



COMMONWEALTH OF MASSACHUSETTS
TOWN OF HUBBARDSTON

SPECIAL TOWN MEETING

MINUTES

JUNE 1, 2010

Pursuant to the foregoing warrant, the voters of the Town of Hubbardston assembled at the Center School gymnasium to act on the articles in said warrant. Present were Moderator Edward Leonard; Board of Selectmen members Matt Castriotta(Chair), Ernest Newcomb, and Michael Stauder; Town Clerk Joyce Green; Finance Committee members Edward Blanchard(Chair), David Simmerer, Mark Connery, Benjamin Prentiss, James Pitney, and Chris Norcross; Town Administrator Debra Roussel; and representative for Town Counsel, Joel Bard.

A total of 113 registered voters were checked in by Marcia Howlett and Kellianne Becker. A quorum of 50 voters was present throughout the meeting. Two voters, Glen Gregory and Chris Norcross were selected as counters by the Moderator.

Moderator Leonard called the meeting to order at 7:01pm. The following actions were taken on the articles presented in the aforesaid warrant:

ARTICLE 1: Motion, Matt Castriotta, that the Town vote to **transfer the sum of \$18,111.25** (Eighteen Thousand One Hundred Eleven and 25/100 Dollars) **from 2009 Overlay Account #000-1230-2009 to 2008 Overlay Account #000-1230-2008.** (FinCom Recommends)

Second: Michael Stauder

Vote: Motion Carries; Majority Affirmative Vote

ARTICLE 2. Motion, Matt Castriotta, that the Town vote to amend Article 15 of the June 3, 2008 Annual Town Meeting to appropriate **5,768.18** (Five Thousand Seven Hundred Sixty Eight and 18/100 Dollars) **from the Community Preservation Act Historic Resources Reserve account** (#24-600-5010) and **\$13,004.82** (Thirteen Thousand Four and 82/100 Dollars) **from the Budgeted Reserve account** (#24-600-5040) to repair the Steeple, Bell Tower, Roof and for masonry work and painting of the First Parish Unitarian Church of Hubbardston, said funds to be administered jointly by the Community Preservation Committee and the First Parish Committee. (FinCom Recommends)

Second: Michael Stauder

Vote: Motion Carries; Majority Affirmative Vote

ARTICLE 3. Motion, Matt Castriotta, that the Town vote **to transfer from the Community Preservation Fund** balance amounts equal to those that were collected in excess of estimates in prior fiscal years, as follows:

Reserves:

FY07-09 estimated revenues for Historic Resources Reserve (10%) \$1,472.52

FY07-09 estimated revenues for Community Housing Reserve (10%) \$1,472.52

FY07-09 estimated revenues for Open Space Reserve (10%) \$1,472.52

(FinCom Recommends)

Second: Michael Stauder

Vote: Motion Carries; Unanimous Affirmative Vote

ARTICLE 4. Motion, Matt Castriotta, that the Town vote **to transfer \$81,647.00** (Eighty One Thousand Six Hundred Forty-Seven and 00/100 Dollars) **from Free Cash** and **\$4,500.00** (Four Thousand Five Hundred and 00/100 Dollars) **from funds remaining in appropriation** voted as Article 12 at the Special Town Meeting of June 2, 2009 **for a block house** (#01-210-5900), to the **General Stabilization Fund** (#000-2210-0000). (2/3 Vote Required) (FinCom Recommends)

Second: Michael Stauder

Vote: Motion Carries; Unanimous Affirmative Vote

ARTICLE 5. Motion, Matt Castriotta, that the Town vote **to transfer from Highway Winter Wages** (#01-423-5101) **the sum of \$20,022.93** (Twenty Thousand Twenty Two and 93/100 Dollars); **from Winter Outside Wages** (#01-423-5102) **the sum of \$118.60** (One Hundred Eighteen and 60/100

Dollars); **from Winter Machine Maintenance** (#01-423-5200) **the sum of \$31.76** (Thirty-one and 76/100 Dollars); **from Plowing of Private Ways** (#01-423-5205) **the sum of \$300.00** (Three Hundred and 00/100 Dollars); and **from Highway Machine Maintenance Fuel** (#01-422-5402) **the sum of \$14,231.48** (Fourteen Thousand Two Hundred Thirty One and 48/100 Dollars); **for a total sum not to exceed \$34,704.77** (Thirty-four Thousand Seven Hundred Four and 77/100 Dollars) **to the Highway Winter Materials Account** (#01-423-5400) **to fund the FY2010 snow and ice deficit.**

(Fin Com Recommends)

Second: Michael Stauder

Vote: Motion Carries; Majority Affirmative Vote

ARTICLE 6. Motion, Matt Castriotta, that the Town vote to **amend the Hubbardston General Bylaws, Chapter XXII – Regulation of Dogs, Section 3. Kennel Licenses**, by removing the last sentence: “Fee to be retained by the Dog Officer,” and replacing it with: “Fee to be retained as general revenue.”

