

SPECIAL TOWN MEETING MINUTES

March 2, 2010

Place: Tyngsborough Elementary School
Moderator: Robert L. Kydd, Jr.

Time: 7:05 PM
Voters: 170

Meeting opened with the Pledge of Allegiance.

Motion: To allow the following non-residents to address the meeting: Atty. Charles Zaroulis – Town Counsel, Norman Thidemann – Interim Town Administrator, Jacque Cronin – Town Accountant, Atty. Douglas Deschenes, and Mary Ann Graham – Consultant.

Action: Motion carries.

Article 1. To see if the Town will vote to appropriate by transfer from one or more municipal government accounts the sum of \$55,140.00 to supplement various municipal government accounts for fiscal year 2010, or take any other action relative thereto.

Motion: That the Town appropriate by transfer from FY10 available funds the following sums to supplement the following accounts in FY10:

Transfer From Accounts:		To Accounts:	
135	Accountant Expense \$1,000.00	122	Selectmen Expense \$ 3,000.00
136	Annual Audit Expense \$5,500.00	123	Town Administrator Salary \$ 4,250.00
141	Assessors Salary \$6,190.00	135	Town Accountant Salary \$ 3,250.00
142	Reval Expense \$7,998.00	145	Treasurer Salary \$17,890.00
145	Treasurer Expense \$3,000.00	162	Election/Registration Salary \$ 4,200.00
175	Planning Board Salary \$1,400.00	162	Election/Registration Expense \$ 7,800.00
182	Econ Devel. Comm Exp \$1,218.00	241	Building Inspector Expense \$10,000.00
241	Building Insp. Sal & Wage \$3,700.00	541	Council On Aging Sal & Exp \$ 4,750.00
242	Gas Insp. Sal & Wage \$8,817.00		
242	Gas Inspector Expense \$ 900.00		
243	Plumbing Insp. Sal & Wage \$8,817.00		
243	Plumbing Insp. Expense \$1,000.00		
421	Highway Admin. Salary \$ 850.00		
541	Council On Aging Expense \$4,750.00		

Action: Motion carries.

Article 2. To see if the Town will vote to appropriate by transfer from the Overlay Surplus Account the sum of \$20,000.00 to supplement the Veterans Benefit Account, or take any other action relative thereto.

Motion: That the Town vote to appropriate by transfer from the Overlay Surplus Account the sum of \$20,000.00 to supplement the Veterans Benefit Account.

Action: Motion carries.

Article 3. To see if the Town will vote to appropriate by transfer from Free Cash the sum of \$228,100.00 to supplement the Capital Asset Stabilization Fund, or take any other action relative thereto.

Motion: That the Town appropriate by transfer \$228,100 from Free Cash to the Capital Asset Stabilization Fund.

Action: Motion carries unanimously.

Article 4. To see if the Town will vote to appropriate by transfer from Free Cash the sum of \$27,750.00 to supplement the Highway Construction/Maintenance Salary Account, or take any other action relative thereto.

Motion: That the Town vote to appropriate by transfer from Free Cash the sum of \$27,750.00 to supplement the Highway Construction/Maintenance Salary Account.

Action: Motion carries.

Article 5. To see if the Town will vote to appropriate by transfer from Free Cash the sum of \$107,103 to supplement the Tyngsborough School Budget for fiscal year 2010 to be expended by the School Committee for reimbursable medical services provided to school pupils who are in residential special education programs pursuant to the provisions of Chapter 71B and for other reimbursable medical services provided by the school department pursuant to state or federal law to students requiring educational or related medical services, or take any other action relative thereto.

Motion: That the Town approve Article 5.

Action: Motion carries.

Article 6. To see if the Town will vote to amend Section 2.11.30, Table of Permitted Uses, of the Town of Tyngsborough Zoning Bylaws to permit “Public or Private Utility Facilities” within B-3 zoning districts as of right, or take any other action relative thereto.

Motion: That the Town vote to amend Section 2.11.30, Table of Permitted Uses, of the Town of Tyngsborough Zoning Bylaws to permit “Public or Private utility Facilities” within B-3 zoning districts as of right.

Motion #2: To allow Mark Dupell, Tyngsborough Building Commissioner, to address the meeting.

Action on Motion #2: Motion carries.

Motion #3: To withdraw Article 6.

Action on Motion #3: Does not carry.

Motion #4: To allow a non-voting resident to address the meeting.

Action on Motion #4: Motion carries.

Motion #5: To amend the Article by striking “B-3” and replacing it with “I-1”.

