

SPECIAL TOWN MEETING

**2011
WARRANT**



**TOWN OF TEWKSBURY
COMMONWEALTH OF MASSACHUSETTS**

Finance Committee Public Hearing

September 22, 2011 7:00 p.m.
Town Hall Auditorium

Special Town Meeting

October 4, 2011 7:00 p.m.
Tewksbury Memorial High School

Town of Tewksbury Website: <http://www.tewksbury-ma.gov>

TOWN MEETING GUIDELINES

- ** Voters and Visitors shall have their identification ribbons conspicuously displayed.
- ** Visitors shall sit in the designated VISITORS SECTION unless they are assigned to a designated area.
- ** Standing at the doors or in the aisles inside the gymnasium or auditorium is prohibited.
- ** No one shall enter the gymnasium or auditorium while voting is in progress.
- ** Everyone shall be at a seat so as to allow the vote to be counted without hindrance.
- ** Collecting signatures upon petitions or nomination papers is prohibited in the building where the Town Meeting is being held.
- ** Food and beverages are not allowed in the gymnasium or auditorium as per order of the School Committee.
- ** Smoking is not allowed in the School Building or on School Property.
- ** To prevent active interference with the conduct of the Town Meeting, any person taping, video taping or using any other means of sonic reproduction is assigned to the designated Press Table or the side aisle perimeters of the gymnasium or auditorium.

This meeting is being held at a site which is physically accessible to persons with disabilities.

For further information please call 978-640-4355.

CART services need to be requested as early as possible, as CART providers often fill their schedule 2-3 months in advance. Other reasonable accommodations for disability related needs will be provided upon request.

Middlesex, ss:

To any of the Constables of the Town of Tewksbury, in said County:

In the name of the Commonwealth of the Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Tewksbury, qualified to vote in Town affairs, to meet and assemble at Tewksbury Memorial High School, 320 Pleasant Street, in said Tewksbury on Tuesday, October 4, 2011, at 7:00 p. m. to act on the following articles:

ARTICLE 1

To see if the Town will vote to transfer from the following fiscal year 2012 budgets to pay for the following outstanding bills from the previous year; or take any action relative thereto.

From Account:	Outstanding Bill:	
School - Operating	Ideas Unlimited Seminars, Inc.	\$199.99
School - Operating	X2 Development Corporation	\$800.00
School - Operating	Stanley Elevator Company, Inc.	\$358.95
Fire - Operating	Constellation Energy	\$234.54
Council On Aging - Operating	Constellation Energy	\$70.31
Recreational - Operating	National Grid	\$66.68
Selectmen - Operating	Power Graphics	\$325.92
	Total	<u>\$2,056.39</u>

Town Manager

Executive Summary: According to Massachusetts General Laws bills that are late must be approved by Town Meeting before payment. This article authorizes the charges to be paid and allows a transfer from Sewer Enterprise Fund Free Cash to cover the amount.

ARTICLE 2

To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$242,318.16 in the Sewer Enterprise Fund to pay outstanding bills of a previous fiscal year; or take any action relative thereto.

Sewer – Operating	City of Lowell	\$242,318.16
	Total	<u>\$242,318.16</u>

Town Manager

Executive Summary: According to Massachusetts General Laws bills that are late must be approved by Town Meeting before payment. This article authorizes the charges to be paid from Sewer Enterprise Fund to cover the amount owed to the City of Lowell for disposing and treating wastewater at their treatment plant.

ARTICLE 3

To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$260,000 in Water Enterprise Fund to pay for the following; or take any action relative thereto.

A Final Judgment/Settlement in the Case of Dow v Town of Tewksbury	\$250,000
Munis Software Support	\$10,000
	Total: <u>\$260,000</u>

Town Manager

Executive Summary: This article transfers funds from Water Enterprise Free Cash to pay for a final judgment/settlement in the case of G. Donaldson Construction, a Division of Hayward Baker, Inc. v. The Dow Company, Inc. and Western Surety Co., and The Dow Company, Inc. v. Town of Tewksbury which involved a construction claim for additional work during the construction of the Water Tank on Colonial Drive. This article also funds \$10,000 for Munis software support for water billing.

ARTICLE 4

To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$170,000 for the following accounts; or take any action relative thereto.

Police Department Capital Outlay:	\$10,000
Fire Department Capital Outlay:	\$160,000

Town Manager

Executive Summary: This article transfers previously approved funds to specific articles in order to account properly for the expenditures. The funds were previously approved from the Town’s Stabilization Fund to the General Fund to be used to purchase new firearms for the Police Department to and a new ambulance for the Fire Department. The Funds should have been transferred to the accounts listed above instead of the General Fund.

ARTICLE 5

To see if the Town will vote to raise and appropriate \$1,200,000 and transfer to the Town Stabilization Fund; or take any action relative thereto.

Town Manager

Executive Summary: Since State Aid will be more than projected and with the adoption of the new meals tax and hotel/motel tax there is a projected General Fund surplus that this Article seeks approval to be set aside in the Stabilization Fund and used in the future emergencies or one time purchases.

ARTICLE 6

To see if the Town will vote to authorize the expenditure of \$28,455 from the Town’s Insurance Recovery Account Greater than \$20,000 for the purchase of a Fire Department command vehicle; or take any action relative thereto.

Town Manager

Executive Summary: This article transfers funds received from an insurance claim to purchase a new vehicle within the Fire Department. The Command Vehicle for the Fire Department was in an accident that rendered the vehicle unsafe to drive. The insurance company paid the Town \$28,455 for replacement value but the funds are deposited in the Town’s Insurance Recovery Account and needs Town meeting approval to spend. Since the vehicle is in need for public safety it was purchased from the Fire Budget with the hope of the funds being replenished from the insurance recovery account by Town meeting vote.

ARTICLE 7

To see if the Town will vote to amend Article 4 of the May 2, 2011 Annual Town Meeting, the General Fund Budget and to raise and appropriate an additional \$1,502,340 for FY2012 General Fund Maturing debt and \$1,918,400 for FY2012 General Fund Interest-Maturing and adjust the FY2012 General Fund Budget as follows: or take any action thereto.

Current FY2012 Maturing Debt	-	\$831,080
Amended FY2012 Maturing Debt	-	\$2,233,420
Current FY2012 Interest - Maturing Debt	-	\$237,935
Amended FY2012 Interest -Maturing Debt	-	\$2,156,335
Current FY2012 General Fund Budget Total	-	\$78,195,312
Amended FY2012 General Fund Budget Total	-	\$81,616,052

Town Manager

Executive Summary: Since the Town voted to shift 50% of the sewer debt from the Sewer Enterprise Fund to the tax levy as exempt debt the FY2012 General Fund Budget needs to be amended to increase Maturing Debt and Interest – Maturing Debt. The article increases the maturing debt and interest-maturing debt by the amount stated above and also increases the total General Fund Budget voted at Town Meeting to reflect the change.

ARTICLE 8

To see if the Town will vote to amend Article 9 of the May 2, 2011 Annual Town Meeting, Sewer Enterprise Fund Budget, to reduce FY2012 Sewer Enterprise Fund Debt by \$3,420,740 and adjust the FY2012 Sewer Enterprise Fund Budget as follows; or take any action relative thereto.

Current FY2012 Sewer Debt	-	\$7,137,571
Amended FY2012 Sewer Debt	-	\$3,716,831
Current FY2012 Sewer Enterprise Total	-	\$9,374,511
Amended FY2012 Sewer Enterprise Total	-	\$5,953,771

Town Manager

Executive Summary: Since the Town voted to shift 50% of the sewer debt from the Sewer Enterprise Fund to the tax levy as exempt debt the FY2012 Sewer Enterprise Fund Budget needs to be amended to decrease Debt. The article decreases the sewer debt also decreases the total Sewer Enterprise Fund Budget voted at Town Meeting to reflect the change;

ARTICLE 9

To see if the Town will vote to rescind the following authorizations to borrow funds from previously approved Town Meeting Articles; or take any action relative thereto.

Middlesex Retirement System Early Retirement Annual Town Meeting, May 2009, Article #17 \$5,000,000.00 Originally Authorized	\$5,000,000.00
Water System Improvement Annual Town Meeting, May 2005, Article #10 \$767,000.00 Originally Authorized	\$445.00
Bicycle Path Special Town Meeting, October 1997, Article #9 \$30,000.00 Originally Authorized	\$30,000.00
Senior Center Expansion Special Town Meeting, May 2007 Article #8 \$350,000.00 Originally Authorized	\$350,000.00
Michael Street Special Town Meeting, May 2004 Article #12 \$61,000.00 Originally Authorized	\$61,000.00
Total	<u>\$5,441,445.00</u>

Town Manager

Executive Summary: The Article seeks Town approval to rescind previously authorized but unissued debt. There is no need for these authorizations to be maintained since the projects are either complete or the authorization is no longer needed.

ARTICLE 10

To see if the Town will vote to approve a Certified Project Application submitted by Thermo Fisher Scientific for facilities located within the Thermo Fisher Scientific, 2 Radcliff Road Economic Opportunity Area (EOA) in Tewksbury, Massachusetts and more specifically described on Assessors Map 52 Parcel 5. Said approval will provide local and state tax relief to promote economic development in accordance with M.G.L. Chapter 23A, Sections 3A-3H. In addition, the Project Certification confirms:

A) The project, as proposed, is consistent with and can reasonably be expected to benefit significantly from inclusion as a Certified Project.

B) The project, as described in the Project Certification Application, will increase employment opportunities for the residents of Tewksbury by allowing for continued growth and expansion of facilities in the Economic Opportunity Area.

C) The Town requests that this project be designated as a certified project for a term of not less than five (5) years or more than twenty (20) years duration; or take any action relative thereto.

Town Manager

Executive Summary: This article requests the Town approve Thermo Fisher Scientific as a Certified Project and allow a Tax Increment Finance Plan for them since they are locating within the Town's Economic Target Area.

ARTICLE 11

To see if the Town will vote to authorize the Board of Selectmen to request the State Legislature to amend the Town's Special Act Charter by deleting the position of Town Clerk under Section 15(i) and inserting the position of Town Clerk in Section 13 as an appointment of the Town Manager; or take any action relative thereto.

