

TOWN OF IPSWICH

WARRANT ARTICLE SYNOPSIS

**SPECIAL TOWN MEETING
October 17, 2011**

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ARTICLE 1

FY 2012 TOWN BUDGET AMENDMENTS

Summary:

The Board of Selectmen proposes the following amendments to the FY'12 budget:

- 1) Appropriate **\$37,534** in additional aid from the Commonwealth to the budget of the Facilities Department.

Explanation: The Legislature decided to appropriate 50% of the state's budget surplus for Fiscal 2011 and distribute the funds to cities and towns as unrestricted general government aid. Of the total of **\$98,000**, the 38.3% proportionate share for the Town is **\$37,534**. These funds will be used by the Facilities Department to repair and replace damaged and broken sidewalk at Town Hall.

- 2) Transfer **\$15,000** from Recreation Department budget to Facilities Department to paint, make repairs and replace carpeting in the Rogers Room of the public Library; and
- 3) Transfer **\$12,000** from the Recreation Department budget to the Facilities Department to tuck point brickwork at the Central Fire Station; and
- 4) Transfer **\$24,000** from the Recreation Department budget to the Police Department for the purchase of a front line cruiser;
- 5) Transfer **\$6,100** in the Police Department Expense budget to the Police Department Capital Outlay budget.

Explanation: These transfers from the Recreation Department budget will leave **\$64,086** remaining to fund Recreation programs, civil observances and the salary of the Recreation Director for the remainder of the fiscal year. The 10 hour Recreation Director position is posted for **\$12,000**.

The transfer for repairs at the Library will be used to continue repairing interior damage resulting from the ice dam last winter. Tuck pointing at the Central Fire Station is urgent. Further deterioration could endanger the stability of several areas of the exterior wall.

The transfer of **\$24,000** to the Police budget will permit the purchase of a new front line cruiser. The vehicle being replaced has in excess of 120,000 miles. Also, there is a transfer of **\$6,100** in the Expense section to the Capital Outlay section to further fund the cruiser purchase.

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- 6) Transfer **\$2,900** from the Waterways Improvement Fund to the Police budget to cover the cost of fuel for the Harbormaster.

Explanation: This is in line with the policy of funding the full cost of the Harbormaster budget from the Waterways Improvement Account.

Fiscal Impact:

These transfers are from within the FY 2012 operating budget and from the Waterways Improvement Account, so there is no impact on the FY 2012 tax rate.

ARTICLE 2 **FY 2012 SCHOOL BUDGET AMENDMENTS**

Summary:

The following financial transfers are proposed for the School budget:

- 1) **\$80,968** from free cash to reimburse the School Department for Medicaid funds deposited into the General Fund during Fiscal 2011. Medicaid funds are routinely deposited into the General Fund each year and transferred from free cash to the School Department in the following fiscal year.
- 2) **\$60,466** from the supplemental local aid from the Commonwealth to the School Department budget.

Explanation: 1) The Medicaid reimbursement funds are contributed by the Federal Government each year as reimbursement for School Department services to special needs students. This is a routine transfer of funds collected in the prior fiscal year; and 2) The local aid transfer represents the School Department's 61.7% of the total of the Commonwealth's supplementary aid.

Fiscal Impact:

There is no impact on the Fiscal 2012 tax rate.

ARTICLE 3 **LEGISLATION REGARDING BUILDING INSPECTORS**

Summary:

This is a local option statute, acceptance of which would allow part-time inspectors in the Building Department to work in the building trades or other professions for which they are licensed or certified (such as engineering) for private clients in Ipswich, provided that any work they perform is inspected or reviewed by other qualified inspectors.

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The Building Commissioner believes that this will allow the Town to retain well-qualified and experienced part-time assistants, without compromising independent oversight of building projects. The Department has the staff resources to ensure that all such projects are independently inspected or reviewed. The wiring and plumbing inspectors are already permitted to accept outside employment within the Town pursuant to other statutory provisions.

Fiscal Impact:

There is no impact on the Fiscal 2012 tax rate.

ARTICLE 4 **AMENDING THE GREAT ESTATES BYLAW**

Summary:

The Great Estates provision of the zoning bylaw (IX.H.) was enacted in 1997. The provision has been modified at least five times since then to address various issues as they have arisen during its application, and to accommodate the needs of the GEPD owners.

