

PROCEEDINGS

**SPECIAL TOWN MEETING
FEBRUARY 24, 2003**

The Special Town Meeting opened at 7:05pm with 87 RTM members present. We have a Quorum.
Pledge of Allegiance to the Flag.

Town Clerk, Patricia A. McNielly, asked for a moment of silence for the victims and their families of the tragic fire in West Warwick this past week.

At this time, the Town Clerk accepted nominations for a Moderator *pro tempore* due to the absence of Moderator Michael Duggan.

Bart Steele (P7) made a motion to nominate John Burke as temporary Moderator for the duration of the Moderator's absence.

Motion seconded.

Motion carried unanimously.

Town Clerk, Patricia A. McNielly, then administered the oath of office to Mr. Burke.

The Moderator opened the warrant for the Special Town Meeting.

**NORTH ATTLEBOROUGH WARRANT
FOR THE REPRESENTATIVE SPECIAL TOWN MEETING
FEBRUARY 24, 2003 AT 7:00 P.M.
THE COMMONWEALTH OF MASSACHUSETTS**

Bristol, ss.

To either of the Constables of North Attleborough:

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the legal voters of the Town of North Attleborough to meet at the North Attleborough Middle School Cafetorium, 564 Landry Avenue, in said North Attleborough on

MONDAY, THE TWENTY-FOURTH OF FEBRUARY 2003 A.D.

At 7:00 P.M., then and there to act upon the following articles to wit:

And you are hereby directed to serve this warrant by posting up attested copies thereof in at least seventeen public places in said Town and also in one place in each of the voting precincts within the Town at least twenty-one days before the time of said meeting. Hereof, fail not, and make due return of this warrant with your doings thereon to the Town Clerk on or before the time of said meeting.

Given our hands and seal of the Town of North Attleborough on this January 9, 2003.

**Mark C. Fisher, Chairman
John C. Rhyno, Vice-Chairman
Marjorie A. Kraskouskas
Bradley A. Plante
James C. Wood**

BRISTOL, ss.

Pursuant to this within warrant, I have notified the inhabitants of the Town of North Attleborough within described, to meet at the time and place for the purpose within mentioned by posting

attested copies of this warrant in seventeen (17) public places in said town twenty-one (21) days before the time of said meeting.

Chief Michael P. Gould, Sr.
Constable
Town of North Attleborough

1. Central Fire Station
2. Richards Memorial Library
3. Town Offices
4. Cushman Union Church
5. Oldetown Church
6. Chamber of Commerce
7. Falls Post Office
8. Cumberland Farms - Kelley Boulevard
9. Registry of Motor Vehicles
10. Housing for the Elderly (Circle Court)
11. Housing for the Elderly (Center)
12. Housing for the Elderly (Elm Terrace)
13. Attleboro Toyota
14. Fleet Bank (Center)
15. Fireside Nissan
16. Department of Public Works (Smith Street)
17. North Attleborough Federal Credit Union

At this time John Donahue (P7) member of the RTM co-ordinating committee made a few comments about the upcoming Town Election and the need for new and veteran RTM members.

Bart Steele (P7) made a motion that we adopt the Bourne Amendment as follows: *Any RTM member wishing to increase money in any article that has been recommended by the Finance Committee, must specify where the additional monies will come from.*

Motion seconded.
Motion carried unanimously.

John Donahue (P7) made a motion as follows: *That the RTM adopt the Procedural Rule that the count of a two-thirds vote, when it is obvious to the Moderator, shall not be taken by the Moderator unless requested by seven or more RTM members.*

Motion seconded.
Motion carried unanimously.

ARTICLE 1 FIREFIGHTERS CONTRACT

BOARD OF SELECTMEN

To see if the Town will vote to appropriate a sum of money to supplement the budgets of the Fire Department and Ambulance for the purpose of financing any changes made in the Personnel By-Laws, as a result of collective bargaining and otherwise for salary increases for Firefighters' Local 1992 and to determine how said appropriation shall be raised, whether by taxation, appropriation or otherwise. Or to do or act in any manner relative thereto.

