

TOWN OF MILTON 2010



Special Town Meeting

Monday, September 20, 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

INDEX
WARRANT ARTICLES

ARTICLE NO.	TITLE	PAGE
1	Adoption of the Stretch Energy Code	9
2	Amend Zoning Bylaws-Height Restrictions on Accessory Structures	9
3	Amend Zoning Bylaws-As of Right Siting	10
4.	Home Rule Petition-Liquor License.....	14

In compliance with the Americans with Disabilities Act, this warrant can be made available in alternative formats. The September Special Town Meeting, if requested, will be offered by assisted listening devices or by 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.

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 twentieth day of September 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 twentieth day of September 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 twentieth day of September, next.

Given under our hands at Milton this sixteenth day of August, two thousand and ten.

Marion V. McEttrick
Robert C. Sweeney
John Michael Shields

A True Copy: Attest

Stephen Freeman
CONSTABLE OF MILTON

REPORT OF THE WARRANT COMMITTEE FOR THE SEPTEMBER 20, 2010 SPECIAL TOWN MEETING

The Special Town Meeting convening on Monday, September 20, 2010, will act on three amendments to the General and Zoning bylaws as well as an authorization for the Town to request the State to enact legislation authorizing the issuance of a wine and malt liquor license. The timing of the Special Town Meeting, the associated printing deadlines for the Warrant and the timing of public hearings have unfortunately meant that the Warrant Committee is unable to make a recommendation in the Warrant on the three amendments to the General and Zoning bylaws. It is the intention of the committee to have our recommendations made and widely published in advance of the Special Town Meeting.

The basis for our recommendation and background on the articles is discussed below and/or in the comments to the articles.

I. Background

The Green Communities Act passed by the State in 2008, established the Green Communities Division at the Department of Energy Resources (DOER) to help cities and towns maximize energy efficiency in public buildings, including schools, city halls, and public works and public safety buildings; generate clean energy from renewable sources; and manage rising energy costs. In addition, the Green Communities Division manages a process whereby eligible cities and towns are able to apply for and receive substantial grant monies to help pursue energy efficiency measures, large renewable energy projects, and innovative methods that use less fossil fuel. Eligibility for the program would require that the Town adopt five criteria:

- Provide as-of-right siting in designated locations for renewable/alternative energy generation, research & development, or manufacturing facilities
- Adopt an expedited application and permit process for as-of-right energy facilities
- Establish a benchmark for energy use and develop a plan to reduce this baseline by 20 percent within five years
- Purchase only fuel-efficient vehicles
- Adopt the new Board of Building Regulations and Standards (BBRS) Stretch Code

The Town currently meets all but two of these requirements. Article 1 would meet the stretch code requirement and Article 3 provides for the as-of-right siting of the wind turbine.

On July 14th 2010, the State awarded the first round of grant money to the 35 Cities and Towns that had met the eligibility criteria. The DOER having reviewed the grant applications, awarded a total of \$8.1 million in grants on a sliding scale with each Green Community receiving a minimum award of \$125,000. The maximum amount per community was adjusted for population and per capita income.

The process for the next round, which begins in October 2010, is structured the same way with the total amount awarded based on the total funds available (up to \$10 million), the number of applicants, the minimum award per community and the adjustment for population and per capita income.

II. Adoption of the “Stretch Energy Code”

Under Article 1, the Town is being asked to adopt Appendix 120.AA of the 7th edition of the Massachusetts State Building Code, 780 CMR, otherwise known as the “Stretch Energy Code”. Upon adoption by the town, this appendix 120.AA along with the Base Energy Code 2009 IECC will increase requirements for all new construction, as well as those for residential additions and renovations that would normally trigger building code requirements.

The Stretch Code would apply to all residential buildings from single family homes up to and including buildings three stories or less of any size, including both new and renovations of existing residential buildings. Historic buildings are exempt. The code also applies to New Commercial buildings over 5,000 square feet in size, including multi-family residential buildings over three stories, but excluding specialized facilities with unusual energy usage requirements such as supermarkets, laboratories, and warehouses up to 40,000 square feet.