This article would make three revisions to the bylaw (the initial article proposed two additional changes, but they were determined to be no longer necessary and will not be part of the article that appears on the warrant). The first revision relates to a provision that was added in 2004 to allow a greater percentage of residential use at any GEPD located on a parcel exceeding 200 acres in size (i.e., Turner Hill). The revised percentage, 45%, was based on the proposed buildout of the property that was approved by the Planning Board in 2002. In 2007, the property was sold to two new owners, The Golf Club at Turner Hill, which owns the golf course and the several buildings located within it, including the mansion, and the Residences at Turner Hill, which owns the 34 acre development parcel located primarily to the rear of the mansion.

Recently, it was discovered that, due to a mathematical error made at the time of the earlier revision, that the approved residential buildout was not 45% of the total developable area allowed within the GEPD, but rather just below 55%. As such, the approved buildout does not meet the percentage requirement as currently stated in the bylaw. Changing the percentage to 55% resolves this issue, without allowing the developers to build any more than what the Board intended them to.

The second revision relates to the use “research and development facility with associated processing”, which is allowed in a GEPD subject to certain conditions. One condition is that no more than 35% of the constructed floor area of the R & D facility be “primarily devoted to such processing.” Three years ago, when the Planning Board developed the Green Space Preservation Development District, which was modeled after the GEPD provision, it increased the percentage of allowable floor area that can be used for processing associated with R & D

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facilities from 35% to 50%, based on a determination that limiting the processing component of the use to half of the floor area was sufficient to achieve its initial objective (i.e., ensuring that the research & development component remains an integral aspect of the allowed use). Thus, increasing the percentage for the use in the GEPD provision brings it into conformity with the new standard.

The final revision involves a provision that allows a five times density bonus for the square footage of all buildings certified by the Historical Commission as having historical and/or architectural significance, provided that each of those buildings are preserved. The proposed change would allow the Planning Board by special permit to provide limited relief from this requirement, provided that a number of conditions are met, including that (1) Not more than one certified building within a GEPD could be exempted from the preservation requirement (great estate mansion specifically excluded); (2) Prior to the issuance of the initial GEPD special permit, the building in question would had to have been vacant and in need of substantial renovation; (3) The Planning Board would need to determine that the cost of renovating the building is so high as to render its renovation financially infeasible; (4) In lieu of the building's preservation, the Board could require a GEPD owner to contribute funds to further the preservation of historic properties elsewhere in Town; (5) The Historical Commission must provide the Planning Board its written assent to the building's demolition; and (6) No additional floor space shall be derived from the square footage of the building that is demolished. This proposed revision would provide an opportunity for a GEPD owner to publicly make a case for an alternative to preservation in a specific instance, but approval would only be given if the Board determines that it is in the public interest to do so.

Fiscal Impact:

No direct cost to the Town, but if the changes facilitate the buildout of the site as is expected, the financial benefit to the Town could be substantial.

ARTICLE 5

AGRICULTURAL USE REVISIONS

Summary:

This article makes the following changes:

- Modifies the minimum acreage requirement for the sale of agricultural products to conform to a recent change in state law, and makes several related changes to the regulations governing the sale of agricultural products
- Clarifies the intent of a footnote which regulates kennels
- Modifies the definition of riding academy and adds a definition of livery stable to better describe the typical activities of both

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Background:

Until recently, the Commonwealth's general law (Chapter 40A, Section 3) forbid communities from prohibiting or requiring a special permit for the sale of agricultural products that satisfy certain requirements (e.g, grow a certain percentage of the products on the property, sell a certain percentage of products that are grown in Massachusetts), provided they are located on land parcels of five acres or more. In 2010, Section 3 was modified to allow the sale of agricultural products by right on parcels less than five acres in size and at least two acres in size if the sales of such products generate at least \$1,000 per acre. Besides changing the bylaw to comply with that requirement, the proposed revisions also corrects an inadvertent omission in the bylaw which applied the state requirements pertaining to local products to parcels that met the threshold but not to parcels that did not. The bylaw also provides some parameters to the relief that may be provided by the Zoning Board of Appeals relative to the local product requirements.

Within the town are several commercial and noncommercial operations involving horse riding instruction or horse boarding. These activities are part of the both the town's character and its economy, and are a distinguishing piece of its economy. As with other uses the bylaw places certain use and dimensional regulations on these activities. To create a better distinction between varying types of horse operations, the article modifies the definition of "Riding Academy" to make clear that such uses do not need to board and care for horses, which is contrary to the current language. The definition is also revised by modifying the description of how riding lessons are offered to the general public.

Fiscal Impact

No direct cost to the Town.

