall contain a market which shall not be a convenience store but which shall be designed to give it an identity of an individual grocery store selling a wide range of quality groceries and fresh foods in a setting which provides an attractive, convenient place in which to shop and for shoppers to meet with neighbors (the “market”). Provision shall be made in or in conjunction with the market for convenient inside and outside seating areas and for the sale of non-alcoholic beverages and non-packaged snacks for consumption in these areas. The special permit may provide that the purveyor of such food and drink may be a separate entity from the operator of the market and may operate under a sublease from the operator of the market. If services, other than services normally incident to a market, as herein described, are to be provided, the services shall be described in the application, and specific provision for such services shall be made in the special permit.

(d) Accessory Structures. In an Institutional /Commercial Development the special permit may provide for one or more small accessory structures which are necessary for orderly and convenient operations or which primarily provide public amenities.

(e) Change of Commercial Use. In the event that a use other than a pharmacy use or a use other than a market use is proposed for either commercial building the Planning Board may amend the special permit to permit a changed use upon a reliable showing that the use as a pharmacy or the use as a market is not economically feasible and that the proposed new use is economically feasible and will be likely to have a positive impact on the neighborhood without significant detrimental consequences.

(f) Change of Institutional Use. In the event that a change in use of the institutional building is proposed, the Planning Board may amend the
special permit to permit a changed use upon a reliable showing that the proposed new use will be a non-profit, tax-exempt use which will be unlikely to have a detrimental impact on the neighborhood.

(g) **Prohibited Uses.** In no event shall a use not permitted in the business district or any of the following uses be permitted in an Institutional/Commercial Development: bar, liquor store, sexually oriented business, motor vehicle dealership, vehicle sales or repair facility, automobile parts store, gasoline station, storage facility, tattoo parlor, clinic for addiction services, game facility, entertainment facility, any residential use, commercial parking lot (except as herein provided). Excepting the pharmacy’s drive-through transaction window, there shall be no drive-through business in an Institutional Commercial Development.

(h) **Hours of Operation:** An Institutional/Commercial Development shall have hours of operation commencing no earlier than 6:00 A.M. and ending no later than 10:00 P.M. Commercial parking more than one half hour after closing or more than one half hour before opening shall not be permitted, excepting security vehicles and the vehicles of employees on site after hours. Use of the institutional building and its associated parking after the closing hour shall be allowed so long as part of the institutional use.

(i) **Siting of Buildings:** Buildings shall be sited so that they present an attractive appearance when viewed both from off-site and from on-site. The pharmacy shall be sited so as to be conveniently accessible from the state highway and so as to permit a drive through facility which economizes on the space needed for its operations. It shall be accessible by safe and convenient driveways and walkways/sidewalks and shall be near some landscaped areas in addition to the set-back area. It shall be sited so that it is conveniently accessible from the market by foot. The market shall be sited so that it is conveniently accessible by safe and convenient driveways and walkways/sidewalks, including a walkway to nearby residential areas as provided herein. Provision shall be made for bicycle access and parking. The market shall be sited so that it is located conveniently and accessible to a landscaped pedestrian space with seating and other amenities for market users and other pedestrians. The institutional building shall be sited so that it is located conveniently and is accessible by safe driveways and walkways/sidewalks. It shall be sited so as to provide for a safe and convenient drop-off pick-up area for any school on site. All buildings shall be sited so that loading areas, loading docks and areas for rubbish disposal and storage are both convenient and located such that visual and noise impacts on nearby residences can be reasonably mitigated. Insofar as reasonably possible sit-
ing of buildings shall be in harmony with topographical features on the site. Siting of buildings shall contribute to the provision of amenities to the public, including attractive pedestrian connections and public spaces. The Planning Board may require changes in the siting of buildings so as to better serve the requirements of this paragraph.

(j) **Ownership:** The parcel containing the pharmacy, the market and their parking areas shall be in the same ownership (the “commercial parcel”). The parcel containing the institutional building may be in separate ownership (the “institutional parcel”) and shall be adequately large to contain the institutional building in a landscaped setting. The institutional parcel shall include the drop-off and pick-up area for the institutional building and shall have deeded perpetual rights for safe and convenient access and egress to and from the state highway. The institutional parcel may include the parking spaces necessary for the institutional use, and, if the requisite parking spaces are not part of the institutional parcel, the parcel shall have deeded perpetual rights to use of the requisite number of conveniently located parking spaces. The institutional parcel may include that part of the set-back area contiguous to one or more of its lot lines.

(k) **Entrances, Basements and Mezzanines.** Entrances to commercial buildings shall be at finished grade without berms. Basements and mezzanines in a commercial building shall be exclusively used for storage and mechanical systems. A mezzanine is a second floor which has an area of no more than 50% of the gross floor area of the first floor and which is used exclusively for storage.

(l) **Height and Set-back:** No building shall be excess of 35 feet in height above mean finished grade, excluding berms, as calculated for each building. The Planning Board may permit greater height for a clock tower or cupola or similar architectural feature. All buildings shall be set back at least 10 feet from the state highway and at least 30 feet from any other lot line provided that the setback may be reduced to 25 feet for good cause provided that planting affording effective, attractive screening can be provided in a 25 foot set-back area.

(m) **Design of Buildings:** The buildings shall be designed and sited by architects specifically for the Institutional/Commercial Development. The buildings shall be designed to be functional and convenient for their specified uses, and each shall have an attractive design appropriate to the site and the neighborhood in which it is located. The buildings shall be designed in compliance with the following design standards and goals.
(n) **Design Standards:** The design and siting of the buildings shall have the following goals:

(i) To ensure that building design is based on a strong, unified, coherent architectural concept;

(ii) To ensure that buildings portray a sense of high architectural integrity;

(iii) To ensure that buildings are appropriately designed for the site, address human scale, and become a positive element in the architectural character of the neighborhood;

(iv) To ensure that new buildings use high quality building materials and architectural finishes in a manner that exemplifies craftsmanship, quality and durability;

(v) To ensure that the buildings and the site take full advantage of sustainable design principles, including recycled and sustainable materials, energy conservation and water use reduction;

(vi) To ensure that buildings are aesthetically pleasing and superior in design. The architectural composition, scale, elements, and details of a building should relate to the site’s natural features and the character of the surrounding area. The composition should express the concept of a neighborhood marketplace and center, seamlessly including non-profit uses. All elements shall be designed to contribute to a pedestrian and bicycle friendly space. The following architectural measures shall be taken:

(vii) Building and site design shall provide an inviting orientation from the state highway and entry driveway and from other buildings. Buildings shall present attractive appearances on all sides, including areas in which deliveries will be made, and such delivery areas shall be adequately screened. Noise impacts on neighboring properties shall be avoided.

(viii) The composition of each building’s masses and elements shall create a unified whole. The apparent mass and bulk of each building shall be reduced by architectural techniques such as façade modulation, building articulation, roof treatment and use of appropriate colors and materials.

(ix) Buildings shall contain various appropriate architectural elements. Window and door treatments shall be articulated in facades and shall be sufficiently large to convey the impression of a reduced scale in the size of the façades. The articulation and arrangement of the doors and windows together with other archi-
tectural features, such as facades, arcades, balconies, bay windows, columns, dormers, stepped roofs, gables, cornices, decorative facing, multi-planed and intersecting rooflines and modulation of elements shall be used to contribute to compositional unity of a strong architectural concept appropriate for the site. Such features shall be used to avoid blank walls and provide interest to each wall of the building and may be purely decorative although appearing to be integral parts of the building.