New Residential Construction

The Stretch Code requires an independent third party Home Energy Rating System (HERS) rater to perform a HERS assessment. For new homes greater than 3,000 square feet in size, the maximum HERS score is 65; for homes less than 3,000 square feet in size, the maximum HERS score is 70. In addition to the HERS score, the homes must be inspected using the EPA ‘thermal bypass checklist’ and the required duct testing must be carried out. These inspections ensure that the home is well air sealed, while the HERS rating ensures that the home is designed to be well insulated with efficient heating, cooling and lighting – all measures that save energy and reduce utility bills. Prior to beginning construction, a HERS pre assessment is provided to the builder and submitted with the

permit application. The HERS rater will then verify compliance during construction and, when construction is complete, provide a confirmed compliance document to the builder and the Town Building Department.

Residential Additions / Renovations

The requirements for renovations or additions are for the completion of the EPA ‘thermal bypass checklist’. If any windows are being replaced, then they are required to be replaced by ones carrying the Energy Star label. If ductwork is installed outside of the existing conditioned spaces (i.e. in unheated/cooled areas like attics, basements or outside the building), then the ducts need to be tested to verify that they have a leakage rate of 4% or less. For most residential renovations you will need to complete the thermal bypass checklist, meet the window requirements, insulate to current code, and conduct duct testing if applicable. While the home owner can go through the HERS rating process, it is entirely optional.

The Warrant Committee is recommending that the Town accept this article for the following reasons:

- a) It provides for the prospect of \$125,000 in grant revenue that can be spent on improving the efficiency of our facilities that in our current fiscal situation, we don’t otherwise have available.
- b) The impact to residents is minimal. In FY2010, there were 3 new single family residence building permits issued. In the same time period, there were 853 renovation permits issued.

III. Height restrictions on accessory structures

Under Article 2 the Town is being asked to amend Section VI. D-1 of the Zoning bylaws by setting a maximum height restriction on the building of accessory structures in the set back area of residence AA, A, B or C districts. The current zoning language does not set any height restriction on these structures and as a result, several homeowners have built two story structures in the setback area. The Town is pursuing these homeowners in court.

At the time of writing, the Planning Board has held their public hearing and recommended that Town Meeting vote to send the matter to the Planning Board for further study and report at the next Town Meeting as the Planning Board was concerned that the height restriction was too stringent. In addition, the Article as written had a technical flaw that could not be fixed on the floor of Town Meeting as the Article refers only to rear setbacks. In order for this change to be effective, changes to the side setbacks would have to be included. The Warrant Committee is, at the time of writing, in the process of reviewing the Planning Board’s concerns and will issue a recommendation prior to Town Meeting.

IV. As-of-right Zoning

The town is being asked in Article 3 to amend Chapter 10 of the General bylaws, known as the Zoning bylaws, by striking the existing Section IV.D and substituting a new Section IV.D. Section IV.D was created under Article 42 of the May 2009 Annual Town Meeting to cover the zoning and permitting process for Wind Turbines on Town property. The current Section IV.D includes specific language relating to the Special Permit process to be followed by the Town and the Planning Board to site and approve a Wind Turbine. By adopting as-of-right siting for the wind turbine, the special permit language is no longer required, and as a result the new Section IV.D is identical to the old; except for the redaction of all language that applied to the special permit process.

At the time of writing, the Planning Board is in the process of completing its public hearing process on this article and the Warrant Committee has held one hearing with the Chairman of the Planning Board to understand the background to the amendment. Further meetings are scheduled in August and a recommendation and commentary on the recommendation will be made and communicated to the Town in early September.

V. Authorization to Issue Liquor License

Under Article 4, the Board of Selectmen seeks Town Meeting's approval to petition the State Legislature for authorization to issue a wine and malt beverages license for the Ichiro Sushi restaurant located at 538A Adams Street. Town Meeting's approval of Article 4 will not result in the issuance of the license; rather it will authorize the Board of Selectmen to request the Legislature's approval to issue such a license for 538A Adams Street. If the Legislature approves the petition, the petitioner, B & D Ichiro, Inc., would be required to apply to the Board of Selectmen for the license. The Board of Selectmen must conduct a public hearing in the course of acting on such an application.

