

TEWKSBURY PLANNING BOARD MINUTES

April 11, 2022

**Call The Meeting to Order**

Chairman Stephen Johnson called the meeting to order at 7:00 P.M. at the Town Hall Meeting Room. Present at the start of the meeting were, Eric Ryder, Vincent Fratalia and James Duffy

Robert Fowler was not present for this meeting.

**(A) Approval of Minutes – March 28, 2022**

Tabled to next meeting.

**(B) Committee Reports/ Administrative Actions**

**(B1) Committee Reports**

Mr. Fratalia stated that Mr. Ryder set them up to view the school department building being built on Pleasant Street and they took a tour with Chairman Sullivan, Bridget Garabedian and Rich Russo from the school committee and it's a phenomenal building. Tewksbury residents should be really happy with the building for the elementary school building on Pleasant Street, its state of the art, the classrooms are huge, and they have spared no expense getting what we need in town for the students of Tewksbury. Mr. Fratalia stated he was pleasantly surprised they are coming along pretty quick and just a great building, he looks forward to the completion of it. He asked the contractor when they are planning on taking down the Center Street School and they are going to wait until April vacation, so it does not disturb the kids while they are in school.

**(B2) Board Reorganization**

**MOTION** – Mr. Fratalia made a motion to nominate Stephen Johnson as Chairman. The motion was seconded by Mr. Ryder and unanimously voted 4-0.

**MOTION** – Mr. Ryder made a motion to nominate Robert Fowler as Vice Chairman. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

**MOTION** – Mr. Fratalia made a motion to nominate James Duffy as Clerk. The motion was seconded by Mr. Ryder and unanimously voted 4-0.

Mr. Johnson stated they have the committee assignments, everybody should take a look at what they are on, if they're comfortable, obviously, for Mr. Duffy, there's a few openings including nimcog, he's kind of holding that seat because they didn't have anybody so he should take a look at that and next time they'll deal with committee assignments.

Ms. Lowder stated typically the committee assignments expire June 30<sup>th</sup> when the committees come up for reassignment so it might be something we deal with even a little bit further down the road, but certainly something to start looking at.

**(B3) Town Planner's Report**

Ms. Lowder stated she was able to speak with Representative Robertson about the proposed sidewalks in front of 1788 & 1866 Main Street including the signal update at Livingston Street & he said they have 2 options to look at right now where they can earmark funding for this fiscal year but also Mass DOT has a greater plan for resurfacing the road and doing sidewalks through that area so he's going to get an update on when that project is set to take place because they certainly wouldn't want to do a bunch of work that they end up having to undo.

Ms. Lowder stated she had proposed an initiative to waive the Sign Special Permit filing fees for the remainder or 2022 to encourage Main Street and Andover Street businesses to give their properties a bit of a facelift. They would have to pay for their building permit fees and some other costs, but she thought this would be a nice way to make things a little bit easier for them. Mr. Johnson stated he thinks it's a good idea, the only thing he would caution is it doesn't mean that they are opening the floodgates for electronic signs, they are talking about update cleaned up like Mac's Dairy, going from that old been around sign to a new updated sign. Mr. Fratalia stated he agrees that they need to help the businesses in town and

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waiving the fee, he's all in favor of that but when he was working in the city of Boston, they had a storefront improvement program that offered low interest loans. If they could do something like that for the residents of Tewksbury, coordinate with a local bank to help in that venture he thinks it will be a win-win for Tewksbury.

**MOTION** – Mr. Ryder made a motion to approve the proposed initiative to waive Sign Special Permit fees through the end of the year. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

### **(B4) Border Road – Non-Substantial Change Determination**

Jim Hanley of Civil Design Consultants appeared for the Non-Substantial Change Determination for Border Road. Mr. Hanley stated they've been out there building since 2017, they basically have everything done except for the curbing and the final placement of the final course of pavement. During the process one of the abutters reached out to the project owner and began a property line dispute. They went back through their files and feel comfortable with the determination they made with the original plan but to make the dispute go away and because they have the ability to do so and still comply with Special Permit Regulations for the OSRD they've been able to modify the plan so that the blue line on the plan is moved 10' into the property away from the abutter. Mr. Fratalia questioned if Mr. Madden was okay with what they're trying to do. Mr. Hanley stated yes, their attorney has worked with Mr. Madden's attorney and there's an agreement in principle for this change and then they are obviously going to have to update those deeds and rerecord things appropriately.

**MOTION** – Mr. Ryder made a motion that this is a Non-Substantial Change. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

**MOTION** – Mr. Ryder made a motion to approve the Non-Substantial Change for Border Road. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

### **(B5) 300 Ames Pond Drive – Approval Not Required Plan**

Jim Hanley of Civil Design Consultants & Dick Cuoco of Woodland Design appeared for the Approval Not Required Plan for 300 Ames Pond Drive. Mr. Cuoco stated there is currently some zoning changes coming down the road which would make the property pretty much useless other than office research so they're filing the perimeter plan in order to preserve the underlying zoning for a period of 3 years which is a requirement under Chapter 48 Section 6. They referenced the plans that outlined the wetlands to have that on record, so that moving forward if anybody looks at the property, they'll know that there's a large wetland area  $\frac{3}{4}$  of the way across the easterly side of the property.

**MOTION** – Mr. Fratalia made a motion to endorse the ANR plan for 300 Ames Pond Drive as requested. The motion was seconded by Mr. Duffy and unanimously voted 4-0.

### **(B6) 890 East Street & 118 Lumber Lane – Approval Not Required Plan**

Dick Cuoco of Woodland Design appeared for the Approval Not Required Plan for 890 East Street & 118 Lumber Lane. Mr. Cuoco stated these are two existing parcels, roughly 4.5 acres each, Lot 1 is pretty much maxed out so there was about 7,000 sq. ft. they could never use down the road so the owner asked if they would sell him 7,584 sq. ft. Basically all they are doing is moving one small lot line, shown as parcel A but parcel A has to be consolidated with lot 2 & it's not a separate building lot so it's basically just a lot lien relocation plan.

**MOTION** – Mr. Ryder made a motion to endorse the ANR plan for 890 East Street & 118 Lumber Lane as requested. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

### **(B7) 2212 Main Street – Preliminary Subdivision Plan**

Dick Cuoco of Woodland Design appeared for the Preliminary Subdivision Plan for 2212 Main Street. Mr. Cuoco stated this is the property where Maverick's Restaurant is. They're still working out some minor ownership issues on the property, they have some plans to move forward with it but in order to preserve their rights on the zoning they have a

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preliminary subdivision which they may end up building if things don't end up going exactly the way they'd like to go but it is a viable plan that could be built out.

Mr. Fratalia stated there are a lot of vacant offices in town, so he likes to tell developers when they come in with a plan hopefully, they have an occupant to fill that space.

Mr. Ryder echoes what Mr. Fratalia stated, they hope when the proposed development comes in, they have a commercial component with this, they don't want to see more empty store fronts.

Mr. Johnson stated there's no official action, its just submitted and noted for the record.

### (C) Zoning Bylaw Warrant Article

Mr. Johnson asked if these were the real numbers, 29, 30 & 31. Mr. Lowder stated to her knowledge, yes.

Todd Johnson, Chair of the Zoning Bylaw subcommittee/member of the Select Board and Steve Sadwick, Assistant Town Manager appeared to present. Mr. S. Johnson stated that he and Mr. Fowler also sit on Zoning Bylaw Subcommittee and have been a part of this the whole way along. Mr. T. Johnson stated this is a much discusses and lengthy discussion they have had for a number of years, involving a very comprehensive bylaw affecting many people, many issues they have in the community. The existing bylaw is just over 20 years old; they've had numerous changes in its lifetime and an effort began about 5 years ago to bring the bylaw up to current standard. The motivation to do that is to make it easier to use, to clarify some areas that over time had inconsistencies and to allow for a little modernization. This did fail to pass at the last town meeting a year ago by 2 votes. They went back to the drawing board, and he believes the process the committee followed over the last year or so has actually had a positive impact on the process, they've had more public input than existed previously, they've addressed a number of concerns that were addressed at the town meeting a year ago among others that have been raised since. He believes they have something that hopefully the community can get behind. Mr. T. Johnson stated the Planning Board needs to take action on this because they were before the town meeting a year ago, so they are respectfully asking for their support once again on what they believe is a very important update and improvement to the existing bylaw.

Mr. S. Johnson clarified that usually the Board would just give its recommendation to adopt or no recommendation. No matter what they recommend it will go to town meeting. This is a little different, in order for this to go to town meeting it has to get a favorable endorsement by a majority of the board to actually get to town meeting, there's a little more weight on what they do.