Human Resources

PURPOSE AND JUSTIFICATION

To fund contract effective 7/1/02

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: As of this date, the firefighters' contract is in arbitration.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 5 REPLACEMENT OF ENGINE

FIRE COMMISSIONERS

To see if the Town will vote to raise and appropriate the sum of \$10,000- to increase line 30b Fire Department: General Expense of the FY2003 Annual Town Meeting. Said appropriation to be raised by taxation, borrowing, or transfer of available funds, or otherwise. Or to do or act in any manner relative thereto. Fire Commissioners SEE ATTACHED

PURPOSE AND JUSTIFICATION

To replace the diesel engine in Truck 59, the Fire Alarm Repair Bucket truck. The 1987 Ford F7000 had catastrophic engine failure on 12/6/02, which is not repairable. Truck 59 is used to maintain the overhead lines which provide Municipal Fire Alarm Service to most large Commercial, Industrial and Municipal Buildings in the community. This unforeseen engine replacement would completely deplete an Apparatus Maintenance account, which has already been cut to 1999 levels.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: The funds were provided from a Reserve Fund Transfer Request.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 6 TRANSFERING OF FUNDS

POLICE FACILITY BLDG. COMM.

To see if the Town will vote to transfer \$50,317.00 from the Demolition Account (030-211-909-5820) to the Construction Account (030-211-709-5751). Or to do or act in any manner relative thereto. Police Facility Building Committee

PURPOSE AND JUSTIFICATION

The general contractor is now responsible for the removal of the asbestos piping and boiler at the Barrows Building. The Committee had to keep the old boiler in place for fire protection of the building until a general contractor was selected. The funds will be used to pay for this expense.

FINANCE COMMITTEE VOTE: 6-1

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: It is the Committee's understanding that this expense was covered by the current construction contract. This article does not properly reference the appropriate Town Meeting Articles.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 7 E-RATE REIMBURSEMENT

SCHOOL COMMITTEE

To see if the Town will vote to appropriate the sum of \$17,720.56, or any other sum, for the purpose of providing technology, and/or telecommunication related supplies, equipment or services to the North Attleborough Public Schools. Said sum to be transferred from the E-Rate reimbursement Reserved for Expenditures Fund. or to do or act in any manner relative thereto. School Committee

PURPOSE AND JUSTIFICATION

The School Department has applied for and received federal E-Rate funds. These funds are designed to help schools improve or expand telecommunications and technology, including training for staff and students. The Town receives the funds from various vendors, and Town Meeting must then vote to allocate the funds to an article under the jurisdiction of the School Committee.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote to appropriate the sum of \$17,720.56, for the purpose of providing technology and/or telecommunication related supplies, equipment, or services to the North Attleborough Public Schools. Said sum to be transferred from the E-Rate Reimbursement – Reserved for Expenditures Fund.

FINANCE COMMITTEE REASON: This allows for the transfer of funds from the E-Rate account to the school department for related expenditures.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 8 CONSTRUCTION PROPOSAL

SCHOOL COMMITTEE

To see if the Town will vote to appropriate the sum of \$100,000 for the preparation of program, engineering designs, and budget estimates for construction of an addition/renovations to the Amvet Boulevard School and/or the High School and/or the addition of modular units at the Allen Avenue School and/or the addition of modular units at the Early Learning Center, and/or the construction of a storage facility, and any other incidental costs related thereto. Said sum shall be raised by taxation, transfer of available funds, bonding, or otherwise. Or to do or act in any manner relative thereto. School Committee

PURPOSE AND JUSTIFICATION

Investigation of soil, septic/sewer conditions, as well as site preparation and examination of conservation regulations and wetland areas are to be a part of the report. This study will provide the Town with a preliminary, architectural solution regarding building and space requirements, as identified in recommendations by the Space Needs Committee.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: that consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: This proposal has not gone through the CIP program or the Municipal Building Committee.

After much discussion, a motion was made and seconded to move the question and go directly to a vote on the recommendation.

Motion Carried.

The RTM members defeated the Finance Committee's recommendation as read.