ARTICLE 6 REVISIONS TO LOT DIMENSIONAL REQUIREMENTS

Summary:

To bring clarity to some of the dimensional requirements in the zoning bylaw, particularly for corner lots, this article proposes the following changes:

- Modify the definitions of "Lot Line, Front" and "Lot Width"
- Modify the diagram (and the references to) of two types of corner lots
- Add footnotes to the Table of Dimensional and Density Regulations relative to the setback requirements for principal and accessory buildings on corner lots

Background:

One area of ambiguity in the dimensional requirements relates to the methodology for determining lot width. The current definition of lot width, which is

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described as the “distance between lot lines measured parallel to the front property line at the front of the principal building,” works fine for a square or rectangular lot, but not so well for an irregularly shaped lot. The article would add language to the definition that would allow the width, in the case of an irregularly shaped lot, to be measured at an angle from a line parallel to the front of the principal building.

Another issue is that the current side and rear setback regulations insufficiently govern the unique setback needs of corner lots. The article addresses the issue by first clarifying, in the definition of “Lot Line, Front,” that for corner lots one of the front lot lines must be permanently designated as the frontage street. The article also modifies the diagram of corner lots by removing a confusing reference to the angle of extended lot lines. Finally, the article adds two footnotes to the Table of Dimensional and Density Regulations relative to corner lots, one stating that the setback requirement for principal buildings from a front lot line that is not designated as the frontage street is equal to the side setback requirement, and the other stating that the setback requirement for accessory structures from the front lot lines is equal to the front setback requirements for principal buildings (as established by the dimensional table or footnote 1 to the table), unless the ZBA by special permit authorizes a lesser distance.

Fiscal Impact:

No direct cost to the Town.

ARTICLE 7

MISCELLANEOUS ZONING AMENDMENTS

Summary:

As the building inspector’s office and the planning office work with the zoning bylaw, they occasionally discover ambiguities, omissions, or inadequacies. The issues addressed by this article include:

- Nonconforming single and two family structures damaged by catastrophe are not provided with the same rights for rebuilding as other nonconforming structures
- There is no time limit on when owners can request an extension for rebuilding a nonconforming structure, nor is there a limit on how long the extension can be granted
- Confusion over the applicability of the zoning definition of Kennels relative to licensing requirements
- Erroneous assumption that structures which do not require building permits are not subject to dimensional regulations
- Height limits in the RRB district are being exceeded due to insufficient language in the current regulation
- There is no use category for “All other permitted uses” under the RRB district in the Table of Dimensional and Density Regulations, as there is for every other district

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- Existing Planning Board authority to reduce parking design requirements in special circumstances does not apply to certain design requirements
- Regulations on surfacing, drainage and curbing does not refer to the recently adopted Stormwater Bylaw
- Businesses with two frontage streets (i.e., corner lots) are currently unable to provide signs for both streets
- Lack of a definition of “Change of use” has led to disagreements between owners and the permitting authorities as what constitutes a change of use
- Defining the commencement of construction as the “laying of footings or foundations” is problematic for projects that do not require footings or foundations

This article addresses these deficiencies as follows:

- (1) amends “II. APPLICABILITY, 5. Reconstruction” by:
 - Adding language allowing nonconforming structures damaged by catastrophe to rebuild pursuant to the criteria provided in Section II.3 and, for structures in the RRB District, Footnote 18 to the Table of Dimensional and Density Regulations
 - Limiting the period in which owners can apply for an extension request to rebuild a nonconforming structure damaged by catastrophe to two years after the catastrophe, and setting the maximum length of extension at two years
- (2) amends “III. DEFINITIONS” by:
 - Adding language to definition of Kennels stating the independence of zoning regulations from other state non-zoning regulations regarding dog kennels
- (3) amends “VI. DIMENSIONAL AND DENSITY REGULATIONS” by:
 - Modifying “A. Applicability of Dimensional and Density Regulations” to clearly state that even buildings not requiring a building permit must adhere to setback regulations
 - Modifying “G. Other General Dimensional and Density Regulations, d.” by disallowing structures or appurtenances not necessary for the use and operation of a residence in the RRB District from exceeding the existing height limit of 25 feet, except by special permit from the Planning Board
- (4) amends “VI.B. Table of Dimensional and Density Regulations” by adding a new use category under the RRB District for “All Other Permitted Uses”
- (5) amends “VII. OFF-STREET PARKING AND LOADING REGULATIONS” by:
 - Expanding the Planning Board’s authority by special permit to reduce parking requirements in “K. Design Standards for Parking Facilities” to include the standards in “L. Loading Space Dimensions” and “M. Parking and Loading Layout”
 - Adding language to “O. Surfacing, Drainage and Curbing” that refers to the Ipswich Stormwater bylaw

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(6) amends "VIII. SIGNS, D. "Sign Requirement per Zoning District, 4." by allowing properties in the Central Business and General Business Districts that have a business on corner lots to have one hanging sign and one wall sign on each frontage street

(7) amends "XI. Administration" by:

- o Defining "Change of Use" in "B. Permits, Certificate Required"
- o Adding language defining commencement for projects without "footings" in "R. Applicability of Amendments to Outstanding Building Permits or Special Permits"

Fiscal Impact:

None.