In an Institutional/Commercial Development the following requirements shall also apply:

(a) **Open Space** There shall be open space comprising at least 30 percent of the area of the Institutional/Commercial lot. Open space shall include open areas in their natural state, other landscaped areas, playgrounds, landscaped islands and strips in parking areas, landscaped areas contiguous to driveways, sidewalks and walkways. Open space shall include a landscaped set back area on all lot lines. Open space shall not include any buildings (excepting those with a predominantly public purpose, such as a gazebo for neighborhood use), driveways, parking aisles and spaces, dumpster and equipment locations, loading areas, and other paved areas without a predominantly public purpose. Landscaping in the set-back area on a lot line (excepting the set-back area on the state highway lot line) shall contain deciduous and evergreen trees, shrubs and other plantings designed by a licensed landscape architect to screen the development from view from neighboring residential areas insofar as practicable. The set-back areas (excepting the set-back area on the state-highway lot line) shall be inobtrusively fenced for safety and for control of pedestrian movement into the Institutional/Commercial Development. Access through the set-back area providing safe, attractive and convenient pedestrian access to the buildings in the development shall be provided for use by neighborhood residents provided that such access shall be designed and other measures taken to minimize any parking of vehicles on neighborhood streets by users of the development. Retaining walls shall be permitted in a portion of the set-back area provided that there is sufficient set-back area remaining at the top of a retaining wall for provision of plantings sufficient to provide effective screening. Use of the set-back area for a driveway to the loading area of a building shall not be employed without effective provision for the benefit of neighboring residents to mitigate the noise of trucks backing into the loading dock and unloading. Plantings shall effectively screen any such driveway, loading area and loading dock. The set-back area on the state highway lot line shall not be fenced and shall contain...
plantings designed by a licensed landscape architect to enhance the appearance of the buildings and to provide an attractive setting for buildings and for the vehicular entrance to the development. The open space in the interior of the site shall be designed to break up areas of paving and to soften the appearance of buildings. A portion of the site interior open space shall provide public amenities for pedestrians to use, including a sitting area that is conveniently accessible to the market building by foot and that is suitable for use as a neighborhood meeting place in good weather. All open space including the plantings shall be maintained in good condition and kept clean and free of trash by the owner of the commercial parcel.

(b) Access, Egress, Driveways, and State Highway Stacking Lane: Vehicular access to the Institutional/Commercial Development shall be exclusively by a driveway located on the state highway at least one hundred feet from any abutting street or any abutting lot. Adequate provision shall be made in the driveway system for queuing of vehicles waiting to exit the site. There shall be a pick-up/drop-off area at the institutional building which is sufficient to serve the needs of any school in the building. The driveway system within the site shall be designed to accommodate anticipated traffic and to conveniently and safely route traffic to the parking areas for the uses on-site, to the pick-up/drop-off area at the institution and to the drive-through window of the pharmacy. The walkways shall be designed for safe and convenient movement of pedestrians within the site and insofar as possible shall not cross driveways, and, if any such crossing is necessary, the crossings shall be delineated through use of different paving treatments and appropriate measures to protect pedestrians from motor vehicles. Landscaped islands and landscaped open space shall be used to enhance the appearance of the driveway system, sidewalks/walkways and parking areas. In the event that a stacking lane and/or traffic signal on the state highway is reasonably necessary so as to maintain the flow of traffic on the state highway, then a stacking lane and/or traffic signal shall be shown on the site plan and shall be a requirement of the development to be paid for by the developer.

(c) Parking: In an Institutional/Commercial Development, there shall be 4 parking spaces provided for every 1,000 square feet of gross floor area in the commercial buildings (excluding basement area and mezzanine) and 1 parking space for every 4 seats to be available in the auditorium or principal meeting space of the tax-exempt institution (whichever holds more seats) provided that parking spaces for one use may be considered for another use upon a reliable finding that a use does not reasonably require some of its parking. In the event that the traffic study establishes that the parking requirement as computed herein is in excess
of anticipated requirements, the Planning Board may permit some parking spaces to remain un-built pending possible future need. Parking shall be in areas which are conveniently located with respect to the use for which the parking is provided. Parking shall be separated from the driveway system. Pedestrian walkways through parking areas shall be clearly delineated through the use of different paving materials, landscaped features and similar treatments. The design standards for parking set out in Section VII.H.1-6, 8 and 10 shall be applicable, provided that the minimum width of maneuvering aisles within parking areas shall be 22 feet for two-way traffic and 12 feet for one-way traffic. Parking shall be restricted to users of the Institutional/Commercial Development. Parking, except for security vehicles, vehicles of employees on site after hours, and vehicles serving the institutional use, shall not be permitted between 10:30 P.M. and 5:30 A.M., and effective measures shall be taken to enforce this restriction, absent which the Planning Board may, following notice and hearing, amend the special permit to require such effective measures to restrict after hours parking.

(d) **Landscape, Lighting and Security:** Areas not required for the buildings, parking areas, driveways, sidewalks/walkways, the pharmacy’s drive-through, the institution’s pick-up/drop-off area and other areas shown as paved on the site plan, shall be landscaped so as to enhance the site. Setback areas shall include a combination of preserved landscape and large trees and newly designed landscape elements. There shall be a public meeting area convenient to the market that is located to enhance pedestrian use of the commercial buildings and to enhance and encourage pedestrian and bicycle access to the site. The landscaping plan shall include a lighting plan which provides lighting that is reasonably adequate to illuminate the driveway, walkway, sidewalk, parking, and public areas without any significant light overspill into nearby residential areas. Lighting fixtures shall have a period design appropriate to the site. To the extent possible, the irrigation system for the landscaping shall take advantage of best practices for the recycling of water collected on the site. There shall be a security camera system providing 24 hour surveillance of the driveway, buildings, and parking lots. Details of the camera system design shall be developed in conjunction with the Milton Police Department.

(e) **Traffic Control, Cost of Mitigation, Traffic Mitigation Escrow Fund and Review of Mitigation Measures:** Adverse detrimental impacts caused by increases of traffic in the state highway and town streets attributable to the development shall be mitigated by appropriate, effective measures. The Planning Board shall impose the traffic control and /or mitigation measures identified in the traffic study or such other measures, which may be suggested by a traffic engineer retained by the Planning Board
and which it determines are likely to result in the requisite mitigation of adverse or detrimental impacts. The developer shall pay for the costs of all action, construction and measures which the Planning Board requires be taken to mitigate adverse or detrimental impacts of the development and its operations. In the event that the Planning Board determines that there are measures to be taken by the Town at the developer’s expense to mitigate the adverse effect of increased traffic, a traffic mitigation escrow fund shall be established to hold and disburse sufficient funds, provided by the developer, to pay for those mitigation measures to be taken by the Town. One year following commencement of full operations at the pharmacy and market, traffic mitigation measures required by the special permit shall be reviewed for their effectiveness in mitigating adverse or detrimental consequences and if the measures are not substantially effective, the Planning Board, following notice and hearing, may amend the special permit to impose additional measures.

(f) Noise Control: Noise emitted by activities in an Institutional/Commercial Development shall be kept as low as reasonably possible, especially noise impacting nearby residences in the early morning and evening hours. The Planning Board shall impose the noise control measures identified in the noise study or such other measures, including those suggested by a noise control expert retained by the Planning Board, which it determines are likely to result in effective noise control.

(g) Property Values. The Planning Board shall not issue a special permit for Institutional/Commercial Development if it shall find that there is likely to be a decrease of real estate property values, attributable to the development with respect to real property within 500 feet of a lot line of the development at the one-year anniversary of completion of construction, unless the Planning Board shall provide for effective, adequate mitigation of this adverse impact on property values.