David Manoogian (P8) presented an Affirmative Action as follows:

That the sum of \$100,000 be hereby appropriated for the payment of design and engineering services related to the construction of an addition/renovations to the Amvet Boulevard School, and/or the High School, and/or the addition of modular units at the Allen Avenue School, and/or the addition of modular units at the Early Learning Center, and/or the construction of a storage facility, and for costs incidental and related thereto; and that to meet said appropriation, the Treasurer with the approval of the Selectmen is hereby authorized to borrow the sum of \$100,000 at one time or from time to time under and pursuant to Chapter 44, Sections 7(21), and 7(22), of the General Laws, as amended and supplemented, or any other enabling authority, and to issue bonds or notes of the Town therefor.

Motion seconded

**The RTM members approved the Affirmative Action with a 2/3 roll call vote, 71 votes needed.
Yes -79 No- 27.**

ARTICLE 9 REPLACEMENT OF ROOFS

SCHOOL COMMITTEE

To see if the Town will vote to raise and appropriate the sum of \$439,777 for the replacement of the roof at the Roosevelt Avenue School and/or repairs to the Early Learning Center roof and/or repairs to the Allen Avenue School roof and/or repairs to the Falls School roof, and any other incidental costs related thereto. Said sum to be appropriated by a transfer of available funds, taxation, bonding, or otherwise. Or to do or act in any manner relative thereto. School Committee

PURPOSE AND JUSTIFICATION

The Roosevelt Avenue School roof was last replaced in the summer of 1985. According to the roofing report published by KFP Architects in September of 2001, the roof is in very poor condition. At the present time, repairs

are being made on a weekly basis. According to the roofing report, repairs to the Early Learning Center, Allen Avenue and Falls Schools should add a minimum of five (5) years to the life of the roofs. (\$439,777 is the balance remaining in Article 6 of the April 2001 Town Meeting (High School Roof Replacement)

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: There is no clear linkage to Article 6 of the April 2001 as referenced in the purpose and justification.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 10 REPLACEMENT OF BOILER

SCHOOL COMMITTEE

To see if the Town will vote to appropriate the sum of \$21,203.00, or any other sum, for the replacement/ rehabilitation of the boiler at the Woodcock Administration Building and any other incidental costs related thereto. Said sum to be appropriated by a transfer of available funds from Article 7, Part 4, Item 37 of the October 1999 (FY2000) Town Meeting, taxation, bonding or otherwise. Or to do or act in any manner relative thereto. School Committee

PURPOSE AND JUSTIFICATION

The current gas-fired boiler is 25 to 30 years old. The rear cast iron section is cracked and is leaking badly. Temporary repairs have been made to no avail and there is an unavailability of parts due to its age. \$21,203.00 is the balance of Article 7, Part 4, Item 37, which was originally appropriated to the School Committee for repairs and renovations to the Woodcock Administration Building.

FINANCE COMMITTEE VOTE: 6-0-1

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote appropriate the sum of \$21,203.00 for the replacement of the boiler at the Woodcock Administration Building. Said sum to be appropriated by a transfer of available funds from Article 7, Part 4, Item 37 of the October 1999 (FY2000) Town Meeting.

FINANCE COMMITTEE REASON: The current gas-fired boiler is 25 to 30 years old. The rear cast iron section is cracked and is leaking badly. Temporary repairs have been made to no avail and there is an unavailability of parts due to its age.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 11 NEW LAYOUT FOR TONER BOULEVARD

BOARD, PUBLIC WORKS

To see if the Town will vote to accept the action taken by the Board of Selectmen to lay out as a public way a portion of road shown as "Proposed Layout for Highway Purposes" on a certain plan entitled "Plan of Land in the Town of North Attleborough" Robert F. Toner Boulevard proposed layout for Highway Purposes, Prepared for the North Attleborough Department of Public Works. Scale 1=1:250. Prepared by SMC, Inc. A copy of which is on file with the Town Clerk's office. Or to do or act in any manner relative thereto. Board of Public Works SEE ATTACHED

PURPOSE AND JUSTIFICATION

The acceptance of this new layout will allow for the reconstruction of Toner Blvd. The improvements planned are being funded 100% through a Public Works Economic Development Grant from the Commonwealth and will improve the safety and traffic flow between North Avenue and the Rte 95 interchange.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote to accept the action taken by the Board of Selectmen to lay out as a public way a portion of road shown as "Proposed Layout for Highway Purposes" on a certain plan entitled "Plan of Land in the Town of North Attleborough" Robert F. Toner Boulevard proposed layout for Highway Purposes, Prepared for the North Attleborough Department of Public Works. Scale 1=1:250. Prepared by SMC, Inc.