(FinCom Takes No Action)

Second: Michael Stauder

Vote: Motion Carries; Majority Affirmative Vote

ARTICLE 7. Motion, Matt Castriotta, that the Town vote to **amend the Hubbardston General Bylaws, by deleting Chapter XIX - Earth Removal** in its entirety, and **replace it** with the following:

CHAPTER XIX EARTH REMOVAL

1. Authority

This bylaw is adopted under the authority contained in Massachusetts General Law, Chapter 40, §21(17) and the Home Rule Amendment to the Massachusetts Constitution.

2. Purpose

The purpose of this bylaw is to prevent the degradation of the town’s natural resources including its soil, surface and groundwater, and naturally occurring vegetation due to the improper or uncontrolled removal or redistribution of earth and vegetation and to protect the right of every resident of the Town of Hubbardston to enjoy the natural, scenic, historic, and aesthetic qualities of the environment as declared in Article XLIX of the Constitution of the Commonwealth of Massachusetts.

3. Definitions

Applicant:

The individual, corporation or other legal entity who makes the application for an Earth Removal Permit. Such individual, corporation or other legal entity might not be the Owner of the site, but might be operator of the Earth Removal Operation. The permit shall be issued to the Applicant. If the Applicant is not the Owner of the land, the applicant shall demonstrate that they have the legal permission of the Owner to make an application and alter the site for an Earth Removal Operation.

Board

The Planning Board of the Town of Hubbardston who shall act as the Permit Granting Authority (PGA)

Earth

All forms of soil, including, without limitation, decomposed organic matter, loam, sand, gravel, clay, peat, hard-pan, or rock.

Earth Removal Operation

The removal from a site, by hand or by machinery, of any earth material including but not limited to loam, sand, gravel, clay, peat, hard-pan, or rock from surface or subsurface without the aid of drilling and/or blasting, together with all activities associated with the removal, including, but not limited to, the stripping of vegetation, loam, topsoil, or sod, the digging, stockpiling, processing, moving, depositing, or transportation of earth products in any form, natural, altered or otherwise. The Earth Removal Operation includes the moving of equipment required for the operation to, from, or within the site, and all land

affected by the operation (e.g. fill, or storage piles, access ways, or structures). There are two classes of earth removal activities as described below:

1) Small scale earth removal:

A small scale earth removal operation is one that is for general site grading, alterations and modification where the removal is 1000 cubic yards or less, annually.

2) Large scale earth removal:

A large scale earth removal operation is earth material removal of more than 1000 cubic yards of material removed from the site on an annual basis.

Erosion

The process by which the ground surface is worn by forces such as wind, running water, ice, abrasion, gravity, transportation, or by artificial means.

Fill

- 1) Soil, earth, sand, gravel or other earth material which is deposited, placed, pushed, pulled, or transported, and includes the conditions that result from that act.
- 2) Any act by which soil, earth, gravel or other similar material is deposited, placed, pushed, pulled, or transported.

Gravel

Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.

Gross Landscape Modification

The alteration of more than 50% of any single lot or more than one acre of land, whichever is less.

Loam or Topsoil

A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter. Surface soil as distinguished from subsoil.

Lot

A parcel of land under single, joint, or several ownership and separated from contiguous land by property lines and/or street lines, defined by metes and bounds, or boundary lines, and shown on a deed and/or plan recorded in the Worcester District Registry of Deeds or registered in the Land Court.

Owner

Owner of the land from which earth is sought to be removed or the person lawfully standing in the stead of such owner. Ownership must be shown on the deed to the property. Person, company or agent standing in the stead of such owner must have owner's notarized permission to do so.

Processing

The sorting or separation of earth materials into distinct categories based on particle size or type usually through the use of a screening process but not exclusively so. Processing does not include stone crushing.