ARTICLE 8 **ACCESSORY APARTMENT ZONING AMENDMENTS**

Summary:

The zoning revisions proposed by this article, which were originally included in the miscellaneous revisions article but are now being addressed separately, all relate to the regulations governing accessory apartments (IX.J.). The proposed revisions would do the following:

- Clarify that the regulations apply to newly constructed houses as well as existing single family homes
- Limit the maximum square footage of the accessory apartment to the lesser of 900 S.F. or 25% of gross floor area
- Limit the maximum change to the building envelope of a principal residence which contains an accessory apartment to the lesser of 900 S.F. or 25% of gross floor area
- Allow accessory apartments in RRA and RRC districts on lots having at least 10,000 square feet and in RRB districts on lots having at least 7,000 square feet.

Background:

In 1999 the zoning bylaw was amended to permit accessory apartments by ZBA special permit in single-family residences. At first the occupancy of the apartments was restricted to family members, but that requirement was removed several years ago. Over the years a number of changes to the accessory apartment regulations have been adopted to improve its clarity and use.

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The changes proposed this year, except for one, are all either clarifications or corrections of the existing language so that they conform to the original intent. The one substantive change relates to the minimum size a lot needs to be in order to accommodate an accessory apartment. Currently the minimum size is 15,000. This article reduces the required minimum lot size so as to provide more homeowners the opportunity to create an accessory apartment in their homes. The provision has been used frequently since its adoption, and it has been very helpful to families seeking to provide housing for family members or to earn extra income to help cover the cost of maintaining the residence. Any concerns as to whether a smaller lot is adequate to accommodate the parking and other needs of an additional dwelling unit on the property can be still addressed by the ZBA, which must issue a special permit before an accessory apartment can be created.

Fiscal Impact:

None.

ARTICLE 9

WINTER STREET REZONING

Summary:

This article would amend the official zoning map for the Town of Ipswich by changing the zoning of two parcels on Winter Street from Industrial (I) to In-town Residence (IR). Each of the two parcels contains a single-family residence, which is a prohibited use in the I District.

The Planning Board initiated the article at the request of the two owners, who would like to make their properties conforming. The properties at 6 and 8 Winter Street are both 17,500 square feet in size. As such, they satisfy the minimum lot size for parcels in the IR District, which is 10,000 square feet. Thus, rezoning the lots to IR would bring the lots into conformity for both the use and the density. Additionally, the two parcels are contiguous to the IR District, so adding the parcels to the IR District can be done seamlessly.

To the greatest extent possible, the zoning of properties should reflect their use, density, and dimensions. In this circumstance, this is best accomplished by rezoning the two subject properties to IR, and thus the Board strongly recommends that the Town Meeting do so.

Fiscal Impact:

No direct cost to the Town.

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ARTICLE 10 **WATER DEPARTMENT MAIN REPLACEMENT**

Summary:

This article was originally approved at the May 10, 2011 Annual Town Meeting. However, Bond Counsel objected with the method used by the Moderator in declaring a 2/3rds majority vote in support of the bond, so a re-vote is necessary at Town Meeting. A 2/3rds majority vote to authorize borrowing must be a counted vote rather than a voice vote unless a local bylaw expressly permits voice votes. Ipswich does not have such a bylaw, so the statutory obligation to have a counted vote applies.

The article authorizes the Treasurer to borrow the sum of **\$1,950,000**, to replace the water mains on Jeffreys Neck Road. A recent study has shown the Jeffreys Neck water main, which is over sixty years old, is severely deteriorated and leaking.

This appropriation will be raised by authorizing the Treasurer, with the approval of the Board of Water Commissioners, i.e., the Board of Selectmen, to issue bonds or serial notes under the provisions of Massachusetts General Laws Chapter 44, as amended.

Fiscal Impact:

The cost of this project will be borne by the Water Department rate payers. There is no impact on the FY 2012 tax rate.

