

**ADJOURNED (THIRD) TOWN MEETING
MONDAY, JANUARY 23, 2006
FOGELBERG AUDITORIUM – BHS**

A quorum being present, the meeting was called to order at 7:40 P.M. with a salute to the flag. A motion to adjourn to Wednesday, January 25, 2006 to complete the business of the Warrant, if necessary, was moved, seconded and so voted. The reading of the Warrant and Constable's Report was waived upon unanimous consent.

ARTICLE 1 RE: Reports of Town Officers & Committees

To hear and act on the reports of the Town Officers and Committees, or to act in any other manner in relation thereto.

Two new employees, Paul Sagarino, Town Accountant, and Marlene Johnson, Health Inspector, were introduced to the members.

The School Facilities Study Committee gave a progress update to the members.

The Town's financial team made a presentation on the process for setting the tax rate including valuation and classification of real estate then addressed questions of the membership.

The Moderator announced that further committee reports would be heard when respective articles were discussed.

ARTICLE 2 RE: Simonds Trust

To see if the Town will vote to accept from the Trustees under the will of Marshall Simonds the amount of \$25,000 or any other sum, for the maintenance and improvement of Simonds Park, same to be spent under the direction of the Recreation Commissioners, or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

Recommendations: Ways & Means voted in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 3 RE: Improvements at Mill Pond

To see if the Town will vote to raise and appropriate, transfer from available funds, borrow, or otherwise provide the sum of 1,000,000 or any other sum for the purpose of paying additional costs of making improvements to the Mill Pond Treatment Plant, and for paying any and all other costs incidental, same to be spent under the appropriate authority, or to act in any other manner in relation thereto.

MAIN MOTION: That the sum of \$1,242,000 be and hereby is appropriated for the purpose of paying additional costs of making improvements to the Mill Pond Treatment Plant, and for paying any and all other costs incidental and related thereto, and to that to meet this appropriation the Town Treasurer, with the approval of the Selectmen is hereby authorized to borrow said amount under and pursuant to Chapter 44, Section 7(1) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore.

Recommendations: Ways & Means voted 12-0-0 in favor. Capital Budget voted 7-0-0 in favor.

ACTION: UNANIMOUSLY APPROVED MAIN MOTION

ARTICLE 4 RE: Rescind Authorization

To see if the Town will vote to rescind various authorized but un-issued borrowing amounts in the amount of \$2,379,870.00, or to act in any other manner in relation thereto.

MAIN MOTION: That the following authorized, but unissued borrowing amounts be and hereby are rescinded and are no longer of any force or effect:

<u>Amount</u>	<u>Purpose</u>	<u>Date Authorized</u>	<u>Article</u>
\$1,600,000	Water	5/18/87	9
245,000	Schools	6/16/98	20A
534,870	Sewer	1/31/05	7

TOTAL: \$2,379,870

Recommendations: Ways & Means voted 12-0-0 in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 5 RE: Amend Part Time Salary Plan

To see if the Town will vote to amend the Part Time Salary Plan by removing the current compensation schedule under Category F "Sealer of Weights and Measures" and replacing with the following new schedule:

<u>1st year</u>	<u>2nd and 3rd year</u>	<u>4th and 5th year</u>
\$8,000	\$8,400	\$8,800

and furthermore to raise and appropriate, transfer from available funds, borrow or otherwise provide the sum of \$4,000 to pay for said adjustment, or to act in any other manner in relation thereto.

MAIN MOTION: Withdrawn

ARTICLE 6 RE: Emergency Utility Cost

To see if the Town will vote to raise and appropriate, transfer from available funds, borrow or otherwise provide the sum of \$25,000 or any other sum as a grant to appropriate non-profit entities for the purpose of providing a service to residents of the Town of Burlington in the form of emergency utility assistance, said funds to be expended under the direction of the Director of the Council on Aging and the Veterans' Agent; provided that any funds provided to non-profit organizations for this purpose shall be pursuant to a written grant agreement specifying that the funds may only be used for emergency utility assistance to residents of the Town of Burlington who would otherwise qualify for federal and/or state emergency utility assistance, and provided further that any funds not expended in fiscal Year 2006 shall be returned to the General Fund, or to act in any manner in relation thereto.