Mr. Sadwick stated the committee met 10 times from September to February, it was a very quick period of time that they went through items within the article. There were 14 different areas that were covered, the summary of revisions in the 2022 Zoning Bylaw Article compared to the 2021 article was given to the Board. It discusses things such as the fee in lieu of affordable units, there was an agreement on the committee that fee in lieu of units would be mandatory for multifamily projects and when it came to those open space residential developments the units had to be provided on site unless the Town was at 10% of the affordable requirement. At that point the board could, at their discretion accept a fee in lieu of affordable units. There were changes to appendix A, which was the table of use changes, multifamily was allowed in the Office Research District in the previous article, the committee decided to remove that so multifamilies are not allowed at all in the Office Research District. The committee added self-storage facilities in the Office Research District by a special permit. The committee also brought forward allowing preowned green vehicle sales by a Planning Board Special Permit in the General Business District so those are the first 2 major areas of changes. The third area is billboards, which the article last year changed from what they currently have today. The committee decided to keep what is in the existing bylaw because there was concern that came up at town meeting and during the public input sessions. Then there were some other technical things that were brought up for open space residential design calculations sidewalks had to be set forth to standards by DPW, landscaping requirements included native plantings and shrubbery and the use of pollinators.

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There was a screening maintenance requirement added that plantings that are installed to serve as a screening buffer according to an approved site plan shall be maintained as a screening buffer by the owner. There are some minor changes to the way definitions occurred in appendix A, then there were some definitional changes themselves such as building height, grading plane, added in gross floor area, green motor vehicles as well as steel storage units. Story was rewritten as well as story above grade plane. There are some additions regarding bicycles, family suite changes occurred, accessory building height, changes to parking to help with some of the issues found with mixed use developments that have the smaller sized spaces. Fences, the building code is now 7' for fences so the current bylaw is not in compliance with the building code, so this draft article now has what's required by the building code. The Medical Marijuana Overlay District components were incorporated into the Marijuana Establishment section and are allowed in the General Business District by Special Permit which pretty much covers the overlay district as it stands today but kind of takes it up to the Lowell border for medical marijuana dispensaries. So that's the changes the committee came up with, everything else in the document stayed as is. Mr. S. Johnson stated several of the changes Mr. Sadwick mentioned were at the suggestion of the building inspector so that they'd be consistent with the building codes. With the medical marijuana it was the intention of the subcommittee to look at the retail sale, but they decided because it's both a zoning and regular town bylaw issue that it would be better to postpone that way the Board of Selectman and all that can all be done at one time at a future town meeting that way no one has any questions of well what didn't you do it then. They did it out of an abundance of caution to make sure everything is done right one time and not piece mail, so it wasn't left out on purpose for any other reason. Mr. T. Johnson stated the Board of Selectmen is working on that with the town administration relative to the procedural side of the house so hopefully by the fall they'll be bale to bring the retail marijuana question before voters and it would be a 2 part process, a general bylaw related topic and potentially a change to the zoning to allow for that and the subcommittee was in full support of that change but out of an abundance of caution didn't want to have half the house in order and the other half not.

Mr. Ryder stated one area of concern that has come up numerous times is the Office Research, could he explain that a little more in depth for the individual to understand a little more what they are voting for at town meeting, what's current vs. what's going to change if this passes. What can go there now, who can approve it what will change if this does pass? Mr. Sadwick stated that biggest change when they get to single family dwelling attached, currently it is allowed in the Office Research District. Originally the ORD was a heavy industrial district and at one point the zoning subcommittee we have heavy industrial and commercial areas in town that don't allow single family housing but there's single family housing in it, the best example is the Woburn St area was zoned heavy industrial and there's a pretty vibrant residential neighborhood in there. There are also areas along Rt. 38 that have single family homes on it, so the planning board decided back then that they would allow for single family housing in those 2 districts. Fast forward a couple years and then the planning board brought forward the ORD to comply with what was in the master plan and that was just one of the uses that remained. The probably could have and should have netted it out at that point and time but just didn't and so that sits in there today and that's one of those uses that and ANR would kind of protect you for 3 years if you submitted and ANR in the ORD you would be able to do single family housing. The new zoning bylaw would not allow it because they are trying to keep the office research to a commercial type of use. As he said, multifamily was stripped out of this which was in the last draft, the article that failed, it's not allowed in the current. Pretty much most of the other uses, there are some new definitions and uses they've added, congregate residents, assisted living, continuing care, retirement communities, those are new uses being introduces into the ORD, basically senior housing & nursing homes was added in, adult day care services were added in, Planning Board Special Permit needed for all of those. Mr. Ryder thinks that help the audience, there's a significant group of abutters here that are or will be impacted if this doesn't change. Mr. S. Johnson stated to add to Mr. Ryder's question, the things that are allowed almost all of them require a Special Permit, nothing is by-right, they are going to have to come in and ask, they don't get to just do it. Mr. Sadwick stated correct, none of the new uses, but some that are carryover from the existing bylaw that are by right uses, the way zoning statutes are written they have to have some by-right uses in each one of the districts, the new ones are all Planning Board Special permits.

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Mr. Fratalia asked if they have ever done any review of the Family Suite after it gets approved by them. Mr. Sadwick stated that the annual recertifications are the responsibility of the homeowners, he doesn't know if they've been submitted to the building department. Mr. Fratalia stated they approve them pretty regularly, but after time goes by if they are still being occupied by a family member, what happens to those units, usually the annual re-certification is something that gets done to avoid problems down the road. Mr. Sadwick stated he'd have to check with the building department and that's kind of a carryover from the current bylaw as it is. Mr. Fratalia then asked about Article 5 about the sidewalks, DPW is going to be establishing the sidewalk fee. Mr. Sadwick then explained that when the current bylaw was written, and they put in sidewalks shall be constructed in non-residential facilities, the thought was along Rt. 38 sidewalks would be part of the build-out and they had in there with planning board's subdivision rules and regulations. The thought back when that was put in was that it would be for the physical specifications to the sidewalk not the waive ability that's in the subdivision rules and regulations so when they talked about this at the committee level the realization was, yes, we still want to have sidewalks put in by these commercial entities when they're building out these sites and that it should be to DPW standards but you still have your waiver ability under subdivision rules and regulations because that's a different animal and controlled by different state laws so there things that you can waive under the subdivision control law but in zoning you wouldn't have that ability anymore, this would all be DPW specifications for sidewalks. Mr. Fratalia asked if they would be given the board a fee with the application for people looking to put sidewalks in, correct? Mr. Sadwick asked who would be giving them the fee. Mr. Fratalia stated there's always been a question of what the fee would be in case they want to waive the sidewalk fee. Mr. Sadwick stated it says it may be determined that a predetermined fee for the use of the public way may be more advantageous to the town at the time of permitting and then, yes, they would know at that point and time. It would be known as they go through the permitting process. Mr. Fratalia stated he's glad its there so that when they come to the Board they aren't bickering back and forth between developers and them as far as what the fee is going to be because they are always coming in looking for different prices compared to what they can get done. Mr. Fratalia then asked if anything was put in there for visitor parking. Mr. Sadwick stated that they have made an attempt to correct instances such as 30 East St where they tried to put minimum parking in this bylaw.

Mr. S. Johnson stated that this has gone on for a long time, he was on board with the las version, he's more on board with this version. It definitely addresses some of the concerns that folks had at the last town meeting, this is incredibly complex, it interwoven, and a lot of time has been put into doing this and hopefully doing it correctly. He asked that people refrain from trying to pick this apart at town meeting, its not a good place for it for this kind of thing. There's too many things that attach to other things and they will end up in the same problem as last time and they will take what may be a very good product and lead them to a path where they end up not passing it again and he knows a lot of the things people complained about that they wanted gone would have been gone if they had passed this last time, instead it allowed all those things to continue happening over the pat year because they didn't pass it. It something they need to do, it's at a place where it should make everybody pretty happy at this point, so he hopes that town meeting will approve it, provided it gets there in a minute, but he thinks its an extremely good product at this point, its certainly taken its time getting created so he thinks all the T's are crossed and the I's are dotted, he hope everyone else feels that way.

Mr. S. Johnson opened the hearing up to the audience.