FINANCE COMMITTEE REASON: Acceptance of this new layout of Robert Toner Boulevard will reflect the new land configurations that resulted from the land takings approved at past Town Meetings.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 12 STREET ACCEPTANCE

PLANNING BOARD

To see if the Town will vote to accept the following streets as public ways, said streets having been constructed and completed in accordance with the Planning Board and Department of Public Works specifications.

ANGELINA DRIVE from station 0 + 00 to station 5 + 17.42; VIRGINIA AVENUE from station 23 + 42.34 to station 27 + 08.22; and THOMAS CIRCLE from station 0 + 00 to station 2 + 24.26. Or to do or act in any manner relative thereto. Planning Board SEE ATTACHED

PURPOSE AND JUSTIFICATION

These streets have been completed according to Planning Board requirements and should be accepted as public ways.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote to accept the following streets as public ways, said streets having been constructed and completed in accordance with the Planning Board and Department of Public Works specifications. ANGELINA DRIVE from station 0 + 00 to station 5 + 17.42; VIRGINIA AVENUE from station 23 + 42.34 to station 27 + 08.22; and THOMAS CIRCLE from station 0 + 00 to station 2 + 24.26

FINANCE COMMITTEE REASON: These streets have been constructed and completed in accordance with the Planning Board specifications and has been approved by the Planning Board.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 13 DRAINAGE EASEMENT

PLANNING BOARD

To see if the Town will vote to authorize the Board of Selectmen to release to Stoneridge Development LLC, a Massachusetts limited liability company, and its successors and assigns of 385 John L. Dietsch Boulevard, North Attleborough, Massachusetts all of its right, title and interest in and to that portion of a drainage easement described as "LOT 10 - DRAINAGE EASEMENT" in that certain easement from Roger J. Sauvageau and Helen L.

Sauvageau to The Inhabitants of the Town of North Attleborough, Massachusetts dated June 30, 1999 and recorded at the Bristol County Northern District Registry of Deeds in Book 8437, Page 286 (hereinafter called the "Original Easement"), said portion of the Original Easement to be released to said Stoneridge Development LLC to consist of 1,095.4 +/- square feet of land as shown and described as Parcel A on that plan of land entitled, "EASEMENT MODIFICATION PLAN IN NORTH ATTLEBOROUGH, MASSACHUSETTS PREPARED FOR STONERIDGE DEVELOPMENT LLC 385 JOHN DIETSCH BOULEVARD NORTH ATTLEBOROUGH, MASSACHUSETTS 02760 SCALE: 1" = 20' DATE: DECEMBER 6, 2002" Prepared by Tilton and Associates, Inc., One George Leven Drive, Suite 100, P.O. Box 467, North Attleborough, MA 02760. And to be recorded at the Bristol County Northern District Registry of Deeds, a copy of which is attached hereto and on file with the Town Clerk. Or to do or act in any manner relative thereto. Planning Board SEE ATTACHED

PURPOSE AND JUSTIFICATION

To allow a municipal drainage easement associated with the Cedar Hill subdivision to conform with amended subdivision plans approved by the Planning Board.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: This article is improperly written because it calls for no action.

The RTM members defeated the Finance Committee's recommendation as read.