(h) Playground: In the event that one of the tax-exempt uses shall be a pre-school, there shall be a fenced playground for use by the students. Use of the playground by neighborhood, pre-school children at one or more designated times during the day when the pre-school is not in operation shall be permitted provided that responsible adult supervision is provided for the children that the playground is not abused, that the institution and pre-school are held harmless and indemnified for any injuries occurring during such use, that such use does not violate the rights of nearby residents to the quiet enjoyment of their property, and that effective measures are taken to prevent parking on neighborhood streets by persons bringing children to the playground by car.
(i) **Rock Excavation:** The special permit shall provide that prior to conducting any rock excavation or blasting on a site proposed for an Institutional/Commercial Development the developer shall conduct a detailed pre-blasting video survey of all buildings and walls within 500 feet of the proposed blasting. Such survey shall be prepared consistent with all standards in the industry for such work. The developer shall also prepare a blasting plan in compliance with all applicable laws, regulations and best practices in connection with any proposed blasting. The survey and blasting plan for the project shall be submitted to a committee on blasting, comprised of the Fire Chief, Town Engineer, and Building Commissioner for review and approval. The issuance of a blasting permit shall be required before any blasting may occur.

(j) **Retaining Walls:** Retaining walls in an Institutional/Commercial development shall be considered a significant design element. Projects shall be designed to reduce the number and height of retaining walls to the greatest extent possible consistent with good site design. Walls shall be designed to enhance the appearance of the site. Whenever possible, natural rock faces shall be retained. Materials for walls shall be selected to blend with the native stone on the site. Where feasible, walls in excess of eight (8) feet in height shall be designed into two wall sections with an intervening planted terrace. No wall in excess of fifteen (15) feet shall be permitted without a specific showing of necessity. All walls in excess of four (4) feet shall have safety barriers or fences that prevent dangerous conditions at the top of the walls.

4. **Compliance Responsibility:** The owner of the commercial parcel shall have the primary responsibility for ensuring proper maintenance, plowing and security and for enforcement of hours of operation, of parking restrictions and of other special permit requirements for the commercial areas. The tax-exempt institution applying for the permit shall have the primary responsibility for ensuring proper maintenance, plowing, security and enforcement of special permit requirements, for any area owned by the institution. The owner of the commercial parcel or the institution may contract with other responsible persons or entities for meeting some or all of these obligations and requirements and shall give notice to the Town Administrator and Planning Director as to the names and addresses of such persons or entities. If, after notice of a violation of the special permit, a person or entity under contract fails to provide services or to take prompt measures to correct the violation, the owner of the commercial parcel, with respect to its areas of responsibility, or the institution, with respect to its area of responsibility, upon notice shall correct the violation forthwith and take effective steps to ensure future compliance by the person or entity under contract to provide the services. The owner of the commercial parcel, the institution, any other persons or entities named in the special permit as responsible for these matters, and any lessee or sublease of commercial or institutional space in the Institutional/Commercial
Development shall be obligated to comply with all applicable requirements of the special permit, and these requirements shall be enforceable against such owner, institution, persons and entities.

5. **Application Review Fees:** When reviewing an application for a special permit for Institutional/Commercial Development, the Planning Board shall secure the assistance of consultants who are expert in the matters under review and who can assist the Planning Board in analyzing the material in the application for efficacy, accuracy and completeness. As part of a peer review of the material submitted by the applicant’s experts, these experts hired by the Planning Board may recommend changes and additions to applicant’s expert’s material so as to better serve or accomplish any task, design or function under review. The traffic engineer hired by the Planning Board shall analyze the traffic study submitted by the applicant and shall carefully scrutinize projections of traffic volumes and proposed mitigation measures and designs for mitigation of all adverse impacts, particularly the impacts on the state highway and all impacted neighborhood streets; the traffic engineer may recommend changes or supplements to mitigation measures and designs. The noise expert hired by the Planning Board shall analyze the noise study submitted by the applicant and shall carefully scrutinize the projected noise impacts of the various elements of the project and may recommend noise abatement measures or designs alternative to or in addition to those recommended by applicant’s expert. Other experts shall similarly review other material submitted by applicant and may recommend changes in proposed measures or designs. The Planning Board may adopt any such recommendations as part of a special permit. Experts may include disinterested engineers, planners, architects, landscape architects, appraisers, or other professionals with specialized expertise. The Planning Board shall require that an applicant pay a review fee, consisting of the reasonable costs estimated by the Planning Board for employment of the experts. Expenditures may be made at the direction of the Planning Board and shall be made only in connection with the review of the application. Failure of the applicant to pay a review fee upon request shall be grounds for denial of the application. At the completion of the Planning Board’s review of an application, any excess amount of the review fee shall be repaid to the applicant. A final report of expenditures shall be provided to the applicant.

6. **Notice, Procedures and Standards for Decision:** The notice and procedural requirements set out in Section IX.B and C shall apply to Special Permits for Institutional/Commercial Development. In rendering a decision the Planning Board shall apply the standard set out in Section IX.C. The Planning Board may require changes in any of the plans and documents submitted as part of the application so that any such plans and documents, when referenced in the special permit, show a development engineered and designed pursuant to standards and in a manner of which the Planning Board approves. The Planning Board shall ensure in the special permit that there is a responsible person or entity or persons or entities who or which will have primary legal responsibility for compliance
with all requirements, terms and conditions of the special permit and other applicable law. The Planning Board shall not issue any special permit for an Institutional/ Commercial Development without ensuring the matters set out herein. The Planning Board shall impose such terms, conditions and requirements in a special permit as it deems necessary to ensure these matters. In the event that a special permit for an Institutional/Commercial Development shall be issued for a lot of land, no use of the lot shall be made except as authorized by the special permit.

7. **Time for Performance:** A special permit issued pursuant to this subsection shall lapse if substantial construction is not commenced within two years after the special permit becomes final or if construction is not substantially completed within three years after the special permit becomes final provided that the Planning Board may extend the time for substantial completion for good cause shown.

8. **Amendment:** The Planning Board shall have the power to modify or change the terms of the special permit, after notice and hearing, upon the application of the owner of the commercial parcel with respect to its parcel or the institution with respect to its parcel. If the authority is specifically reserved in the special permit with respect to specified matters, the Planning Board may propose modifications or changes as to such matters. Standards for decision on an application for modification or change or on a Planning Board proposal for modification or change shall be the same as the standards for decision of a new application for a special permit.

**RECOMMENDED** The Town vote to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection L to Section III:

**L. Institutional/Commercial Development**

In a Residence C district on a lot which has at least 500 feet of frontage on a state highway, which contains at least 150,000 square feet, and which contains tax-exempt uses in a building deemed too large for its uses, the Planning Board may grant a special permit for an institutional/commercial planned unit development (“Institutional/Commercial Development”) for a building to contain a tax exempt use or tax-exempt uses and for two buildings to contain certain commercial uses upon satisfaction of all requirements specified in this subsection and upon such other requirements, terms and conditions deemed necessary or appropriate by the Planning Board as specified in the special permit. As used in this subsection the word “lot” shall include two or more adjacent lots existing on January 1, 2010 only if those lots have been owned in common ownership by a tax-exempt institution for at least 10 years immediately prior to January 1, 2010. The purpose of this subsection is the creation of a vibrant, community-friendly, walkable mar-
ketplace and neighborhood meeting place which, in association with tax-
exempt uses, will benefit the immediate neighborhood and the community at
large.

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buildings and signed by them. The application shall contain a written
narrative describing the development and its uses and include 7 copies
of the following:

(a) Existing Conditions Plan. An existing conditions plan showing:
existing topography of the land with two foot contours; delineated
wetlands; major site features such as trees, wooded areas, rock
ridges and outcroppings; water bodies; stone walls; buildings;
paved areas; driveway openings and any other significant features.

