

TOWN OF MILTON 2012



October Town Meeting

Monday, October 22, 2012

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

2012
OCTOBER 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 October next at 7:30 o'clock in the evening, then and there to act upon the following Articles to wit:

Articles 1-6

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 seven days at least before the twenty-second day of October and leaving printed copies thereof at the dwelling houses of said Town at least four 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 October, next.

Given under our hands at Milton this twentieth day of September, two thousand and twelve.

J. Thomas Hurley
Denis F. Keohane
Robert C. Sweeney

A True Copy: Attest

Stephen Freeman
CONSTABLE OF MILTON

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WARRANT ARTICLES AND RECOMMENDATIONS

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In compliance with the Americans with Disabilities Act, this warrant can be made available in alternative formats. The October 22, 2012 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 2012 FALL TOWN MEETING**

To the Honorable Board of Selectmen:

The Warrant Committee herewith presents to the Town Meeting and to the voters and taxpayers of the Town recommendations for action on several articles submitted to the Fall Town Meeting convening on Monday, October 22, 2012.

Article 34 of the 2012 Annual Town Meeting Warrant, as voted by Town Meeting, established a schedule of Spring and Fall Town Meetings to replace our current Annual May and floating Fall/Winter Special Town Meetings. In accordance, our first Fall Town Meeting is October 22, 2012 at the Milton High School Auditorium, with a second night, if needed, to be held October 29, 2012, also at the Milton High School Auditorium beginning at 7:30 p.m.

This first Fall Town Meeting will act on six articles. The articles are briefly described as follows: one article to appropriate additional unrestricted general government aid as provided by the State's FY2013 Conference Committee Budget; one article to provide funding for capital needs for the Town's sewer system; one article relating to adjustments to Article 16 of the 2012 Annual Town Meeting Warrant (Public Works); one article to provide funding for the demolition of the Town owned portion of the existing structure at 131 Eliot Street; one Citizens Petition for Overlay Zoning for a Landscaping/Residential/Planned Unit Development; and one article for amendment of the existing zoning bylaws to allow for development of Assisted Living Residence Developments.

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

I. Unrestricted General Government Aid Appropriation

As described in Article 29 of the 2012 Annual Town Meeting Warrant, \$95,000 was left un-appropriated at the time the warrant went to print in March, 2012. The \$95,000 was the balance of an additional House appropriation made in April, 2012. Final fiscal year appropriations resulted in an additional \$103,278 for a total of \$198,278. The Warrant Committee voted to further enhance funds available to help the Town meet the expected operating expenses of FY2014. By including the \$871,972 reported in the comment section of Article 29, the new additional funds mean there is \$1,070,250 available for use in FY2014.

The current balance of both the stabilization and the capital stabilization fund prior to action on article 1 is:

Fund	Balance
Stabilization Fund	\$2,995,189
Capital Stabilization Fund	\$555,234

II. Sewer System Improvements Appropriation

Over the last several years, Town Meeting authorized the Treasurer to borrow money from the MWRA at an interest rate of zero percent for the purpose of financing the capital needs of the sewer system. For fiscal year 2012, (2011 ATM article 21), the MWRA cancelled the zero percent loan program but Town Meeting approved the continuation of this important maintenance program by authorizing the Treasurer, with approval from the Board of Selectmen, to bond annual replacement needs for fiscal year 2012. For fiscal year 2013, (2012 ATM, Article 20), the DPW Director and Capital Committee were not in favor of borrowing for this purpose. Subsequent to the 2012 ATM, on July 11, 2012, the MWRA reinstated their prior financial assistance program. The Town is now able to borrow up to \$485,000 during FY13 under the program at a zero percent interest rate.

III. 2012 Annual Town Meeting Appropriation

When the 2012 warrant was closed the Water and Sewer budget was built on MWRA preliminary FY13 assessments (see Article 16 of the 2012 ATM warrant). Subsequent to the 2012 Annual Town Meeting, the MWRA issued its final FY13 Water and Sewer assessments. The final assessments were less than the preliminary assessments. The changes in this article take advantage of the decreased assessment by lowering the Water and Sewer rates accordingly. The decrease in the Water Enterprise appropriation is \$17,577 and the decrease in the Sewer Enterprise appropriation is \$54,381.

IV. Eliot Street Property Demolition

The Engineers Design Group, Inc. employed by the Town of Milton, assessed the condition of the Town owned portion of the existing structure at 131 Eliot Street. Their report concluded that, "The building must either be completely demolished or repaired within a brief time-span. Due to the extent of work required to repair this structure, it is likely that demolition is the most practical approach." The Board of Selectmen expects to request funds to demolish the town owned portion of the property. This amount will include not only the cost of the demolition of the Town owned portion of the property, but also the cost of busing MBTA passengers in the absence of trolley service and police details during the demolition.

Requests for Proposals for the demolition are currently under review by the Board of Selectmen. Cost estimates for the MBTA and police department service have been requested.

V. Citizen’s petition: Amend Zoning Bylaws for a Landscaping/Residential Planned Unit Development

This article seeks to add a new subsection to the Zoning Bylaws to allow the granting of a special permit by the Planning Board for the ongoing operation of a landscaping business. The owner/operator is the occupant of the residence on which lot the landscaping business is located. The business has operated over the last twenty years under a variety of permits and temporary variances granted by the Town of Milton Board of Appeals. An abutter appealed to the Massachusetts Land Court to overturn the most recent Zoning Board of Appeals variance. The Court overturned the Milton variance with respect to the landscaping portion of the business. The owner has appealed the ruling to the Appeals Court. In support of the owner, neighbors filed this Citizens’ Petition.