Quarrying

The removal of stone (from the ground) by cutting, blasting, ripping or hammering or any other method other than collection of distinct particles (e.g., glacial erratics, boulders and similar distinct, separate stone objects).

Sand

A loose granular material resulting from the disintegration of rock, consisting of smaller granules than gravel, and larger particles than silt particles.

Sediment

Earth materials transported or deposited into any body of water, creek ravine, or other sensitive area by the movement of wind, water, ice, gravity, or by artificial means.

Sensitive Areas

1. Areas subject to the jurisdiction of either the State Wetlands Protection Act (M.G.L. Ch. 131 §40), the Hubbardston Wetlands Protection Bylaw, or both.
2. Areas delineated as Priority or Estimated Habitats for Rare Species as Defined by the Natural Heritage and Endangered Species Program (NHESP), a Division of the Department of Fisheries and Wildlife.
3. Areas designated as Watershed Protection:
 - a. Department of Environmental Protection Estimated or Defined Zones 1 and 2 to Public Water Supply Sources.
 - b. Areas delineated on the Town of Hubbardston's Aquifer Protection Favorability overlay district.
 - c. Areas subject to the Department of Conservation and Recreation (DCR), Watershed Protection per the Watershed Protection Act (350 CMR 11.00)

Sensitive Receptors

Existing structures and uses that are not compatible with Earth Removal Operations. These include: schools, libraries, senior housing facilities, hospitals, densely developed residential areas, multifamily or cluster developments and other uses by their nature, as determined by the Planning Board, that are sensitive to noise, air and traffic caused by earth removal operations.

Silt

Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter.

Site

A distinct portion of one lot, or one or more contiguous lots, under the same or different ownerships, on which an earth removal operation is conducted, or is proposed to be conducted, under an Earth Removal Permit.

Slope

An area that is more or less steep, as measured by vertical rise over a horizontal distance, expressed as a percentage or ratio. For example, a rise of one (1) foot over three (3) horizontal feet is a slope of 33%, and is expressed as a ratio of 3:1 slope.

Stone Crushing

The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.

4. General Provisions

- A. All operations for the removal of earth shall be regulated in accordance with the procedures, standards and conditions contained herein.
- B. Earth removal may be permitted by a permit on a lot in the Town of Hubbardston and shall run with the land and encumber said lot.
- C. Quarrying is prohibited.
- D. No Earth Removal Operation shall be permitted adjacent to any sensitive receptor or area unless mitigation measures can be implemented, which in the opinion of the Board will serve to protect such areas. as approved by the Planning Board,.
- E. No person, firm, or corporation shall excavate in any one year more than five hundred (500) cubic yards of earth from any land in the Town without first obtaining an earth removal permit as provided in the following sections.
- F. Each operation proposed by the same applicant for a site with multiple owners shall require a separate Earth Removal Permit for each lot so affected.

- G. The Permit Granting Authority for earth removal shall be the Planning Board. The Planning Board shall have the following powers and duties relative to earth removal:
1. The Planning Board shall receive, review and hold public hearings, take testimony and facts and act on all complete applications for permits to conduct earth removal.
 2. The Planning Board shall issue all permits for earth removal according to the provisions of this bylaw.
 3. The Planning Board, its agent or designee, in addition to the Building Inspector shall act to monitor compliance with issued permits and any conditions imposed thereon. The Board, its agent or designee, in addition to the Building Inspector shall, under the provisions of this Bylaw, act to issue notice of violation(s), cease and desist orders or revoke or suspend any permit for cause.
 4. The Planning Board shall, annually by April 15th, file with the Board of Selectmen, a report on the current activity and status of all earth removal operations in the Town.
 5. The Planning Board may waive strict compliance with the requirements under Section 7 Rules and Regulations, except for large scale earth removal applications. A pre-submission review with the Board is recommended for all earth removal operations.

5. Existing Operations

All earth removal operations in existence in Hubbardston on the effective date of this bylaw shall be subject to the requirements stated herein according to the following:

- A. Existing operations with permits. All earth removal permits, issued either under the provisions of the Hubbardston General Bylaws or Zoning Bylaws prior to the effective date of this bylaw, shall remain in effect until their expiration date. Permit renewal for existing permits shall follow the procedures of this bylaw and be subject to all the terms and conditions contained herein.
- B. Existing operations without permits. Within thirty (30) days of the effective date of this bylaw, each existing operation without a permit shall meet with the Planning Board to discuss a process for development of a transition plan to bring the site into compliance. The Applicant shall, in consultation with the Planning Board, property owner (if not the applicant), operator and the Town's consultants, develop such transition plan to bring the operation into compliance with the bylaw to the greatest extent possible. The transition plan shall be developed and approved within ninety (90) days of the effective date of this bylaw.