(b) Site Plan. A site plan showing the layout, materials and dimensions
of all proposed buildings, structures, loading docks, loading areas,
 driveways, parking areas, walls, curbs, sidewalks, walkways and
landscaped areas.

(c) Grading Plan. A grading plan showing the proposed grading with
two foot contours, all proposed cuts and fills, all retaining walls with
elevation drawings and specification of their construction and
materials.

(d) Drainage Plan. A drainage plan and drainage report detailing
drainage calculations for all elements of site drainage, including
the storm water system.

(e) Utility Plan. A utility plan showing the construction and location of
all utilities, including electric, gas, water and sewer, telephone/cable
and their connection to their respective systems.

(f) Landscape Plan. A landscape plan to scale including specific land-
scaping features, trees, shrubs, grass, ground cover, lighting, fences,
walls, playgrounds, open spaces, at least 3 bicycle racks and ameni-
ties in landscaped areas. The plan shall indicate areas of landscape
and individual trees to be preserved and protected and the size and
species of new trees and plantings. The landscape plan shall be pre-
pared by a Massachusetts licensed landscape architect.

(g) Elevations. Elevations of all buildings to scale, showing each side of
each building in all material detail and the appearance of the build-
ings viewed from outside the site. The elevations shall set out the
height and width of the buildings and their major elements such as
windows, doorways, and arcades and shall be accompanied by
descriptions by the architect of the designs of the buildings and their compatibility with each other and the immediate neighborhood. The elevations shall include roof plans for each building showing the construction, materials, slope, dormers, gables and major rooftop equipment (screened from view from outside the site so as to provide noise buffering).

(h) **Traffic Study.** A traffic study establishing traffic volumes on the state highway and neighboring streets which will receive additional traffic as a result of the development. The study shall show the existing volumes and projected volumes once the development is operational and five years thereafter. The study shall reliably determine the number of vehicle trips to the various buildings in the site, hourly, daily, weekly and monthly. The study shall reliably determine the number of cars to be parked on site by users of the various buildings at peak and non-peak periods. The study shall reliably determine the adequacy of the proposed on site driveway system to handle projected traffic at peak periods. The study shall reliably determine measures reasonably necessary for the state highway to serve users of the proposed development without occasioning delays to other users. Such measures may include a traffic signal and a stacking lane for left turns. The study shall reliably determine measures which will mitigate the adverse effects of increased traffic on neighboring streets attributable to the development. Such measures shall include any actions which are recommended for the Town to take at the developer’s expense in order to mitigate adverse traffic effects attributable to the development. The traffic study shall be prepared by a Massachusetts licensed traffic engineer.

(i) **Noise Study.** A noise study which shall reliably document the noise impacts produced by proposed activities on site, their audibility to nearby residents and to employees and users of the development and measures proposed to mitigate all significantly adverse noise impacts. Particular attention shall be paid to the noise produced by trucks and their warning horns and the anticipated specific impacts on residents during the hours when trucks will be operating in the development. The noise study shall set out reasonable measures to be taken to keep noise emitted by activities in the development as low as reasonably possible, especially in the early morning and evening hours.

(j) **Property Values Analysis.** A reliable analysis as to the effect that the development, at the one-year anniversary of completion of construction, will have had on real estate property values of real property within 500 feet of a lot line of the development. In the event that
the analysis projects a decrease of real estate property values attributable to the development on this date, measures to mitigate this impact shall be included in the analysis.

(k) **Signs.** A signage plan showing the number, size, type, and location of signs for the uses and activities in the development, including the signs controlling and directing traffic inside the development.

4. **Buildings and Their Uses:** In an Institutional/Commercial Development there shall be the following requirements for buildings:

(a) **Institutional Building.** One building (the “institutional building”) shall contain one or more of the non-profit, tax-exempt uses conducted on the lot on January 1, 2010; this building shall contain no more than 15,000 square feet of gross floor area (excluding the area of a sub-grade basement) and cover no more than 7,500 square feet of ground area.

(b) **Pharmacy.** The second building shall contain no more than 13,100 square feet of gross floor area (excluding the area of a sub-grade basement and a mezzanine up to 6,500 square feet used exclusively for storage and excluding the area of a drive-through structure used exclusively for the order and pick-up of prescriptions). This building shall contain a use as a pharmacy or drug store. Such a use involves a type of convenience store which contains a pharmacy, including provision for drive through order and pick-up of prescriptions (the “pharmacy”). The pharmacy may include a small clinic serving general health needs of the public on a non-reserved basis, but no addiction services shall be provided at the clinic. No alcoholic beverages (except as may be prescribed by a doctor) shall be sold in the pharmacy, and no food or drink shall be sold for consumption on the premises. If services, other than services normally incident to a pharmacy, are to be provided, the services shall be described in the application and specific provision for such services shall be made in the special permit.

(c) **Market.** The third building shall contain no more than 10,000 square feet of gross floor area (excluding the area of a sub-grade basement and a mezzanine of up to 5,000 square feet used exclusively for storage) shall contain a market which shall not be a convenience store but which shall be designed to give it an identity of an individual grocery store selling a wide range of quality groceries and fresh foods in a setting which provides an attractive, convenient place in which to shop and for shoppers to meet with neighbors (the “market”). Provision shall be made in or in conjunction with the market for convenient inside and outside seating areas and for the
sale of non-alcoholic beverages and non-packaged snacks for consumption in these areas. The special permit may provide that the purveyor of such food and drink may be a separate entity from the operator of the market and may operate under a sublease from the operator of the market. If services, other than services normally incident to a market, as herein described, are to be provided, the services shall be described in the application, and specific provision for such services shall be made in the special permit.

(d) **Accessory Structures.** In an Institutional /Commercial Development the special permit may provide for one or more small accessory structures which are necessary for orderly and convenient operations or which primarily provide public amenities.

(e) **Change of Commercial Use.** In the event that a use other than a pharmacy use or a use other than a market use is proposed for either commercial building the Planning Board may amend the special permit to permit a changed use upon a reliable showing that the use as a pharmacy or the use as a market is not economically feasible and that the proposed new use is economically feasible and will be likely to have a positive impact on the neighborhood without significant detrimental consequences.

(f) **Change of Institutional Use.** In the event that a change in use of the institutional building is proposed, the Planning Board may amend the special permit to permit a changed use upon a reliable showing that the proposed new use will be a non-profit, tax-exempt use which will be unlikely to have a detrimental impact on the neighborhood.

(g) **Prohibited Uses.** In no event shall a use not permitted in the business district or any of the following uses be permitted in an Institutional/Commercial Development: bar, liquor store, sexually oriented business, motor vehicle dealership, vehicle sales or repair facility, automobile parts store, gasoline station, storage facility, tattoo parlor, clinic for addiction services, game facility, entertainment facility, any residential use, commercial parking lot(except as herein provided). Excepting the pharmacy’s drive-through transaction window, there shall be no drive-through business in an Institutional Commercial Development.

(h) **Hours of Operation:** An Institutional/Commercial Development shall have hours of operation commencing no earlier than 6:00 A.M. and ending no later than 10:00 P.M. Commercial parking more than one half hour after closing or more than one half hour before opening shall not be permitted, excepting security vehicles.
and the vehicles of employees on site after hours. Use of the institutional building and its associated parking after the closing hour shall be allowed so long as part of the institutional use.