Action on Motion #5: Motion carries unanimously.

Action on Amended Motion: Moderator called for hand count of votes. Amended motion carries 139 in favor and 5 opposed.

Article 7. To see if the Town will vote to amend the definition of “Public or Private Utility Facilities” under Section 2.11.43 of the Town of Tyngsborough Zoning Bylaws, in its entirety, to read as follows:

“Public or Private Utility Facilities – Facilities, equipment and structures necessary for conducting a utility service by a public or private entity, including publicly or privately owned and operated facilities, equipment and structures associated with the generation, utilization, transmission and/or storage of solar energy, equal to 250 kw or greater, hydroelectric and geothermal energy systems.”,

or take any other action relative thereto.

Motion: That the Town vote to amend the definition of “Public or Private Utility Facilities” under Section 2.11.43 of the Town of Tyngsborough Zoning Bylaws, in its entirety, to read as follows:

“Public or Private Utility Facilities – Facilities, equipment and structures necessary for conducting a utility service by a public or private entity, including publicly or privately owned and operated facilities, equipment and structures associated with the generation, utilization, transmission and/or storage of solar energy, equal to 250 kw or greater, hydroelectric and geothermal energy systems.”

Motion #2: To strike “hydroelectric” from the Article.

Action on Motion #2: Does not carry.

Action on Motion #1: Moderator called for hand count of votes. Moderator counted 40 in favor and 5 opposed. Motion does carry.

Article 8. To see if the Town will vote to amend the Town of Tyngsborough Zoning Bylaws (including the Table of Permitted Uses) to insert a new Section 2.16.00, to establish a mixed-use overlay district, to read as follows:

2.16.00 **Mixed-Use Village Overlay District**

2.16.10 **Purpose:** The purposes of this Mixed-Use Village Overlay District (MUVOD) are to encourage a mix of business, commercial, professional, residential and recreational uses and to promote compact, village-style development that is pedestrian-oriented and incorporates traditional architectural features compatible with the Town character. A vibrant mixed-use village will

minimize impacts on public services; maximize efficient use of public infrastructure; increase and diversify the Town's tax base; create a thriving small business environment; provide diverse housing opportunities; encourage the reuse of existing underutilized or vacant properties; attract new investment and promote economic development within the Town. The following Section is intended to further the general goals, objectives and recommendations outlined in the Town of Tyngsborough Master Plan and Tyngsborough Economic Development Plan.

2.16.20 **Boundaries:** The boundaries of the MUVOD shall be as shown on the plan of land for Tyngsborough Commons, and shall encompass an area consisting of approximately 30 acres with frontage on Westford Road and bounded as follows [Boundary description is forthcoming.]

2.16.30 **Relationship to Existing Zoning:** The underlying zoning shall remain an integral part of the Town of Tyngsborough Zoning Bylaw and shall be neither modified, repealed nor amended, except as otherwise provided in this Section. The property owners in the MUVOD shall possess all current zoning rights and be subject to the requirements applicable in the underlying zones. In the event that an owner desires to use the owner's property for Mixed-Use Development as defined in this Section, the rules and regulations of the MUVOD shall apply and by filing an application for development subject to the rules and regulations of this Section, the owner shall be deemed to accept and agree to them. Where the MUVOD provisions are silent on a zoning rule or regulation, the requirements of the underlying zoning shall apply.

2.16.40 **Definitions:**

"Mixed-Use Development": A combination of residential and non-residential uses, as permitted within the MUVOD, arranged vertically (in multiple stories of one or more buildings) or horizontally (adjacent to one another in one or more buildings) within a lot.

2.16.50 **Permitted Uses:**

The following uses are allowed, in the MUVOD, subject to the requirements set forth in this Section:

2.16.51 **Permitted General Uses:**

- (a) Conservation; and
- (b) Recreation

2.16.52 **Permitted Residential Uses:**

- (a) Multi-Family Dwelling.

2.16.53 **Permitted Government, Institutional and Public Service Uses:**

- (a) Municipal;
- (b) Public or Private Utility Facilities; and
- (c) Post Office.