Bob O'Brien, Cartigan Rd – Mr. O' Brien stated he noticed on of the main intents of the bylaw rewrite is to have consistency withing the bylaw. Mr. T. Johnson mentioned consistency in a couple of his comments tonight. He referenced the ANR before them earlier in the meeting, stated he understands they have no control over them, but they can reject them, they don't have to accept them as easily and receptively as they did. Mr. O' Brien also commented that Mr. Ryder mentioned OR, it has been a lot of attention in the town and he's not sure the question that he asked about the details of OR was adequately described or defined. He feels it's the one bringing the audience level where it is and he's not sure it was described with all the changes that should have been. No disrespect to Mr. Sadwick but he doesn't think it was described as well, as its been said its very complicated, it's very interwoven and he doesn't think the amount of response that was given qualifies for the amount of details in OR. Mr. O'Brien then asked why wasn't the ANR brought up in the

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bylaws, it's a zoning question, it's a zoning approval, Mr. Sadwick corrected him saying it is not. Mr. S. Johnson stated Mr. O'Brien was calling it an approval again, it's an endorsement, not an approval, he's got to use his terms right or he's going to confuse people even more, the board did not approve it, they endorsed it. Mr. O'Brien stated he just questioned that it when a zone is frozen, as the board endorsed it is a zoning issue, that is his conception, consensus and he thinks if it's a zoning thing it should include ZBA activity as well, he knows it's a state mandate, but they don't address it in detail as much as they should. Mr. Sadwick stated, unfortunately the way the state statutes a written is that a tool under the subdivision control law is used in zoning for freezes, but zoning has no control over those freezes whatsoever, nor do local zoning bylaws, they just don't. Mr. Ryder stated he just wants to make sure and that's why he asked his question specifically, so people understand. He's glad Mr. O'Brien stood up to get a better understanding, is there something specific that is a point of concern, they can sit there all not, he doesn't have a problem with that. Mr. O'Brien stated not necessarily for him, but he's talking about others, the viewing audience and they people that might have ideas or thoughts at town hall and like he's said before with the bylaw committee process the question should be asked at this level and not at the town meeting level. He has a great understanding of it, probably not as well as they do but no one has all the answers to the bylaws either. Mr. O'Brien then asked if the ANR that was endorsed have the specifics on it that the representative or the applicant stated earlier. Mr. S. Johnson stated they have the mylar but he's getting off topic, if he wants to talk about ANRs for some reason during zoning as they pertain to the zoning bylaw, where they aren't, he can do that but he's now asking about some thing he stated they weren't doing public comment on and he's trying to jam it in here during the discussion for zoning bylaw. Mr. S. Johnson asked what would be the point of whether or not that is or isn't on the plan relative to the zoning bylaw. Mr. O'Brien doesn't like what happened, that doesn't make it wrong, so he's not having a conversation about the ANR that was earlier, stick to the zoning because that's what they are discussing right now. Mr. O'Brien stated he was trying to raise the issue and Mr. S. Johnson stated he's trying to do it in a place he wasn't supposed to and he's had multiple conversations with the office about this where they explained it to you but he's not happy with the answer he got so now he's trying to jam it in during the zoning discussion, it's not fair to everybody that they have to try to explain away something that's been explained in a place that it doesn't belong, so stick to the zoning article. Mr. O'Brien asked, with the zoning article are there any height changes made within the zoning in OR. Mr. Sadwick stated no. Mr. O'Brien asked if it was still 2.5 stories, Mr. Sadwick stated yes. Mr. O'Brien then asked if a condo unit is considered single family housing or it that considering multi-family. Mr. Sadwick stated under the current bylaw he doesn't think it would apply. Going forward in the new bylaw single family wouldn't be allowed in the office research district but he doesn't think they would classify condos as a single-family development. Mr. S. Johnson asked Mr. O'Brien to clarify his question, is he asking about current or future. Mr. O'Brien stated he's talking about the new one, the future bylaw. Mr. S. Johnson then stated they are both removed from the district so neither of those are allowed. Mr. O'Brien asked of single families were being removed and Mr. S. Johnson stated that was the biggest thing, that's what he just went through during the presentation. Mr. Ryder stated the new guidelines, the new zoning, will not align is changing, so if the zoning fails at town meeting it goes back, the parcel owner can come back and do whatever at the time to fall within the guidelines. The reason he did that tonight because the new zoning guidelines are going to change that will no longer allow a multifamily home there or a single-family home there, that's why he wanted to clarify those things to make everyone understand. Mr. O'Brien stated that with the endorsement of the zone freeze they can be allowed. Mr. Ryder stated that was correct, they'll be allowed single-family under the current ANR, but the multifamily is going away and the single-family will go away providing the zoning changes. Mr. O'Brien then asked under the current freeze if a condo was considered a single or multifamily. Mr. Sadwick stated a condo would be considered multifamily and they've had this conversation before, again there are single-family condominium units on route 38. He thinks it is Serena way, the property is owned by a condominium association, it's not fee simple because those homes are part of a condominium association but they're standalone single-family homes. Mr. O'Brien stated so there could be a single standalone unit that is allowed. Mr. Sadwick answered, under the existing, correct. Mr. Ryder stated it would not be allowed if the new zoning passes. Mr. S. Johnson stated Mr. O'Brien is talking about the way its owned versus looks. He's thinking in terms of big condo, no just think of it in terms of the way its operated vs. the way it looks. Single-family is single-family in terms of structures but the ownership of how they operate the place could be condoized to handle how they deal with it opposed to what you

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might think of is one house one deed that kind of thing but visually think of it, one house. Mr. O'Brien stated that's why he brought about the element of the height. Mr. S. Johnson then clarified that on the Office Research Mr. O'Brien didn't have a specific question he wanted clarified beyond the one they just did on the single family. Mr. S. Johnson stated they can get lost in a weeds, he would like to stick to specific questions anyone had to try and clarify.

Robert Wald, 97 Cartigan Rd – Mr. Wald stated in addition to height one of the concerns he has is where the height is measured from in both the old and new bylaw. Mr. Sadwick stated under the new it is the vertical distance from grade plane to the average height of the highest roof surface not included are spires, cupolas, antennas, similar parts of structures which do not enclose potentially habitable floor space. Under the existing it is the height of building shall be the vertical distance from the grade plane to the highest point of the roof not included are spires, cupolas, antennas, similar parts of the structures. The difference is building height is the grade plane to the highest point of the roof whereas in the proposed its from the average height of the highest roof surface which he believes is in compliance with the building code. Mr. S. Johnson stated that was one of the ones the building inspector had suggested as the way to do it because it'll be most consistent to how the building code is run as well, it will make the bylaw and building code consistent with each other. Mr. Wald asked if the one on the new code was based off average height, Mr. S. Johnson answered that was correct. Mr. Wald then asked if there are multiple levels to the grade plane, what happens? Mr. Sadwick stated the grade plane is reference out of the building code which is a reference plane representing the average finished ground level of adjoining the building and exterior walls where the finished ground level slopes away from the exterior walls the reference plane should be established by the lowest points within the area between the building and the lot line or where the lot line is more than 6' from the building between the building and a point 6' from the building, so again that's straight out of the building code. Mr. S. Johnson clarified visually, you're going to go out 6', if it drops way off after that were not counting the drop it stops at 6', so if it slopes a little bit from 6' you're going from here, after the 6' it doesn't matter how far it drops. Mr. Wald then asked if they did not endorse the ANR what would happen. Mr. Sadwick answered if the Board didn't endorse and ANR plan then the town clerk would have to certify that it was not endorsed and then they would be able to take it to the registry and record it as a plan that was an approval not required plan that action was not taken by the planning board. Mr. Wald asked how that would have changed it. Mr. Sadwick answered it wouldn't have changed the outcome at all. Mr. S. Johnson stated when they say its an Approval Not Required, its what it means, they're going to get it done anyway, its just cleaner when they do it with the endorsement for filing purposes. You're just changing the steps; they can do it with them, or they are simply just going to go to the clerk's office and do the whole thing anyways. This is why it's not something they are going to address in the zoning bylaw to somehow change that, they would have frozen zoning, just a different way through the clerk's office so what happened there wasn't something if they said no was just going to stop it.

Joan Unger, 160 Cardigan Rd – Ms. Unger stated she is still not clear on what can happen over on Ames Pond in Office research, she's just still confused. Right now, there can be single-family but not multi-family, does that mean condos are considered multi-family. Mr. S. Johnson stated again, were going back to how you're managing it versus how it looks. In your mind you're thinking single family homes, even if they are being run as a condo, they'd still need to be single family home to comply with the zoning that exists now, so don't think those condo buildings that go way up and have tons of units inside them, you'd be talking about stand-alone, they look like single family home to you or me. Ms. Lowder stated the idea of multi -family is that yours putting more than one unit on a buildable lot so right now we have 1 acre zoning so if you have more than 1 unit on that 1 acre it would be considered multi-family because that's how the zoning is right now. As Mr. S. Johnson said the mechanism whether it's a condo association almost doesn't matter. If you're talking about the Ames Pond property specifically, that's 30 acres, they could do 30 standalone condos or single-family condos or whatever you want to call them but still put themselves in a condo association. So, when they talk about multi-family, they really mean more than one unit on a zoning compliant buildable lot. Ms. Unger stated she still doesn't understand, is that a technicality, can it still become a condo. Mr. S. Johnson stated as of right now 30 single homes could be build there, of the next 3 year the current property owner has frozen the zoning that way, so over the next 3 year think that the zoning