(i) **Siting of Buildings:** Buildings shall be sited so that they present an attractive appearance when viewed both from off-site and from on-site. The pharmacy shall be sited so as to be conveniently accessible from the state highway and so as to permit a drive through facility which economizes on the space needed for its operations. It shall be accessible by safe and convenient driveways and walkways/sidewalks and shall be near some landscaped areas in addition to the set-back area. It shall be sited so that it is conveniently accessible from the market by foot. The market shall be sited so that it is conveniently accessible by safe and convenient driveways and walkways/sidewalks, including a walkway to nearby residential areas as provided herein. Provision shall be made for bicycle access and parking. The market shall be sited so that it is located conveniently and accessible to a landscaped pedestrian space with seating and other amenities for market users and other pedestrians. The institutional building shall be sited so that it is located conveniently and is accessible by safe driveways and walkways/sidewalks. It shall be sited so as to provide for a safe and convenient drop-off pick-up area for any school on site. All buildings shall be sited so that loading areas, loading docks and areas for rubbish disposal and storage are both convenient and located such that visual and noise impacts on nearby residences can be reasonably mitigated. Insofar as reasonably possible siting of buildings shall be in harmony with topographical features on the site. Siting of buildings shall contribute to the provision of amenities to the public, including attractive pedestrian connections and public spaces. The Planning Board may require changes in the siting of buildings so as to better serve the requirements of this paragraph.

(j) **Ownership:** The parcel containing the pharmacy, the market and their parking areas shall be in the same ownership (the “commercial parcel”) The parcel containing the institutional building may be in separate ownership (the “institutional parcel”) and shall be adequately large to contain the institutional building in a landscaped setting. The institutional parcel shall include the drop-off and pick-up area for the institutional building and shall have deeded perpetual rights for safe and convenient access and egress to and from the state highway. The institutional parcel may include the parking spaces necessary for the institutional use, and, if the requisite parking spaces are not part of the institutional parcel, the parcel shall have deeded perpetual rights to use of the requisite number of con-
veniently located parking spaces. The institutional parcel may include that part of the set-back area contiguous to one or more of its lot lines.

(k) **Entrances, Basements and Mezzanines.** Entrances to commercial buildings shall be at finished grade without berms. Basements and mezzanines in a commercial building shall be exclusively used for storage and mechanical systems. A mezzanine is a second floor which has an area of no more than 50% of the gross floor area of the first floor and which is used exclusively for storage.

(l) **Height and Set-back:** No building shall be excess of 35 feet in height above mean finished grade, excluding berms, as calculated for each building. The Planning Board may permit greater height for a clock tower or cupola or similar architectural feature. All buildings shall be set back at least 10 feet from the state highway and at least 30 feet from any other lot line provided that the setback may be reduced to 25 feet for good cause provided that planting affording effective, attractive screening can be provided in a 25 foot set-back area.

(m) **Design of Buildings:** The buildings shall be designed and sited by architects specifically for the Institutional/Commercial Development. The buildings shall be designed to be functional and convenient for their specified uses, and each shall have an attractive design appropriate to the site and the neighborhood in which it is located. The buildings shall be designed in compliance with the following design standards and goals.

(n) **Design Standards:** The design and siting of the buildings shall have the following goals:

(vii) To ensure that building design is based on a strong, unified, coherent architectural concept;

(viii) To ensure that buildings portray a sense of high architectural integrity;

(ix) To ensure that buildings are appropriately designed for the site, address human scale, and become a positive element in the architectural character of the neighborhood;

(x) To ensure that new buildings use high quality building materials and architectural finishes in a manner that exemplifies craftsmanship, quality and durability;

(xi) To ensure that the buildings and the site take full advantage of sustainable design principles, including recycled and sustainable materials, energy conservation and water use reduction;
(xii) To ensure that buildings are aesthetically pleasing and superior in design. The architectural composition, scale, elements, and details of a building should relate to the site’s natural features and the character of the surrounding area. The composition should express the concept of a neighborhood marketplace and center, seamlessly including non-profit uses. All elements shall be designed to contribute to a pedestrian and bicycle friendly space. The following architectural measures shall be taken:

(vii) Building and site design shall provide an inviting orientation from the state highway and entry driveway and from other buildings. Buildings shall present attractive appearances on all sides, including areas in which deliveries will be made, and such delivery areas shall be adequately screened. Noise impacts on neighboring properties shall be avoided.

(viii) The composition of each building’s masses and elements shall create a unified whole. The apparent mass and bulk of each building shall be reduced by architectural techniques such as façade modulation, building articulation, roof treatment and use of appropriate colors and materials.

(ix) Buildings shall contain various appropriate architectural elements. Window and door treatments shall be articulated in facades and shall be sufficiently large to convey the impression of a reduced scale in the size of the façades. The articulation and arrangement of the doors and windows together with other architectural features, such as facades, arcades, balconies, bay windows, columns, dormers, stepped roofs, gables, cornices, decorative facing, multi-planed and intersecting rooflines and modulation of elements shall be used to contribute to compositional unity of a strong architectural concept appropriate for the site. Such features shall be used to avoid blank walls and provide interest to each wall of the building and may be purely decorative although appearing to be integral parts of the building.


In an Institutional/Commercial Development the following requirements shall also apply:
(a) **Open Space** There shall be open space comprising at least 30 percent of the area of the Institutional/Commercial lot. Open space shall include open areas in their natural state, other landscaped areas, playgrounds, landscaped islands and strips in parking areas, landscaped areas contiguous to driveways, sidewalks and walkways. Open space shall include a landscaped set back area on all lot lines. Open space shall not include any buildings (excepting those with a predominantly public purpose, such as a gazebo for neighborhood use), driveways, parking aisles and spaces, dumpster and equipment locations, loading areas, and other paved areas without a predominantly public purpose. Landscaping in the set-back area on a lot line (excepting the set-back area on the state highway lot line) shall contain deciduous and evergreen trees, shrubs and other plantings designed by a licensed landscape architect to screen the development from view from neighboring residential areas insofar as practicable. The set-back areas (excepting the set-back area on the state-highway lot line) shall be inobtrusively fenced for safety and for control of pedestrian movement into the Institutional/Commercial Development. Access through the set-back area providing safe, attractive and convenient pedestrian access to the buildings in the development shall be provided for use by neighborhood residents provided that such access shall be designed and other measures taken to minimize any parking of vehicles on neighborhood streets by users of the development. Retaining walls shall be permitted in a portion of the set-back area provided that there is sufficient set-back area remaining at the top of a retaining wall for provision of plantings sufficient to provide effective screening. Use of the set-back area for a driveway to the loading area of a building shall not be employed without effective provision for the benefit of neighboring residents to mitigate the noise of trucks backing into the loading dock and unloading. Plantings shall effectively screen any such driveway, loading area and loading dock. The set-back area on the state highway lot line shall not be fenced and shall contain plantings designed by a licensed landscape architect to enhance the appearance of the buildings and to provide an attractive setting for buildings and for the vehicular entrance to the development. The open space in the interior of the site shall be designed to break up areas of paving and to soften the appearance of buildings. A portion of the site interior open space shall provide public amenities for pedestrians to use, including a sitting area that is conveniently accessible to the market building by foot and that is suitable for use as a neighborhood meeting place in good weather. All open space including the plantings shall be maintained in good condition and kept clean and free of trash by the owner of the commercial parcel.
(b) **Access, Egress, Driveways, and State Highway Stacking Lane:** Vehicular access to the Institutional/Commercial Development shall be exclusively by a driveway located on the state highway at least one hundred feet from any abutting street or any abutting lot. Adequate provision shall be made in the driveway system for queuing of vehicles waiting to exit the site. There shall be a pick-up/drop-off area at the institutional building which is sufficient to serve the needs of any school in the building. The driveway system within the site shall be designed to accommodate anticipated traffic and to conveniently and safely route traffic to the parking areas for the uses on-site, to the pick-up/drop-off area at the institution and to the drive-through window of the pharmacy. The walkways shall be designed for safe and convenient movement of pedestrians within the site and insofar as possible shall not cross driveways, and, if any such crossing is necessary, the crossings shall be delineated through use of different paving treatments and appropriate measures to protect pedestrians from motor vehicles. Landscaped islands and landscaped open space shall be used to enhance the appearance of the driveway system, sidewalks/walkways and parking areas. In the event that a stacking lane and/or traffic signal on the state highway is reasonably necessary so as to maintain the flow of traffic on the state highway, then a stacking lane and/or traffic signal shall be shown on the site plan and shall be a requirement of the development to be paid for by the developer.