On August 20, 2012, many of these neighbors met with the Warrant Committee to discuss the petition and their reasons for bringing it forward. Also present to help explain the history of the property (in commercial use since 1962) and the appropriateness of this petition to the unique character of the lot were the owner and his attorney. The same participants also met with the Planning Board on September 13, 2012, which voted to approve the scope of the petition. Subsequently the owners’ counsel and the director of the Planning Department of the town of Milton met with the Warrant Committee on September 17, 2012, to discuss the vote of the Planning Board and to clarify the process of obtaining a special permit under the bylaws put forth by the petition.

A “no” vote to this article could mean the closure of a longstanding business with fifteen employees. The near-unanimous support of abutters and neighbors for its continued existence and the cases made for its benefit to the Town were noted by the committee. The Warrant Committee voted unanimously to recommend that the town approve the change in Zoning Bylaws.

VI. Amend Zoning Bylaws: Assisted Living Residence Development

This article seeks to add a new section to the Zoning Bylaws to allow for Assisted Living Residence Development by Special Permit in a Residential District.

Acknowledgements

The Chair extends her thanks to all of the appointed and elected officials of the Town who assisted in the preparation of this Warrant: Interim Town Administrator Annemarie Fagan, the Board of Selectmen and staff of its office.

Respectfully submitted,

September 20, 2012

Jean Wilson, Chair
Ted Hays, Secretary
Richard Boehler
Nathan Bourque
Carolyn Cahill
Kevin Chase
Jennifer Creedon
Stanley Genega

Robert Hallisey
Fred G. Kelly
George Noonan
Kevin Sorgi
Cheryl Tougias
Darnell Turner
Joyce Wilkins Nkwah
Patricia Cahill, Clerk

ARTICLE 1 To see if the Town will vote to appropriate the sum of \$198,278.00, representing the amount of unrestricted general government aid received from the Commonwealth of Massachusetts in excess of the amount of such aid previously estimated; to determine the purpose for such appropriation;

and to act on anything relating thereto.

Submitted by the Board of Selectmen

RECOMMENDED that the Town vote to amend the following appropriations voted by Milton Town Meeting in May, 2012 under Article 29 for the twelve month period beginning July 1, 2012:

STABILIZATION FUNDS	2012 ATM	Current Vote	Adjustment Approp.	Revised Approp.
Stabilization Fund	Article 29	490,859	198,278	689,137
Capital Stabilization Fund	Article 29	134,983	0	134,983
GRAND TOTAL		625,842	198,278	824,120

and that to meet said appropriation the sum of \$198,278 be transferred from available funds.

COMMENT: As described in Article 29 of the 2012 Annual Town Meeting Warrant, \$95,000 was left un-appropriated at the time the warrant went to print in March, 2012. The \$95,000 was the balance of an additional House appropriation made in April, 2012. Final fiscal year appropriations resulted in an additional \$103,278 for a total of \$198,278. The Warrant Committee voted to further enhance funds available to help the Town meet the expected operating expenses of FY2014. By including the \$871,972 reported in the Comment section of Article 29, the new additional funds mean there is \$1,070,250 available for use in FY2014.

ARTICLE 2 To see what sum of money the town will vote to appropriate to provide capital needs for the Town’s sewer system, including costs incidental and related thereto, and to authorize the Board of Selectmen, on behalf of the Town, to apply for and use federal, state, MWRA, or other funds for this purpose, to see 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 that the sum of \$485,000 be appropriated for the purpose of financing the rehabilitation, replacement, or enhancement of the Town’s sewer system, including costs incidental and related thereto; that to meet this appropriation, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow \$485,000 under and pursuant to Chapter 44, Sections 7(1) and 8(15) of the General Laws, as amended, or any other enabling authority, 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 the Massachusetts Water Resources Authority or any other public or private funding source.

COMMENT: This article authorizes the Treasurer to borrow money from the MWRA at an interest rate of zero percent for the purpose of financing the capital needs of the sewer system.

ARTICLE 3 To see if the Town will vote to reduce the appropriations for the following line items voted by the 2012 Annual Town Meeting under Article 16:

1. WATER ENTERPRISE M.W.R.A. Assessment
2. SUB-TOTAL WATER ENTERPRISE
3. SEWER ENTERPRISE M.W.R.A. Sewer Assessment
4. SUB-TOTAL SEWER ENTERPRISE
5. TOTAL PUBLIC WORKS

and to act on anything relating thereto.

Submitted by the Board of Selectmen

RECOMMENDED that the Town vote to amend the appropriation for the twelve month period beginning July 1, 2012, for the operation, maintenance and improvements of Public Works, voted by the 2012 Milton Annual Town Meeting under Article 16, by reducing certain amounts as set forth in the table below:

PUBLIC WORKS	Current Approp.	Reduction	Revised Approp.
Public Works General	1,793,150	0	1,793,150
Capital Equipment	0	0	0
Vehicle Maintenance	434,134	0	434,134
SUB-TOTAL PUBLIC WORKS	<u>2,227,284</u>	0	<u>2,227,284</u>

SOLID WASTE MANAGEMENT

Collection of Refuse	558,000	0	558,000
Refuse Disposal	418,000	0	418,000
Curbside Recycling	823,225	0	823,225
Landfill Monitoring	17,000	0	17,000
Solid Waste General	79,250	0	79,250
Household Hazardous Waste Collection	9,314	0	9,314
SUB-TOTAL SOLID WASTE	1,904,789	0	1,904,789