MAIN MOTION: To see if the Town will vote to transfer from the NESWC Account the sum of \$25,000 for the public purpose of promoting public health and safety to fund an emergency utility assistance program for the benefit of residents of the Town who meet the "needs test" standards under similar federal and state programs, said funds to be expended under the direction of the Director of the Council on Aging and the Veterans' Agent.

Recommendations: Ways & Means voted 12-0-0 in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 7 RE: Reserve Fund

To see if the Town will vote to raise and appropriate, transfer from available funds, borrow or otherwise provide the sum of \$100,000 or any other sum to add to the FY2006 Ways and Means line item budget (line# 99), or to act in any other manner in relation thereto.

MAIN MOTION: To see if the Town will vote to transfer from the NESWC Account the sum of \$100,000 to fund the Ways & means FY2006 Reserve Fund.

Recommendations: Ways & Means voted 12-0-0 in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 8 RE: Stabilization Account

To see if the Town will vote to raise and appropriate, transfer from available funds, borrow or otherwise provide the sum of \$700,000 or any other amount to add to the Town FY2006 Stabilization Account, or to act in any other manner in relation thereto.

MAIN MOTION: To see if the Town will vote to transfer from the NESWC Account the sum of \$700,000 to fund the Town's Stabilization Account.

Recommendations: Ways & Means voted 12-0-0 in favor.

ACTION: UNANIMOUSLY APPROVED THE MAIN MOTION**ARTICLE 9 RE: Town Center District Article and Zoning Bylaw Amendments**

TO see if the Town will vote to amend Article II "Definitions" of the Zoning Bylaw, by adding the following new definitions:

2.6.0.1 Bed & Breakfast

An owner-occupied one family dwelling offering temporary lodging accommodations for travelers, operated under an Innkeeper's license from the Board of Selectmen, and subject to any requirements of the Massachusetts Department of Public Health and the Burlington Board of Health. No Bed and Breakfast shall have more than 4 rooms to rent, nor shall any one room be rented by more than 3 unrelated people. Guest rooms shall not be provided with separate cooking facilities. Meals may be prepared and served from a central kitchen facility.

2.24.1 Farmers Market

A market, usually held out-of-doors, where farmers can sell their produce, other edible farm products, flowers, fireplace wood, preserves and similar products to the public. Products at such markets should be locally and/or regionally grown. Farmers Markets are subject to regulation by the Board of Health.

2.27.1 Fitness Center

An establishment, providing space or facilities for physical exercise, fitness and health, occupying not more than 5,000 square feet.

2.38.2 In-Law Apartment

A second dwelling unit located within a structure constructed as a detached one family dwelling, not exceeding 30% of the net floor area of the structure, and not internally separated from the main dwelling unit, in a manner that maintains the appearance of the structure as a one family unit. The owner of the dwelling shall occupy either of the dwelling units. There shall be no more than one in-law apartment within a one family dwelling.

2.38.3 Inn

A building designed and used to provide temporary accommodations for travelers, including sleeping quarters and bathroom facilities, but not cooking facilities, operated under an Innkeeper's license from the Board of Selectmen. Meals may be prepared and served from a central kitchen/dining facility.

2.52.1 Multi-Family Dwelling

A building designed and used as living quarters and habitation by four (4) or more families, containing separate cooking, bathroom and sleeping facilities in each of the living quarters.

2.63.2 Performance Theater

An enclosed space suitable for a variety of cultural arts performances, permanently available for the primary principal use of public performing arts presentations such as plays, dance, and concerts, although incidental use for private meetings, exhibits and presentations shall be permitted. Such space may also include studios, classrooms, and galleries.

2.78.0.1 Three-Family Dwelling

A building used as living quarters and habitation by three families, containing separate cooking, bathroom and sleeping facilities in each of the three living quarters.

2.80.1 Two-Family Dwelling

A building used as living quarters and habitation by two families, containing separate cooking, bathroom and sleeping facilities in each of the living quarters.