(c) **Parking:** In an Institutional/Commercial Development, there shall be 4 parking spaces provided for every 1,000 square feet of gross floor area in the commercial buildings (excluding basement area and mezzanine) and 1 parking space for every 4 seats to be available in the auditorium or principal meeting space of the tax-exempt institution (whichever holds more seats) provided that parking spaces for one use may be considered for another use upon a reliable finding that a use does not reasonably require some of its parking. In the event that the traffic study establishes that the parking requirement as computed herein is in excess of anticipated requirements, the Planning Board may permit some parking spaces to remain un-built pending possible future need. Parking shall be in areas which are conveniently located with respect to the use for which the parking is provided. Parking shall be separated from the driveway system. Pedestrian walkways through parking areas shall be clearly delineated through the use of different paving materials, landscaped features and similar treatments. The design standards for parking set out in Section VII.H.1-6, 8 and 10 shall be applicable, provided that the minimum width of maneuvering aisles with-
in parking areas shall be 22 feet for two-way traffic and 12 feet for one-way traffic. Parking shall be restricted to users of the Institutional/Commercial Development. Parking, except for security vehicles, vehicles of employees on site after hours, and vehicles serving the institutional use, shall not be permitted between 10:30 P.M. and 5:30 A.M., and effective measures shall be taken to enforce this restriction, absent which the Planning Board may, following notice and hearing, amend the special permit to require such effective measures to restrict after hours parking.

(d) Landscape, Lighting and Security: Areas not required for the buildings, parking areas, driveways, sidewalks/walkways, the pharmacy’s drive-through, the institution’s pick-up/drop-off area and other areas shown as paved on the site plan, shall be landscaped so as to enhance the site. Set-back areas shall include a combination of preserved landscape and large trees and newly designed landscape elements. There shall be a public meeting area convenient to the market that is located to enhance pedestrian use of the commercial buildings and to enhance and encourage pedestrian and bicycle access to the site. The landscaping plan shall include a lighting plan which provides lighting that is reasonably adequate to illuminate the driveway, walkway, sidewalk, parking, and public areas without any significant light overspill into nearby residential areas. Lighting fixtures shall have a period design appropriate to the site. To the extent possible, the irrigation system for the landscaping shall take advantage of best practices for the recycling of water collected on the site. There shall be a security camera system providing 24 hour surveillance of the driveway, buildings, and parking lots. Details of the camera system design shall be developed in conjunction with the Milton Police Department.

(e) Traffic Control, Cost of Mitigation, Traffic Mitigation Escrow Fund and Review of Mitigation Measures: Adverse detrimental impacts caused by increases of traffic in the state highway and town streets attributable to the development shall be mitigated by appropriate, effective measures. The Planning Board shall impose the traffic control and/or mitigation measures identified in the traffic study or such other measures, which may be suggested by a traffic engineer retained by the Planning Board and which it determines are likely to result in the requisite mitigation of adverse or detrimental impacts. The developer shall pay for the costs of all action, construction and measures which the Planning Board requires be taken to mitigate adverse or detrimental impacts of the development and its operations. In the event that the Planning Board determines that there are measures to be taken by the Town at the devel-
operator’s expense to mitigate the adverse effect of increased traffic, a traffic mitigation escrow fund shall be established to hold and disburse sufficient funds, provided by the developer, to pay for those mitigation measures to be taken by the Town. One year following commencement of full operations at the pharmacy and market, traffic mitigation measures required by the special permit shall be reviewed for their effectiveness in mitigating adverse or detrimental consequences and if the measures are not substantially effective, the Planning Board, following notice and hearing, may amend the special permit to impose additional measures.

(f) **Noise Control**: Noise emitted by activities in an Institutional/Commercial Development shall be kept as low as reasonably possible, especially noise impacting nearby residences in the early morning and evening hours. The Planning Board shall impose the noise control measures identified in the noise study or such other measures, including those suggested by a noise control expert retained by the Planning Board, which it determines are likely to result in effective noise control.

(g) **Property Values**: The Planning Board shall not issue a special permit for Institutional/Commercial Development if it shall find that there is likely to be a decrease of real estate property values, attributable to the development with respect to real property within 500 feet of a lot line of the development at the one-year anniversary of completion of construction, unless the Planning Board shall provide for effective, adequate mitigation of this adverse impact on property values.

(h) **Playground**: In the event that one of the tax-exempt uses shall be a pre-school, there shall be a fenced playground for use by the students. Use of the playground by neighborhood, pre-school children at one or more designated times during the day when the pre-school is not in operation shall be permitted provided that responsible adult supervision is provided for the children that the playground is not abused, that the institution and pre-school are held harmless and indemnified for any injuries occurring during such use, that such use does not violate the rights of nearby residents to the quiet enjoyment of their property, and that effective measures are taken to prevent parking on neighborhood streets by persons bringing children to the playground by car.

(i) **Rock Excavation**: The special permit shall provide that prior to conducting any rock excavation or blasting on a site proposed for an Institutional/Commercial Development the developer shall conduct a detailed pre-blasting video survey of all buildings and walls
within 500 feet of the proposed blasting. Such survey shall be prepared consistent with all standards in the industry for such work. The developer shall also prepare a blasting plan in compliance with all applicable laws, regulations and best practices in connection with any proposed blasting. The survey and blasting plan for the project shall be submitted to a committee on blasting, comprised of the Fire Chief, Town Engineer, and Building Commissioner for review and approval. The issuance of a blasting permit shall be required before any blasting may occur.

(j) Retaining Walls: Retaining walls in an Institutional/Commercial development shall be considered a significant design element. Projects shall be designed to reduce the number and height of retaining walls to the greatest extent possible consistent with good site design. Walls shall be designed to enhance the appearance of the site. Whenever possible, natural rock faces shall be retained. Materials for walls shall be selected to blend with the native stone on the site. Where feasible, walls in excess of eight (8) feet in height shall be designed into two wall sections with an intervening planted terrace. No wall in excess of fifteen (15) feet shall be permitted without a specific showing of necessity. All walls in excess of four (4) feet shall have safety barriers or fences that prevent dangerous conditions at the top of the walls.

4. Compliance Responsibility: The owner of the commercial parcel shall have the primary responsibility for ensuring proper maintenance, plowing and security and for enforcement of hours of operation, of parking restrictions and of other special permit requirements for the commercial areas. The tax-exempt institution applying for the permit shall have the primary responsibility for ensuring proper maintenance, plowing, security and enforcement of special permit requirements, for any area owned by the institution. The owner of the commercial parcel or the institution may contract with other responsible persons or entities for meeting some or all of these obligations and requirements and shall give notice to the Town Administrator and Planning Director as to the names and addresses of such persons or entities. If, after notice of a violation of the special permit, a person or entity under contract fails to provide services or to take prompt measures to correct the violation, the owner of the commercial parcel, with respect to its areas of responsibility, or the institution, with respect to its area of responsibility, upon notice shall correct the violation forthwith and take effective steps to ensure future compliance by the person or entity under contract to provide the services. The owner of the commercial parcel, the institution, any other persons or entities named in the special permit as responsible for these matters, and any lessee or sublease of commercial or institutional space in the Institutional/Commercial Development shall be obligated to
comply with all applicable requirements of the special permit, and these requirements shall be enforceable against such owner, institution, persons and entities.