6. Exemptions

A permit shall not be required for the following:

- A. Removal of earth incidental to and reasonably required in connection with the construction of any building, appurtenant walk or driveway, septic system, swimming pool or other accessory uses and expansions thereto, for which all permits required by the Town of Hubbardston have been granted, provided the quantity of materials removed shall not exceed that displaced by the portion of the building or accessory use below grade;
- B. Removal of earth in the course of customary agricultural use of land;
- C. Removal of earth in compliance with the specific requirements of an approved subdivision plan; not including individual house lot development.
- D. Removal of earth in the normal use of a cemetery;
- E. Removal of earth from land in public use; the Town will, however, develop a transition plan for the earth removal operations conducted by the Town for the extraction and processing of road maintenance materials at the so-called "town pit" on Pitcherville Road.
- F. Removal of earth for the construction, maintenance and repair of existing roadways or fire ponds, including the installation of utilities and appurtenances.
- G. Removal of earth on a single lot, involving an excavation of no more than five hundred (500) cubic yards or less in one year.

The above exemptions do **not** apply to any activity which involves soil stripping or loam stripping or involves topographical changes which shall be considered gross landscape modifications.

7. Rules and Regulations

The Planning Board may establish additional rules and regulations, including fee schedules, to implement this bylaw. Changes in rules and regulations shall be made only after the Planning Board holds a public hearing thereon, such hearing to be advertised in a newspaper of general circulation in the town twice in successive weeks, the first advertisement being not less than fourteen days before the day of the hearing, and posted in the Town Office at least 14 days before the day of the hearing.

8. Application and Public Hearing Process**A. Application and Fees:**

1. All applications for earth removal operations shall be in writing on a form approved by the Planning Board and shall be accompanied by a filing fee established by the Planning Board to be adequate to defray the costs incurred by the town to administer the application
2. Plans prepared and stamped by a registered surveyor or engineer shall be submitted in the quantity, format and containing the contents identified in the Rules and Regulations.
3. A list of all abutters and abutters to the abutters within three hundred (300) feet of the property line as shown on the most recent tax list, certified by the Board of Assessors.
4. No application for an Earth Removal Permit shall be considered complete and shall not be acted upon, unless the Tax Collector of the Town of Hubbardston has certified, pursuant to M.G.L. Ch 40, Section 57, that no debt is owed to the Town by the applicant and owner.
5. All costs relating to publication and mailing shall be borne by the applicant.

B. Hearing Process:

The Planning Board shall hold a public hearing upon receipt of a complete application within sixty (60) days of the submission of all required application materials. The Planning Board shall publish notice of the hearing, including the time and place thereof and a description of the proposal sufficient for identification, in a newspaper of general circulation in the town once in each of two successive weeks, the first publication of which shall be not less than fourteen (14) days before the hearing. This notice shall be sent by registered or certified mail at least ten (10) days before the hearing to:

1. the applicant;
2. the owner of the parcel (if different from the applicant);
3. the owners of all land abutting the parcel for which a permit is sought, including land across any public or private street or way or any body of water or watercourse from such parcel, as they appear on the most recent tax list;
4. any other owners of property within three hundred (300) feet of the property lines of the parcel;
5. the Board of Selectmen (not certified mail);
6. any other Town, Regional, State or Federal agencies deemed by the Planning Board to be affected thereby; and
7. any other persons deemed by the Planning Board to be affected thereby.