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stays like it is right now as far as single-family home part, so for the next 3 years 30 single family homes could be built there. Under the new zoning, once that runs out, that option would go away. So, in 4 years no single-family homes anymore. Ms. Unger stated she was still thinking about condos, Mr. S. Johnson stated no condos like she is thinking, single family homes, they shouldn't use the word condo anymore because they're talking about a different kind of thing. No multi-family now, they don't have the ability to do multi-family there, now or in the future. That's under this zoning or the future zoning, no multi-family so put that out of her mind as a worry. Single family maxed at 30, 30 standalone buildings is the max you can do now for 3 years with it frozen. If the new zoning bylaw passes that's getting rid of single family & multi-family doesn't exist so on that property, after the freeze is gone, no single families, no multi-families. Ms. Unger then stated so office buildings are allowed and asked if there is a height limit on the office buildings. Mr. Sadwick stated there is, in the proposed article the height in the ORD for commercial buildings is 60' and the current allows for 35' but refers you to section 6300 in the current bylaw which states the planning board may waive the heavy industrial dimensional requirements in the office district upon granting a special permit, so the planning board would have the ability to waive the height in the ORD, so it would be 50' and what's proposed is 60'. Ms. Unger asked if that was a recommendation for the people that put this together, Mr. Sadwick answered yes. Ms. Unger then asked if 40B could always move in and put condos or whatever. Mr. S. Johnson answered not really, at this moment they are still working under the census from the previous 10 years which they met the 10% so they're still technically at 10% until the new census numbers become official at which point 40B is a possibility up until you get to 10% again at which point a forced 40B would not be allowed. Mr. Ryder stated that this is why article 1 is being changed, under Article 1 basically if they are under the 10%, they will no longer be able to take the fee in lieu of so they are trying to eliminate that situation and work towards maintaining the 10% at all times, understand the new census based on the population in town is going to change. So, this is going to help them to continue to work towards staying at that 10%. Mr. Unger stated she thought that they voted at town meeting not to do the fee in lieu of anymore. Mr. Ryder stated no, that was part of the last zoning that they tried to get in there but that did not pass with the last zoning change, as Mr. S. Johnson stated there are a lot of components to this zoning article that will help them to maintain the affordable housing population or numbers to eliminate that forced 40B. not to say that the town may not go a friendly 40B, but if there is that helps to maintain that 10% so they don't have the forced 40B put on the town. Mr. Ryder stated this is a method they can work towards to maintain those numbers of affordable units without taking a fee in lieu of to get us to that point. Ms. Unger stated she has one other question, what is the difference between an endorsement & approval, she really doesn't know. Mr. S. Johnson stated that when they endorse something they are really just deciding, did it meet the requirements that were put forth for it, if it does then they endorse it. An approval is when they are making a decision on something that's in front of them. Mr. S. Sadwick stated that an approval that goes before the planning board is an appealable approval so it's appealable by abutters or the applicant themselves. The real name of ANR is Approval Not Required Under Subdivision Law, so that's really what the planning board is doing, they're looking at a plan there's criteria in the state subdivision control law that says if it meets these 3 criteria then a subdivision is required. The plans that are being brought in are not plans that require subdivision so they're saying approval is not required under subdivision control law and they're endorsing the plan so it can be recorded for other purposes. A lot of times these types of plans come in when lots or lot lines are being reconfigured, like Border Rd earlier tonight.

Jessica Randolph, 1484 Andover St. – Ms. Randolph stated she was concerned with setbacks & multi-families, will this new zoning not allow the kind of development at the corner of North St & 133, the townhouses that are 3 story, they seem to have hardly any setback from the road, she doesn't know what's planned for greenery there. They're 3-story, and she believes they have an advertising sign of 509. Mr. S. Johnson stated to answer part of her question she could go to the community development office and can take a look at the submitted plans which would include landscaping. Mr. Ryder stated what could have been on that parcel could have been far worse than what is there. He commends the board, they had many meetings with the applicant on the reduction of the number of units, landscaping, sidewalks, a bus stop, they type of siding going on the homes, the way they oriented the properties. Mr. S. Johnson added they removed the commercial. Mr. Ryder continued that originally, they wanted 2 row houses both directions, they worked with them to

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break them up, set them back, offset, so that could have been a lot worse. Mr. S. Johnson added that it took a year to go through it with them. Mr. Ryder stated he knows she's looking at it now seeing it still in construction but the plans, the landscape design plan, they worked on that many meetings and back and forth and it will be a nice product when all is said & done. Mr. Sadwick stated the way that that was permitted was that there was an overlay district there, which again this new zoning article is getting rid of overlays, so they don't have this dual system of zoning for parcels and in that community overlay district it allowed for significant waivers on any setback requirements. The new zoning, if it were enacted, would require 25' minimum as far as frontage is concerned so he thinks it actually works for the planning board and the community's benefit that not having the flexibility that shows up in the current zoning bylaw. The overlay district it was approved for allows for a 20' front yard setback but then goes on to say that it can be waived. The new bylaw is saying its 25' and there's no waivers without going to the ZBA. Ms. Lowder added that currently under the community village overlay district there are no caps on density and this new bylaw would cap it at 7 per acre so to answer the question in a more direct way, that development wouldn't look the same. Mr. S. Johnson then added he'd like to point out how long it took Mr. Sadwick figure out the answer to what seems like a fairly straightforward question between the old bylaw & the new version. The new version he can pretty much reference in 2 seconds, the amount of sections he has to cross-reference to try and get the answer they need is an exact example of why the new bylaw is so important because what that just did to the person that probably knows this better than anyone in this room in order for him to find the answer, is why there is a problem with the one they currently work under, not to mention changes made just in general, just the ability to find that answer. Ms. Randolph appreciated the explanation about the limit of the 7 units the content to her is the most meaningful part, she's sure the drive-in coffee shop is very popular, but someone is going to get whacked going left there, just an FYI, she hopes traffic hold up well with that.

R.J. Shilly, 90 Cartigan Rd. – Mr. Shilly asked if the current zoning bylaw article does not pass in the May town meeting, what does that mean. Mr. S. Johnson answered if the new proposed zoning bylaw does not pass like last time, they go back to the old rules. For an example the one that the lady just brought up with the project at the end of North St & 133. All the ways in which that project went forward can happen again because the limits that are placed in the new zoning bylaw will not take effect so when the developers come in those are the rules they're working under, they go back to the one that is pretty much the one with the things in it that bother everyone by not passing the new zoning bylaw which is what happened a year ago. Mr. Shilly clarified he was asking what happens to the effort for trying to change the current zoning bylaw, legally what happens with that article. Mr. T. Johnson stated that town meeting has the final word as they do in all the matters that go before them, it's a 2/3 vote and if town meeting defeats this article, then we will continue to operate under the current rules that are in existence. As a member of the committee and as a select board member he can tell you that if they have taken 2 cracks at the plate over 2 consecutive years, they've invested 5 years of time, they've spent thousands of dollars with consultants, hundreds of meetings, public input sessions, emails, etc. and the one thing he can tell you through the whole process is that he has yet to run into a person who says the current bylaw is the way to go, everyone agrees that the current bylaw is flawed in very many ways and needs to be updated. They're driving a 20-year-old vehicle, in needs brakes, tires, a new battery, muffler and they're making do with what they have. He doesn't see that they will go back to the well if this does not pass. Mr. S. Johnson then stated that he said at the beginning of this that by bringing this back the limit for how long it should have taken should have been 2 years so they are jumping the line and the reason they have to actually give a positive endorsement is the only way this can go back within a year, otherwise it should have sat out for 2 years. If this does not pass, it's probably going to wait at least 2 years before something comes forward again. Mr. T. Johnson added they came back and over the last year they've made additional changes and those changes, in the eyes of the committee that worked on it, were very positive and additive to the process from the public for the most part. They heard what was said and took more input and what they present now is that additional improvement to it from 12 months ago. Mr. Johnson stated, to build on that, there's a lot more compromise to some of the areas than there have been previously, and he thinks that should mean a lot to folks, some of the people who fought the hardest about certain things, they're interested in compromising on a lot of things to get this right, he can't stress enough how much he hopes this moves forward in May. Mr. Shilly stated that he does not disagree that there is a need for this. He spoke at one

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of the zoning bylaw committee meetings and commented that this thing is too big, and he knows there's been discussions of piece mailing it but personally because this is so big, he still has a hard time backing it because he's sure there's unintended consequences that not even Mr. Sadwick can track down and explain, he understands the logistics of trying to break that up. Mr. T. Johnson stated they took that possible path into consideration, and it was the committee's decision that that was not going to be as productive. Mr. S. Johnson stated that its kind of dangerous to break it up because there's so much interplay within the sections, if one section passes now & the counterpart doesn't pass. Town meeting is held maybe once every six months, to do it the way he's talking about could take years and its much cleaner as one item. He knows it's a lot but again after 6 years they've been over this with a fine-tooth comb.