5. **Application Review Fees:** When reviewing an application for a special permit for Institutional/ Commercial Development, the Planning Board shall secure the assistance of consultants who are expert in the matters under review and who can assist the Planning Board in analyzing the material in the application for efficacy, accuracy and completeness. As part of a peer review of the material submitted by the applicant’s experts, these experts hired by the Planning Board may recommend changes and additions to applicant’s expert’s material so as to better serve or accomplish any task, design or function under review. The traffic engineer hired by the Planning Board shall analyze the traffic study submitted by the applicant and shall carefully scrutinize projections of traffic volumes and proposed mitigation measures and designs for mitigation of all adverse impacts, particularly the impacts on the state highway and all impacted neighborhood streets; the traffic engineer may recommend changes or supplements to mitigation measures and designs. The noise expert hired by the Planning Board shall analyze the noise study submitted by the applicant and shall carefully scrutinize the projected noise impacts of the various elements of the project and may recommend noise abatement measures or designs alternative to or in addition to those recommended by applicant’s expert. Other experts shall similarly review other material submitted by applicant and may recommend changes in proposed measures or designs. The Planning Board may adopt any such recommendations as part of a special permit. Experts may include disinterested engineers, planners, architects, landscape architects, appraisers, or other professionals with specialized expertise. The Planning Board shall require that an applicant pay a review fee, consisting of the reasonable costs estimated by the Planning Board for employment of the experts. Expenditures may be made at the direction of the Planning Board and shall be made only in connection with the review of the application. Failure of the applicant to pay a review fee upon request shall be grounds for denial of the application. At the completion of the Planning Board’s review of an application, any excess amount of the review fee shall be repaid to the applicant. A final report of expenditures shall be provided to the applicant.

6. **Notice, Procedures and Standards for Decision:** The notice and procedural requirements set out in Section IX.B and C shall apply to Special Permits for Institutional/ Commercial Development. In rendering a decision the Planning Board shall apply the standard set out in Section IX.C. The Planning Board may require changes in any of the plans and documents submitted as part of the application so that any such plans and documents, when referenced in the special permit, show a development engineered and designed pursuant to standards and in a manner of which the Planning
Board approves. The Planning Board shall ensure in the special permit that there is a responsible person or entity or persons or entities who or which will have primary legal responsibility for compliance with all requirements, terms and conditions of the special permit and other applicable law. The Planning Board shall not issue any special permit for an Institutional/Commercial Development without ensuring the matters set out herein. The Planning Board shall impose such terms, conditions and requirements in a special permit as it deems necessary to ensure these matters. In the event that a special permit for an Institutional/Commercial Development shall be issued for a lot of land, no use of the lot shall be made except as authorized by the special permit.

7. **Time for Performance:** A special permit issued pursuant to this subsection shall lapse if substantial construction is not commenced within two years after the special permit becomes final or if construction is not substantially completed within three years after the special permit becomes final provided that the Planning Board may extend the time for substantial completion for good cause shown.

8. **Amendment:** The Planning Board shall have the power to modify or change the terms of the special permit, after notice and hearing, upon the application of the owner of the commercial parcel with respect to its parcel or the institution with respect to its parcel. If the authority is specifically reserved in the special permit with respect to specified matters, the Planning Board may propose modifications or changes as to such matters. Standards for decision on an application for modification or change or on a Planning Board proposal for modification or change shall be the same as the standards for decision of a new application for a special permit.

**COMMENT:** The Warrant Committee recommends approval of the Zoning Overlay article. The article entails leaving the underlying residential C zoning where the Temple Shalom resides intact while allowing for an overlay for an institutional/commercial development. This zoning overlay can only be used for sites that meet the requirements of the proposed overlay zoning bylaw. There are only three sites in the Town that would qualify. The Planning Board has reviewed the project extensively; taking input from abutters, town residents, and experts and has recommended approval of the article by a majority vote.

The Temple Shalom has been in Milton, MA since 1944 and the Temple is in desperate need of repair to the structure. The Temple Shalom has stated that it does not have the funds to maintain and repair the facility and therefore, must sell the property. The Temple approached the Town and neighborhood for feedback on the various sale alternatives. The Temple’s goal is to remain in Milton and build a smaller facility on the current site. The Temple has stated that the option that provided the funds necessary for them to stay at the current site is the proposed commercial development of a pharmacy (CVS), small grocery store, and the new
Temple. The bylaw, as written by the Planning Board, requires one building to be a nonprofit, the other two buildings must be owned by one entity and must be a pharmacy and grocery store. The restrictiveness of the bylaw would limit the use to the Temple property and two other properties in the Town (St. Mary’s School and St. Elizabeth Church). St. Elizabeth would have to use all of its property in order to qualify.

Proponents of the development list the following as reasons for approval of the article:

- The Temple Shalom, as the owner, has the right to sell the property that is in their best interest. They also must sell the property.
- The proposed commercial development allows the Temple Shalom to remain in Milton which is their desire. They have been in the neighborhood for over 60 years.
- Additional commercial tax revenue to the Town which lacks a commercial tax base and will provide some funds to the Town in a difficult economic environment.
- The development will provide essential services to the town (pharmacy & grocery store).
- The property will be developed in such a way to enhance the surroundings and potentially increase property values.
- If this article is not approved, the only other option for the Temple is to sell the property to the highest bidder. If the highest bidder decides to construct affordable housing on the site the Town may have very little control over design construction and density. This may also force the Temple out of Milton as the valuation would not provide enough funds for the Temple to construct a new Temple. Dense housing development would put additional strain and costs on other town services (police, fire, and additional students to the school system).
- Traffic would also increase with dense housing and it may not be esthetically pleasing to the neighborhood.

Those opposed to the article argue the following:

- Commercial development on the site would substantially increase traffic.
- Property values in the neighborhood would decline.
- Approval of this article would set a precedent for future commercial development in other residential zoned areas of Milton.
- Those who bought in the neighborhood did so with the belief the neighborhood would always stay residential.

The Planning Board, after extensive input from those in favor and opposed have appeared to have addressed the major concerns. They have written a restrictive bylaw which makes it extremely difficult to get an overlay zoning of residentially zoned property. They have built mitigation into the bylaw that addresses traffic and potential property value declines related to the development. If town meet-
ing approves the article, which needs 2/3 approval, the Planning Board must still get 4/5 approval to issue the special permit for the development. The Planning Board will also be monitoring the progress during development to ensure compliance.

ARTICLE 3 To see if the Town will vote to amend the General Bylaws by adding after Chapter 22 the following new chapter.

CHAPTER 23

BLASTING PERMITS AND REQUIREMENTS

1. Blasting Permits – Pre-blasting Survey Requirements

   A. Permit Required. No blasting (rock excavation) shall be conducted in the town without a permit issued by the Committee on Blasting. Blasting shall be conducted only in the manner directed by the Committee on Blasting, consisting of the Fire Chief, Town Engineer and Building Commissioner.

   B. Permitted Surveyors. For all permits issued for blasting (rock excavation) in the town, a pre-blast survey shall be made by the contractor or by an approved firm in this kind of work and satisfactory to the contractor’s insurance company.

   C. Requirements.

   (i) Approval. The pre-blast survey shall include a survey of the interior and exterior of existing buildings and structures, including, but not limited to residential and commercial buildings, landscape and retaining walls, detached garages and in-ground swimming pools, adjacent to the project as specified herein, before any excavation or blasting is done. Written approval shall be secured from the Fire Chief, Town Engineer and Building Commissioner serving as the Committee on Blasting. The applicant shall demonstrate to the Committee on Blasting compliance with the State Fire Prevention Regulations, 527 CMR Section 13.