Town Manager

Executive Summary: The Article seeks Town approval to petition the State Legislature amend the Town Charter change the position of Town Clerk from being elected to being an appointment by the Town Manager.

ARTICLE 12

To see if the Town will vote to release the existing sanitary sewer easement as described on a parcel of land located in Tewksbury, Massachusetts, Middlesex County, shown on a plan entitled "Proposed Easement Plan Of Land", prepared for The Hanover Company, prepared by Tetra Tech Rizzo, dated April 20, 2010, and authorize the Town Manager to take any action relative thereto.

Town Manager
Community Development Director

Executive Summary: The purpose of this article is to authorize the release of an existing sewer easement at the Lodge at Ames Pond. A new access and utility easement was accepted by the October 5, 2010 Special Town Meeting making this existing sanitary sewer easement obsolete.

ARTICLE 13

To see if the Town will vote to authorize the School Committee to grant an easement to Massachusetts Electric Company and its successor's and assigns for the purpose of placing and maintaining utility lines with the necessary appurtenances which would provide natural gas or electricity in, on and over a certain parcel of land to service the new High School owned by the Town and described below:

320 Pleasant Street, Tewksbury, Massachusetts

Parcel of land shown on Map 46, block 32. Recorded Deed 1399, Page 511 at the Middlesex North District Registry of Deeds, Lowell Massachusetts.

Town Manager

Executive Summary: This article requests the Town authorize an easement for Massachusetts Electric Company to bring utility lines to the new High School or act in relation thereto.

ARTICLE 14

To see if the Town will vote to authorize the School Committee to grant an easement to Verizon New England Inc. (Formerly known as New England Telephone & Telegraph) and its successor's and assigns for the purpose of placing and maintaining one (1) pole and underground cables, wires and conduit with the necessary appurtenances which would provide for the transmission of telecommunications and intelligence in, on and over a certain parcel of land to service the new High School owned by the Town and described below:

320 Pleasant Street, Tewksbury, Massachusetts

Parcel of land shown on Map 46, block 32. Recorded Deed 1399, Page 511 at the Middlesex North District Registry of Deeds, Lowell Massachusetts.

Town Manager

Executive Summary: This article requests the Town authorize an easement for Verizon New England Inc. to bring utility lines to the new High School or act in relation thereto.

ARTICLE 15

To see if the Town will vote, pursuant to Massachusetts General Laws Chapter 82, Section 23, as amended, and other applicable statutes, to accept the laying out of particular town ways by order of the Board of Selectmen as follows:

TOWN OF TEWKSBURY
BY ORDER OF THE BOARD OF SELECTMEN
ROADWAY LAYOUT
CATAMOUNT ROAD, TEWKSBURY MA

A certain parcel of land situated in Tewksbury, Middlesex County, Massachusetts and shown as Catamount Road on a plan entitled, "Street Acceptance Plan, Catamount Road, Ames Run, North St. and Catamount Rd, Tewksbury, MA for Ames Hill Development, LLC, 1880 Main Street, Tewksbury, MA 01876, dated July 14, 2011, Cuoco & Cormier Engineering Associates, Inc." and being more particularly bounded and described as follows:

Beginning at stone bound located on the northeasterly sideline of Catamount Road at the end of the existing said Catamount Road, thence; N 36°50'30" W a distance of 36.39 feet more or less to a stone bound, thence; northwesterly by a curve to the left having a radius of 225.00 feet more or less, a length of 157.05 feet more or less to a stone bound, thence; N 76°49'59" W a distance of 110.45 feet more or less to a stone bound, thence; northwesterly by a curve to the right having a radius of 175.00 feet more or less, a length of 132.31 feet more or less to a stone bound, thence; N 33°30'53" W a distance of 713.75 feet more or less to a stone bound, thence; northerly by a curve to the right having a radius of 25.00 feet more or less, a length of 23.55 feet more or less to a stone bound, thence; northerly, northwesterly, southwesterly, and southeasterly by a curve to the left having a radius of 60.00 feet more or less, a length of 301.53 feet more or less to a stone bound, thence; southeasterly by a curve to the right having a radius of 25.00 feet more or less, a length of 23.55 feet more or less to a stone bound, thence; S 33°30'53"E a distance of 713.75 feet more or less to a stone bound, thence; southeasterly by a curve to the left having a radius of 225.00 feet more or less, a length of 170.12 feet more or less to a stone bound, thence; S76°49'59" E a distance of 110.45 feet more or less to a stone bound, thence; southeasterly by a curve to the right having a radius of 175.00 feet more or less a length of 122.15 feet more or less to a stone bound, thence; S 36°50'30" E a distance of 37.89 feet more or less to a stone bound at the end of the existing said Catamount Road, thence; N 47°21'30" E along said existing Catamount Road, a distance of 14.90 feet more or less to a stone bound, thence; N 53°09'30" E along said existing Catamount Road a distance of 35.18 feet more or less to the stone bound a the point of beginning.

The above description contains 69,475 square feet and is further shown as Catamount Road on Street Acceptance Plan, Tewksbury, MA, prepared for Ames Hill Development, LLC dated July 14, 2011, scale: 1"=50', prepared by Cuoco & Cormier Engineering Associates, to be recorded at the Middlesex Registry of Deeds.

The layout plan is filed at the Office of the Town Clerk and Community Development; and said plan is referred to for more particular description and to authorize the said Board of Selectmen to take by eminent domain, an easement, or in fee, or take any other action relative thereto.

Planning Board

Executive Summary: The purpose of this article is to accept the new section of Catamount Road as a public way (Town street).

ARTICLE 16

To see if the Town will vote to accept certain parcels of land situate in Tewksbury, Middlesex County, Massachusetts, being shown as Open Space Parcel "A", Open Space Parcel "B", Open Space Parcel "C", Parcel "D" and Parcel "E" on a plan of land entitled "Definitive Lot Layout Plan 'Jennie's Woods' Tewksbury, Massachusetts" dated April 25, 1997, prepared by Dana F. Perkins, Inc., recorded with Middlesex North Registry of Deeds, Book of Plans 197, Plan 105, said parcel deeds located at the Middlesex North Registry of Deeds, Book 22940, Page 149 and more particularly described as follows, or take any other action relative thereto:

Open Space Parcels A, B, D, E:

Beginning on the easterly side of South Street at the western corner of the subject parcel and the northwest corner of the lot now or formerly owned by Anthony M. & Regina B. Tammaro;

Thence by the South Street right-of-way, N 28°16'52" E, one hundred forty feet (140.00') to a point; Thence S 61°43'08" E, one hundred forty-five feet (145.00') to a point; Thence N 28°16'52" E, two hundred ninety-five feet (295.00') to a point on the southwesterly side of Fieldstone Circle; Thence by the Fieldstone Circle right-

of-way, S 61°43'08"E, twenty-three and eighty-nine hundredths feet (23.89') to a point; Thence S 28°16'52" W, one hundred fifty-two and forty-seven hundredths feet (152.47') to a point; Thence S 43°57'39" E, sixty-four and fifty-six hundredths feet (64.56') to a point; Thence S 68°25'33" E, two hundred twenty-nine and thirty-eight hundredths feet (229.38') to a point; Thence N 72°06'08" E, one hundred fifty-six and sixty-seven hundredths feet (156.67') to a point; Thence N 58°51'14" E, one hundred fifty-four and ninety-nine hundredths feet (154.99') to a point; Thence N 32°56'41" E, one hundred forty-six and forty six hundredths feet (146.46') to a point; Thence N 59°31'32" W, one hundred eighty-one and thirty-one hundredths feet (181.31') to a point on the southeasterly side of Fieldstone Circle; Thence by the Fieldstone Circle right-of-way, N 27°52'34" E, thirty and eighty-two hundredths feet (30.82') to a point; Thence S 72°21'29" E, one hundred eighty-nine and forty-two hundredths feet (189.42') to a point; Thence N 33°22'36" E, one hundred forty-two and ninety-one hundredths feet (142.91') to a point; Thence N 16°03'37" W, sixty-one and forty-one hundredths feet (61.41') to a point on the Tewksbury / Andover Town line; Thence S 50°20'25"E, along the Tewksbury / Andover Town line twelve hundred ninety-six and sixty-three hundredths feet (1296.63') to Interstate Route 93; Thence by the Interstate 93 right-of-way, S 12°34'08" E, two hundred forty-nine and seventy hundredths feet (249.70') to a point; Thence S 65°38'51" W, two hundred thirty-seven and twenty-seven hundredths feet (237.27') to a point; Thence N 12°47'42" W, five hundred eight and sixty-eight hundredths feet (508.68') to a point; Thence N 62°31'26" W, five hundred eighty and seventy-three hundredths feet (580.73') to a point; Thence S 62°34'48" W, five hundred fourteen and seventy-four hundredths feet (514.74') to a point; Thence S 31°15'48" W, seventy-four and sixty-nine hundredths feet (74.69') to a point; Thence S 13°16'09" W, ninety-three and four hundredths feet (93.04') to a point; Thence S 72°35'15" E, one hundred eighty-six and twenty-two hundredths feet (186.22') to a point on the westerly side of Jennie's Way; Thence by the Jennie's Way right-of-way, along a curve to the left with a radius of one hundred eighty-five feet (R=185.00'), twenty-nine and twenty hundredths feet (L=29.20') to a point; Thence N 80°36'22" W, one hundred eighty-two and seventeen hundredths feet (182.17') to a point; Thence N 53°24'17" W, one hundred fifty-nine and ninety-two hundredths feet (159.92') to a point; Thence S 36°40'02" W, one hundred thirty-five and seventy-seven hundredths feet (135.77') to a point on the northeasterly side of Jennie's Way; Thence by the Jennie's Way right-of-way, N 48°28'07" W, one hundred eighty-one and seventy-nine hundredths feet (181.79') to a point; Thence by said right-of-way, along a curve to the left with a radius of one hundred seventy-five feet (R=175.00'), one hundred two and sixty-five hundredths feet (L=102.65') to a point; Thence by said right-of-way, N 82°04'48" W, one hundred sixty-one and twenty-three hundredths feet (161.23') to a point; Thence N 28°16'34" E, ninety-one and twenty-three hundredths feet (91.23') to a point; Thence N 61°43'08"W, one hundred forty-five feet (145.00') to the point of beginning.