In 2008, the owners of Ichiro Sushi discussed with the Town Administrator the possibility of obtaining a liquor license to serve Sake, a traditional Japanese wine, as part of the restaurant's fare. The owners agreed to withhold their request until after the opening of the Abby Park restaurant and the resolution of the issuance of a liquor license for 2 Adams Street.

On August 26th 2010 a new provision of Chapter 138 of the Massachusetts General Laws which covers the use and sale of alcohol

takes effect. This provision requires that any applicant or licensee provide proof of coverage under a liquor legal liability insurance policy for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of one person, and \$500,000 on account of any one accident resulting in injury to or death of more than one person. As existing licenses come up for renewal, they will be required to meet the new provision. This new provision means that there is no need to include specific liability language in the article, as was done on the floor of the October 2008 Special Town Meeting via an amendment to Article 10 regarding the issuance of a liquor license for the building at 2 Adams Street.

VI. Acknowledgements

The Chair extends his thanks to all of the appointed and elected officials of the Town who assisted in the preparation of this Warrant: Town Administrator Kevin Mearn, the Board of Selectmen and staff of its office, Planning Board Chair Alexander Whiteside, Town Planner Bill Clark, Building Commissioner Joe Prondak and Local Inspector Jay Beaulieu.

Respectfully submitted,
August 9, 2010

Ewan Innes, Chair
Maurice (Moe) Mitchell, Secretary
Tom Hurley
Leroy Walker
Kevin Chase
John Folcarelli
Jean H. Powers
Raj Pathak
Michael Zullas
John Ahonen
Henry Bell
Cheryl Friedman Tougias
Darnell Turner
Carolyn Cahill
Jean Wilson
Helen Kiddy, Clerk

ARTICLE 1 To see if the Town will vote to accept Appendix 120.AA of the Massachusetts Building Code, 780 CMR, the “Stretch Energy Code”, including amendments or modifications thereto, regulating the design and construction of buildings for the effective use of energy, a copy of which is on file with the Town Clerk;

and to act on anything relating thereto.

Submitted by the Board of Selectmen

RECOMMENDED that the Town vote to accept Appendix 120.AA of the Massachusetts Building Code, 780 CMR, the “Stretch Energy Code”, including amendments or modifications thereto, regulating the design and construction of buildings for the effective use of energy.

COMMENT:

The Warrant Committee has reviewed the information provided at the Selectmen’s Public Hearing, met with the Inspectional Services Department and also met and discussed the issues related to the Stretch Code with representatives from Conservation Services Group. It is clear from those discussions that the barriers and impacts to adopting Appendix 120.AA for nearly all residential construction in Milton are minimal. Nearly all construction that would be impacted would fall into the compliance criteria for alterations, renovations and repairs, and meeting those requirements is not in the Committee’s opinion burdensome to residents. Moreover, the potential benefit to the town of being able to access in excess of \$125,000 in grant monies is a significant advantage. If Articles 1 and 3 are approved by Town Meeting we look forward to the Town moving forward in its application to be a Green Community and the subsequent grant proposals.

ARTICLE 2 To see if the Town will vote to amend the General By Laws, known as the Zoning By Laws, by inserting in Section VI. D-1 the words “not greater than 14 feet in height above average grade” between the words “accessory use” and “shall”, so that said section VI. D.1 reads

“In a Residence AA, A, B or C district no building except a one-story building of accessory use, not greater than 14 feet in height above average grade, shall be erected or maintained within 30 feet of the rear lot line, provided that no building need be set back from the rear lot line more than 30 percent of the mean depth of the lot.”

and to act on anything relating thereto.

Submitted by the Board of Selectmen

RECOMMENDATION: The Warrant Committee has no recommendation at this time.