John Stanton, 130 Cardigan Rd. – Mr. Stanton questioned if the fee in lieu of would be based off of the federal census. Mr. S. Johnson stated under the current zoning bylaw they can pretty much do whatever they want. Under the new version, no fee in lieu of period, ever for any reason for multi-family. If someone builds a multi-family development, they are going to have to provide on site the affordable units and that will go towards the 10%. They won't take any money under any circumstance. For the single family they cannot accept a fee in lieu of if the town is not at or above its 10% requirement. Mr. Stanton asked if that was a rolling number or it lasted 10 years, Mr. S. Johnson stated that is for the next 10 years, once you hit that number now there are no forced 40B as an option anymore. In the 2 kinds of housing that can be built they cannot, will not, are not going to take a fee if they are not at 10%, in any case. The only option would be if they are above the 10% on a single-family home development it would be allowed, doesn't mean it will happen, only if they are above the 10%. Ms. Lowder stated the Andover & North development that Ms. Randolph referenced, that type of development would never be able to do a fee in lieu of, it is multi-family it would not be allowed. The Terramore Drive development is a 39 single family home lot subdivision, that is the type of project they would be able to exercise discretion, doesn't mean they would accept a fee in lieu of, but that is the only time they would be allowed to, after 10%.

Karen Slaver, 254 North St – Ms. Slaver asked if she heard correctly, did Mr. T. Johnson stated that for this zoning bylaw to pass they needed a 2/3 favorable vote. Mr. T. Johnson stated yes. Ms. Slaver questioned if that was still correct. Mr. S. Johnson stated the decision that was in effect at the last town meeting, they took it without trying to pick things out, the entire bylaw as requiring the 2/3 vote, the whole thing because it would be incredibly messy and unfortunate there are things sprinkled in there that might fall under this. They are working with the 2/3 vote for the whole thing to pass. In what she described it would be like if 50.1% were in favor there may be little things in there that could be passed, they aren't treating it that way. It's a 2/3 vote, all or nothing just like last town meeting because that rule was actually in effect at last town meeting, so nothings really changed since last town meeting. Ms. Slaver asked when the majority vote comes in. Mr. S. Johnson stated they would get to that in a few minutes with another hearing that they have for a zoning article & he'll talk about it, but she shouldn't worry about it for this one because this is a 2/3 vote which is where they come up 2 votes short last time, if it was just a majority, they would have shot right past, but they need 2/3.

Jessica Randolph, 1484 Andover St – Ms. Randolph asked for a clarification on the decision for going to 60' for ORD versus the current. Mr. Sadwick stated everyone has expressed an interest that the ORD should be for commercial use and for office research type facilities & what they are finding is that in a lot of research facilities, especially in biotech, they are seeing that they look for increased ceiling heights in order to do their manufacturing & research. So if this is truly going to be an office research district, which everyone has been telling us for the last couple of years now there should be no housing that this should be just for office research, they were advised by their experts that 60' works better for those types of organizations that look for space in the ORD. Ms. Randolph then asked if the ceiling height meant that the number of floors isn't really changed its more the ceiling height. Mr. Sadwick stated its building height in its entirety, again going back to the proposed bylaw there's no story requirement, it's just maximum height period. It could be a one-story 60' high interior that they have, or it could be broken into 4 floors, 2 floors however that mix works for an office research type facility. Ms. Randolph stated she understands the interest in having it as office research was so that lighting wouldn't stay on too late at night, is there any kind of limit how late lights stay on. Mr. Sadwick stated that would be picked up during the special permitting process, that becomes very site specific. Again, zoning is for the entire district so

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it's a little more general. As far as lighting and hours of operation that would be when there was an actual project before the planning board for a special permit. Mr. S. Johnson stated a good example would be Walmart, they have a 24-hour allowance for part of the year, so obviously their lighting would be on theoretically for 24 hours a day for the time they are allowed to be open those hours & he thinks they did it as a seasonal thing. The rest of the time it's cutting off at a time so another business who doesn't need or didn't get approved for 24 hours then they start to whittle that down into the hours they actually operate, so he thinks that's Mr. Sadwick's point about site specific in terms of who's doing what there.

Bob O'Brien, 110 Cardigan Rd. – Mr. O'Brien stated that during the bylaw hearings some were public, some were closed, Mr. S. Johnson corrected Mr. O'Brien stating all their meetings were public meetings, there were some that did not have public comment, nothing was done behind closed doors. Mr. O'Brien inquired when the 60' change was made for OR was it ever put in any type of minutes, on a closed meeting vs. a meeting that allowed resident input, Mr. S. Johnson reminded Mr. O'Brien there were no closed meetings, he corrected himself to say non-participatory meeting, and asked if there were minutes published for all of these events. Mr. T. Johnson answered yes, every meeting is a public meeting that was posted, and any resident could come and sit and observe the discussion and deliberation. Every meeting had minutes taken and then as the other Mr. Johnson stated there were public input sessions that they invited resident and member of the Tewksbury community to ask their questions or offer their input in addition those were taped and televised. Mr. S. Johnson said he should also note they also allowed for emailed comments at questions to come in. Mr. T. Johnson stated it's a requirement of the open meeting law, all these meetings have been posted and minutes have been taken. Mr. O'Brien then stated more specifically when this committee determined that the 60' height in OR as recommended by an outside consultant was that done in a Mr. S. Johnson interrupted to say all of the meetings were public meetings and minutes were kept, so if Mr. O'Brien wants to go back and go through the minutes for whenever anything was discussed he was free to do so. Mr. O'Brien questioned if it was every meeting and Mr. S. Johnson answered every single meeting. Ms. Lowder informed Mr. O'Brien he could request a copy of any draft minutes, the reason the ones he's talking about from the 2/27 meeting of this year haven't been posted yet is because we haven't had a subsequent meeting where they could be approved where they would end up on the town website, but he can certainly request any meeting minutes they he sees are not posted. Mr. O'Brien asked if the committee was abolished, are they meeting, they have to have another meeting to get that approved to put on the website. Mr. T. Johnson stated that is correct and the committee is not abolished. Mr. S. Johnson asked Mr. Sadwick just to clarify, this office research, they are trying to condense and take out the things that were really bothering everybody but, the tradeoff to that is, it needs to be what it says it is, which is something that is attractive to being an office research area. The consultants, who have no skin in this other than expert in what they're experts in suggesting that that is what the industry is looking for unless the town wants to make itself non-competitive for those kinds of businesses this is what they need to do. They are putting such a narrow focus on what can go there, to change that would put Tewksbury at such a disadvantage against other communities when office research type companies are looking for space and from a tax base and that kind of thing they were looking at. It felt like they were sneaking around the question of why they did that, because that's what they're being told and their understanding of what will make Tewksbury competitive and that's what their focus on for that area. Mr. T. Johnson 100% agreed.

Robert Wald, 97 Cartigan Rd. – Mr. Wald stated he was one of the people who raised a number of objection to the zoning change that was proposed a year ago and he would like to thank them, for the work that went in 5 years before and the work that they've done since then because the changes, removing the multi-family housing from the OR seems like one of the things that he wanted to see done and the additional things that were added to the OR seems to be good things also. After being a pain in the ass it wasn't clear that it was appreciated last time but, in any case, he does thank them for the work that they've done, and he looks forward to the town meeting. There are some things he wants to read more carefully but overall; it's a good effort and his schedule didn't permit him to participate in those meetings, so he was worried it was going to come out to be something not all that great and Mr. Sadwick asked him what his suggestions were and a number of them were incorporated so thank you.

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**MOTION** – Mr. Ryder made a motion to close the public hearing on Article 29. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

Ms. Lowder asked for clarification of it had to be a recommendation or endorsement. Mr. S. Johnson clarified its either recommend adoption, recommend indefinite postponement or no recommendation.

**MOTION** – Mr. Fratalia made a motion to endorse Article 29 in its entirety as written and recommend adoption of Article 29. The motion was seconded by Mr. Ryder and unanimously voted 4-0.

Mr. Sadwick stated the zoning map is really the implementation component to the zoning article itself. If the zoning article passes, they would move forward with it if the zoning article fails they would just remove that article. Just for peoples understanding what was driving the revisions on the map was, 1. To make it match up to what was in the bylaw, 2. Was to eliminate a number of split zoned lots, there's a number of lots that have mixed zoning on them which becomes, again, very confusing for the town, the abutters, & the owners as to what can be done on those. This cleans that up and removes all the split zones in town. It aligns Main St. districts with the master plan. The current zoning bylaw has a commercial district that runs from the Lowell line to the Wilmington line, everything on Rt. 38 is treated the same, everyone there is aware that Rt. 38 as some different areas that have distinct areas that need to be treated differently that what the master plan called for and that's what this zoning map does. It reduces the number of overlay districts, they would take out 8 overlay districts and be left with 3 so currently they have 11, which makes it very confusing, they are down to 3 very simple overlay districts. Mr. S. Johnson asked what the 3 remaining were. Mr. Sadwick answered, the Floodplain district, groundwater protection district & the interstate overlay district. Mr. S. Johnson clarified so not like the overlays they currently have that deal with approvals, that's not the kind that are staying, these deal with other things. Mr. Sadwick further clarified that floodplain and groundwater are pretty self-explanatory, for peoples understanding the overlay district was created for specific areas in town that have interstate interchanges so it can only be in the 93, Dascomb Rd., East St. area and again its an overlay district that need to be put into place is it at that location it up off of Rt. 30 & Woburn St. and that's it as far as map changes are concerned.