The lot contains 13.06 acres and is shown as open space parcels A, B, D and E on said plan.

Open Space Parcel C:

Beginning at the northwest corner of Lot 29 and the northeastern corner of the subject parcel, on the southerly side of Jennie's Way as shown on a plan recorded in the Middlesex North Registry of Deeds in plan book 197 plan 105; Thence S 27°22'40" W, one hundred ninety-two and sixty-six hundredths feet (192.66') to a point; Thence S 69°39'56" E, two hundred eighty-four and forty-five hundredths feet (284.45') to a point; Thence S 60°19'10" W, six hundred twenty-seven and twenty-nine hundredths feet (627.29') to a stone bound found; Thence N 45°52'37" W, one hundred forty-one and forty-six hundredths feet (141.46') to a point; Thence N 07°55'12" E, five hundred eighty-seven and eighty-nine hundredths feet (587.89') to a point; Thence by the Jamie's Way right-of-way, S 82°13'52" E, two hundred thirty-four and ninety-one hundredths feet (234.91') to a point; Thence by said right-of-way, along a curve to the right with a radius of one hundred ninety-feet (R=190.00'), sixty-six and thirty-two hundredths feet (L=66.32') to a point; Thence by said right-of-way, S 62°13'59" E, one hundred three and seventy-six hundredths feet (103.76') to the point of beginning.

The lot contains 5.62 acres and is shown as open space parcel C on said plan.

Town Manager
Community Development Director

Executive Summary: The purpose of this Article is to accept from Edith D. Perkins, Individually, and Frank J. Orlando and Gerald M. Davis, Trustees of Perkins Development Trust, u/d/t/ dated November 5, 1991 and recorded with Middlesex North Registry of Deeds at Book 5802, Page 58, as amended at Book 9762, Page 234, five open space parcels of land located off of South Street in Tewksbury, Massachusetts all as shown as Parcels A, B, C, D & E on the Jennie's Woods Definitive Subdivision Plan. Town Meeting accepted the street on May 7, 2002.

ARTICLE 17

To see if the Town will vote, pursuant to Massachusetts General Laws Chapter 82, Section 23, as amended, and other applicable statutes, to accept the laying out of particular town ways by order of the Board of Selectmen as follows:

**TOWN OF TEWKSBURY
BY ORDER OF THE BOARD OF SELECTMEN
ROADWAY LAYOUT
MAC DRIVE, TEWKSBURY MA**

A certain parcel of land situated in Tewksbury, Middlesex County, Massachusetts and shown as Mac Drive on a plan entitled, "Street Acceptance Plan, Map 33/Lot 34, Mac Drive, Tewksbury, MA for Jacqueline McCarthy, 184 Marshall Street, Tewksbury, MA 01876 Scale: 1"=30', Date: June 29, 2011, Cuoco & Cormier Engineering Associates, Inc." to be recorded herewith at the Middlesex North Registry of Deeds and described as follows:

Beginning at stone bound located on the southerly sideline of Marshall Street, said stone bound marking the point of curvature of Mac Drive thence; northeasterly along the southerly sideline of said Marshall Street by a curve to the left having a radius of 424.18 feet, a length of 62.16 feet more or less to a point which marks the intersection of the northerly sideline of said Mac Drive with the southerly sideline of said Marshall Street, thence; S 71°42'00" E along said Mac Drive a distance of 118.03 feet more or less to a stone bound, thence; S 18°18'00" W, a distance of 6.00 feet more or less to a stone bound, said bound marking the beginning of the 40 foot right of way width of said Mac Drive, thence; southeasterly along said Mac Drive by a curve to the right having a radius of 170.00 feet, a length of 189.26 feet more or less to a stone bound, thence; S 07°54'47" E along said Mac Drive a distance of 8.84 feet more or less to a stone bound, thence; southeasterly by a curve to the left having a radius of 25.00 feet more or less, a length of 24.33 feet more or less to a stone bound, thence; southeasterly, southwesterly, northwesterly and northeasterly by a curve to the right having a radius of 55.00 feet more or less, a length of 279.86 feet more or less to a stone bound, thence; northerly by a curve to the left having a radius of 25.00 feet more or less, a length of 24.33 feet more or less to a stone bound, thence; N 07°54'47" W a distance of 8.84 feet more or less to a stone bound, thence; northwesterly by a curve to the left having a radius of 130.00 feet, a length of 144.73 feet more or less to a stone bound, thence; N 71°42'00" W a distance of 117.69 feet more or less to a stone bound, thence; westerly by a curve to the left having a radius of 21.00 feet, a length of 24.88 feet more or less to the point of beginning. The above description contains 22,865 square feet.

The layout plan is filed at the Office of the Town Clerk and Community Development; and said plan is referred to for more particular description and to authorize the said Board of Selectmen to take by eminent domain, an easement, or in fee, or take any other action relative thereto.

Planning Board

Executive Summary: The purpose of this article is to accept Mac Drive as a public way (town street).

ARTICLE 18

To see if the voters of the Town of Tewksbury will vote to amend the Tewksbury Zoning Bylaws by replacing the existing Zoning Bylaw, Section 8500. Highway Corridor Overlay District Bylaw with the following revised existing Bylaw as shown, with DELETIONS denoted in strike-through format and ADDITIONS denoted in underline format.

8500. HIGHWAY CORRIDOR OVERLAY DISTRICT

8501. Purpose. The purpose of the Highway Corridor Overlay District (hereinafter referred to as the HCOD District) is:

- (a) To promote and facilitate a development proposal ~~for a Regional Retail Shopping Center~~ that will be accessible only via an interstate highway without any connection to a public or private way within the Town of Tewksbury other than the Ring Road;
- (b) to facilitate integrated physical design and to encourage interaction among activities located within the HCOD;
- (c) to establish controls which will facilitate development while protecting the public interest by setting regulations which limit the aggregate amount of development within the HCOD and set other district wide requirements while permitting flexible development scale and configuration on individual lots within the HCOD.

8502. Definitions. The following definitions shall apply in the HCOD:

- (a) **Accessory Uses and Structures:** Uses and structures incidental and subordinate to the principal use ~~of a Regional Retail Shopping Center~~, including the following:
 - i. Water tank to facilitate fire protection and domestic supply.
 - ii. Garage for automotive storage.
 - iii. Transformer station, substation, gas regulator station, or pumping station and related utility uses designed primarily to serve development within the District.
- (b) **Frontage:** In the HCOD ~~for the development of a Regional Retail Shopping Center~~, frontage shall be computed without regard to the individual lots that may be created and shall be computed as if all adjacent lots constitute a single parcel. Such frontage shall be on (a) any internal site drive of any length (including a ring road); or (b) a public way which the Town Clerk certifies is maintained and used as a public way, or (c) a way shown on a plan heretofore

approved and endorsed in accordance with the subdivision control law. Frontage shall be measured in a single, continuous, uninterrupted line along a street or streets. Notwithstanding any contrary provision in this Bylaw, vehicular access to an individual lot on the combined development area ~~of the Regional Retail Shopping Center~~ need not be obtained exclusively through the legal frontage of the individual lot.

- (c) **Gross Leasable Area (GLA):** Gross leasable area is the total floor area designed for tenant occupancy and exclusive use (including but not limited to basements, kitchens, restrooms, storage rooms, private corridors, stairways, areas devoted to kiosks or pushcarts, mezzanines and upper floors), expressed in square feet and measured from the centerline of interior walls or other interior tenant partitions and from outside wall faces. GLA does not include public or common areas; i.e., public restrooms, corridors, stairwells, elevators, lobbies or mall areas, nor does it include mechanical rooms, equipment and/or machine rooms or mechanical chases.
- (d) **Library:** A facility for the storage of books, films, manuscripts, videos, records and similar materials whose purpose is to allow free public use of said materials.
- (e) **Museum:** A use which entails the display of educational, scientific, or historic and similar materials open to the public, and nonprofit in its operation.
- ~~(f) **Regional Retail Shopping Center:** A group of retail, service and/or consumer oriented establishments the maintenance of which is under common management and having at least 500,000 square feet of gross leasable area, but not more than 805,000 square feet of gross leasable area, and 1.2 million square feet of gross building area. The Regional Retail Shopping Center shall be located in a single structure (excluding accessory parking structures and other accessory structures) and may be on single or multiple contiguous lots within the HCOD.~~
- (f) **Ring Road:** A private or public way encircling the development area~~Regional Retail Shopping Center~~, with public access ways connecting thereto.

8503. Overlay District. The HCOD is an overlay district superimposed on all underlying zoning districts. All uses permitted by right or by special permit in the pertinent underlying zoning district shall be similarly permitted in the HCOD subject to the provisions of this Section. Where the HCOD authorizes uses not otherwise allowed in the underlying district, the provisions of the HCOD shall control.

8504. Location. The HCOD shall be defined as those portions of the Town of Tewksbury located on the Westerly Side of Interstate Route 93 and shown on Tewksbury Assessor's Map 109 Lots 76, Map 114 Lot 1 and 2 and Map 115 Lot 1 and 2, being further described as follows:

Beginning at the southeast corner of the premises on the westerly sideline of Interstate Route 93 at the intersection of the Town line dividing the Towns of Tewksbury and Wilmington, thence; Southwesterly by said Town line to land of now or formerly Anthony Rocco, John and Jan Cave being shown as Lot 69 on Tewksbury Assessor's Map 109, said land being the discontinued Salem and Lowell Railroad, thence; Northwesterly said Lot 69 to the southwest corner of land of now or formerly John and Jan Cave, being shown as Lot 75 on Tewksbury Assessor's Map 109, thence; Northeasterly and Northerly by said Cave's land to a point on the southerly line of other land of now or formerly John and Jan Cave, being shown as Lot 58 Tewksbury Assessor's Map 109, thence Northeasterly by said Cave's land to a stone bound at the northeast corner of said Lot 58, thence; Northeasterly by the northerly line of said Perkins land and the southerly line of the subdivision know as Jennie's Way, along Lots 26,24,23,22,21 and 20 on Tewksbury Assessor's Map 115 and Lot 13 on Tewksbury Assessor's Map 116, to a point on the westerly line of said Route 93, said point being the northeast corner of land of now or formerly Bror

and Sonya Berg, thence; Southerly by said Route 93 to the point of beginning.