COMMENT:

The Planning Board recommended after its public hearing that the matter be sent back to the Planning Board for further study and report at the next Town Meeting citing concerns with the article as written. Firstly, with the height restriction as this was felt to be too stringent and secondly, with the scope of the Article as it did not address side setbacks. The Warrant Committee is, at the time of writing, still in the process of reviewing the Planning Board's position and so has no recommendation at this time. The Warrant Committee will issue a recommendation prior to the Special Town Meeting.

ARTICLE 3 To see whether the Town will vote to amend Chapter 10 of the General Bylaws known as the Zoning bylaws, by striking Section IV.D and by substituting the following Section IV.D

SECTION IV. D. Wind Turbines

1. Definition. A wind turbine consists of a foundation, a tower, a generator located at the top of the tower, associated wiring and a rotor with two or more blades. It may include an accessory structure necessary for operations. The height of a wind turbine shall be measured from the grade at its base to the tip of a rotor blade at its highest point.
2. Authorization of up to Two Wind Turbines. Up to two wind turbines may be erected and maintained on a parcel of land owned by the Town subject to the requirements specified in this section. There shall be only one or two wind turbines erected, maintained and operated pursuant to this section. The turbine(s) shall at all times be owned by the Town and sited on Town-owned land. The wind turbine(s) may be operated, maintained and managed by experienced persons or entities under contract with the Town.
3. In applicable Zoning Provisions. The requirements set out in Sections III, V, VI, VII and VIII D of the zoning bylaws shall not be applicable to the wind turbine and its components on this site.

4. Requirements for Wind Turbine(s).

- (a) Siting: The wind turbine(s) shall be sited on a parcel of land owned by the Town at least 1200 feet from the nearest dwelling and at least 1100 feet from the nearest state highway and at least 1200 feet from the nearest public town street, which is not separated from the selected site by the state highway, and at least 100 feet from the green and fairway of any golf course. Siting of the wind turbine(s) shall be supported by a study concluding that the selected site is a good wind energy project site and by a study concluding that siting the wind turbine(s) on the selected site would minimize any adverse environmental consequences and any adverse impacts on historical or archeological sites.
- (b) Height: The wind turbine(s) shall in no event exceed 480 feet in height. If the Town determines that a lesser height will reasonably enable performance sufficient to make the wind turbine(s) project financially feasible to the Town in a manner that efficiently generates the desired amount of electricity (not less than 1.5 megawatts in rated capacity), the height of the wind turbine(s) shall not exceed such lesser height. The height of the tower and its location shall be approved by state and federal entities if such approval is legally required.
- (c) Noise: As the wind turbine ages, it shall be properly maintained and serviced so as to ensure continued reasonably quiet operation at all times. The wind turbine(s) and appurtenant equipment shall be reasonably quiet, comparable with other such turbines and equipment. Under no circumstances shall the noise level of actual operations of the wind turbine(s) and of the appurtenant equipment exceed the standards set in the Massachusetts DEP's Noise Control Regulation, 310 CMR 7.10 or successor regulatory provision.
- (d) Ownership: The wind turbine(s) shall be constructed on town-owned land in such manner and under such terms and conditions as may be authorized by the Board of Selectmen using grants, gifts, and other financing. Following construction the wind turbine(s) shall be owned by the Town.

(e) Operations: During its useful life or until such earlier time as its operations permanently cease, the wind turbine(s) shall be operated, maintained and managed by one or more persons or entities skilled in such operation, maintenance and management (the “operator”). The operator shall be under contract with the Board of Selectmen. The contract shall provide terms and conditions pursuant to which the wind turbine shall be operated and maintained and pursuant to which all necessary and appropriate charges and expenses shall be paid from revenues of the wind turbine(s). A separate reserve from these revenues shall be maintained by the Town Treasurer for unforeseen contingencies and for the eventual dismantling of the wind turbine(s). The operator shall have the responsibility and obligation to maintain all parts of the wind turbine(s) and associated structures and equipment in good condition providing for the safe, efficient and quiet generation of electricity. The operator shall have the responsibility to operate the wind turbine in the manner for which it was designed, safely, efficiently and quietly. In the event of any malfunction of or damage to the wind turbine the operator shall take all necessary steps to remedy the malfunction or to repair the damage as quickly as reasonably possible. At the end of the useful life of the wind turbine or at such earlier time as the wind turbine(s) can no longer generate electricity safely, efficiently and quietly, the operator shall notify the Town, and the wind turbine(s) shall be removed and the site restored to an attractive natural condition.