Dave Manoogian (P8) presented the following Affirmative Action:

That the Town vote to authorize the Board of Selectmen to release to Stoneridge Development LLC, a Massachusetts limited liability company, and its successors and assigns, of 385 John L. Dietsch Boulevard, North Attleborough, Massachusetts all of its right, title and interest in and to that portion of a drainage easement described as "LOT 10- DRAINAGE EASEMENT" in that certain easement from Roger J. Sauvageau and Helen L. Sauvageau to The Inhabitants of the Town of North Attleborough, Massachusetts dated June 30, 1999 and recorded at the Bristol

County Northern District Registry of Deeds in Book 8437, Page 286 (hereinafter called the "Original Easement"), said portion of the Original Easement to be released to said Stoneridge Development LLC to consist of 1,095.4± square feet of land as shown and described as Parcel A on that plan of land entitled "EASEMENT MODIFICATION PLAN IN NORTH ATTLEBOROUGH, MASSACHUSETTS PREPARED FOR STONERIDGE DEVELOPMENT LLC 385 JOHN DIETSCH BOULEVARD NORTH ATTLEBOROUGH, MASSACHUSETTS 02760 SCALE: 1"=20' DATE: DECEMBER 6, 2002" Prepared by Tilton and Associates, Inc. One George Leven Drive, Suite 100, P.O. Box 467, North Attleborough, MA 02760, and to be recorded at the Bristol County Northern District Registry of Deeds.

Motion seconded.

The RTM members approved the Affirmative Action as presented.

ARTICLE 14 AMEND ARTICLE III, SECTION I(i) TOWN BY LAWS BOARD, SELECTMEN

To see if the Town will vote to amend Article III, section I (i) of the municipal by-laws by replacing the phrase "January 15" with "February 15", so that the by-law will now read as follows: "The Board of Selectmen, no later than February 15, shall present to each member of the Finance Committee, the comprehensive proposed budget, supporting documents, and their recommendations relative thereto. Copies of the same shall be placed in the Town Clerk's office and in the Public Library and made available to the Public." Or to do or act in any manner relative thereto. Board of Selectmen SEE ATTACHED

PURPOSE AND JUSTIFICATION

The proposed change in the by-law reflects the recent change in the Town By-Laws changing the date(s) for the closing of the Annual Town Meeting warrant to February 15 and the commencement of the Town Meeting to the 3rd Monday in May. Also, the January 15 date necessitates that the Board of Selectmen presents a proposed budget to the Finance Committee prior to publication of Local Aid numbers by the Governor.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote to amend Article III, section I (i) of the municipal by-laws by replacing the phrase "January 15" with "February 15"

FINANCE COMMITTEE REASON: This change to the Town's By Laws brings deadline for annual budget submission to the Finance Committee in concert with the new dates for the Annual Town Meeting.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 15 AMEND ARTICLE III, SECTION 2(C) TOWN BY LAWS BOARD, SELECTMEN

To see if the Town will vote to amend Article III, section 2 (c), of the municipal by-laws by replacing the phrase "January 15" with "February 15", in the second sentence of Article III, 2 (c) so that the by-law will now read as follows: "The Board of Selectmen shall review the proposed capital improvements program and make such changes as it considers necessary to reflect its stated policies and program objectives. It shall return the proposed Capital Improvements program to the Town Administrator for presentation to the Finance Committee for its review on or before February 15th for the Annual Town Meeting. Copies of the Capital Improvement Program shall be placed in the Town Clerk's office and the Public Library and shall be made available to the public." Or to do or act in any manner relative thereto. Board of Selectmen SEE ATTACHED

PURPOSE AND JUSTIFICATION

The proposed change in the by-law reflects the recent change in the Town By-Laws changing the date(s) for the closing of the Annual Town Meeting warrant to February 15 and the commencement of the Town Meeting to the 3rd Monday in May. Also, the January 15 date necessitates that the Board of Selectmen presents a capital improvement proposal and budget to the Finance Committee prior to publication of Local Aid numbers by the Governor.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote to amend Article III, section 2 (c), of the municipal by-laws by replacing the phrase "January 15" with "February 15".

FINANCE COMMITTEE REASON: This change to the Town's By Laws brings deadline for the capital improvement plan submission to the Finance Committee in concert with the new dates for the Annual Town Meeting.

The RTM members approved the Finance Committee's recommendation as read.