8505. Concept Plan. Prior to the application for approval of any special permit ~~for a Regional Retail Shopping Center~~, (hereinafter HC-SP), a preliminary plan called for purposes of this Section 8500 a "Concept Plan", shall be filed for review with the Planning Board. The submitted Plan shall be consistent with the provisions of this HCOD and shall include: (a) a preliminary site development plan (signed by a registered architect or other pertinent design/engineering professional) showing the location and footprint(s) of all proposed buildings, changes in grading and topography, parking, landscaping, roads, walkways and access ways, open space, and wetlands; (b) a preliminary utilities plan showing the proposed location and types of water, wastewater and stormwater facilities, including hydrants; (c) a preliminary lighting plan; (d) a preliminary sign plan; and, (e) preliminary subdivision plan(s), if applicable. The Planning Board may solicit public comment on the Concept Plan. Any comments of the Planning Board on the Concept Plan shall be advisory in nature only and shall be without binding effect on either the Planning Board or the Applicant.

~~**8506. Time Limit.** Until such time as a special permit (HC-SP) is issued for a Regional Retail Shopping Center, the restrictions of the underlying zoning shall solely govern the use and development of the property comprising the HCOD. At the time of the issuance of a certificate of use and occupancy for the Regional Retail Shopping Center, the underlying zoning shall no longer be applicable in the HCOD. If no such special permit is issued, however, within eight (8) years after the date of enactment of this by law by Town Meeting, or, in the alternative, whichever is sooner, if that certain Development Agreement dated as of May 4, 2004 between the Town and Mills Corporation (a copy of which is available for inspection in the office of the Town Clerk) is terminated and written notice thereof is provided to the Town Clerk, the provisions of this HCOD by law shall expire, and, in such event, the underlying zoning in effect on the date of adoption of this bylaw shall govern the use of the property described in Section 8504.~~

8506. Reserved.

8507. Special Permit Required. ~~The d~~ Development ~~of a Regional Retail Shopping Mall~~ within the HCOD shall require the issuance of a Highway Corridor Special Permit (HC-SP) by the Planning Board. An application for a HC-SP shall be on a form provided by the Planning Board and shall be submitted in accordance with the rules and regulations of the Planning Board for an HC-SP.

8508. Dimensional Requirements. ~~For a Regional Retail Shopping Center to~~ To be eligible to apply for a HC-SP, the following dimensional requirements shall apply in lieu of any other contrary dimensional requirements contained in this By-Law, subject to the Planning Board in their sole and absolute discretion finding that waivers of the following, Section 8508, (a) through (f), provide substantial benefit to the overall proposal.

- (a) **Minimum Area.** The parcel or set of contiguous parcels ~~containing the Regional Retail Shopping Center~~ for which the HC-SP is requested shall not be less than eighty (80) acres prior to any dedication of any portion of said parcel or set of contiguous parcels for purposes of, by way of example only, public or private ways, and common or open space areas. All of said eighty (80) acre parcel shall be located exclusively in the Town of Tewksbury and shall be comprised of the HCOD in its entirety.
- (b) **Maximum Lot Coverage.** The total lot coverage by structures and impervious surfaces shall not exceed fifty-five (55%) percent of the HCOD in its entirety.
- (c) **Minimum Frontage.** The minimum frontage shall be 150 feet for the contiguous combined area ~~of the Regional Retail Shopping Center.~~
- (d) **Building and Parking Setbacks.** The ~~principal structures~~ containing the Regional Retail

~~Shopping Center~~ and all associated parking shall be placed within the Ring Road. No accessory use or structure shall be located within 50 feet of any boundary of the HCOD.

- (e) **Maximum Building Height.** No building shall exceed more than two (2) stories and sixty (60) feet in height above grade plane; provided, however, that forty percent (40%) of the building may be three (3) stories and eighty (80) feet in height above grade plane. Greater height may be allowed by a separate special permit. Fill shall be limited in depth to the minimum amount required to comply with the Stormwater Management Policy of the Commonwealth's Department of Environmental Protection (DEP). This definition excludes penthouses, bulkheads and other allowable super-structures above the roof line.
- (f) **Maximum Building Coverage.** The maximum building coverage of any legal subdivided lot within the HCOD Project shall be permitted to have up to a maximum building coverage of one hundred (100%) percent provided that the maximum lot coverage for the project is not exceeded. For purposes of this Section 8500, land use principally dedicated for a coordinated, ~~integrated retail~~ use ~~such as a Regional Retail Shopping Center~~, shall be deemed to be one lot for density regulation and parking purposes notwithstanding that legal ownership in the land is divided, by lease, in fee or otherwise, among two or more owners.

8508.1 Use Regulations. ~~Within a Regional Retail Shopping Center, T~~the uses available shall be as set forth in the HCOD Table of Uses Available ~~in a Regional Retail Shopping Center~~, which follows Section 8516 (HCOD Table). There shall be no restriction on combining different categories of use as of right ~~within a Regional Retail Shopping Center~~ other than those imposed by the State Building Code or other federal, state or local regulations. Retenancing ~~within the Regional Retail Shopping Center~~ shall be allowed as of right, where such retenancing complies with such HCOD Table, or by special permit where allowed in compliance with such HCOD Table.

8509. Parking and Loading Standards. The following parking and loading standards shall apply in the HCOD:

- (a) **Location.** All parking shall be provided within the Ring Road.
- (b) **Minimum Parking Ratio.** Parking spaces shall be provided at the rate of not less than 4.8 parking spaces per one thousand (1,000) square feet of gross leasable area (GLA).
- (c) **Minimum Parking Dimensions.** Standard parking spaces shall be nine (9.0') feet wide by eighteen (18') feet deep.
- (d) **No Backing.** Parking and loading areas shall not require vehicles to back onto an access way or the Ring Road.
- (e) **Screening.** All loading areas and parking areas for ten (10) or more cars shall provide screening in accordance with Section 5000.

8510. Performance Standards. The development ~~of a Regional Retail Shopping Center~~ in the HCOD shall comply with the following performance standards:

- (a) **Sidewalks.** Concrete sidewalks are required within the HCOD where necessary for safe pedestrian access and circulation. There shall be a marked pedestrian aisle at each entrance to the building served by the parking lot. Sidewalks must be constructed in accordance with the Planning Board's Subdivision Rules and Regulations and in accordance with the regulations of the Massachusetts Architectural Access Board.
- (b) **Landscape Buffer Area.** Whenever required by the Planning Board pursuant to the provisions of Section 5400 and this Section 8510, a landscaped buffer area shall consist of natural and intact vegetation or a landscaped strip and may include fences, walls or berms, which shall serve to

provide an effective year round visual screening at the time of installation.

The following additional requirements shall pertain to all landscape buffer areas located in the HCOD:

- i. Driveways or other private ways necessary for access and egress to and from the tract for emergency access purposes may cross such buffer areas.
 - ii. No vegetation in a buffer area will be disturbed, destroyed or removed, except for construction of and/or normal maintenance of structures and landscapes approved as part of the project.
 - iii. The Planning Board may waive the buffer requirement of Section 5400 when it determines that a smaller buffer (or no buffer) will suffice to accomplish the objectives set forth herein.
 - iv. A landscape buffer area may be used for passive recreation; it may contain pedestrian, bike or equestrian trails, provided such use does not reduce the effectiveness of the buffer area as year round visual screen. No other uses are permitted in landscape buffer areas.
 - v. Wastewater and stormwater management systems serving the HCOD District may be located within the landscape buffer areas.
 - vi. All plant materials required by this Section and Section 5400 shall be maintained in a healthful condition. Dead limbs refuse and debris shall be promptly removed. Dead plantings shall be replaced with new live plantings at the earliest appropriate season. Bark mulch and non-plant ground surface materials shall be maintained so as to control weed growth.
- (c) **Outdoor Lighting.** The key to effective lighting design and outdoor lighting codes is to define the lighting equipment and design criteria that minimize the causes of sky glow, light trespass and glare while providing a comfortable, visually effective, energy efficient and safe / secure outdoor environment. Therefore, outdoor lighting fixtures utilized for lighting parking areas, sidewalks, roadways (except as herein provided), buildings and structures, and recreation and landscape areas shall be designed to improve safety, and to minimize glare and light trespass. All outdoor lighting fixtures except those with an initial output less than 5,000 lumens shall be Semi-Cutoff, Cutoff or Full Cutoff (as defined by the Illuminating Engineering Society of North America's (IESNA) standards to the maximum allowed under the Massachusetts Energy Code) and shall be installed and maintained in such a manner as to be horizontal to the ground so that the cutoff characteristics of the fixture are maintained. Beyond the cutoff requirements set forth herein, all light fixtures shall be located, aimed or shielded so as to minimize light trespass and glare across property boundaries.

No outdoor lighting shall be installed to exceed the maximum maintained luminance levels as recommended by the IESNA for the designated activity. When no maximum level is defined by IESNA, no lighting shall be installed to exceed 400% of the minimum maintained luminance levels as recommended by the Illuminating Engineering Society of North America (IESNA) for the designated activity so as to obtain a uniform luminance level ratio of 4:5. Spacing of poles shall be designed such that the luminance on the ground is uniform to the greatest extent practicable.

The lighting of building facades is allowed and Cutoff fixtures as defined by the IESNA are not required so long as shielded and directional fixtures are used. Fixtures must be installed and aimed so as to minimize glare, sky glow and light trespass.