(f) Lighting and Signs: The wind turbine(s) shall carry aircraft warning lights as required under federal law, regulation or permit. The wind turbine(s) shall carry no logos or signs except as authorized by the Town’s sign regulations.

5. Contents of Application: The application for a building permit shall be in the usual form but shall also include the following:

(a) GIS maps showing the proposed site of the wind turbine(s). The topography, all significant natural features, lot lines and identification of lot owners, all existing ways and trails, and all existing power lines shall be shown with reasonable accuracy.

- (b) A plan showing the distances from the proposed site of the closest residence, the nearest state highway, the nearest public street not separated from the proposed site by a state highway, and the nearest fairway and green of a golf course. Distances can be calculated using the geological survey map of the area produced by the United States Geological Survey.
 - (c) A site plan showing all site work necessary for the construction and operation of the wind turbine(s), including specifications for: clearing; foundation work; grading; and construction of power lines, access road, fencing, and accessory building.
 - (d) Detailed plans for the wind turbine(s) including renderings showing the front, rear and side profiles of the wind turbine(s) in all material detail.
 - (e) Elevations accurately depicting the wind turbine(s) on site.
 - (f) Specifications of the wind turbine(s) including: height and diameter of tower; length, width and weight of blades; color and type of exterior finish; make and characteristics of the generator, including power output and noise characteristics.
6. Compliance: The requirements of this Section shall bind and be enforceable against both the Town and the operator then under contract with the Town or otherwise operating the wind turbine(s).

Submitted by the Board of Selectmen

RECOMMENDATION: The Warrant Committee has no recommendation at this time.

COMMENT: At press time, the public hearing process was not yet complete on this Article. The Warrant Committee will be considering the article during the period between going to press and the Warrant being received in homes and will issue a recommendation prior to Town Meeting.

ARTICLE 4 To see if the Town will vote to authorize the Board of Selectmen to petition the General Court to enact legislation in substantially the following form, provided that the General Court may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition.

**AN ACT AUTHORIZING THE TOWN OF MILTON
TO GRANT A LICENSE FOR THE SALE
OF WINES AND MALT BEVERAGES TO BE DRUNK
ON THE PREMISES OF A CERTAIN RESTAURANT**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of sections 11 and 17 of chapter 138 of the General Laws, the licensing authority of the Town of Milton may grant to B & D Ichiro, Inc., d/b/a/ Ichiro Sushi, a license for the sale of wines and malt beverages to be drunk on the premises of the restaurant located at 538A Adams Street, Milton, MA. The license shall be subject to all of said chapter 138, except said sections 11 and 17. The licensing authority shall not approve the transfer of the license to any other location.

SECTION 2. This act shall take effect upon its passage.

and to act on anything relating thereto.

Submitted by the Board of Selectmen

RECOMMENDED that the Town authorize the Board of Selectmen to petition the General Court to enact legislation in substantially the following form, provided that the General Court may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition.

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SECTION 2. This act shall take effect upon its passage.

COMMENT: In 2008, the owners of Ichiro Sushi discussed with the Town Administrator the possibility of obtaining a liquor license to serve Sake, a traditional Japanese wine, as part of the restaurant's fare. The owners agreed to withhold their request until after the opening of the Abby Park restaurant and the resolution of the issuance of a liquor license for 2 Adams Street. As noted in the report of the Warrant Committee, the new liability insurance provisions of Section 12 Chapter 138 that take effect on August 26th 2010 will require that liability insurance is carried by the petitioner prior to the issuance of any license by the Selectmen during the course of their license hearing process.

SPECIAL TOWN MEETING

Monday, September 20, 2010

7:30 P.M.

Milton High School Auditorium

POSTAL CUSTOMER RESIDENT

MILTON, MA 02186

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