**TOTAL NON-ENTERPRISE
ACCOUNTS**

4,132,073	0	4,132,073
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WATER AND SEWER ENTERPRISE**WATER ENTERPRISE**

Water Operations & Improvement	1,178,657	0	1,178,657
M.W.R.A. Assessment	2,736,126	(17,577)	2,718,549
D.E.P. (SDWA) Assessment	9,000	0	9,000
Water Leak Survey	12,000	0	12,000
Water Capital Outlay	364,992	0	364,992
Water Capital/Debt Service	546,088	0	546,088
SUB-TOTAL WATER ENTERPRISE	4,846,863	(17,577)	4,829,286

SEWER ENTERPRISE

Sewer Operations & Improvement	748,228	0	748,228
M.W.R.A. Sewer Assessment	5,039,550	(54,381)	4,985,169
Sewer Capital Outlay	774,694	0	774,694
Sewer Capital/Debt Service	232,903	0	232,903
SUB-TOTAL SEWER ENTERPRISE	6,795,375	(54,381)	6,740,994

**TOTAL WATER AND SEWER
ENTERPRISE**

11,642,238	(71,958)	11,570,280
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TOTAL PUBLIC WORKS

15,774,311	(71,958)	15,702,353
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Of the total amounts appropriated, the maximum sum authorized for salaries and wages is \$2,322,736.

To meet the appropriation for Water Operations and Improvement and for the MWRA Water Assessment and the DEP Assessment, the sum of \$243,293 is to be transferred from the water surplus as of June 30, 2012 and the sum of \$4,585,993 is to be raised from the tax levy. This sum of \$4,585,993 represents expenditures attributable to the Water Enterprise which are to be included in Schedule A, "Local Receipts Not Allocated," of the Tax Recapitulation as Water Estimated Receipts.

To meet the appropriation for Sewer Operations and Improvement and for the MWRA Sewer Assessment, the sum of \$143,000 is to be transferred from the Sewer Surplus as of June 30, 2012, and the balance of \$6,597,994 is to be raised from the tax levy. This sum of \$6,597,994 represents expenses attributable to the Sewer Enterprise which is to be included in Schedule A, “Local Receipts Not Allocated,” of the Tax Recapitulation as Sewer Estimated Receipts.

The Public Works Department is hereby authorized to sell at a private or public sale, with the approval of the Board of Selectmen, equipment that is no longer needed by the department. It is further authorized to exchange or trade in old equipment for similar materials in the usual course of its operations to provide for replacement items.

COMMENT:

When the 2012 warrant was closed the Water and Sewer budget was built on MWRA preliminary FY13 assessments. Subsequent to the 2012 Annual Town Meeting, the MWRA issued its final FY13 Water and Sewer assessments. The final assessments were less than the preliminary assessments. The changes in this article take advantage of the decreased assessment by lowering the Water and Sewer rates accordingly. The reduction would go towards reducing the tax levy by a total of \$71,958. The decrease in the Water Enterprise appropriation was \$17,577 and the decrease in the Sewer Enterprise appropriation was \$54,381.

ARTICLE 4 To see what sum of money the Town will vote to appropriate for the purpose of demolition of the building located on Town-owned property at Eliot Street and Central Avenue; to determine how said appropriation shall be raised, whether by transfer from available funds, borrowing or otherwise;

and to act on anything relating thereto.

Submitted by the Board of Selectmen

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

COMMENT: As of the date of the warrant going to print, the cost of the demolition has not been determined. The cost of the demolition includes the cost of the actual demolition of the Town’s portion of the existing structure, police detail, and busing of MBTA passengers around the site during demolition. Requests for Proposals for the demolition are currently under review by the Board of Selectmen. Cost estimates from the MBTA and police department are underway.

ARTICLE 5 To see of the Town will vote to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection M to Section III:

Landscaping/Residential Development

In a Residence A district on a lot (including a combination of adjacent lots in one ownership) with at least 200 feet of frontage on a state highway and with at least 100 feet of frontage on an intersecting town way, containing at least 35,000 square feet of land with access to the state highway, which contains a single family residence and a landscaping business (including businesses that are reasonably ancillary thereto) and which have been in common ownership and occupancy since January 1, 1992, the Planning Board may grant a special permit for a landscaping business/residential planned unit development (“Landscaping/Residential Development”) 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. The application for a special permit shall be made by the owner of the property and by the owner of the landscaping business.

1. Purpose

The purpose of this Subsection is to permit the ongoing operation of a landscaping business, which has existed since at least January 1, 1992 and which exists on a lot that also contains a single family residence, where the business will continue to be operated by the owner/occupant of the residence.

2. Landscaping Business Defined

As used in this Subsection, a landscaping business is defined to mean a business concern whose primary business is the construction, installation and maintenance of lawns, yards, gardens and related grounds and which are owned by others. The landscaping business may employ others and use trucks, lawnmowers, small loaders, seeders and related equipment, which are owned by the landscaping business and stored on the lot, to perform such construction, installation and maintenance activities. A landscaping business may also sell at retail shrubs, seed, loam, mulch and related materials, Christmas, Halloween and other holiday materials, host weekly farmers’ markets during the months between May and October, and may perform such ancillary and related activities as snow plowing. A landscaping business may also store trucks, trailers, plows, spreaders, a dumpster and other equipment on the grounds and within a detached garage built specifically for the purpose.