The following are exempt from the provisions hereof:

- i. The lighting of flags - Cutoff fixtures as defined by the IESNA are not required so long as shielded and directional fixtures are used. Fixtures must be installed and aimed so as to minimize glare, sky glow and light trespass.
- ii. Emergency lighting, used by police, firefighting, or medical personnel, or at their direction for as long as the emergency exists.
- iii. Temporary lighting, such as that used at construction sites or other uses of a temporary nature. However temporary lighting shall be aimed so as to minimize glare and light trespass to adjacent properties and turned off upon the completion of the project.
- iv. Lighting for Town, State or Federal roadways.

Light pole and all fixture types shall not exceed forty-five (45') feet in height above the average grade around the structure.

Waivers from these provisions may be granted by the Planning Board upon documentation that meeting specific provisions hereof would result in an unsafe condition, impede normal operations or inflict undue financial hardship.

- (d) **Reduced Lighting Levels.** Lighting levels shall be reduced to security levels within one (1) hour after the close of business or the end of the business activity. Sufficient security lighting shall be permitted at all times.
- (e) **Solid Waste Storage.** Any accessory receptacle or structure with holding capacity of at least one hundred (100) cubic feet for temporary storage of solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and similar waste items shall be screened from all adjacent premises and streets from which it would otherwise be visible in accordance with this By-Law.
- (f) **Street Width.** The Ring Road shall have a paved surface width of not less than thirty (30') feet and a minimum travel way width of twenty-eight (28') feet. Berming or curbing shall be provided in accordance with the standards of the Planning Board's Subdivision Rules and Regulations.
- (g) **Stormwater Management.** Stormwater management facilities shall comply with the Stormwater Management Policy of the DEP and the standards of the Planning Board's Subdivision Rules and Regulations.
- (h) **Emergency / Public Safety Access.** Access to the HCOD site locus from any abutting public or private way, other than the access or Ring Road, so-called, or by means of such other access way not normally open to vehicular traffic, shall be permitted only for the express purpose of allowing emergency and or public safety vehicular access to the HCOD, notwithstanding the underlying zoning district within which such way is located. Such access shall be subject to the

reasonable satisfaction of the Tewksbury Fire Department and the Tewksbury Police Department.

8511. Signs. This By-Law is adopted for the regulation and restriction of billboards, signs and other advertising devices within the Town on public ways or on private property within public view of a public way, public park or reservation in order to protect and enhance the visual environment of the Town and the safety, convenience and welfare of its residents.

- (a) **Permit Required.** No sign shall be erected, refaced or enlarged until a permit is issued by the Sign Officer, except as otherwise provided herein. An application for a permit shall be made on forms furnished by the Sign Officer containing such information, including photographs, plans and scale drawings, as he/she may require. Such permit shall be issued only if the Sign Officer determines that the sign complies or will comply with all applicable provisions of this By-Law. A schedule of fees for such permits may be determined from time to time by the Board of Selectmen.
- (b) **Sign Officer.** The Building Commissioner is hereby designated as the Sign Officer and is hereby charged with the enforcement of this By-Law. The Sign Officer and his duly authorized agents shall, at reasonable times and upon presentation of credentials, have the power to enter upon the premises on which any sign is erected or maintained in order to inspect said sign.
- (c) **Exemptions.** The provisions of this section shall not apply to:
 - i. Temporary signs;
 - ii. Building numbers;
 - iii. Public utility identification markings;
 - iv. Signs or markers required or erected by local, state or federal government;
 - v. Directional signs not exceeding 150 square feet;
 - vi. Directional markers not exceeding four (4) square feet, such as arrows or entrance and exit markings;
 - vii. Any sign limited solely to directing traffic or providing direction or setting out restrictions on the use of parking areas, or designating loading areas, and not exceeding four (4) square feet in area per face.
- (d) **Standards.** All signs shall conform to the following standards.
 - i. **Movement.** No sign shall contain any moving, flashing or animated lights or visible moving parts. A sign consisting solely of indicators of time and/or temperature or of an automatically changing message shall be permitted only upon the issuance of a special permit by the Planning Board.
 - ii. **Illumination.** No sign shall be illuminated between the hours of 1 A.M. and 6 A.M. unless, in the case of an accessory sign, the premises on which it is located are open for business. Signs may be illuminated only by the following means:

1. By a white steady stationary light of reasonable intensity shielded and directed solely at the sign.
 2. By an interior light of reasonable intensity or by neon gas-filled tubes.
 3. Neon lights are prohibited on free-standing signs.
- (e) **Electrically Operated Sign.** No sign permit shall be issued for an electrically operated sign until the local wiring inspector has issued a permit therefore. Such permit shall be issued only if the proposed sign complies with all requirements and recommendations of the National Electrical Code and Massachusetts Electric Code.
- (f) **Color.** No sign shall contain red or green lights if such colors would, in the opinion of the Police Chief, constitute a safety hazard.
- (g) **Tethered / Floating Devices.** Tethered floating or inflated devices of any kind, and banners are prohibited where intended to serve as a sign.
- (h) **Accessory Signs.** Accessory signs which are permitted in the Business, Commercial and Industrial Districts may be permitted in the HCOD.
- (i) **Attached Signs.** Attached signs may be erected if firmly affixed to the building. The sign shall not project beyond the face of any other wall of the building or above the highest point of the eave. The sign shall not project more than twelve (12) inches from the face of the wall to which it is attached.
- i. The height of each wall mounted ~~Anchor Store Building~~ Sign shall not exceed six (6') feet in height and 350 square feet of sign area. The aggregate length of all such ~~Anchor Store Building~~ Signs shall not exceed in the aggregate seventy-five (75%) percent of the length of the ~~store~~-wall.
 - ~~ii. If a store has a direct entrance in a wall other than the store front, there may be secondary Anchor Store Building Signs affixed to such wall not to exceed six (6') feet in height and 350 square feet of sign area, and the aggregate length of all such Anchor Store Signs shall not exceed fifty (50%) percent of the maximum permissible length of the signs on the store front.~~
 - ~~iii.i~~ One attached wall mounted entry sign per building entrance not to exceed a maximum height of six (6') feet in height and 300 square feet of sign area.
- (j) **Standing signs.** Standing signs may not be erected within fifteen (15) feet of any street lot line or ten (10) feet of any side lot line. Standing signs are limited to the height set forth below to be measured from the nearest pavement grade to the top of the sign structure. Standing signs may be double faced; however, the permitted area will be measured on one side only.
- i. One (1) free standing Reader Board sign not greater than twenty-five (25) feet in height and not to exceed two (200) square feet of sign area per face.

- ii. (ii) One (1) free standing sign at each entrance, but not more than three (3) such signs. Each such sign shall be not greater than sixty (60) feet in height, and may be a maximum of two (200) hundred square feet per face.
- (k) **Awnings.** Awnings used as signs shall not project more than thirty-six (36) inches from the face of the wall to which it is attached. The signage on the awning must comply with the size requirements of this Section.
- (l) **Special Signs.** Signs painted or placed on the inside of the glass of a window shall be permitted, provided that the aggregate area of such sign does not exceed 30 percent of the area of the window glass.
- (m) **Temporary Signs.** Temporary signs which comply with these By-Laws shall be permitted (other than a temporary sign placed in a window).

Temporary signs which do not comply with these By-Laws may be authorized by a special permit by the Board of Selectmen for private, nonprofit charitable organizations.

8512. Landscaping, Screening and Buffer Requirements. All landscaping, screening and buffer requirements that are requirements in the Commercial (COM) District pursuant to the provisions of Section 5400, Landscaping, Screening and Buffer Requirements, shall also apply in the HCOD District and shall be in addition to those requirements set forth herein under Section 8510(b).

8513. Special Permit Decision. The Planning Board may approve, approve with conditions, or deny an application for a HC-SP, ~~where the Regional Retail Shopping Center complies in compliance~~ with the dimensional requirements, parking and loading requirements, and performance standards set forth herein, and after consideration of the criteria set forth in Section 9490 and the following:

- (a) Impact ~~of the Regional Retail Shopping Center~~ on the environment (land and water resources, air quality), public utilities, and traffic safety;
- (b) Impact ~~of the Regional Retail Shopping Center~~ on the economy of the Town, including employment opportunities, contributions to tax base and impact on property values;
- (c) Impact ~~of the Regional Retail Shopping Center~~ on neighborhood character.

8514. Special Permit Conditions. It shall be, at the discretion of the Planning Board, a condition of any HC-SP that the applicant shall comply with the commitments ~~made by the developer~~ to the Town contained in that certain Development Agreement dated as of May 4, 2004 between the Town and Mills Corporation (a copy of which is available for inspection in the office of the Town Clerk). In addition to the conditions of said Development Agreement, where the Planning Board grants a HC-SP with conditions, the Board may impose additional reasonable conditions, safeguards and limitations on time and use, including, but not limited to, those set forth in Section 9491 and the following:

- (a) If circumstances so warrant, to impose conditions regarding hours of operation, delivery times, and lighting schedule;
- (b) Approved Special Permits and Site Plans shall be recorded in the North Middlesex Registry of Deeds prior to the issuance of any building permits or the start of any construction on site;
- (c) The Planning Board, or its representative, shall have the authority to make inspections during the

construction process. All drainage installed on the site shall be inspected and approved by the Planning Board's Consulting Engineers. In the event that the developer does not comply with conditions set forth in the HC-SP, said Special Permit may be modified or revoked after a public hearing held by the Planning Board. The owner of the property shall be responsible for the maintenance and upkeep of the on-site drainage system;

- (d) All development within the approved site shall be conducted in accordance with plans approved by the decision of the Planning Board and with all statutes, laws, rules, and regulations of the Commonwealth of Massachusetts and the Town of Tewksbury.
- (e) If circumstances so warrant, to impose conditions of compliance with recommendations of the Planning Board with regard to ingress and egress to the site locus for emergency and/or safety vehicle purposes.
- (f) If circumstances so warrant, to require continued monitoring of off-site impacts to traffic safety and the environment in site locations immediately abutting the site locus of the HCOD development;
- (g) If circumstances so warrant, to require additional plantings within the site upon review of the as-built plan and after an on-site inspection. The developer shall be required to add more plantings if desired by the Planning Board. This condition, if imposed, must be satisfied prior to any formal release issued by the Planning Board.
- (h) If circumstances so warrant, to require that the property owner shall be responsible for maintenance of the building and landscape area surrounding and abutting any building on site.