C. The Planning Board may continue the public hearing process for cause, for receipt of additional information or to take testimony or receive and review additional provided information. Any continuance in the public hearing process beyond ninety (90) days from date of receipt of the project shall require the applicant's written permission. Any continuance of process shall be extended to a time and date certain, which shall be announced at the public hearing.**D. The Planning Board shall issue a decision within thirty (30) days of the closing of the public hearing. An Earth Removal Permit shall be deemed approved upon a simple majority vote of the Planning Board.****E. The Planning Board may act to issue an Earth Removal Permit with standard conditions, with special conditions or may deny the application. If an application is denied, the reasons for denial shall be included in decision.****F. A copy of the issued Earth Removal Permit or denial thereof shall be filed at the Office of the Town Clerk within five (5) business days of the Board's final action.****G. Appeals to the action of the Planning Board on any Earth Removal Permit may be taken to a court of competent jurisdiction. Such appeals shall be made within twenty (20) days of the filing of**

action with the Town Clerk. Notification of any appeal must be provided to the owner, applicant, and Hubbardston Planning Board.

9. Conditions for all Earth Removals

- A. General - The following criteria shall apply to all earth removal operations, regardless of whether a permit is required or not:
1. Unless otherwise provided as part of the permit: Hours of operation shall be between 6:30 a.m. and 4:00 p.m. Monday through Friday and 8 a.m. to 12 noon on Saturday, except hours of operation for a crusher shall be 8 a.m. to 4 p.m., Monday through Friday and 9 a.m. to noon on Saturday. No operations are allowed on Sunday and State holidays.
 2. Noise from normal operations shall not exceed permissible levels as set forth in the Regulations of the Hubbardston Board of Health, Section 5: Noise Thresholds. Professional monitoring tests shall be performed by the permittee and submitted to the Planning Board and Board of Health for review.
 3. All earth removal operations shall be conducted in such a manner to prevent the erosion of the land, siltation of waters or water bodies and prevention and control of dust and other deleterious effects of earth removal operations.
 4. All Earth Removal Operations shall be permitted as set forth in Section 9.B.12, and shall include the provision for reclamation of the site, in part during operations or in whole, once excavation and earth removal activities have ceased in that part of the site. Reclamation shall include the stabilization of all surfaces by planting or other means to prevent erosion, control runoff and reduce hazards at the site. All slopes shall be graded to a maximum slope of 3:1 (Horizontal:vertical) and shall be planted or otherwise made stable in a manner determined acceptable to the Planning Board.
- B. Permit Requirements:
1. The limit of work shall be as described in the permit application and depicted on accompanying plans. Work outside the limit of work is expressly prohibited. Phasing limits shall be clearly depicted on submitted plans.
 2. No excavation may extend below four (4) feet above the estimated seasonal high water table as determined by a Massachusetts Department of Environmental Protection Certified Soil Evaluator, or other expert source of determination, and/or on site groundwater monitoring wells as adjusted for seasonal variations. A minimum of two monitoring wells shall be required for each phase of operations. No areas shall be excavated to cause accumulation of standing water.
 3. No permit shall be issued for a term longer than two (2) years. Permit renewal applications shall be accompanied by an operations plan for the permit period being applied for and updated site plan. Permit renewals may be granted only if the applicant has complied with all conditions of the original permit and has corrected any violations in a manner satisfactory to the Planning Board.
 4. As part of and as set forth in any such permit, the Planning Board shall impose such reasonable restrictions and conditions on the exercise of the permit as it deems to be in the public interest, including but not limited to
 5. Permits are transferable with the approval of the Planning Board after submission of an operations plan that meets all requirements of the bylaw and have provisions to transfer the applicable performance bond/surety. Permits are revocable (see Section 12: Enforcement).
 6. Any Order of Conditions established by the Town of Hubbardston Conservation Commission shall become part of the conditions for the earth removal operation.
 7. The permit holder must comply with any and all other requirements of federal, state, or local law applicable to the operation. Violations of any and all other requirements of federal, state or local law can be considered a violation of the Earth Removal Permit and be subject to the enforcement action as described in Section 12: Enforcement.

8. The permittee shall submit an operations report to the Planning Board every six months containing details on the amount of material removed, percent of restoration completed and an estimated timeline to complete the removal operations as permitted.
9. The permit shall not become effective until the applicant has filed the proper security and paid all required fees and review costs.
10. Owners of discontinued, permitted earth removal sites subject to this bylaw, as originally adopted in 1985, and as amended, shall submit a letter to the Planning Board describing the status of the site and plans, if needed, for reclamation. Failure of the owner to have such a letter on file with the Town within six (6) months after written notice to the owner may cause the Town to seek a court order for permission for the Town to undertake reclamation of the site at the expense of the owner
11. Permits for Large Scale Earth Removal shall require a bond or other surety as required by Section 11 of these bylaws.
12. All permits shall include the provision for reclamation of the site, in part during operations or in whole, once excavation and earth removal activities have ceased in that part of the site. Reclamation shall include the stabilization of all surfaces by planting or other means to prevent erosion, control runoff and reduce hazards at the site. All slopes shall be graded to a maximum slope of 2:1 (Horizontal:vertical) and shall be planted or otherwise made stable in a manner determined acceptable to the Planning Board.