3. Site Plan

An application for a Landscaping/Residential Development shall include a plan meeting the requirements for site plan specified in Section VIII.D.2 and such other requirements as may be specified by the Planning Board. The site plan may be contained in one or more plans prepared in a form suitable for recording by a Registered Professional Engineer or a Registered Land Surveyor, and in accompanying text and material.

4. Special Permit Application

An application for a special permit shall include the following plans and other material as may be required by the Planning Board:

- (a) An existing conditions plan;
- (b) A topographical plan with two-foot contours;
- (c) Wetlands delineation plan (if applicable);
- (d) Utility plan;
- (e) Storm water and drainage calculations;
- (f) Plans for buildings and accessory structures. The plans shall include detailed elevations of buildings with dimensions, square footage and exterior elevations;
- (g) Landscape and hardscape plan;
- (h) Lighting plan showing all exterior lighting; and
- (i) Location and description of any signs advertising the business.

5. Buildings and Setbacks

A Landscaping/Residential Development may contain the following buildings and shall have following setback and site requirements:

- (a) There shall be a principal residence, which shall be set back from the state highway by at least 30 feet and from side and rear yard lot lines by at least 20 feet.
- (b) There may be a greenhouse and/or a retail space (containing approximately 2,000 square feet) each of which may be within or attached to the principal residence.
- (c) There may be a detached two-story accessory garage (containing approximately 3,600 square feet) and which shall be set back from the side and rear yard lot lines by at least 20 feet. The ground floor of the garage may be used to store vehicles and equipment owned by the landscaping business. The second floor may contain an office and related facilities to support the operation of the business.

- (d) The Landscaping/Residential Development shall be adequately buffered from neighboring residential properties with appropriate fencing and landscape features, including arbor vitae and related plantings. The fencing and landscaped features shall be installed and maintained in accordance with a landscape plan and shall be maintained in good condition.
- (e) Lighting, including lighting installed for the prevention of theft, shall be at low level and reasonably sited so as not to interfere with neighboring residential properties.
- (f) The business may also include a dumpster and small sheds, provided that such shall be screened from neighboring residential properties with fencing and/or other landscaped features.

6. Conditions of Operation

The landscaping business shall be operated in accordance with the following conditions, which shall be included in a special permit to be issued for the Landscaping/Residential Development by the Planning Board:

- (a) The owner of the landscaping business shall reside with his/her family and shall maintain his/her principal residence in the single family dwelling.
- (b) The landscaping business may be operated Monday through Saturday between the hours of 8:00 AM and 6:00 PM and on Sunday between the hours of 9:00 AM and 5:00 PM, except that from the last Friday before Thanksgiving Day to the following January 1, the hours of operation may be from 8:00 AM to 9:00 PM, and except during snow and ice storms, where the snow plowing portion of the business may operate as necessary to address the impacts any such storm.
- (c) No more than 2 pickup trucks, 5 dump trucks and 6 14-foot trailers may be located and stored on the site. When not in use, or after business hours, the trucks, trailers and related equipment shall be housed in the detached garage.
- (d) The movement and/or emptying of any dumpster shall be scheduled to occur on weekdays between 10:00 AM and 2:00 PM.
- (e) The business may sell fruits, vegetables, flowers, Christmas trees and other seasonal items within the greenhouse/retail space and in an area of the property that is located proximate to the state highway.
- (f) The business may sell and store certain non-perishables on site, including shrubs, trees, mulch, loam, fertilizer, stone pavers, stone dust and gravel, commensurate with the level and seasonal nature of a landscaping business; provided that such materials shall be covered and/or stored in locations to prevent odors and dust from impacting neighboring properties.

7. Parking

There shall be 2 parking spaces for the residence located on the site. Their shall be 6 parking spaces for the landscaping business, or such lesser number of spaces determined to be adequate by the Planning Board considering all relevant circumstances.

8. Notice and Procedure for Decision

The notice and procedural requirements set out in Section 1X.B and C and the standard to be used in rendering a decision set out in Section 1X.C shall apply to special permits for Landscaping/Residential Developments under this Section. The Planning Board may grant a special permit for a Landscaping/Residential Development where it finds compliance with the foregoing standards and that (a) the Landscaping/Residential Development complies with the requirements of this Subsection and (b) the Development will not cause any substantial detriment to the neighborhood or to the intent of the bylaw. A special permit may be made subject to such terms and conditions as the Planning Board may find necessary or appropriate.

The provisions of this Subsection shall be construed as being in addition to and, except as expressly stated in this Subsection, in substitution for all other provisions of Section V1. Otherwise, Landscaping/Residential Developments shall be subject to all other provisions of this bylaw where the intent and context permit.

9. Decision

The special permit issued by the Planning Board shall be recorded by the Applicant at the Applicant's expense within thirty days after the special permit has been filed with the Town Clerk. A copy of the recorded document with recording information shall be provided to the Town Planner promptly after recording. The special permit shall remain in effect for as long as the residence and the landscaping business are owned and occupied in common by the permittee and the special permit may not be transferred. In the event that the residence and the business are conveyed to a third party and said party shall reside in the premises and operate the landscaping business, then a new permit application shall be required and the Planning Board may issue a new special permit in accordance with the provisions of this Subsection.