2.16.54 **Permitted Business and Industrial Uses:**

- (a) Retail Store; provided however, no single Retail Store use shall occupy an area exceeding 10,000 square feet;
- (b) Business or Professional Office;
- (c) Financial;
- (d) Restaurant;

- (e) Restaurant-Fast Food; provided, however, no such Restaurant-Fast Food use shall incorporate a drive-through service;
- (f) Lodge or Club;
- (g) Veterinary Care;
- (h) Personal Service Facility;
- (i) General Services;
- (j) Studio;
- (k) Commercial Recreation - Indoor or outdoor facilities, operated as a business and open to the public for a fee;
- (l) Lounge or Pub;
- (m) Amusement Facility Indoor; provided, however, no such Amusement Facility Indoor shall incorporate a cinema;
- (n) Commercial Broadcast Facility;
- (o) Day Care Facility;
- (p) Light Manufacturing; provided, however, no single Light Manufacturing use shall occupy an area exceeding 10,000 square feet; and
- (q) Industrial Office/R&D; provided, however, no single Industrial Office/R&D use shall occupy an area exceeding 10,000 square feet.

2.16.55 Other Permitted Uses.

- (a) Farmer’s Markets, Farm Stands, and Similar Facilities; and
- (b) Outdoor Sales of Holiday Trees, Wreaths or Similar Products.

2.16.60 **Site Plan Special Permit:** All uses and structures in the MUVOD are subject to a Special Permit and Site Plan Special Permit from the Town of Tyngsborough Planning Board in accordance with Sections 1.16.00 through 1.16.23 of this Bylaw. In addition to the requirements of Sections 1.16.00 through 1.16.23, all design criteria set forth in this Section shall apply. The Planning Board shall be the Special Permit Granting Authority for any Special Permits under this Section.

2.16.70 **Dimensional Requirements:**

2.16.71 General Dimensional Requirements in the MUVOD:

Uses and structures within the MUVOD shall conform to the following requirements unless said requirements are otherwise waived by the Planning Board as provided herein:

Residential/Business/Industrial

Minimum Lot Area:	2 acres
Minimum Frontage:	200 feet
Minimum Front Yard Setback:	30 feet
Minimum Side Yard Setback:	20 feet
Minimum Rear Setback:	20 feet
Maximum Building Height:	3 and 1/2 stories or 45 feet
Minimum Land Area Per Lot/Dwelling Unit:	Building footprint coverage not to exceed 25% of total lot area

2.16.72 Special Provisions:

- (a) The minimum separation between two or more buildings on the same lot shall be at least 20 feet.
- (b) The Planning Board may waive or modify any dimensional requirements set forth in this Section if, in its opinion, such modifications will result in an improved design in light of the stated purposes of this Section.
- (c) The building footprint of any single building located within the MUVOD shall not exceed 40,000 square feet.
- (d) Public restrooms shall be made available in accordance with the design guidelines for the MUVOD.

2.16.73 Parking/Bicycling Requirements:

- (a) The parking requirements for any use in the MUVOD shall be as set forth under Section 3.10.00 of the Bylaw, except as otherwise provided below:
 - i. At least 1.5 parking space(s) shall be provided for each dwelling unit, business, office or industrial use and at least 1 parking space shall be provided for each 200 square feet of business or office use. The Planning Board may reduce the required number of parking spaces set forth in this Section if, in its opinion, such reduction will result in an improved design in light of the stated purposes of this Section.
 - ii. The minimum width of all parking spaces in the development shall be 9 feet and the minimum depth of all parking spaces within the development shall be 18 feet. The width of all maneuvering aisles shall be 24 feet or greater.
 - iii. Parking lots shall contain or be bordered within five feet by at least one tree per 8 parking spaces, trees to be of two inch caliper or larger. Trees and soil plots shall be located so as to assure safe internal circulation and to provide visual screening from streets and residential areas.
 - iv. On at least three sides of the perimeter of an outdoor parking lot containing 20 or more parking spaces, there shall be planted at least one tree for every 8 parking spaces abutting the perimeter.
 - v. In the interior part of an outdoor parking lot where two rows of parking spaces containing a total of ten or more parking spaces face each other, a landscaped open space not less than 4 feet in width shall be provided. The landscaped strip may be provided either: 1) between the rows of parking spaces parallel to the aisle or, 2) in two or more strips parallel to the spaces and extending from the aisle serving one row of spaces to the aisle serving the other row of spaces. There shall be planted in each such strip at least 3 trees and in all such strips not less than one tree for every 8 parking spaces in the interior part of the parking lot.
 - vi. Structured parking facilities (including underground parking and parking garages) shall be permissible within the MUVOD.