C. Specific Conditions - The Planning Board shall have the authority to impose specific conditions on an Earth Removal Operation as determined necessary to meet the Purposes of the Bylaw.

10. Inspections

The Planning Board shall require a deposit for periodic inspections of permitted earth removal sites, by an agent of the town to determine compliance with permit conditions. Upon entering the site, the town's agent will identify him/herself to an employee, if one is present. During times of active operation, the Planning Board may have its agent prepare monthly compliance review reports for the Planning Board.

Expenditures from this deposit shall be made only in connection with the review and inspection of the specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for revocation of the application permit.

11. Surety and Performance Bond

The permittee shall furnish a performance bond or other security in a form satisfactory to the Treasurer and Town Counsel sufficient to insure satisfactory performance of the requirements of the permit, including all phases of the earth removal operation and restoration of the site, and any conditions imposed thereupon.

After completion of the operation, and upon receipt of the permittee's written request, the Board may grant a partial release of any security posted by the applicant. The remainder of the security shall be released one year after the operation has been completed or the permit has expired, if the town's agent certifies that:

1. the restoration has been completed in compliance with the permit,
2. the permittee has submitted an "as-built" plan approved by the agent,
3. no deterioration of the site has occurred for a period of one year. During the year following the partial release of the security, the applicant shall be responsible for repairing any damage to the site.

12. Enforcement

The provisions of this bylaw shall be enforced by the Planning Board's designated agent or the Hubbardston Building Inspector.

If, after reviewing the reports from the permittee, the Town's agent, or other source the Planning Board concludes that there has been a violation of this bylaw, it shall send a notice of the specific violation to the permittee, by registered or certified mail or by process server, to the record address and applicant, as

applicable. The notice shall specify a time for compliance. If compliance is not achieved by the specified date, the following penalties shall apply:

13. Penalties

- A. Penalties - Criminal Disposition. Whoever is found to have violated any provision of this bylaw may be penalized by indictment or complaint brought to the Superior Court, Housing Court, or Gardner District Court, and a penalty of \$300.00 shall be imposed for each violation. Each day on which a violation exists shall be deemed to be a separate offense, with the first day of violation to be construed as the date on which the owner and applicants, as applicable was first notified of the violation.
- B. Penalties - Non-criminal Disposition. In addition to the procedures described above, the provisions of this bylaw may be enforced by the Planning Board by way of the non-criminal disposition procedure provided in the Mass General Laws, Chapter 40, Section 21.D. Each day on which a violation exists constitutes a separate offense. The penalty for each offense shall be Three Hundred Dollars (\$300.00).
- C. In the event the permitting authority determines that any person, whether or not an Owner, as defined herein, is in violation of this bylaw, the person may be assessed the cost of any and all action taken to remedy the violation, including reasonable attorney's fees, as provided for by M.G.L. Ch 40, section 31.
- D. The Planning Board may revoke or suspend the permit of any person, firm or corporation holding a permit under this bylaw if such person, etc. violates, disobeys, or fails to comply with any of the provisions of this bylaw. A permit may be revoked only after a hearing, the notice of which shall be the same as described in Section 8.B. Such hearing shall be held within thirty (30) days after the deadline for correction of a violation of the bylaw. A decision on revocation must be made within thirty (30) days of the closing of the hearing.

14. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof. (FinCom Takes No Action)

Second: Michael Stauder

Planning Board Chairman Vincent Ritchie, reported on the Public Hearings held regarding this bylaw and reviewed the history of other recent changes to the Earth Removal Bylaw. He stated that this version has changes suggested by a consultant to give the Planning Board more discretion to evaluate each permit and to allow more flexibility for small vs. large operations. He noted that if this article passes tonight the Planning Board will be voting on the Rules and Regulations to go along with this bylaw tomorrow night at the meeting.