8515. Relation to Other Requirements. The submittals and special permit of this section shall be in addition to any other requirements of the Subdivision Control Law to the extent that the site or any portion thereof is approved as a subdivision thereunder.

8516. Inapplicability of Certain Other Regulations. Where this Section 8500-8516 specifies some standard or makes some other requirement contrary to a requirement elsewhere in this Zoning Bylaw, the provisions of this Section 8500-8516, as may be amended from time to time, shall prevail.

TABLE OF USES AVAILABLE IN <u>THE HCOD REGIONAL RETAIL SHOPPING CENTER USES</u> <u>USES</u>		
A.	RESIDENTIAL USES	
1.	Single-family dwelling	N
2.	Two-Family dwelling	N
3.	Multi-family dwelling	N
4.	Multi-family dwelling/55	N
5.	Community Development Project	N
6.	Cluster Development	N
B.	EXEMPT AND INSTITUTIONAL USES	
1.	Use of land or structures for religious purposes	Y
2.	Use of land or structures for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y

3.	Child care facility in existing building	Y
4.	Child care facility in new building	Y
5.	Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five (5) acres in area	Y
6.	Facilities for the sale of produce, and wine and dairy products on exempt agricultural sites	Y
7.	Cemeteries, private	N
8.	Municipal parks and playgrounds	Y
9.	Other municipal facilities	Y
10.	Essential services	Y
11.	Water towers and reservoirs	Y
12.	Hospital	N
C.	COMMERCIAL USES	
1.	Nonexempt farm stand for wholesale or retail sale of products	N
2.	Nonexempt educational use	N
3.	Nonexempt agricultural use	N
4.	Animal clinic or hospital; kennel	N
5.	Personal service establishment	Y
6.	Funeral home	N
7.	Hotel/motel	N
8.	Bed and Breakfast	N
9.	Retail food or drug store	Y
10.	Retail sale of alcoholic beverages	Y
11.	Retail sales not elsewhere set forth	Y
12.	Motor vehicle, motorcycle, trailer, snowmobile, or boat sales and rental	N
13.	Motor vehicle light service; Motor vehicle general and body repair	N
14.	Car wash	N
15.	Garage for automotive storage	Y
16.	Limousine, taxicab or livery business	N
17.	Automotive stereo systems installations	PB
18.	Restaurant	Y
19.	Restaurant, fast- food or drive-through	Y
20.	Business or professional office	Y
21.	Freestanding ATM or kiosk for public use	N
22.	Adult day care	N
23.	Indoor commercial recreation; provided, however, that such use shall not exceed 30% of the GLA without authorization by a separate special permit of the Planning Board	Y
24.	Outdoor commercial recreation	PB
25.	Membership club, civic, social, professional or fraternal organization	N
26.	Adult use establishment	N
27.	Wireless Communications Facility	N
28.	Airport, airfield or airstrip	N
29.	Mobile parked food service	N
30.	Itinerant roadside vending	N

31.	Massage parlor	N
32.	Major Commercial Project	NOT APP LIC- ABL E
33.	Massage Therapy (Licensed)	N
34.	Garaging or parking of one light commercial vehicle. (Accessory use only)	Y
35.	Garaging or parking of two light commercial vehicles. (Accessory use only)	Y
36.	Garaging or parking of three or more light commercial uses (Accessory use only)	Y
37.	Garaging or parking of one heavy commercial (Accessory use only)	Y
38.	Garaging or parking of two or more heavy commercial vehicles (Accessory use only)	Y
39.	Drive-through facility	PB
40.	Casino, gambling facility	N
D.	INDUSTRIAL USES	
1.	Removal of loam, sand or gravel	N
2.	Research laboratories, manufacture of equipment, electronics industry, assembling of electrical appliances	N
3.	Welding shop	N
4.	Machine shop	N
5.	Stone or monument works	N
6.	Ceramic products manufactured by electrical kilns	N
7.	Manufacturing	N
8.	Manufacturing, Light	N
8.	Sale of products at retail manufactured on the premises	N
9.	Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	N
10.	Farm supply warehouse	N
11.	Heating fuel storage and sales	N
12.	Contractor's yard or landscaping business	N
13.	Junkyard or automobile salvage yard	N
14.	Transportation or freight terminal	N
15.	Truck stop	N
16.	Steel Fabrication	N

Planning Board

Executive Summary: The adoption of this Article will achieve the goals as set forth by the Planning Board, establishing zoning by laws that strike a balance between protecting the town's, the neighborhood's and the landowner's interests and encouraging desired development that can be reasonably implemented based on marketability and economic viability.

In keeping with these goals, the Planning Board recommends the following changes to the HCOD by-law, as denoted in the Article:

1. Delete the Sunset clause, 8506. The timing and future construction of the I-93 ramp will not happen before the May 2012 expiration date of the sunset clause as established in the by-law.
Removing the Sunset clause continues the protections contained in the original bylaw, such as; accessibility to the site only via the Interstate accept for emergencies and the allowed Table of Uses. This provides the continued economic development potential of the property, other than allowed by the underlying zoning - Residential, R40.
2. Delete the overlay zoning language requiring that future development be limited to a retail mall. Future development plans by the current owner do not include a retail mall and a retail mall may not be the best and highest use of the land. Other viable uses, which are allowed in the existing HCOD bylaw, can be applied to this area which will allow for marketability and sustainable economic growth. The Planning Board will propose further definition and establish criteria at a future time, if needed.
3. Retain the Planning Board's discretion on conditions specified in the original retail mall development agreement to protect the town's interest in future proposed developments and carry forward the original spirit and intent of the development agreement as approved by Town Meeting.

ARTICLE 19

To see if the Town will vote to replace the existing Town Bylaw, Chapter 19 Stormwater Management & Erosion Control with the following revisions shown on the existing Bylaw with DELETIONS denoted in strike-through format and ADDITIONS denoted in underline format:

Chapter 19

Stormwater Management & Erosion Control

Sections:

19.010	Purpose
19.020	Definitions
19.030	Authority
19.040	Applicability
19.041	Regulated Activities
19.042	Exempt Activities
19.043	Activities Allowed to Request Exemption
19.050	Administration
19.060	Permits and Procedures
19.070	Fees
19.080	Surety
19.090	Waivers
19.100	<u>Inspections</u> Enforcement
<u>19.110</u>	<u>Enforcement</u>
<u>19.120</u>	<u>Stormwater Management Plan</u>
<u>19.130</u>	<u>Operation and Maintenance Plans</u>
19.1 40	Severability

19.010 Purpose

- A. Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of:

1. impairment of water quality and decreased flow in lakes, ponds, streams, rivers, wetlands and groundwater;
2. decreased flow in lakes, ponds, streams, rivers, wetlands and groundwater;
3. contamination of drinking water supplies;
4. erosion of stream channels;
5. alteration or destruction of aquatic and wildlife habitat;
6. flooding; and,
7. overloading or clogging of municipal catch basins and storm drainage systems; and
8. flooding and erosion on abutting properties.

The United States Environmental Protection Agency has identified sedimentation from land disturbance activities and polluted stormwater runoff from land development and redevelopment as major sources of water pollution, impacting drinking water supplies, natural habitats, and recreational resources. Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Tewksbury water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town.

In addition, this bylaw establishes stormwater management standards for the final conditions that result from development and redevelopment projects to minimize adverse impacts offsite and downstream which would be borne by abutters, townspeople and the general public.

B. The objectives of this Bylaw are to:

1. protect water resources;
2. require practices that eliminate soil erosion and sedimentation;
3. control the volume and rate of stormwater runoff resulting from land disturbance activities in order to minimize potential impacts of flooding;
4. require practices to manage and treat stormwater runoff generated from new development and redevelopment;
5. protect groundwater and surface water from degradation or depletion;
6. promote infiltration and the recharge of groundwater;
7. prevent pollutants from entering the municipal storm drain system;
8. prevent flooding and erosion to abutting properties;
9. ensure that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into the site planning and design process and are implemented and maintained;
10. ensure adequate long-term operation and maintenance of stormwater best management practices so that they work as designed;
11. require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;
12. comply with state and federal statutes and regulations relating to stormwater discharges; and
13. establish the Town of Tewksbury legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring and enforcement.

19.020 Definitions

ABUTTER: The owner(s) of land abutting the land disturbance site.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 CMR 10.00).

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPLICANT: Shall be the owner of record of all of the land shown on any plan submitted for approval to the Planning Board in accordance with the Stormwater Management Bylaw and Regulations, any person or persons acting on behalf of the applicant for purposes of preparing and submitting plans and documents to the Planning Board, and may include engineers, surveyors, contractors or attorneys, and may also include any person or persons having an equitable interest in the land under an agreement or option to purchase the land. The owner shall certify in writing the identity of each applicant who is authorized to submit plans and/or documents and act on behalf of the owner. Without such certification an applicant shall not act on behalf of the owner. The applicant shall submit the title reference or references from the Middlesex County Registry of Deeds indicating the owner of record. All applications shall include original signatures of all owners.

AUTHORIZED ENFORCEMENT AGENCY: The Planning Board and its employees or agents who will be in charge of enforcing the requirements of this bylaw.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

[THE BOARD – Town of Tewksbury Planning Board.](#)

CONSTRUCTION AND WASTE MATERIALS: Excess or discarded building or construction site materials that may adversely impact water quality, including but not limited to concrete truck washout, chemicals, litter and sanitary waste.

CLEARING: Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity as defined below.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND: Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

EROSION AND SEDIMENTATION CONTROL PLAN: A document containing narrative, drawings and details developed by a qualified professional engineer (PE) or a public land surveyor (PLS), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbance activities.

GRADING: Changing the level or shape of the ground surface.

GRUBBING: The act of clearing land surface by digging up roots and stumps.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and

roof tops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 85.