ARTICLE 16 SENIOR TAX CREDIT PROGRAM

COUNCIL ON AGING

To see if the Town will vote to approve the Council on Aging's criteria for the Senior Citizen's Tax Credit Program. Or to do or act in any manner relative thereto. Council on Aging SEE ATTACHED

PURPOSE AND JUSTIFICATION

The purpose of the program is to utilize the expertise and skills of senior citizens in service to the Town of North Attleborough, to increase community involvement among senior citizens and their families, to allow senior citizens to provide services to cover part of their property tax obligation to the Town, to provide financial relief from Town property tax obligations for North Attleborough senior citizens.

FINANCE COMMITTEE VOTE: 5-2

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: Although we support the program, we believe that additional controls (e.g. Section 2, "Program Overview", Paragraph 7) in subsequent years are needed.

After much discussion, John Donahue (P7) made a motion to move the question.

Motion seconded.

Motion carried.

The RTM members defeated the Finance Committee's recommendation as read.

James Wood (P8) presented an Affirmative Action as follows:

That the Town vote to approve the Council on Aging's criteria for the Senior Citizen's Tax Credit Program, or to do so in any manner relative thereto. (See Attached documentation)

Motion seconded.

The RTM members approved the Affirmative Action as presented.

ARTICLE 17 AMEND ZONING BY LAWS, SECTION VIII

BUILDING INSPECTOR

To see if the Town will vote to amend the North Attleborough Zoning By-Laws, Section VII - Nonconforming or Existing Uses, A. Nonconforming or Existing Use of Land, 1.b.

Amend 1.b. as follows:

1. b. Any nonconforming lot or open space on the lot including yards and setbacks if already smaller than that required shall not be further reduced so as to be in greater nonconformity, except that the Board of Appeals may grant a special permit to extend a conforming use so as to violate or further violate the side or rear yard requirements. ADDING "The Building Inspector may issue a building permit for an extension, reconstruction or alteration to a legal pre-existing nonconforming single family or two-family residential structure under either of the following circumstances:"

Add: (i.), (ii.) as follows:

- i. The extension, reconstruction or alteration of the structure complies with current setbacks and building height requirements.
- ii. The extension, reconstruction or alteration will not extend beyond the existing footprint of the structure, provided that the structure will comply with current building height requirements.

Or to do or act in any manner relative thereto. Building Inspector SEE ATTACHED

PURPOSE AND JUSTIFICATION

As stated in the Executive Office of Communities & Development, (EOCD), Land Court Manager, Volume 9, Edition No. 1, July, 1992: "Over the last few years, there have been a number of Land Court cases that have decided that a landowner was entitled to the issuance of a building permit based on the so-called footprint theory. In those cases, the Land Court held that an extension, alteration or change within the existing footprint of a nonconforming single-family structure was permitted as a matter of right provided such extension, alteration or change did not create any new zoning violation. See Land Use Manager, Volume 8, Edition No. 7."

"In *Goldhirsh v. McNear*, 32 Mass. App. Ct. 455 (1992), the Massachusetts appeals Court overturned the footprint theory and decided that the Zoning Enforcement Officer must refer requests for extensions, alterations or changes to nonconforming single-family structures to the Zoning Board of Appeals." "The Goldhirsh decision will, in many communities, dramatically increase the workload of the Zoning Board of Appeals. Except for alterations, which do not intensify or change the use of a nonconforming single or two-family structure, any change will require a Zoning Board of Appeal's review. Communities may wish to consider amending their local zoning regulations to permit certain changes as a matter of right. Clarifying what will constitute an "increase in the nonconforming nature" would appear not to be inconsistent with the Court's decision in *McLauhlin v. City of Brockton*, 32 Mass. App. Ct. 930 (1992)." Towns and Cities in the Commonwealth of Massachusetts have taken the advice of EOCD and amended their Zoning By-Laws as exemplified by The Town of Foxborough who amended their Zoning By-Laws to permit certain changes as a matter of right on May 10, 1999 as can be seen in the attached copy of their Article 10 Zoning, Protection Section 10.01 Non-Conforming Uses, Structures and Lots, D. 1.2.3. In 2002, the Town of North Attleborough Zoning Board of Appeals received one hundred and seventeen, (117), Applications for Variance, Special Permit or Exception. Twenty-four, (24) of these applications would not have come before the Board if the proposed amendment was in place. In all twenty-four (24) cases, the Board approved the action requested. Acceptance of this article could potentially reduce the workload of the Zoning Board of Appeals by twenty percent (20%).