Motion To Amend: Vincent Ritchie [Planning Board Chairman], to complete the unfinished sentence under Section 9 Conditions for all Earth Removals, Section (B) Permit Requirements, #4, **add** "... deemed to be in the public interest, including but not limited to **hours of operations, days of operations, noise, dust, and other mitigation measures, and other protective measures to be utilized during earth removal operations to limit or mitigate impacts of the operation on adjacent sites, the environment, the public good or abutters.**" **and** on advice of Town Counsel to **delete** in its entirety Section 9(B), #10 [Owners of discontinued, permitted earth removal sites subject to this bylaw, as originally adopted in 1985, and as amended, shall submit a letter to the Planning Board describing the status of the site and plans, if needed, for reclamation. Failure of the owner to have such a letter on file with the Town within six (6) months after written notice to the owner may cause the Town to seek a court order for permission for the Town to undertake reclamation of the site at the expense of the owner.]

Second on Motion to Amend: Michael Stauder

The Moderator then read the title of each section and asked for discussion or questions from the voters.

Vote on Article 7 as Amended: Motion Carries; Majority Affirmative Vote

ARTICLE 8: Motion, Matt Castriotta, that the Town vote to **amend the Hubbardston Zoning Bylaws, Article 9 – Site Plan Approval**, as follows:

To Section 9.1 **Add the following new paragraph:**

The site plan application shall include:

- a.) A summary description of the proposed use, its location, purpose and zoning district.
- b.) A citation to sections of these zoning bylaws which apply to the site plan.
- c.) A list of abutters in accordance with MGL Chapter 40A Section 11 and the required cost to publish hearing notices and notify abutters.

Section 9.2 **Add the following subsections:**

- h.) When deemed necessary by the Board the plan may be reviewed by an engineer selected by the Planning Board.
- i.) All consultants fees for legal, engineering, and other professional reviews required by the Planning Board shall be paid for by the applicant.

Section 9.7, delete the words: “And shall endorse the plan” at the end of the second sentence.

Section 9.7 Add the following as the fourth paragraph:

The Planning Board may waive or modify the requirements listed under section 9.2, 9.3, 9.4.

Add the following new section 9.8 Associate Member:

The Associate Member of the Planning Board shall sit on the Board for purposes of acting on site plan reviews and applications in the case of absence, inability to act, or conflict of interest in the part of any member of the Planning Board in the event of a vacancy on the Board.

(FinCom Takes No Action)

Second: Michael Stauder

Vincent Ritchie, Chairman of the Planning Board stated that these amendments were unanimously endorsed by the Planning Board.

Vote on Article 8: Motion Carries; Yes-103, No-0, Abstain-2

ARTICLE 9: Motion, Matt Castriotta, that the Town vote to **amend the Hubbardston Zoning Bylaws, by adding** as follows:

ARTICLE 20 – Use of Large-Scale Solar Photovoltaic Installations

20.1 Purpose

20.2 Definitions

20.3 General Requirements: Use of Large-Scale Solar Photovoltaic Installations

20.10 Purpose

The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations, which standards address public safety and minimize impacts on scenic, natural and historic resources and providing adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

20.1.1 Applicability: This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical

modifications that materially alter the type, configuration, or size of these installations or related equipment.

20.2.0 Definitions

20.2.1 As-of-Right Siting: As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right developments are subject to site plan review by the Planning Board to determine conformance with the Town's Zoning Bylaws. Projects cannot be prohibited, but can be reasonably regulated by the Planning Board through the site plan review process.

20.2.2 Building Inspector: The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the Town's Zoning Bylaws

20.2.3 Building Permit: A construction permit issued by the Building Inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as Town's Zoning Bylaws, which include those provisions governing ground-mounted large-scale solar photovoltaic installations.

20.2.4 Designated Location: Large scale ground mounted solar photovoltaic installations may be sited as-of right in all zoning districts in the Town of Hubbardston.

20.2.5 Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

20.2.6 On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

20.2.7 Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

20.2.8 Site Plan Review: review by the Site Plan Review Authority to determine conformance with the Town's Zoning Bylaws.

20.2.9 Site Plan Review Authority: For purposes of this bylaw, Site Plan Review Authority refers to the Planning Board.

20.2.10 Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

20.2.11 Zoning Enforcement Authority: The person or board charged with enforcing the zoning ordinances or bylaws.

20.2.12 Lot Size: A minimum of 80,000 square feet will be required for lots to have large solar ground mounted panels facilities placed on them. Lots must conform to zoning setbacks for each district they are located in. A minimum of one contiguous acre (43,560 square feet) must be available for siting. No dwelling or other structures – except those structures that are part of the facility are allowed on designated parcel. The aggregation of parcels in order to create a parcel of sufficient size to construct a qualifying facility will be considered.