**MOTION** – Mr. Ryder made a motion to close the public hearing. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

**MOTION** – Mr. Ryder made a motion to approve the positive endorsement for Article 30. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

Mr. S. Johnson let the audience know that Article 30 is a citizen's petition. This Article will in fact be impacted by that multi-family change that was made, signed off by the governor. The vote for this at town meeting does not require a 2/3 vote, it simply requires a majority, so 50.1 gets it done as opposed to the zoning article which needs the 2/3 vote.

Gora Banerjee, the trustee of the Maple listed trust, appeared. 10.5 acres of land plus a single-family house is on this land and he has had awful hard luck since 1986. He tried to sell it as is, its almost forest like right now. 2 developers offered money that didn't cover even half his cost. His only way out now to pay off his debts is if he can rezone this property to single-family, free-standing housing, whatever the Planning Board will allow him to do, he'll do it, whatever the town folks will allow, he will never break any law.

Mr. Ryder asked for clarification, this request is for residential R40 to multi family. Mr. Banerjee said yes. Mr. Ryder stated that Mr. Banerjee just stated he'll do whatever for single-family homes, his request is already single -family home zoned, is he looking to put multi-family homes on this parcel. Mr. Banerjee stated yes, right now its one house per acre of land, and he would very much like to have a few more single-families, free standing homes per acre of land. Mr. S. Johnson stated he thinks the confusing here is what Mr. Banerjee is describing is not the technical term of what these are. What he is suggesting is actually something they don't have in Tewksbury unfortunately; they don't have smaller lot sizes. Its pretty much single-family 1 acre, they don't have a version for single families on lots smaller than that. The next

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option is multi-family, what he's describing as to what you want to do there is not all that would be allowed in the multifamily district. The fact that he'd be able to stand alones, the design of how he would build them, yes, he could build what he's describing but you're asking that it be changed to multi-family which actually allows building that have multiple residents within 1 building. Mr. Banerjee said no. Mr. Johnson explained by approving this that's what happens, there is no limit if this changes to multifamily, there is no limit that would prohibit him from doing anything than what he just described, he'd be able to do anything up to whatever is allowed in a multifamily zone so there really isn't a mechanism to create what he's talking about. He can continue to ask for the multi-family change, but it would be disingenuous to allow him to describe it the way he just did. Mr. Banerjee stated he's nervous. Mr. Johnson said he understood, and he wasn't upset he just wants to make sure its clear to everyone, what he would do there may be what he says he's going to do there, but this change would allow him to do a lot more and there's no way to limit it to what he's suggesting here. Mr. Banerjee stated all he is looking for is to make some money back and pay all his debts, the only way he can do that is if he's allowed to or the person, he sells it to, if they build one house per acre, he'll never be able to get his money back so if he or someone else can build 5 or 6 houses per acre then. Mr. Johnson stated the density he's describing he understands, the multi-family district would allow him to do more than that and there's nothing for them to do here to limit it to what he's describing. Basically, what he's asking in this article is to change this to multi-family, there isn't really more to say. Mr. Banerjee stated his lawyers at the time wrote multi-family, that is not correct then and what he's planning to do. Mr. Johnson stated it is correct in that there is no in between option in Tewksbury, they don't have small lot zoning, so his choices are single-family r40 and MFD. They don't have like other communities have like an r15 or a r20 or 30, they don't have those option, so he gets t he 1 acre version or multifamily, they don't have the in between. For his purposes, the article is what he's asking for but when he tells people he's going to limit to X number of houses, he can say that, but nothing actually makes that fact. Mr. Banerjee asked if he needed to change the language. Mr. Johnson stated he can't, this is really the only option for what he can request. Mr. Banerjee is just promising everyone that it won't be condos. Mr. Johnson stated that he can't allow him to say it that way because as he pointed out he might sell the property and he can't force the next owner to keep his promise.

Mr. Duffy stated he's not comfortable making a recommendation on it at this time. Mr. Johnson informed him that they have to do one of 3 things, make a recommendation to adopt, a recommendation to indefinitely postpone or to make no recommendations. They are required to do one of the 3 at this time so he would be leaning toward the 3<sup>rd</sup> on for now.

Mr. Ryder stated he's sympathetic to his situation however opening up this can of worms, as someone sitting on this board, is not something he's willing to do. He thinks what they are doing here, and he has the right to bring it to town meeting, but he thinks allowing this to happen is going to create multiple parcels within town under the new governor's guidelines, to bring in people just to vote their way, they would be opening pandora's box because the moment this happens at the next town meeting there is going to be 5 or 6 other parcels, they're going to be citizen petitions to turn it from R40 to multi-family and his intentions are great but as he stated you potentially could sell this and the individual that's buying this parcel say sure I'm going to put in single family houses thank you, but they are going to come back to this board and they're going to say well it's zoned for multi-family, I want to put in 15 units, that intersection already is a hazard, he doesn't feel comfortable that he can sit there and support this.

Mr. Johnson stated hi sympathies for his position are different from what he's required to make for a decision sitting on this board. He has to look out for what's in the best interest of the town and as Mr. Ryder said he doesn't think there's anything they can do to stop what you just described because the governor's intention in passing this was to make that happen, so its coming but that doesn't mean that this board has to give it a thumbs up if they don't think its in the best interest of the town, then it goes to town meeting and its up to town meeting. Mr. Banerjee is certainly free to bring it forward regardless of their recommendation, he'll still be able to go to town meeting with this and see what town meeting thinks. Whatever recommendation they make is not the final say, he still gets his day at town meeting to make his case, but they are required to make their recommendation.

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Mr. Johnson opened it up to the audience.

Bob Ferrari, 676 East St. – Mr. Ferrari stated he lives directly across the street from this property, over 20 years ago there was a story of trying to put 1,000 unit in this location, just before he moved in the area, thankfully it did not happen. He just heard that Article 29 & 30 was supported by the planning board, this flies right in the face of that so he would be shocked if they supported this in any means or any stretch. He knows that the East St pumping station across the street from this practically exploded into people's homes 2 days ago, can't handle more people at the moment. Mr. Ferrari stated he believes the land is within well zone protection 2 off the state hospital wells, its either 2 or 3, there's 3 different zones of protection around the state hospital for the wells, but that is something to consider in their decision. Mr. Banerjee stated that's crazy stuff that he just heard. Mr. Johnson said before they got into a back and forth, Mr. Ferrari was just stating something he heard, people can feel however they feel about his comment. But he doesn't feel like he has to refute it. Mr. Banerjee stated he felt upset that kind of hearsay or rumors that absolutely not true. Mr. Johnson reminded him that he said he heard, it only has the weight that anybody's willing to give it based on him saying he heard it. Mr. Banerjee stated one thing about the sewer line, his tentative or wishful thinking plan was to go the other way from Maple St. to Shawsheen St, not to East St.

Vinnie Allard, 225 Maple St – Mr. Allard stated he understands Mr. Banerjee's situation but hopefully he'll be sympathetic to his. He has 2 daughters 3 & 1 right on the corner, less than a quarter mile from the property and Maple St over the last 15-20 years has become a drag strip, the amount of cars he sees speeding on that road is insane, adding multi-family to that road whether its his intent or not would absolutely magnify that. It's potentially zoned for 7 units, he thinks its like 48 units potentially could go in there hypothetically, that ridiculous. He knows it's not Mr. Banerjee's intention but he completely sides with the board and thanks them for their consistency in trying to preserve what the town in whether it's the signs or the single-family homes or the neighborhood fields or whatever it is they are trying to preserve here and being consistent with that even with all the zoning changes, thank you.

**MOTION** – Mr. Ryder made a motion to close the public hearing. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

**MOTION** – Mr. Ryder made a motion to recommend indefinite postponement. The motion was seconded by Mr. Duffy.

**MOTION** – Mr. Johnson made a motion to make no recommendation on the article. The motion was seconded by Mr. Fratalia.

Mr. Ryder stated with the governor's new guidelines, they're taking a gamble of when this comes in and they have 75 people at the town meeting. Historically they've seen the numbers are going down, he'd hate to see that this is something after they come over 2 large zoning articles and they have a mass exodus, and they turn around and there's 30 people left. His opinion is he thinks it's the boards responsibility to listen to some of the residents and preserve the single-family lots that they have, and he doesn't want to be sitting here in a month saying we just wish we took that extra step, so that's why he thinks they should move for indefinite postponement.

Mr. Johnson stated it's the part that they may have to keep doing this going forward and they are going to have to look at them all individually of that reason that he thinks he'll withdraw his motion and they will go with Mr. Ryder's for a vote. Mr. Fratalia agreed.

**MOTION** – Mr. Ryder made a motion to recommend indefinite postponement. The motion was seconded by Mr. Duffy and unanimously voted 4-0.