- vii. In order to maintain the aesthetic aims of this Section, loading bays or loading areas shall not be required within the MUVOD.
- (b) The required number of parking spaces may be reduced by the Planning Board where the applicant demonstrates that such parking spaces will not be needed for the proposed use, subject to the condition that the area necessary for those spaces is available on the lot and is designated on the approved plan of record. If anytime after the special permit for the MUVOD is granted, the Building Commissioner determines that a need exists for the additional spaces, the Building Commissioner may require the spaces be added.
- (c) Bicycle racks should be permanently mounted and placed in convenient locations throughout public spaces to encourage bicycle use. The selected design should be simple and easy, allowing for convenient and safe use by the public. Bicycle racks should be placed so as not to obstruct views or cause hazards to pedestrians or motorists.

2.16.80 Applicant Procedures:

Projects submitted for Special Permit consideration under this Section shall follow the application and approval process outlined below:

2.16.81 Submittals Generally:

The applicant for a Special Permit under this Section shall submit appropriate application materials in accordance with the regulations adopted pursuant to Section 1.16.00 of this Bylaw.

2.16.82 Specific requirements

Any application for a special permit under this section shall provide to the Planning Board:

- (a) A site plan in accordance with section 1.16.20.
- (b) Analysis of the consequences of the proposed development, evaluation of the following impacts at a level of detail appropriate to the scale of development proposed.
 - i. Natural environment: groundwater and surface water quality, groundwater level, stream flows, erosion and siltation, vegetation removal (especially unusual species and mature trees), and wildlife habitats.
 - ii. Public services: traffic safety and congestion, need for water system improvements, need for public sewage
 - iii. Economics: amount and types of employment, labor force area.
 - iv. Visual environment: visibility of buildings and parking, visual consistency with existing development in the area.

2.16.83 Decision Criteria:

A Special Permit under this Section shall be approved upon determination by the Planning Board that the requirements of Section 1.16.00, including section 1.16.14, have been met and that the proposed plan is consistent with the stated purposes and guidelines set forth in this Section.

2.16.90 Waiver: The Planning Board under its special permit authority may waive one or more requirements of this Section 2.16.00 and its subsections where the waiver is not inconsistent with

public health and safety, where such waiver is in the public interest, and where such waiver does not undermine the purposes of this section.

2.16.100 **Other:** A development pursuant to a Special Permit approved by the Planning Board under this Section shall not be subject to the growth rate regulations under Section 1.19.00 of the Bylaws, or take any other action relative thereto.

Motion: That the Town vote to accept as printed with the following amendment:

2.16.20 **Boundaries:** The boundaries of the MUVOD shall include the areas as shown on the Town of Tyngsborough Assessors' Map Sheet 21, Block 23-1, Lots 6, 13, 14, 15, 16 and 17, encompassing an area consisting of approximately 43 acres with frontage on Westford Road.

Motion #2: To add new section 2.16.110 to create a buffer zone of 200'.

Action on Motion #2: Does not carry.

Motion #3: To add "industrial" in section 2.16.73, (a), (i). Amended line: "At least 1.5 parking space(s) shall be provided for each dwelling unit, business, office or industrial use and at least 1 parking space shall be provided for each 200 square feet of business, industrial or office use."

Action on Motion #3: Motion does carry to amend section 2.16.73.

Action on Motion #1: Moderator called for hand count of votes. Moderator counted 50 in favor and 2 opposed. Motion does carry.

Article 9. To see if the Town will vote to appropriate by transfer from Free Cash the sum of \$7,318.00 to fund the Street Light Consulting Agreement, or take any other action relative thereto.

Motion: That the Town vote to appropriate from Free Cash the sum of \$7,318.00 to fund the Street Light Consulting Agreement between the Town of Tyngsborough and George A. Woodbury.

Action: Motion carries.

Article 10. To see if the Town will vote to adopt 780CMR Appendix 120.AA to the 7th edition Mass. Building Code, known as the Stretch Energy Code, the purpose and intent of which is to provide a more energy efficient alternative to the base energy code for new and existing buildings, and that the Building Commissioner shall be the enforcing agent for the Town, or take any other action relative thereto.

Motion: That the Town vote to adopt 780CMR Appendix 120.AA to the 7th edition Mass. Building Code, known as the Stretch Energy Code, the purpose and intent of which is to provide a more energy efficient alternative to the base energy code for new and existing buildings, and that the Building Commissioner shall be the enforcing agent for the Town.

Motion #2: To move this Article to the May Annual Town Meeting.

Action on Motion #2: Motion does not carry.

Motion #3: To insert the words "additions or modifications to" before the words "existing buildings".

Action on Motion #3: Motion does carry.

Action on Motion #1 as amended: Motion carries.

Motion to adjourn.

Meeting adjourned at 10:28 pm.

Attest: a true copy

Joanne Shifres, Town Clerk