Presented for consideration by the undersigned citizens of the Town:

Laurie Kennedy 170 Atherton Street
John Cullen 135 Atherton Street
Patricia Cullen 135 Atherton Street

Erin Knowles 160 Atherton Street
Andrew Knowles 160 Atherton Street
Kathy Henderson 121 Atherton Street
Karen O'Neil 109 Atherton Street
James O'Neil 109 Atherton Street
Patrick Greeley 149 Bradlee Road
Rebecca Schorin 227 Atherton Street

RECOMMENDED that the Town vote YES to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection M to Section III:

Landscaping/Residential Development

In a Residence A district on a lot (including a combination of adjacent lots in one ownership) with at least 200 feet of frontage on a state highway and with at least 100 feet of frontage on an intersecting town way, containing at least 35,000 square feet of land with access to the state highway, which contains a single family residence and a landscaping business (including businesses that are reasonably ancillary thereto) and which have been in common ownership and occupancy since January 1, 1992, the Planning Board may grant a special permit for a landscaping business/residential planned unit development (“Landscaping/Residential Development”) 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. The application for a special permit shall be made by the owner of the property and by the owner of the landscaping business.

1. Purpose

The purpose of this Subsection is to permit the ongoing operation of a landscaping business, which has existed since at least January 1, 1992 and which exists on a lot that also contains a single family residence, where the business will continue to be operated by the owner/occupant of the residence.

2. Landscaping Business Defined

As used in this Subsection, a landscaping business is defined to mean a business concern whose primary business is the construction, installation and maintenance of lawns, yards, gardens and related grounds and which are owned by others. The landscaping business may employ others and use trucks, lawnmowers, small loaders, seeders and related equipment, which are owned by the landscaping business and stored on the lot, to perform such construction, installation and maintenance activities. A landscaping

business may also sell at retail shrubs, seed, loam, mulch and related materials, Christmas, Halloween and other holiday materials, host weekly farmers' markets during the months between May and October, and may perform such ancillary and related activities as snow plowing. A landscaping business may also store trucks, trailers, plows, spreaders, a dumpster and other equipment on the grounds and within a detached garage built specifically for the purpose.

3. Site Plan

An application for a Landscaping/Residential Development shall include a plan meeting the requirements for site plan specified in Section VIII.D.2 and such other requirements as may be specified by the Planning Board. The site plan may be contained in one or more plans prepared in a form suitable for recording by a Registered Professional Engineer or a Registered Land Surveyor, and in accompanying text and material.

4. Special Permit Application

An application for a special permit shall include the following plans and other material as may be required by the Planning Board:

- (a) An existing conditions plan;
- (b) A topographical plan with two-foot contours;
- (c) Wetlands delineation plan (if applicable);
- (d) Utility plan;
- (e) Storm water and drainage calculations;
- (f) Plans for buildings and accessory structures. The plans shall include detailed elevations of buildings with dimensions, square footage and exterior elevations;
- (g) Landscape and hardscape plan;
- (h) Lighting plan showing all exterior lighting; and
- (i) Location and description of any signs advertising the business.

5. Buildings and Setbacks

A Landscaping/Residential Development may contain the following buildings and shall have following setback and site requirements:

- (a) There shall be a principal residence, which shall be set back from the state highway by at least 30 feet and from side and rear yard lot lines by at least 20 feet.

- (b) The may be a greenhouse and/or a retail space (containing approximately 2,000 square feet) each of which may be within or attached to the principal residence.
- (c) There may be a detached two-story accessory garage (containing approximately 3,600 square feet) and which shall be set back from the side and rear yard lot lines by at least 20 feet. The ground floor of the garage may be used to store vehicles and equipment owned by the landscaping business. The second floor may contain an office and related facilities to support the operation of the business.
- (d) The Landscaping/Residential Development shall be adequately buffered from neighboring residential properties with appropriate fencing and landscape features, including arbor vitae and related plantings. The fencing and landscaped features shall be installed and maintained in accordance with a landscape plan and shall be maintained in good condition.
- (e) Lighting, including lighting installed for the prevention of theft, shall be at low level and reasonably sited so as not to interfere with neighboring residential properties.
- (f) The business may also include a dumpster and small sheds, provided that such shall be screened from neighboring residential properties with fencing and/or other landscaped features.

6. Conditions of Operation

The landscaping business shall be operated in accordance with the following conditions, which shall be included in a special permit to be issued for the Landscaping/Residential Development by the Planning Board:

- (a) The owner of the landscaping business shall reside with his/her family and shall maintain his/her principal residence in the single family dwelling.
- (b) The landscaping business may be operated Monday through Saturday between the hours of 8:00 AM and 6:00 PM and on Sunday between the hours of 9:00 AM and 5:00 PM, except that from the last Friday before Thanksgiving Day to the following January 1, the hours of operation may be from 8:00 AM to 9:00 PM, and except during snow and ice storms, where the snow plowing portion of the business may operate as necessary to address the impacts of any such storm.
- (c) No more than 2 pickup trucks, 5 dump trucks and 6 14-foot trailers may be located and stored on the site. When not in use, or after business hours, the trucks, trailers and related equipment shall be housed in the detached garage.

- (d) The movement and/or emptying of any dumpster shall be scheduled to occur on weekdays between 10:00 AM and 2:00 PM.
- (e) The business may sell fruits, vegetables, flowers, Christmas trees and other seasonal items within the greenhouse/retail space and in an area of the property that is located proximate to the state highway.
- (f) The business may sell and store certain non-perishables on site, including shrubs, trees, mulch, loam, fertilizer, stone pavers, stone dust and gravel, commensurate with the level and seasonal nature of a landscaping business; provided that such materials shall be covered and/or stored in locations to prevent odors and dust from impacting neighboring properties.

7. Parking

There shall be 2 parking spaces for the residence located on the site. There shall be 6 parking spaces for the landscaping business, or such lesser number of spaces determined to be adequate by the Planning Board considering all relevant circumstances.