Mr. Johnson explained to Mr. Banerjee that the Board made its recommendation to the town meeting for indefinite postponement of the article All that means is that they are recommending to town meeting to vote to indefinitely postpone this which would be to defeat the article. Hos article will still go to town meeting, and he'll still get a vote from town meeting, this is just their recommendation to town meeting as to what they think they should do. They can ignore the

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board or take their recommendation and vote that way or its possible eh could withdraw the article, their recommendation does not change any of that other than they've made a recommendation to town meeting for what the board thinks they should do. Mr. Banerjee starts to ask if he won, and Mr. Johnson states that if he wins their recommendation means absolutely nothing. If they approve his article at town meeting then it will be changed to multifamily, and they will be that the board will have no further role in the process. What he is looking for at this point, if he wants this to happen is he wants to win at town meeting, he wants town meeting to approve this article. Mr. Banerjee asked is he won if he would be back in front of this board, Mr. Johnson stated he would see them when he went to do something, but he will be doing it with the okay of being in a multifamily district of that's the case if he wins. Mr. Banerjee asked if he withdraws the article then he can go ahead, if able, to build more than one houses per acre of land or just one. Mr. Johnson stated if he was to withdraw this article, he would remain in the R40 district, one house per acre, if he withdraws it and does nothing. If he goes to town meeting and his article defeated, he will still be in the R40 district where he can build 1 house per acre. The only way he can build one house per acre is if he gets the article approved at town meeting. Mr. Banerjee then asked at town meeting all he needs is 50.1% of the vote. Mr. Fratalia stated just to be clear, they are not supporting the article as presented, Mr. Banerjee stated he understands that but that doesn't preclude him from going forward. Ms. Lowder clarified this vote is a recommendation only, it doesn't preclude him from going to town meeting, it doesn't mean the town meeting won't approve it. It just means that they're recommending it not be adopted, but he can move forward.

**(D) 60 Highland View Road – Highland View Realty Trust: Site Plan Special Permit, Special Permit & Land Disturbance Permit (continued from 3/28/22)**

Matt Hamor appeared for the Site Plan Special Permit, Special Permit & Land Disturbance Permit for 60 Highland View Road. Mr. Hamor stated he is going to request a continuance; the engineering department is still reviewing their plans. They didn't go through the effort of submitting all the plans to all the planning board members until they got engineering sign off. They are working with Kevin Hardiman to get sign off on the drain system.

**MOTION** – Mr. Fratalia made a motion to continue 60 Highland View Rd to 7:20 P.M. on April 25, 2022. The motion was seconded by Mr. Ryder and unanimously voted 4-0.

**(E) 160 & 170 River Road – Trull Brook Golf Course, Inc.: Site Plan Permit & Land Disturbance Permit (continued from 3/28/22)**

Applicant requested continuation to 4/25/22

**MOTION** – Mr. Ryder made a motion to continue the Site Plan Permit & Land Disturbance Permit for 160 & 170 River Road to April 25, 2022, at 7:10 PM. The motion was seconded by Mr. Fratalia and unanimously voted 4-0.

**(F) 85 French Street – CIL Realty of Massachusetts: Land Disturbance Permit (continued from 3/28/22)**

Applicant requested continuation to 4/25/22

**MOTION** – Mr. Ryder made a motion to continue the Land Disturbance Permit for 85 French Street to April 25, 2022, at 7:15 PM. The motion was seconded by Mr. Duffy and unanimously voted 4-0.

**(G) 940-960 Main St – 960 Main Street Development, LLC on behalf of John D. Sullivan: Modification to Site Plan Special Permit (continued from 3/28/22)**

Applicant requested continuation to 4/25/22

**MOTION** – Mr. Fratalia made a motion to continue the Modification to Site Plan Special Permit for 940-960 Main Street to April 25, 2022, at 7:05 PM. The motion was seconded by Mr. Ryder and unanimously voted 4-0.

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## (H) Administrative Items (continued)

### 1. **2122 Main Street – Concept Plan Review**

Matt Hamor & Derek Leader appeared for the concept plan review for 2122 Main Street. Mr. Hamor stated that they've been doing some work with the town vetting out a potential solution to a problem the Leaders discovered when they purchased the property. The construction of the retail building was going to be financially problematic for them, coupled with the affordable housing component of the townhouses is making this difficult for them to ultimately develop the plan. If they have to develop the plan, they are going to figure out a way to get through that but what has happened is Donna's Donuts which is directly adjacent to this site is in much need of a parking area. They've spoken with those folks and vetted out a plan with the town and what they are proposing is to replace the area where the commercial building was, do a full parking lot, that parking lot will service Donna's Donuts, it will help with the operations of Donna's Donuts, then add 3 townhouses to this and make this entire development a mixed use development by the incorporation of the parking lot to be added on to Donna's Donuts thus having both properties governed by a Special Permit. They would then go and modify the existing special permit for 2122 Main St with this configuration & take recommendations that were brought forth from the IDR Meeting that pertained to some of the walkways, a little bit on the parking configuration and some snow storage comments that came up during that meeting. The proposal thus far has been positive from the town otherwise they wouldn't have come here before the board to get their view on this. They are looking for their input in order to take the next step where they would formally go before the Planning Board and request a modification and do the engineering necessary in order to make this project work, that they think is going to benefit Donna's Donuts, it's a tight configuration & they are in desperate need of a parking lot for their facility.

Mr. Ryder stated they are going down the same path they went with the old police station, parking lot as a commercial component, not meeting the bylaw. By adding a parking lot to an existing commercial building, again they are going to go down and create another, well we did it on this lot, we did it on that lot, the intent of the bylaw is to have a commercial component with the residential units. They went back and forth with the development across the street about having a commercial component with that development, they went through this with Colonial Drive, the development across the street from Colonial Drive, they went through this with the old wicked cheesy lot, the corner of Marshall St. The guideline states a commercial component in a parking lot is not a commercial component, if the town is supporting that then he thinks the planning board needs to have a conversation with the town because that's not the intent of the bylaw. They went through this back and forth with the old police station. Mr. Hamor stated he didn't know the background of those properties; he thinks there this may be different is that Donna's Donuts property would be incorporated into the overall special permit. Mr. Ryder questioned if it was the same owner. Mr. Hamor stated no. Mr. Ryder stated they were skirting the bylaw, it's a no for him, he thinks they're going down another slippery slope.

Mr. Duffy stated he didn't have the benefit of being on the board with those previous developments, but he knows exactly where they are and what Mr. Ryder was talking about, and he also knows that he sees a lot of open glass as he drives down Main St. and he questions, along with many residents, do they need that space. He drives by all these beautiful new spaces, and he doesn't see a tenant in any of them, not a single one & he's not sure about the slippery slope thing, if everyone will say they don't want the commercial component, is that something that if they did, they would be setting some sort of precedent.

Mr. Johnson stated he thinks from Mr. Ryder's perspective he would say yes if he's asking him, he worries about the slippery slopes sometimes too but the one thing he does know is that they do always when it's something they have to ask for they can always make a decision each time. So, for him, the one he was pointing out by the police station, didn't work and they were to say here that they thought it did & they had legitimate reasons for that, then he doesn't see it as a slippery slope, he sees it as a case-by-case decision that the board can make if they want. The only way this does work is if it's considered a commercial component because that if still necessary, it's just in this case this would be the commercial component so it's not that they wouldn't have it. If this goes forward and that's how it's approved that would be the commercial component and take the place of the 2 units that were here previously but from a definitional perspective Donna's would be the commercial component and that would be the residential. Mr. Duffy then stated the parking lot added for the benefit of Donna's Donuts would be considered the commercial component. Mr. Johnson stated yes, they referenced the plans in front of them. Mr. Duffy stated, just his opinion, but all he sees is 2 empty buildings there in the

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future and to him 3 more residential units is more where the demand is, its 3 more Tewksbury residents that are going to be able to buy a home.

Mr. Fratalia stated they went through this a number of times and his first opinion when seeing it was where's the commercial component, Mr. Hamor has done a number of developments here and know there's always been a commercial component with a business with residential. He knows Donna's Donuts does need parking & asked the town's opinion on the IDR. Mr. Hamor stated he spoke with the assistant town manager to go through this scenario & he thought there was a window for this in benefiting a business that is tight in constraint in the way that it functions as a business. It was directly adjacent to this property to incorporate Donna's Donuts into the special permit then combines the 2 properties into and overall special permit. Ultimately this board is the board that has the final say, that's what led them to go to an IDR, to see if there was any feedback from the municipal department standpoint whether this is a viable solution from an engineering standpoint it's doable, it's really whether the board wants to take a look at this case to see if there's a net benefit to an adjacent commercial business that would be further expanded to incorporate this parking lot to alleviate some past concerns with operations of that business on that property, its tight, they have a drive thru, its limited parking. His first concern was opening pandora's box with Donna's Donuts as an operating business, the way this was laid out was to leave Donna's Donuts the way its currently configured & add the parking lot to deal with the overflow congestion that obviously happens on the morning and weekends. With their direct adjacency it seems to work & this is the opportunity to do it, if not the Leaders are going to be forced to develop the property the way its permitted if they choose to do so but Donna's Donuts won't have a parking lot available. Mr. Fratalia stated the other solution would be to sell that particular property or that particular to Donna's Donuts to do the same function rather than what Mr. Ryder said skirting the bylaw, or what you could do is sell that to Donna's Donuts and still continue with that project with the special permit, putting a commercial component like they had in there and reduce the number of units but a that's how he sees the best scenario for this particular piece of property & with that said where are they with affordable housing components. Mr. Leader stated is about 25% at the current levels. Mr. Hamor stated maybe 4. Mr. Fratalia stated he's all for that then went on to explain to Mr. Duffy that this is already an approved project, special permit with the commercial component being the jewelry store, that was the original approved plan, which is in place now, so they want to change that. Mr. Fratalia stated he did not see a postal delivery area, plans usually include that. This is not their typical plan, and he doesn't want a new design coming at the town, he'd like to see the commercial component being incorporated in this rather than being on the side.