20.3.0 General Requirements: Use of Large-Scale Solar Photovoltaic Installations

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

20.3.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

20.3.2 Building Permit and Building Inspection

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

20.3.3 Fees

20.3.3.1. The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.

20.3.3.2 The application for the Site Plan Review by the Planning Board must be accompanied by the fee required for the review.

20.3.3.3 All engineering fees, legal fees, publication fees, etc. incurred by the Planning Board during the application process and the Site Plan Review will be paid for by the applicant.

20.3.4 Site Plan Review

Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Site Plan Review Authority, as set forth in this Section and Article 3 9 of the Zoning Bylaws prior to construction, installation or modification as provided in this section.

20.3.4.1 General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

20.3.4.2 Required Documents

Pursuant to the site plan review process, the project proponent shall provide the following documents:

- (a) A site plan showing:
 - i. Property lines and physical features, including roads, for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

- vi. Name, address, and contact information for proposed system installer;
- vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- viii. The name, contact information and signature of any agents representing the project proponent; and
- (b) Documentation of actual or prospective access and control of the project site (see also Section 3.5);
- (c) An operation and maintenance plan (see also Section 3.6);
- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance; and
- (f) Description of financial surety that satisfies Section 3.12.3.

The Site Plan Review Authority may waive documentary requirements as it deems appropriate.

20.3.5 Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

20.3.6 Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the large- scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

20.3.7 Utility Notification

No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Site Plan Review Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

20.3.8 Dimension and Density Requirements

20.3.8.1 Setbacks

For large - scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

- (a) Front yard. The front yard depth shall be distance allowed in zoning districts.
- (b) Side yard. Each side yard shall have a depth at least 50 feet.
- (c) Rear yard. The rear yard depth shall be at least 50 feet.

20.3.8.2 Appurtenant Structures

All appurtenant structures to large- scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

20.3.9 Design Standards

20.3.9.1 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. All lighting on the premises shall be by motion activated devices and no all night lighting will be allowed unless so allowed by Planning Board. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

20.3.9.2 Signage

Signs on large- scale ground-mounted solar photovoltaic installations shall comply with the Town's Zoning Bylaws, Article 17-Signs. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

20.3.9.3 Utility Connections

Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

20.3.10 Safety and Environmental Standards

20.3.10.1 Emergency Services

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

20.3.11 Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large – scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and the Town's Zoning Bylaws.

20.3.11 Monitoring and Maintenance

20.3.11.1 Solar Photovoltaic Installation Conditions

The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

20.3.11.2 Modifications

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

20.3.12 Abandonment or Decommissioning

20.3.12.1 Removal Requirements

Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has reached the end of its useful life consistent with Section 3.12.2 of this

bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Removal shall consist of:

- (a) Physical removal of all large- scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

20.3.12.2 Abandonment

Absent notice of a proposed date of decommissioning and removal or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than six months without the written consent of the Site Plan Review Authority. If the owner or operator of the large- scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 120 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

20.3.12.3 Financial Surety

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Site Plan Review Authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. As a condition of approval, an applicant shall bind itself to grant the necessary license or easement to the Town to allow entry to remove the structure. The Town shall have the right, but not the obligation to remove the facility.

AND to amend the Hubbardston Zoning Bylaws, Article 9 – Site Plan Approval, section 9.1 Application and Purpose, by adding a reference to Article 20 in the last sentence;

AND, to amend Article 4.1 Uses Permitted by Right in Residential Districts, by adding as a permitted by right use: **p.** solar photovoltaic installations, subject to Article 20. (FinCom Takes No Action)

Second: Michael Stauder

Vincent Ritchie, Chairman of the Planning Board stated that the Planning Board endorsed this bylaw and recommends its adoption.

Vote on Article 9: Motion carries; Yes-104, No-7, Abstain-2

Seeing no further business before the meeting, the Moderator adjourned the Special Town Meeting at 7:39pm and called for a 5-minute recess prior to the start of the Annual Town Meeting.

Respectfully Submitted,

Joyce E. Green
Town Clerk

(Town Seal)