   (ii) Adjacent Area. The adjacent area requiring the pre-blast survey is specified as all buildings and structures within a radius of five hundred feet from said blast.

   (iii) Structural Defects. The survey shall record all visible structural defects such as cracks, settlement, and lines out of plumb.

2. Disposition of Pre-blasting Survey Data

   The survey data shall be recorded in a permanent manner in approved hardbound notebooks and/or electronic form, as deemed appropriate by the Committee on Blasting. The survey data shall include photographs showing the building constructions surveyed referenced to the notebook.
pages. An audio recording of all data pertinent to the survey shall be made. The scope and format of the record survey data shall be satisfactory to the Committee on Blasting. Before commencing any blasting or ledge excavation, copies of the survey shall be on file at the offices of the Town Engineer, the Building Commissioner and the Town Clerk.

3. **Pre-blasting Survey Not Required**
   No pre-blasting survey shall be required if blasting is within the following limits: The total charge weight per blast does not exceed five pounds, and the maximum weight per delay does not exceed two pounds per delay.

4. **Posting of Bond Required**
   If blasting is designed to excavate more than a ten-cubic-yard area, the contractor shall post a bond with the Town. The amount of said bond shall be determined by the Committee on Blasting. The Committee on Blasting will not release the bond until it is satisfied that all judgments and claims relating to the blasting have been paid or settled by the contractor.

5. **Fire Department Supervision Required; Costs**
   All blasting is to be supervised on site by an authorized member of the Fire Department, assigned by the Fire Chief, and the cost of said supervision shall be paid by the contractor.

6. **Penalties for Violation**
   Any person who shall violate any of the provisions of this Chapter as determined by the Committee on Blasting, or who fails to comply therewith, shall severally, for each and every violation and noncompliance respectively, be liable for a penalty of two hundred dollars for each offense. Each day on which a violation or noncompliance continues shall constitute a separate offense.

and to act on anything related thereto.

submitted by the Building Commissioner.

**RECOMMENDED** that the Town vote to amend the General Bylaws by adding after Chapter 22 the following new chapter.

**CHAPTER 23**

**BLASTING PERMITS AND REQUIREMENTS**

7. **Blasting Permits – Pre-blasting Survey Requirements**
   A. **Permit Required.** No blasting (rock excavation) shall be conducted in the town without a permit issued by the Committee on Blasting. Blasting shall be conducted only in the manner directed
by the Committee on Blasting, consisting of the Fire Chief, Town Engineer and Building Commissioner.

B. Permitted Surveyors. For all permits issued for blasting (rock excavation) in the town, a pre-blast survey shall be made by the contractor or by an approved firm in this kind of work and satisfactory to the contractor’s insurance company.

D. Requirements.

(i) Approval. The pre-blast survey shall include a survey of the interior and exterior of existing buildings and structures, including, but not limited to residential and commercial buildings, landscape and retaining walls, detached garages and in-ground swimming pools, adjacent to the project as specified herein, before any excavation or blasting is done. Written approval shall be secured from the Fire Chief, Town Engineer and Building Commissioner serving as the Committee on Blasting. The applicant shall demonstrate to the Committee on Blasting compliance with the State Fire Prevention Regulations, 527 CMR Section 13.

(ii) Adjacent Area. The adjacent area requiring the pre-blast survey is specified as all buildings and structures within a radius of five hundred feet from said blast.

(iii) Structural Defects. The survey shall record all visible structural defects such as cracks, settlement, and lines out of plumb.

8. Disposition of Pre-blasting Survey Data
The survey data shall be recorded in a permanent manner in approved hardbound notebooks and/or electronic form, as deemed appropriate by the Committee on Blasting. The survey data shall include photographs showing the building constructions surveyed referenced to the notebook pages. An audio recording of all data pertinent to the survey shall be made. The scope and format of the record survey data shall be satisfactory to the Committee on Blasting. Before commencing any blasting or ledge excavation, copies of the survey shall be on file at the offices of the Town Engineer, the Building Commissioner and the Town Clerk.

9. Pre-blasting Survey Not Required
No pre-blasting survey shall be required if blasting is within the following limits: The total charge weight per blast does not exceed five pounds, and the maximum weight per delay does not exceed two pounds per delay.
10. Posting of Bond Required
   If blasting is designed to excavate more than a ten-cubic-yard area, the contractor shall post a bond with the Town. The amount of said bond shall be determined by the Committee on Blasting. The Committee on Blasting will not release the bond until it is satisfied that all judgments and claims relating to the blasting have been paid or settled by the contractor.

11. Fire Department Supervision Required; Costs
   All blasting is to be supervised on site by an authorized member of the Fire Department, assigned by the Fire Chief, and the cost of said supervision shall be paid by the contractor.

12. Penalties for Violation
   Any person who shall violate any of the provisions of this Chapter as determined by the Committee on Blasting, or who fails to comply therewith, shall severally, for each and every violation and noncompliance respectively, be liable for a penalty of two hundred dollars for each offense. Each day on which a violation or noncompliance continues shall constitute a separate offense.

COMMENT: This article creates a new general bylaw by providing provision for the appropriate handling, use and supervision of explosive materials within the Town. The use of these materials in the Town is currently governed solely by Massachusetts State law, 527 CMR Section 13, which requires the issuance of a permit by the Town fire marshal. The proposed bylaw would add significant additional provisions to protect residents and home when explosives are being used within the Town, including the surveying and recording of the state of all property within 500 feet of the proposed blasting site.

ARTICLE 4 To see what sum of money the Town will vote to appropriate for the purpose of construction, erection, installation and maintenance of wind turbines on land owned by the Town of Milton; to determine how such appropriation shall be raised, whether by borrowing under applicable provisions of law or otherwise;

and to act on anything relating thereto.

Submitted by the Board of Selectmen

RECOMMENDED the Town vote to appropriate $6,200,000 for the purpose of construction, erection, installation and maintenance of wind turbines on land owned by the Town of Milton and that to meet said appropriation the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow $6,200,000 and to issue bonds or notes of the Town therefor and that the Board of Selectmen be and hereby is authorized to accept and expend in addition to the foregoing appropriation one or more grants or gifts from any other public or private funding source.
COMMENT: A vote in favor of this article will appropriate $6.2 million for the design and construction of a wind turbine and authorize the Town Treasurer to borrow $6.2 million for that purpose. The May 2009 Annual Town Meeting approved an amendment to the zoning bylaws to allow for the construction of two wind turbines on Town owned land. After feasibility studies were completed it was determined that two turbines on the proposed site were not economically feasible. Plans have progressed for the construction of one turbine on a land owned by the Town and sited near the Quarry Hills Golf Course. The turbine is estimated to generate electricity equal to approximately 70% of the current annual electric use for all Town owned buildings including the Schools. The energy generated will be sold to the utility company at a contractual rate equal to retail utility rates and will be used to offset the Town’s municipal electricity cost. Construction costs are estimated to be $6,200,000. The Town has received a grant in the amount of $399,000 that will defray part of the construction costs. Based on the issuance of bonds at 3% for 15 years the estimated undiscounted net cash flow after payment of debt services, operating costs and decommissioning costs will be approximately $7.6 million over the estimated 20 year useful life of the turbine. Please refer to Table 1 in this Warrant for a summarization of the cash flow and debt service analysis for this project.
### TABLE 1
WIND TURBINE CASH FLOW AND DEBT SERVICE ANALYSIS

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<th>YEAR</th>
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<th>Annual Maintenance</th>
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Monday, February 22, 2010

The auditorium has been reserved for addition sessions at 7:30 p.m. on Tuesday, March 2 and Thursday, March 4, 2010.

Milton High School Auditorium

7:30 P.M.

Monday, February 22, 2010

SPECIAL TOWN MEETING