8. Notice and Procedure for Decision

The notice and procedural requirements set out in Section 1X.B and C and the standard to be used in rendering a decision set out in Section 1X.C shall apply to special permits for Landscaping/Residential Developments under this Section. The Planning Board may grant a special permit for a Landscaping/Residential Development where it finds compliance with the foregoing standards and that (a) the Landscaping/Residential Development complies with the requirements of this Subsection and (b) the Development will not cause any substantial detriment to the neighborhood or to the intent of the bylaw. A special permit may be made subject to such terms and conditions as the Planning Board may find necessary or appropriate.

The provisions of this Subsection shall be construed as being in addition to and, except as expressly stated in this Subsection, in substitution for all other provisions of Section V1. Otherwise, Landscaping/Residential Developments shall be subject to all other provisions of this bylaw where the intent and context permit.

9. Decision

The special permit issued by the Planning Board shall be recorded by the Applicant at the Applicant's expense within thirty days after the special per-

mit has been filed with the Town Clerk. A copy of the recorded document with recording information shall be provided to the Town Planner promptly after recording. The special permit shall remain in effect for as long as the residence and the landscaping business are owned and occupied in common by the permittee and the special permit may not be transferred. In the event that the residence and the business are conveyed to a third party and said party shall reside in the premises and operate the landscaping business, then a new permit application shall be required and the Planning Board may issue a new special permit in accordance with the provisions of this Subsection.

COMMENT: The amendment of Zoning Bylaws requires a two-thirds vote of Town Meeting. The Warrant Committee is aware that the proposed overlay zoning is quite specific. The committee feels that the underlying residential zoning is thereby protected. Additionally, the process of obtaining a special permit from the Planning Board subjects an applicant to further scrutiny regarding proposed uses and its grant requires a super-majority of the board (4/5 votes).

ARTICLE 6 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: Assisted Living Residence Development.

In a residential district on a lot (including a combination of adjacent lots in one ownership) with at least 75 feet of frontage on a state highway containing at least 150,000 square feet of land (not including wetlands, land within the 25' wetland buffer zone, vernal pools and land within the 100' vernal pool buffer zone) with access to the state highway at a fully signalized intersection, a residential use for an Assisted Living Residence Development may be permitted by a Special Permit for an Assisted Living Residence Development (a planned unit development) issued by the Planning Board upon terms and conditions meeting the requirements of this subsection, upon such other terms and conditions as the Planning Board may consider reasonable and appropriate, and upon a finding that the development will enhance the public good, provide significant public benefit, benefit the neighborhood and have no significant detrimental impacts. An Assisted Living Residence Development (ALRD) shall meet the following requirements:

1. Certification: Developer/Operator

It shall be certified as an assisted living residence by the Executive Office of Elder Affairs (or successor agency) pursuant to M.G.L. c.19D (or successor statute) and provide the services and meet the requirements prescribed therein and in 651 CMR 12.00 (or successor regulations).

The developer shall also be the operator of the ALRD and shall be experienced in the successful development and competent operation of other assisted living residences.

2. Units

An ALRD shall have no less than 60 or more than 100 units in a single building with primarily one-bedroom units and no more than 10 two-bedroom units. The units shall be rental apartments designed for frail elderly persons who need assistance with activities of daily living. Units shall include a kitchen and bathroom.

3. Common Area Space

There shall be a significant amount of common area space in an ALRD, including living rooms, sitting areas, dining rooms, activity rooms and screened porches. Common area space (exclusive of hallways) shall cover at least 10% of total floor area. There shall be a courtyard with at least 8,000 square feet. The courtyard area shall be designed to provide outside uses.

4. Services

Services offered to residents in an ALRD shall include assistance with activities of daily living (bathing, dressing, undressing, personal care and medication supervision), three meals a day with waited service, apartment housekeeping and linen change, organized social programs, recreational activities, transportation to outside appointments and needs, 24-hour staffing, and emergency response through a call system in each apartment. Commercial activities not for the exclusive use of residents shall not be permitted provided that guests may be served in dining areas. Any commercial activities for the exclusive use of residents shall be specifically authorized in the special permit.

5. The Building and Accessory Buildings.

In an ALRD, the units and indoor accessory uses shall be contained in a two-story building (with or without a basement) with a pitched roof not to exceed 35 feet above finished grade (without berms) at its highest point (the "Building"). The Building shall have a landscaped central courtyard providing sitting areas and outside uses. The Building (exclusive of the courtyard) and any accessory buildings shall cover no more than 33% of the Buildable Area of the lot (the area which does not include wetlands, land within the 25' wetland buffer zone, vernal pools, and land within the 100' vernal pool buffer zone). Any accessory building shall be one story with a pitched roof and windows to be used for storage of equipment, supplies and tools, used at this ALRD, such as lawn mowers and

snow removal equipment, fertilizer, salt, rakes and shovels; small accessory structures for resident activities, such as a gazebo, may also be authorized in the special permit.

6. Open Space

In an ALRD at least 33% of the Buildable Area of the lot shall be open space (Open Space). Open Space shall include land left in its natural state, gardens, the courtyard, and other open land suitably landscaped in harmony with the terrain of the site and in harmony with the Building and any accessory building. Open Space shall not include driveways, sidewalks, and parking areas but may include walkways provided for enjoyment of the Open Space. As part of the Open Space there shall be a landscaped area not less than forty feet wide on all lot lines; this landscaping shall enhance the prospect of the Building viewed from outside the ALRD and provide attractive views from within the Building. Driveways and sidewalks may be sited to pass through this area as necessary.