ARTICLE 11 **AMENDING THE OCCUPATIONAL LICENSES BYLAW**

Summary:

The Ipswich bylaw governing "Dealers in Second Hand Articles" is woefully behind the times. The majority of surrounding Towns have more stringent by laws governing the purchase and sales of second hand items, which unfortunately can be stolen items. As a result, in the past year, Ipswich has seen more stolen merchandise surfacing in Town.

Ipswich Police Detectives have in the past dealt with cases where stolen items from surrounding towns have been sold in Ipswich for quick cash. Our present by law does not address a "waiting period" before the resale or the altering of items. As a result, the Police Department is often unable to recover the items for the victims or get a positive identification of the stolen items.

More often than not, the cash value of the items sold is far less valuable than the sentimental or historical value to the proper owner. Additionally, our present by law does not require the proper identification and documentation of sellers. This oversight greatly reduces the Police Department's ability to investigate the sale of stolen items.

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The proposed changes will protect victims, as well as store owners, from the financial and emotional loss of dealing in stolen items. When properly prosecuted for selling stolen items, defendants are required to pay restitution to shop owners and/or victims if the item is not recovered or returned to its proper owner.

Fiscal Impact:

There will be no fiscal impact.

ARTICLE 12

WIND TURBINE LAND LEASE

Summary:

This article will authorize the Board of Selectmen to enter into a lease of a parcel of land or portion thereof known as Tax Map 13, Parcel 25, sub-parcel A and shown on attached map for the purposes of erecting, maintaining and operating a wind turbine to generate electricity for a term not to exceed 25 years. The lease will include terms and conditions that the Board of Selectmen deems appropriate.

Fiscal Impact:

There will be no impact upon the Fiscal 2012 tax rate.

ARTICLE 13

BYLAW AMENDMENT: VOTE COUNTING AT TOWN MEETINGS

Summary:

This proposed change in the Town bylaws will permit the Moderator to declare a 2/3rds vote without an actual count and be recorded by the Town Clerk upon the Moderator's declaration. If, however, seven or more voters at the town meeting doubt the vote, the Moderator must take an actual count of the vote.

Without acceptance of this bylaw, the Moderator is required to do an actual head count whenever a 2/3rds vote is required at Town Meeting, even when voice votes are clearly unanimous or nearly unanimous.

Fiscal Impact:

There will be no fiscal impact.

ARTICLE 14

NORTH GREEN IMPROVEMENTS

Summary:

As part of the North Green Streetscape Improvement Project, the Town will be making a number of improvements in and around the North Green, including adding curbs and sidewalks. The total amount of green space within the Green is being maintained, but the configuration of the Green will be altered in a few

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instances. The Green is owned by the Town, except for the land area immediately surrounding the First Church, which is Church property.

At both the October 25, 2010 Special Town Meeting and the May 10, 2011 Annual Town Meeting, an article was approved that modified the layouts of North Main and Meetinghouse Green. Both of those modifications required that some of the Town-owned land, which is considered park land by the Commonwealth and is thus subject to Article 97 of the amendments to the Massachusetts Constitution, be incorporated into the Right-of-Way (ROW). Article 97 requires that any improvements undertaken on park land, such as sidewalks or drives, which are not specifically related to the use of the land as a park, be first approved by an Act of the Legislature. Thus, those town meetings authorized the Selectmen to seek that legislative approval, which was obtained when Governor Patrick signed the bill into law in July.

The two previous modifications to the ROW were necessitated by changes to the scope of the project improvements that occurred during the design process. Earlier this summer, the design engineer discovered a discrepancy in the ROW layout between their survey work and the ROW plan that was developed by another engineering firm several years ago. This requires a further modification of the ROW, but it does not require any additional parkland, so no further Article 97 action is required.

This article would do the following: (a) approve the modification of the layouts of North Main Street and Meetinghouse Green, which will be identified on a plan and which will be subject to action by the Selectmen before the Town Meeting; (b) approve the modification of the layout of Meetinghouse Green to exclude land no longer needed for public way purposes; and (c) transfer the care, custody, and control of the land now within the layout of North Main Street and Meetinghouse Green that is no longer needed for public way purposes to the Parks and Cemeteries Commission

Fiscal Impact:

There will be no fiscal impact.

ARTICLE 15

RECONSIDERATION

Summary:

This article will permit the Town Meeting to reconsider any and all previous articles raising and appropriating money which have a direct impact on the tax levy for the next fiscal year. The purpose is to finalize a budget which is balanced and in compliance with the levy limit provisions of Proposition 2½, so that certification of the FY 2012 tax rate can be completed successfully.