LAND-DISTURBING ACTIVITY or LAND DISTURBANCE: Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

LAND-DISTURBANCE PERMIT: A permit issued by the Planning Board .

LOT: An area or parcel of land or any part thereof, in common ownership, designated on a plan filed with the Town of Tewksbury by its owner or owners as a separate lot.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131 s. 40 and the Massachusetts Clean Waters Act MGL c. 21, ss. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, swales, brooks, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Tewksbury.

OPERATION AND MAINTENANCE PLAN: A plan developed by a Massachusetts licensed professional engineer (PE) describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a discernible, confined point source or discrete conveyance into waters of the Commonwealth.

OUTSTANDING RESOURCE WATERS (ORWs): Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER: Shall be the owner of record of all the land shown on any plan submitted. The owner shall submit the title reference or references from the Middlesex County Registry of Deeds indicating the owner of record.

PERMITTEE: The person who holds a land disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

PRE-CONSTRUCTION: All activity in preparation for construction.

PRIVATE STORM DRAIN SYSTEM or PRIVATE SEPARATE STORM SEWER SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system that is not owned and maintained by the Town.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

RESPONSIBLE PARTIES: owner(s), persons with financial responsibility, and persons with operational responsibility.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of deposition of sediment.

SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL: Earth materials including duff, humic materials, sand, rock and gravel.

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER: Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PLAN: A document containing narrative, drawings and details prepared by a qualified professional engineer (PE) or a professional public land surveyor (PLS), which includes structural and non-structural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.

STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

TSS: Total Suspended Solids. Material, including but not limited to trash, debris, soils, sediment and sand suspended in stormwater runoff.

WATERCOURSE: A natural or man-made channel through which water flows, including a river, brook, or stream.

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and in the Town of Tewksbury Wetland Protection By-law.

19.030 Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

19.040 Applicability

No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance that will disturb equal to or greater than one half acre of land or will disturb less than one acre of land but is part of a larger common plan of development that will ultimately disturb equal to or greater than one acre of land draining to the Town of Tewksbury's municipal separate storm sewer system without a permit from the Planning Board. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or the original purpose of the site.

Except as permitted below or as otherwise provided in this Bylaw, no person shall perform any activity that results in disturbance or clearing of land without a land disturbance permit.

19.041 Regulated Activities.

A. For minor land disturbance, defined as the disturbance of five hundred (500) cubic yards or more of material or clearing activity which disturbs an area of 20,000 square feet or more and less than 40,000 square feet within any twelve (12) month period, the activity shall be allowed only under a Land Disturbance Permit issued by the Planning Board. Said permit shall be considered an administrative action by the Planning Board and no public hearing shall be required. The Department of Community Development shall be the administrator of a minor land disturbance permit.

B. Regulated activities by the Planning Board shall include, but not be limited to:

1. Land disturbance of 40,000 square feet or more of land, associated with construction or reconstruction of structures,
2. Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 40,000 square feet or more of land,
3. Paving or other change in surface material over an area of 40,000 square feet or more causing a significant reduction of permeability or increase in runoff,
4. Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of more than 40,000 square feet,
5. Any other activity altering the surface of an area exceeding 40,000 square feet that will, or may, result in increased stormwater runoff flowing from the property into a public way or the municipal storm drain system, OR
6. Land disturbance where there is a 15% or greater slope and where the land disturbance is greater than or equal to 200 square feet within the sloped area.

C. Minimum performance standards for regulated activities:

1. Erosion control structures will be located no closer than 15 feet from an abutting property line and will be designed so as not to create point discharges onto abutting properties.
2. Dust from all earthmoving activities shall be controlled.
3. Earth materials shall not be deposited onto any roadways.

4. Vegetative stabilization measures shall be employed during the Regulated Activity and construction activity as required by the approving authority. All perimeter dikes and slopes, basin or trap embankments shall be stabilized with sod, seed, anchored mulch within seven (7) days of disturbance. All other disturbed areas shall be stabilized with sod, seed and anchored mulch within fourteen (14) days after disturbing activities are ceased.
5. Topsoil shall be stripped from disturbed areas and stockpiled in an approved area and stabilized with a temporary vegetative cover if left more than fifteen (15) calendar days. Perimeter sediment controls shall be installed around stockpiled topsoil.
6. During cold weather months, when seeding and sodding may be impractical, anchored mulch shall be applied as approved.

19.042 Exempt Activities. The following activities are exempt from the requirements of this Bylaw:

1. Normal maintenance and improvement of Town owned public ways and appurtenances.
2. Normal maintenance and improvement of land in agricultural use.
3. Repair of septic systems when required by the Board of Health for the protection of public health.
4. Normal maintenance of currently existing landscaping, gardens or lawn areas associated with a single-family dwelling.
5. The construction of fencing that will not alter existing terrain or drainage patterns.
6. Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.
7. Maintenance of existing town drainage system, including, but not limited to removal of trees, debris, sediment and trash from swales, brooks, culverts, and any other impediment to the flow of the town's drainage system.
8. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;
9. As authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the activities identified in Section 19.043 that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.

19.043 Activities Allowed to Request Exemption. Areas of land that have had a Stormwater Management review either through the Conservation Commission or Planning Board using the performance standards as defined in this bylaw and Regulations may request an exemption from the requirements of this bylaw. Requests must include a plan of the area of land reviewed and approved by either the Planning Board or Conservation Commission accompanied by a sign-off from the issuing authority.

The Planning Board will review each request on an individual basis and issue a decision as to whether the exemption is granted or whether the applicant is required to file for a permit.

19.050 Administration

- A. The Planning Board shall administer this bylaw. The Town of Tewksbury's Community Development Department shall serve as the Planning Board's primary staff support for this bylaw. The Department may use the Director, Conservation Administrator, Town Engineer, or others to implement this bylaw.
- B. The Planning Board and its agents shall review all applications for a land disturbance permit, conduct inspections, issue a final permit and conduct any necessary enforcement action.
- C. The Planning Board may adopt and periodically amend Stormwater Regulations relating to Land Disturbance Permits, exemption or waiver applications; permit terms or conditions, Design Criteria,

additional definitions, enforcement, fees (including application, inspection, and/or consultant fees), or other procedures and administration of this Bylaw after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days before the hearing date. After public notice and hearing, the Planning Board may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Bylaw.

D. The Planning Board will refer to the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy or with Design Criteria that may be developed or in Tewksbury's Subdivision Regulations, whichever is more stringent, in the protection of the town's environmental and infrastructure resources, for execution of the provisions of this Bylaw.

E. All meetings of the Planning Board are subject to the Open Meeting Law. A notice in the local newspaper of a hearing on the Land Disturbance Application and that the Planning Board is accepting comments on the Land Disturbance Application shall be published at the applicant's expense. The Land Disturbance Application shall be available for inspection by the public during normal business hours at the Town offices. Comments may be submitted to the Planning Board during business hours at the Town offices.

F. Filing an application for a land disturbance permit grants the Planning Board or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

G. The Planning Board may:

- i. Approve the Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this Bylaw;
- ii. Approve the Application and issue a permit with conditions, modifications, requirements for operation and maintenance requirements of permanent structural BMPs, designation of responsible party, or restrictions that the Planning Board determines are required to ensure that the project will protect water resources and will meet the objectives and requirements of this Bylaw; or
- iii. Disapprove the application and deny a permit if it finds that the proposed plan fails to meet the objectives and requirements of this Bylaw and its Regulations. If the Planning Board finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Planning Board may disapprove the application, denying a permit.

H. The Planning Board shall take final action on an Application within 30 days of receipt of a complete application. If in the Planning Board's opinion, additional time or information is required for review, the Planning Board by written agreement of the applicant may continue a consideration of the request to a date certain announced at the meeting.

I. Failure to take action shall be deemed to be approval of said application. Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, the Land Disturbance Permit shall be issued by the Planning Board.

J. Appeals of Action by the Planning Board. A decision of the Planning Board shall be final. Further relief of a decision by the Planning Board made under this Bylaw shall be reviewable in the Superior Court or Land Court in accordance with the applicable law. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law. No work shall commence until the applicable appeal period has passed with no appeal or if an appeal has been filed, the appeal has been finally resolved by adjudication or otherwise.

K. All activity permitted by the Land Disturbance Permit must be completed within one-year of permit issuance. Extensions of time can be granted by the Planning Board upon formal written request by the applicant. Should the one-year pass without an extension being granted the permit is then considered revoked.

L. Project Completion. At completion of the project the permittee shall submit as-built record drawings of all structural stormwater controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer. As-built drawings must comply with the Town's Digital data submission requirements.

19.060 Permits & Procedures

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated as permitted under Section 19.050 of this Bylaw.

19.070 Fees

The Planning Board shall establish fees subject to cover expenses connected with application review and monitoring permit compliance. The fees shall be sufficient to cover Town secretarial staff and professional staff. The Planning Board is also authorized to charge the applicant fees to pay a Registered Professional Engineer or other professional consultant to advise the Planning Board on any or all aspects of the project. The applicant for a Land Disturbance Permit may be required to establish and maintain an escrow account to cover the costs of said consultants.

19.080 Surety

The Planning Board may require the permittee to post before the start of land disturbance activity, a surety bond, or other acceptable security. The form of the bond shall be approved by the Planning Board, which may consult with town counsel when necessary, and be in an amount deemed sufficient by the Planning Board to insure that the work will be completed in accordance with the permit. If the project is phased, the Planning Board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Planning Board has issued a certificate of completion.

19.090 Waivers

- A. The Planning Board may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where the activity:
1. is allowed by federal, state or local statutes and/or regulations, or
 2. is in the public interest, and is not inconsistent with the purpose and intent of this bylaw and its regulations.
- B. Any applicant may submit a written request to be granted such a waiver at the time of submission. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that the activity is allowed by federal, state or local statutes and/or regulations or is in the public interest and is not inconsistent with the purpose and intent of this bylaw and its regulations.
- C. All waiver requests shall be discussed and a decision will be made at the time of final action by the Planning Board .
- D. If in the Planning Board 's opinion, additional information is required for review of a waiver request, the Planning Board may continue a consideration of the waiver request to a date certain announced at the

meeting. In the event the applicant fails to provide requested information, the waiver request shall be denied.