7. Driveways and Access

In an ALRD there shall be a safe and convenient driveway system designed to meet foreseeable needs. Access to and from the state highway shall be at a fully signalized intersection (an intersection with a traffic signal providing regular red and green intervals for the intersecting streets). Driveways may connect to an access roadway to and from the signalized intersection. Such an access roadway shall provide safe and convenient access to the driveway of the ALRD. In the event that use of a driveway on site over a right of way or easement is permissible for persons, who are not residents, guests, employees or business invitees, reasonable provision shall be made to ensure safe, compatible, non-disruptive use by such persons.

8. Rights of Way or Easements

A lot or lots separated from one or more other lots in the same ownership by right of way or easement in other ownership may be deemed to be a single lot for purposes of this subsection so long as the lots would be contiguous but for the right of way or easement and further provided that the use of the right of way or easement, contiguous to such lots, is restricted to uses with no substantial adverse effect on the ALRD. The right of way or easement, contiguous to such lots, shall be restricted so as to ensure safety, to prevent deleterious uses, and to present an attractive well-maintained appearance. The right of way or easement area contiguous to a lot or lots shall be kept in a safe and well maintained condition by the operator of the ALRD as part of its obligations under the special permit. Terms and conditions on the construction, maintenance and use of the right of

way or easement may be imposed in the special permit, and the operator shall be obligated to ensure compliance with all such terms and conditions. The area of the right of way or easement shall not be included in the Buildable Area. Set-backs, otherwise applicable with respect to streets and abutting properties, shall not be required on account of the right of way or easement being in separate ownership provided that a lesser, appropriate set-back from the right of way or easement shall be required.

9. Parking

In an Assisted Living Residence at least one parking space shall be provided for every two (2) dwelling units. Covered parking may be provided in the basement of the Building. Other covered parking including garages, shall not be permitted. Parking areas and the area of driveways, sidewalks and walkways shall cover no more than 33% of the Buildable Area of the lot with impermeable surfaces.

10. Sign

An exterior permanent sign at the signalized intersection providing appropriate prominent notice of the presence of the ALRD may be erected with the consent of the landowner of such size and construction and upon such terms as may be specified by the Town's Sign Review Committee. Alternatively the sign may be sited on the ALRD's frontage on the state highway giving appropriate, prominent notice of the presence of the ALRD and its access from the signalized intersection.

11. Utilities

All electric, gas, telephone, water distribution lines and other utilities shall be placed underground. The ALRD shall be connected to Town water and sewer. The stormwater management system shall be designed in accordance with the DEP'S Stormwater Management Guidelines and Regulations, as amended. Installation of utilities and the drainage system shall meet reasonable requirements imposed by the Town's Department of Public Works. Central heating and air conditioning shall be used if practicable.

12. Design Standards and Requirements

In an ALRD, the Building shall be of high architectural quality. It shall be located in an appropriate place on the site, with landscaped buffers, and compatible in style, scale and massing with its site and environs. The Building shall meet the following design standards:

- a. Architecture of the Building shall be consistent and coherent in all its elements and compatible with and complementary to its surroundings, in form, scale and massing. The exterior façades and the façades of the interior courtyard shall receive equal treatment in design, material and architectural elements. The rear and sides of the Building shall be given the same careful attention as the front.
- b. The scale of the Building shall not overpower its site or landscape context. The apparent scale of the Building shall be reduced by providing variations in massing and architectural elements. The Building shall have an inviting, human scale.
- c. There shall be a distinctive principal entrance to the Building with a large porch suitable for sitting and a port cochere designed as an integral part of the porch over the pick-up and discharge area at the principal entrance. The porch and porte cochere shall be in the same architectural style as the rest of the Building.
- d. Windows and doors shall be surrounded by appropriate architectural elements setting the windows and doors off from the plane of the façade. Muntins shall be used in the top half of windows. Any vents or grilles for air conditioner units, shall be incorporated into the architectural elements surrounding the window units so as to present a coherent visual whole.
- e. Each door, doorway, window or window grouping shall be suitably proportioned to the building. Each unit shall have windows that open, if practicable. Small windows, disruptive to architectural continuity, shall not be used.
- f. Exterior lighting fixtures shall be appropriate to the architecture and shielded to prevent significant light over-spill into adjoining residential areas.
- g. The roof-line shall be visually coherent and architecturally well defined. A pitched roof, cornices and other appropriate architectural elements shall be used. Dormers and/or gables shall break the planes of the roof.
- h. Building materials should be of high quality. Traditional materials and colors that are in keeping with the architectural context shall be used when reasonably possible.