Mr. Duffy stated this seems to be a very unique situation with an abutting business that at glance, seems to be a pretty good fit. He asked if Mr. Johnson could explain what went on at the old police station lot that has some similarities here. Mr. Johnson thinks it was the suggestion of the board at that time that they were making, he thinks the parking was technically going to be to the town but sort of specifically to the housing authority that was the limit. It wasn't actually something they had to make an official determination on, the feeling in that case was that was really being done as a way to get around building a commercial unit but not really giving any benefit to anyone other than the developer for what they wanted to do and not so much what that commercial component was giving to the town. Mr. Ryder stated the RFQ that went out, the RFP that went out for that parcel was that whoever the owner would be was to build a parking lot for the housing authority, that was part of the RFP, so their intent was they were going to put in a guard shack on that parking lot and have that as the commercial component to the development. Mr. Johnson stated he's not making the argument for it, just a statement, that was a piece put out by the town just it had an RFP involved, the difference from that property to how he would look at this you one you could see as different things. Mr. Ryder stated obviously this parcel, when purchased, was bought with the due diligence that it met a certain requirement to put residential components it had to have a commercial component so knowing now that this was going to be something that was going to be allowed this parcel became worth that much more, they are building a parking lot which is maybe \$75,000 and they're gaining 3 residential units that they are going to rent or sell. They're going to make it on the lease or sale to Donna's Donuts and then turn around are they're going to build 3 additional residential units they're going to make money on. At the end of the day, this parcel was purchased under the guidelines, they purchased a parcel it needs to meet the guidelines for residential has to have a commercial component, in a commercial component if you read the guidelines, it doesn't say a parking lot, it says a commercial unit and that is not a commercial unit, it needs to have a commercial component. Mr. Hamor stated he reads it the same way, they thought it was different. Mr. Ryder stated that is the problem, they thought it was different and the difference is that we're going to open up another, that what happens. They sat here for the last 2 hours talking about zoning, the board gets hammered enough about what gets put in front of them & to permit this, it cant happen and it cant happen while he sits on the board because that's not the intent of the bylaw because that lot becomes that much more valuable to anyone that bought this 6 years ago , 10 years ago knowing that they could have put a parking lot there, they

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could get all residential units if I build a parking lot the next door. Mr. Johnson stated Mr. Ryder just brought up an interesting point they are going to need clarification on. This is multi-family, it does have an affordable component, his guess is that is only going to require a majority vote. Ms. Lowder agreed. Mr. Ryder said he understands, they have a parcel they are trying to develop, and he gets the commercial component there's an expense to it but there's a value to those residential properties so meet the guidelines, build a commercial component and then at that point they have to make sure they meet the parking for that commercial component, he just doesn't feel comfortable doing this, they are walking a very fine line here.

Mr. Fratalia stated for these special permits he usually makes it a point to tell the developer that there's a lot of vacant office space in town but if the residential sells/rents out but the commercial space stays vacant its not good for them but it obviously work for some developers because they have their rentals and the commercial is secondary, it may take a while but they do go ahead and do it.

Mr. Duffy asked if anyone from Donna's is anxious to get additional parking. Mr. Leader stated he came up with this plan because he didn't want to be known as the guy that put Donna's Donuts out of business by taking away all their parking so he's the one that had Matt change the plans, he was thinking of Donna's Donuts being a small business owner himself. Mr. Fratalia questioned if it was being rented to them now, Mr. Leader answered they wanted to lease it in perpetuity to always be their property for their use. Mr. Ryder stated if this was something that was going to be allowed Donna's could have purchased it, built units and met the guideline so its not the guideline. Mr. Hamor answered was they couldn't afford to purchase the entire parcel. Mr. Ryder stated they probably couldn't afford it the way it sat with the guidelines, having to build a commercial component where they already own a commercial component. They know they way real estate is selling right now, residential is hot, commercial is not so that parcel just became that much more valuable. Mr. Johnson stated they are grandfathered so if they did that, they would open themselves up to all the non-conforming.

Mr. Johnson stated he gets the point on all sides. Mr. Duffy has a point, there's a lot of empty commercial units, the money is in the residential units. The only reason most of the commercials are being done is because they are a requirement, they'll do the minimum that's necessary from the commercial standpoint to meet the requirement if it stays empty its really no great loss to the property owner because the units are footing the bill. This site does have affordable units, it's something that keeps being brought up, if this is done what they get for affordables ticks up a little and in this case he can see looking at this differently than the other because you can see right now today how much the need for that parking is because they are using it for parking right now, so it not an abstract idea, it is in fact in play right now showing how much its necessary. He also has to think about its Donna's Donuts now, maybe Donna's Donuts forever but if somewhere down the line if they decide they want to open their place elsewhere, wherever goes in next, do they need that parking, that's something he has to weigh.

### **Old Business**

There was no old business

### **New Business**

There was no new business.

### **Correspondence**

There was no correspondence.

Mr. Duffy stated he is very happy here to be working with the board and he looks forward to a very productive term here. He'd like to thank Mr. Delaney for his years of service with the board and town of Tewksbury and he's looking forward to working with them all to make Tewksbury a better place.

### **Adjournment**

**MOTION** – Mr. Duffy made the motion to adjourn the meeting at 9:52 P.M. The motion was seconded by Mr. Ryder and unanimously voted 4-0.

**Approved on: April 25, 2022**

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*List of documents for the 4.11.22 meeting*

*Documents can be found in the Community Development Office*

- 7:00 p.m.** Call meeting to order
- A. 7:00** Approval of Minutes: March 28, 2022
- **Meeting Minutes for March 28, 2022**
- B. 7:00** Committee Reports/Administrative Actions
- 1- Committee Reports
  - 2- Board Reorganization
    - **No materials submitted**
  - 3- Town Planner's Report
    - **Memo from Alexandra Lowder dated 4/8/2022**
  - 4- Border Road – Non-Substantial Change Determination
    - **Cover letter from Civil Design Consultants dated 3/30/2022**
    - **Revised Subdivision Plan dated 3/10/2022**
    - **Review letter from Kevin Hardiman dated 4/6/2022**
  - 5- 300 Ames Pond – Approval Not Required Plan
    - **Cover letter from Civil Design Consultants dated 3/31/2022**
    - **Form A dated 3/31/2022**
    - **Approval Not Required Plan dated 3/22/2022**
  - 6- 890 East Street & 118 Lumber Lane – Approval Not Required Plan
    - **Form A dated 3/23/2022**
    - **Approval Not Required Plan dated 2/10/2022**
  - 7- 2212 Main Street – Preliminary Subdivision Plan
    - **Cover letter from Woodland Design dated 4/6/2022**
    - **Preliminary subdivision plan dated 4/2/2022**
- C. 7:00** Zoning Bylaw Warrant Article
- **2022 Zoning Article Compared to 2021 Article**
  - **Final Update to Zoning Map 2022**
- D. 7:05** 60 Highland View Road – Highland View Realty Trust: Site Plan Special Permit, Special Permit, and Land Disturbance Permit (*continued from 3/28*)
- **Revised site plans dated 4/1/2022**
  - **Memo from Alexandra Lowder dated 4/8/2022**
  - **Email from Kevin Hardiman dated 4/8/2022**
- E. 7:10** 160 & 170 River Road – Trull Brook Golf Course, Inc.: Site Plan Special Permit & Land Disturbance Permit (*continued from 3/28*) – **applicant requested continuation to 4/25**
- **No materials submitted**

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**F. 7:15** 85 French Street – CIL Realty of Massachusetts: Land Disturbance Permit  
*(continued from 3/28) – applicant requested continuation to 4/25*

- Letter from Kevin Hardiman dated 4/8/2022

**G. 7:20** 940-960 Main Street - 960 Main Street Development, LLC on behalf of John D. Sullivan: Modification to Site Plan Special Permit  
*(continued from 3/28) – applicant requested continuation to 4/25*

- No materials submitted

**H. Administrative Items (continued)**

1- 2122 Main Street – Concept Plan Review

- Concept plan dated 3/8/2022

**Old Business**

**New Business**

**Correspondence**

**Adjournment**