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That consideration of this article be indefinitely postponed.

FINANCE COMMITTEE REASON: Acceptance of this proposal would eliminate the public's knowledge as notice is not required and consequently no public hearing on the changes to a non-conforming lot.

Following some discussion, the RTM members defeated the Finance Committee's recommendation as read.

Bart Steele (P7) made a motion to extend past the time of 10:00pm.

Motion seconded.

Motion carried.

Town Planner, Don Johnson, read the following letter into the minutes:

Michael Duggan, Town Moderator, 43 South Washington Street, North Attleborough, MA 02760

Re: Article for proposed changes to the North Attleborough Zoning By-Laws, scheduled for the February 24, 2003 Special Town Meeting

Dear Mr. Duggan:

Article 17 of the February 24, 2003 Special Town Meeting is to see if the Town will vote to amend the North Attleborough Zoning By-Laws

Pursuant to Section 5 of Chapter 40A of the Massachusetts General Laws, the Planning Board held a duly called public hearing on this proposed amendment on February 6, 2003.

At their meeting held on February 6, 2003, the Board voted, based on input received at the public hearing, five members for, none against, to recommend that this article be approved with an additional statement. This statement would require the applicant for a building permit to notify direct abutters and abutters directly across the street who might wish to oppose a building proposal under Section VII.A.1.b.ii. as amended of the Zoning By-Laws to appeal the proposed issuance of a building permit under said Section to the Zoning Board of Appeal at the applicant's

expense. The statement would be added after the end of the last sentence of the article. The recommended affirmative action motion for Article 17 thus would be as follows:

That the Town vote to amend the Zoning By-Laws, **Section VII-Nonconforming or Existing Uses, A. Nonconforming of Existing Use of Land, 1.b.**, as follows:

Amend 1.b. as follows:

1. b. Any nonconforming lot or open space on the lot including yards and setbacks if already smaller than that required shall not be further reduced so as to be in greater nonconformity, except that the Board of Appeals may grant a special permit to extend a conforming use so as to violate or further violate the side or rear yard requirements. **ADDING** "The Building Inspector may issue a building permit for an extension, reconstruction or alteration to a legal pre-existing, nonconforming single family or two-family residential structure under either of the following circumstances:"

Add: (i.), (ii.) as follows:

- i. The extension, reconstruction or alteration of the structure complies with current setbacks and building height requirements.
- iii. The extension, reconstruction or alteration will not extend beyond the existing footprint of the structure, provided that the structure will comply with current building height requirements. Prior to the issuance of any building permit under this paragraph ii., the applicant shall, at the applicant's expense, notify direct abutters and abutters directly across the street of said application by certified mail, return receipt requested, and shall provide proof to the Building Inspector that all of said abutters have been notified. If any direct abutter or abutter directly across the street wishes to object to the issuance of a building permit under this paragraph, said abutter shall notify the Building Inspector in writing of said objection within fourteen (14) days after the notice to direct abutters and abutters directly across the street, and said abutter may appeal the proposed issuance of the building permit to the Zoning Board of Appeal at the applicant's expense. If, after the elapse of fourteen (14) days after said notice to direct abutters and abutters directly across the street no appeals have been made to the Zoning Board of Appeal, the Building Inspector may issue a building permit for said extension, reconstruction or alteration provided that said permit otherwise complies with all applicable sections of this bylaw.