19.100 Inspections

A. The Board or its agents shall inspect the project site at the following stages:

- (1) Initial Site Inspection: prior to approval of any plan.
- (2) Erosion Control Inspection: to ensure erosion control practices are in accordance with the filed plan.
- (3) Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.
- (4) Final Inspection. After the stormwater management system has been constructed and before the surety has been released, the applicant must submit a record plan detailing the actual stormwater management system as installed. The Board shall inspect the system to confirm its "as-built" features. This inspector shall also evaluate the effectiveness of the system in an actual storm. If the inspector finds the system to be adequate he shall so report to the Board which will issue a Certificate of Completion.

B. If the system is found to be inadequate by virtue of physical evidence of operational failure, even though it was built as called for in the Stormwater Management Plan, it shall be corrected by the permittee before the performance guarantee is released. If the permittee fails to act the Town of Tewksbury may use the surety bond to complete the work. Examples of inadequacy include, but shall not be limited to: errors in the infiltrative capability, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from basins.

19.100 Enforcement

- A. The Planning Board or its authorized agent shall enforce this Bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- B. Orders. The Planning Board or its authorized agent may issue a written order to enforce the provisions of this Bylaw or the regulations thereunder, which may include:
1. a requirement to cease and desist from the land-disturbing activity until there is compliance with the Bylaw or provisions of the land-disturbance permit;
 2. maintenance, installation or performance of additional erosion and sediment control measures;
 3. monitoring, analyses, and reporting;
 4. remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity;
 5. compliance with the Operation and Maintenance Plan.
 6. If the enforcing person determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Tewksbury may, at its option, undertake such work, and the property owner shall reimburse the town's expenses. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town of Tewksbury, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner

and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, § 57, after the thirty-first day at which the costs first become due.

7. Fines. Any person who violates any provision of this Bylaw, regulation, order or permit issued there under, shall be punished by a fine of not more than \$ 300.00. Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.
8. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Planning Board may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D, which has been adopted by the Town, in which case the Planning Board or authorized agent shall be the enforcing person. The penalty for each violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

19.120 Stormwater Management Plan

- A. The Stormwater Management Plan shall contain sufficient information for the Board to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet the Massachusetts Stormwater Management Standards as set forth in Part B of this section and DEP Stormwater Management Handbook Volumes I and II. The Stormwater Management Plan shall fully describe the project in drawings, and narrative. The Planning Board may adopt regulations for specific submittal requirements.
- B. Standards. Projects shall meet the Standards of the Massachusetts Stormwater Management Policy, which are as follows:
 1. No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth.
 2. Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates. The rates may be equal to or better than pre-existing conditions.
 3. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
 4. For new development, stormwater management systems must be designed to remove 80% of the average annual load (post development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when:
 5. Suitable nonstructural practices for source control and pollution prevention and implemented;
 6. Stormwater management best management practices (BMPs) are sized to capture the prescribed runoff volume; and
 7. Stormwater management BMPs are maintained as designed.
 8. Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater management BMPs (see Stormwater Management Volume I: Stormwater Policy Handbook). The use of infiltration practices without pretreatment is prohibited.
 9. Stormwater discharges to critical areas must utilize certain stormwater management BMPs approved for critical areas (see Stormwater Management Volume I: Stormwater Policy Handbook). Critical areas are Outstanding Resource Waters (ORWs), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.

10. Redevelopment of previously developed sites must meet the Stormwater Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.
11. Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.
12. All stormwater management systems must have an operation and maintenance plan to ensure that systems function as designed.
13. When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

19.130 Operation and Maintenance Plans

A. A post construction Operation and Maintenance plan (O&M Plan) is required prior to final release of the project. The maintenance plan shall be designed to ensure compliance with the Permit, this Bylaw and that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. The Board shall make the final decision of what maintenance option is appropriate in a given situation. The Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. Once approved, The Operation and Maintenance Plan shall remain on file with the Town Engineer and shall be an ongoing requirement. The Planning Board may adopt regulations for specific submittal requirements.

B. Stormwater Management Easement(s).

1. Stormwater management easements shall be provided by the property owner(s) as necessary for:
 - a. access for facility inspections and maintenance,
 - b. preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event.
 - c. direct maintenance access by heavy equipment to structures requiring regular cleanout.
2. The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
3. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the The Board.
4. Easements shall be recorded with the Middlesex North County Registry of Deeds prior to issuance of a Certificate of Completion by the Board.

C. Changes to Operation and Maintenance Plans

1. The owner(s) of the stormwater management system must notify the Board and Town Engineer of changes in ownership or assignment of financial responsibility.
2. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this bylaw by mutual agreement of the Board, the Town Engineer and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

D. Maintenance Responsibility

The responsibility party named in the Operation and Maintenance Plan shall maintain in good condition and promptly repair and restore all structural and non-structural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion

and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement and the stormwater maintenance plan.

E. Maintenance Inspection by Planning Board, its agent, or Town Engineer

The Planning Board or its Representatives shall conduct periodic inspections for all stormwater practices for which a Stormwater Certificate of Completion has been issued in accordance with section 19.050. All inspections shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plan.

F. Record of Maintenance Activities

The responsible party shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be submitted to the Town Engineer on an annual basis.

19.1~~40~~ Severability

If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

Town Manager
Community Development Director

Executive Summary: Passage of this article will modify the existing Stormwater Management & Erosion Control Bylaw to include post-construction stormwater management standards in order to comply with the requirements under the Federal Clean Water Act as put forth through the National Pollutant Discharge Elimination System general permit filed with the State DEP and Federal EPA.

And you are directed to serve the within Warrant by posting up true and attested copies thereof upon the Town Hall and in each precinct, fourteen (14) days at least before the time of holding said meeting; also, having copies available at the Selectmen's Office at Town Hall or at such convenient places as the Selectmen shall think proper in said Town of Tewksbury.

HEREOF, FAIL NOT, AND MAKE DUE RETURNS OF THIS WARRANT, with your doings thereon, to the Town Clerk at the time and place of meeting aforesaid.

Given under our hands this twenty-third day of August in the year of Our Lord, two thousand and eleven.

BOARD OF SELECTMEN

Todd R. Johnson
Chairman

David H. Gay
Vice Chairman

Douglas W. Sears
Clerk

Anne Marie Stronach

Scott Wilson

GLOSSARY OF TERMS

Town Meeting:

A duly called meeting in which all Town of Tewksbury registered voters are eligible to participate to act upon fiscal issues, zoning changes, by-law amendments, and other matters affecting the Town. Each voter has one vote in the decision making process.

The Annual Town Meeting is held each May to decide issues for the fiscal year starting July first. Special Town Meeting(s) may be called at other times, to address issues that cannot wait for the next Annual Town Meeting, a Special Town Meeting is called by the Board of Selectmen; or by a petition of 200 registered voters.

Warrant:

Public notice of business to be considered at the Town Meeting. It is publicly posted in each Precinct throughout the Town and on the Town's Website <http://www.tewksbury-ma.gov/Pages/index>.

Article(s):

Individual subjects are described in the articles so that all voters are warned of potential action to be taken. The scope of each article sets the bounds of action that may be taken. Articles are submitted by the Town Departments or by voter petitions. Articles submitted by voter petitions require ten (10) or more registered voters signatures for insertion in the Annual Town Meeting Warrant, and one hundred (100) or more registered voters signatures for insertion in a Special Town Meeting Warrant.

General Information:

The Moderator presides at the Town Meeting and is responsible for the ruling on procedural matters, overseeing an orderly debate, announcing the result of all votes and preserving decorum.

The proceedings are governed by Town Meeting Time, a handbook of parliamentary law prepared under the auspices of the Massachusetts Moderators Association. This guide may be simpler and easier to understand than the more widely known and consulted Robert's Rules of Order. Copies are available for reference at the Town Clerk's Office, Board of Selectmen's Office and the Tewksbury Public Library.

Registered voters are entitled to attend, address and vote at the Meeting. Visitors may attend the meeting and shall sit in the "reserved for visitors" section.

A voter desiring to speak should approach the microphone, await recognition by the Moderator, and identify him or herself when recognized by name and address.

Motions, Motions to Amend, and Votes Required:

An Article in the Warrant states a question for the Town Meeting voters to answer. Separate issues are described in the Town Meeting Articles so that all voters are warned of potential action to be taken. The scope or intent of each Article set the bounds of action that may be taken.

Customarily the Finance Committee Chairman makes the first or Main Motion or if the Article relates to the Zoning By-Law the Planning Board Chairman will make the first or Main Motion. The sponsor or Petitioner of an article also may make the first or Main Motion.

The Motion is then open for discussion by the assembly.

Motions to Amend the Main Motion, which is within the scope or intent of the Article, may be made on the Town Meeting floor.

Ordinarily motions require a majority vote of the voters present and voting for an Article to pass. Certain motions require a 2/3, 4/5 or a 9/10 vote to pass because of the provisions of the Town By-Laws or Massachusetts General Laws. The Moderator will announce the voting requirement before each vote requiring more than a majority vote.

Motions For Indefinite Postponement of an Article:

A motion to Indefinitely Postpone an Article is equivalent to a motion to take no action on the Article. If the Motion to Indefinitely Postpone the Article is Adopted; the Article is defeated.

Reconsideration of an Article:

No vote on a prior Article shall be Reconsidered except to correct a procedural defect, scrivener's error or an oversight. Reconsideration for the above exceptions requires a majority vote.

Move the Question:

The voters have heard all the discussion that they wish to hear on the pending Article and prefer to vote at once.

The Moderator shall allow those presently standing, at the time of the motion, the opportunity to be heard and then he or she will take the vote to Move the Question.

Rules to Govern Speakers:

No voter shall speak twice on any one subject, if any other voter who has not spoken already and is standing to be recognized by the moderator. No voter shall speak for more than five minutes at one time, except by vote of permission of the assembly.