- i. Building walls shall not present unrelieved flat surfaces. Windows, doors, dormers, window bays, porches and architectural elements shall project or be recessed in order to relieve such flatness unless good architectural cause exists for a different treatment.
- j. Interior spaces shall be designed so that units are resistant to noise from the adjoining units. Interior finishes shall be constructed with high quality materials. Construction methods and uses of materials may be specified by the Building Commissioner in order to ensure high-quality construction.
- k. Accessory structures shall be designed in the same architectural style as the Building. Accessory structures shall present an unobtrusive appearance.
- l. Landscaping shall enhance the overall design of the building and integrate the ALRD into the surrounding area. Landscaping shall provide some significant screening of the building when viewed from offsite. Evergreen and deciduous plantings, some of which shall be trees expected to attain a large size, shall be used with other landscape features. The landscaping shall enhance the view of the Building when viewed from off-site. Walkways and sidewalks shall provide safe and convenient passage of pedestrians on site and to a bus stop on the state highway (if bus service shall be available). Driveways, walkways and sidewalks shall be well constructed, paved and drained. Lighting of driveways walkways and sidewalks shall be sufficient to ensure safety and shielded to avoid significant off-site light over-spill. Paved elements should be considered part of the landscape plan and consistent with the style of the Building.
- m. Parking areas for residents shall be convenient to the Building. Landscaping shall surround and screen parking areas from abutting residential areas. Landscaping within parking areas shall mitigate unrelieved pavement. Provision shall be made for pedestrian safety. Insofar as practicable, design of parking areas shall also comply with the design standards specified in Section VII.H.
- n. Any dumpster shall be enclosed by fencing compatible with the architecture and located unobtrusively without significant negative impact.
- o. Compressors and other mechanical equipment for systems in the Building shall be visually screened and audibly buffered. Equipment on the roof shall be in a well providing such screening and buffering without architectural disruption.

- p. If an applicant shall propose a design treatment which is consistent with the intent of these design guidelines, which is inconsistent with one or more specific guidelines, but which contributes to a better design, for good cause the Planning Board may allow modification of one or more guidelines so as to achieve such a better design than would exist without such modification.

13. Special Permit Application

An application for a special permit for an ALRD shall include a plan meeting the requirements for a site plan specified in Section VIII.D.2 and such other requirements as may be specified by the Planning Board. The site plan for the ALRD may be contained in, one or more plans prepared in a form suitable for recording by a Registered Professional Engineer or a Registered Land Surveyor, and in accompanying text and material. Applicants shall secure the assistance of a Registered Architect and a Landscape Architect in preparation of the site plan. A site plan, approved by the Planning Board, is a prerequisite of a special permit for an ALRD granted under this Subsection L, and construction of the ALRD shall be strictly in accordance with the approved site plan and the provisions of the special permit. Insofar as not part of the site plan an application for a special permit for an ALRD shall also include the following plans and such other material as may be required by the Planning Board:

- (a) Existing conditions plan
- (b) Topographical plan with two-foot contours
- (c) Wetlands delineation plan (if applicable)
- (d) Utility Plan
- (e) Storm water plan and drainage calculations
- (f) Concept plans for the Building and any accessory structures. The plans shall include detailed elevations of the proposed Building with dimensions, square footage and floor layouts
- (g) Exterior elevations, including the elevations of the interior courtyard
- (h) Massing studies including a three-dimensional representation of the proposed Building
- (i) A minimum of one perspective rendering
- (j) Landscape and hardscape plan including siting, grading, driveways, walkways, walls, parking plan, open space and showing significant natural site features
- (k) Lighting plan showing all exterior lighting
- (l) A description by the architect of the architecture of the proposed Building and an explanation of how it fulfills the requirements of the zoning

- (m) A specification of all services to be provided to residents and specification of the area of the Building where such uses will occur.
- (n) Copies of the owner(s)' deed or deeds to the lot or lots for the site of the ALRD.
- (o) A plan showing any improvements and landscaping for any access road to the signalized intersection at which access to and egress from the ALRD shall be made from the state highway.
- (p) The proposed location of the sign for the ALRD and specification of its proposed size, and construction.

14. Application Review Fees

When reviewing an application for a special permit for an ALRD, the Planning Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of the proposed project or because of the project's potential impacts. The Planning Board may require that an applicant pay a review fee, consisting of reasonable estimate of costs to be incurred by the Planning Board for employment of outside consultants. In hiring outside consultants, the Planning Board may engage disinterested engineers, planners, architects, urban designers or other appropriate professionals. Expenditures may be made at the direction of the Planning Board and shall be made only in connection with the review of the specific project for which the review fee has been paid. Failure of an applicant to pay a review fee shall be grounds for denial of the application. At the completion of the Planning Board's review of the project, any unused portion of the review fee shall be returned to the applicant, and a final report of expenditures shall be provided to the applicant.

15. Notice, Procedures and Standards for Decision

The notice and procedural requirements set out in Section IX.B and C and the standard to be used in rendering a decision set out in Section IX.C shall apply to special permits for ALRD's under this Section. The Planning Board may grant a special permit for an ALRD where it finds compliance with the foregoing standard and that (a) the ALRD complies with the requirements of this Section and (B) the ALRD will not cause any substantial detriment to the neighborhood will have a substantial beneficial effect for the neighborhood and will provide a significant public benefit. A special permit may be made subject to such terms and conditions as the Planning Board may find necessary or appropriate.

The provisions of this Subsection L shall be construed as being in substitution for the provisions of Section VI. Otherwise ALRDs shall be subject to other provisions of this bylaw where the context so permits.

Submitted by the Planning Board

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

COMMENT: The purpose of this article is to facilitate the availability of assisted living residences and services. Assisted Living is a special combination of housing, ancillary support services and personalized care that is designed to respond to the individual needs of adults requiring help with activities of daily living, but who do not require the skilled medical care provided in a nursing facility. As the public hearing was held close to press time, the Warrant Committee will be considering the article further during the period between going to press and the Warrant being received in homes. A recommendation will be issued prior to Town Meeting.

Town of Milton
525 Canton Avenue
Milton, MA 02186

Town Meeting will be held on
Monday, October 22, 2012
Beginning at 7:30 p.m. at the
Milton High School auditorium

The Milton High School auditorium
is reserved for an additional Town Meeting
session at 7:30 p.m. on Monday, October 29, 2012

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