For the Planning Board,
Donald T. Johnson
Planning Board Agent

Barbara Smith (P2) then presented an Affirmative Action as follows:

Amend 1.b. as follows:

1. b. Any nonconforming lot or open space on the lot including yards and setbacks if already smaller than that required shall not be further reduced so as to be in greater nonconformity, except that the Board of Appeals may grant a special permit to extend a conforming use so as to violate or further violate the side or rear yard requirements. **ADDING** "The Building Inspector may issue a building permit for an extension, reconstruction or alteration to a legal pre-existing, nonconforming single family or two-family residential structure under either of the following circumstances:"

Add: (i.), (ii.) as follows:

- i. The extension, reconstruction or alteration of the structure complies with current setbacks and building height requirements.
- ii. The extension, reconstruction or alteration will not extend beyond the existing footprint of the structure, provided that the structure will comply with current building height requirements. Prior to the issuance of any building permit under this paragraph ii., the applicant shall, at the applicant's expense, notify direct abutters and abutters directly

across the street of said application by certified mail, return receipt requested, and shall provide proof to the Building Inspector that all of said abutters have been notified. If any direct abutter or abutter directly across the street wishes to object to the issuance of a building permit under this paragraph, said abutter shall notify the Building Inspector in writing of said objection within fourteen (14) days after the notice to direct abutters and abutters directly across the street, and said abutter may appeal the proposed issuance of the building permit to the Zoning Board of Appeal at the applicant's expense. If, after the elapse of fourteen (14) days after said notice to direct abutters and abutters directly across the street no appeals have been made to the Zoning Board of Appeal, the Building Inspector may issue a building permit for said extension, reconstruction or alteration provided that said permit otherwise complies with all applicable sections of this bylaw.

Motion seconded.

Following further discussion, Brian Geoghegan (P7) made a motion to move the question.

Motion seconded.

Motion carried.

The RTM members approved the Affirmative Action as presented. 2/3's vote obvious to the Moderator.

ARTICLE 18 COMMUNITY PRESERVATION ACT

BOARD OF SELECTMEN

To see if the Town will vote to accept Sections 3 to 7, inclusive of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the acquisition, creation and preservation of open space, the acquisition and preservation of historic resources, the acquisition, creation and preservation of land for recreational use, the creation, preservation and support of community housing, and the rehabilitation and restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided under said Act to determine the amount of such surcharge on real property as a percentage of the annual real estate tax levy against real property; to determine whether the Town will accept any of the exemptions from such surcharge permitted under Section 3 (e) of said Act; Or to do or act in any manner relative thereto. Board of Selectmen SEE ATTACHED

PURPOSE AND JUSTIFICATION

The statute, M.G.L. c. 44B necessitates that the town's legislative body (RTM) approves this article before its acceptance can again be considered by the voters. Approval of this article will permit the presentation of this article at the April 2003 town election.

FINANCE COMMITTEE VOTE: 7-0

MAJORITY VOTE

FINANCE COMMITTEE RECOMMENDATION: That the Town vote to accept Sections 3 to 7, inclusive of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the acquisition, creation and preservation of open space, the acquisition and preservation of historic resources, the acquisition, creation and preservation of land for recreational use, the creation, preservation and support of community housing, and the rehabilitation and restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided under said Act to determine the amount of such surcharge on real property as a percentage of the annual real estate tax levy against real property; to determine whether the Town will accept any of the exemptions from such surcharge permitted under Section 3 (e) of said Act.

FINANCE COMMITTEE REASON: Passage of this article will enable the Board of Selectmen to put this issue before the voters of the Town on the April 2003 general election.

After much discussion, James Wood (P8) presented a Substitute Motion as follows:

That the Town will vote to accept General Laws Chapter 44B sections 3-7 known as the Community Preservation Act, which establishes a special Community Preservation Fund that may be appropriated and spent for certain open space, historic resources and affordable housing purposes, to approve a property tax surcharge in an amount of one (1) percent of the taxes assessed annually on real property which shall be dedicated to the fund, such surcharge to

be imposed on taxes assessed for fiscal years beginning on or after July 1, 2003 and to exempt from the surcharge any or all of the following: (1) property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the community; (2) Class Three Commercial, and Class Four Industrial property in any year the Town adopts a higher tax rate for those classes; or (3) \$100,000 of the assessed valuation of Class One, Residential parcels.

Following more discussion, Chris Noll (P8) made a motion to move the question.

Motion seconded.

Motion carried.

The RTM members defeated the Substitute Motion as presented.

The RTM members defeated the Finance Committee's recommendation as read.

A motion was made to adjourn the Special Town Meeting.

Motion seconded.

Motion carried.

It is 10:45PM. Sine Die.