AND Further to amend Article III "Establishment of Districts", Section 3.1.1 Special Districts, by inserting the following new overlay districts:

CC – Civic Center District
CBD – Central Business District

AND Further to amend Article III, "Establishment of Districts", Section 3.2.0 Location of Districts, by adding the following new paragraph:

Town Center Districts: As shown on the map entitled, "Town of Burlington Town Center Districts" prepared by the Town of Burlington, and dated December 2005.

AND Further to amend Article IV, "Use Regulations" Section 4.1.1 Symbols in Use Regulations Schedules, by adding the following symbols and text:

YES₁ – Permitted by right in a Town Center overlay district, even if prohibited or allowed only by SP in the underlying zoning district.

SP₁ – Permitted only by a special permit in a Town Center overlay district, even if prohibited in the underlying zoning district.

AND Further to amend Article IV, "Use Regulations", by adding two new columns to the use regulations schedules of Section 4.2.0 Principal Use Regulations Schedule, Section 4.3.0 "Accessory Use Regulations Schedule" and Section 4.4.0 "Permitted Uses in the Wetlands District", as attached as Exhibit "A".

AND Further to amend Article IV, "Use Regulations", by adding the following new uses:

4.2.1.1.A "2-Family Dwelling", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and to provide a "NO" in all other districts.

4.2.1.1.B "3-Family Dwelling", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and to provide a "NO" in all other districts.

4.2.1.17 "Multi-Family Dwelling other than 4.2.1.2", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and to provide a "NO" in all other districts.

4.2.1.18 "Inn, Bed and Breakfast", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and a "NO" in all other districts.

4.2.2.28 "Fitness Center", and to provide a "YES" in the BN, BL, BG, BT, IR, A, and WR Districts, a YES₁ in the CC and CBD Districts, and a "NO" in all other districts.

4.2.2.29 "Performance Theater", and to provide a "YES" in the A and WR Districts, an "SP" in the BG, BT, IG, IH, and IR Districts, a "SP₁" in the CC and CBD Districts, and a "NO" in all other districts.

4.2.6.3.A "Retail stores other than above and showrooms, each less than 20,000 square feet", and to provide a "YES" in the BL, BG, BT, IR, A and WR Districts, a YES₁ in the CC and CBD Districts, and a "NO" in all other districts.

4.2.6.3.B "Retail stores other than above and showrooms, any individual tenant greater than 20,000 square feet", and to provide a "Yes" in the BG, IR, A, and WR Districts, an "SP₁" in the CC and CBD Districts, and a "NO" in all other districts.

4.3.1.19 "Garage space for parking more than three automobiles", and to provide a "YES" in the A and WR Districts, an "SP₁" in the CC and CBD Districts, and a "NO" in all other districts.

AND Further to amend Article V, "Density Regulations", Section 5.2.0, to add a footnote #3, to reference Section 8.5.5 for additional criteria applicable to the CC and CBD Districts.

AND Further to amend Article VIII, "Special Districts", to add a new Section 8.5.0 "Town Center" as follows:

8.5.0 Town Center Overlay District**8.5.1 The Town Center (TC) District is hereby adopted to achieve the following purposes and objectives:**

The fulfillment of goals and strategies enumerated in the Master Plan and the Community Development Plan involving aesthetic and functional improvements to the Town Center;

The enhancement and improvement of existing historic structures and properties around the Town Common;

The enhancement and improvement of existing properties and/or structures relative to pedestrian access, vehicular circulation, and signage;

The implementation of design and development standards to guide future development and re-use proposals which reflect the historic and governmental features of the neighborhood;

The implementation of design and development standards that encourage parking areas to be subordinated in relation to buildings, landscaping, and pedestrian access;

The encouragement of communication and shared redevelopment efforts among adjoining property owners to help achieve their long term goals and objectives; and,

The promotion of increased density where utility and transportation infrastructure already exist to better accommodate future growth;

The promotion of a mixture of uses to reduce vehicle trips, such that residents and area employees can walk to needed services and amenities, and to conversely provide a built-in demand for the local commercial and retail uses;

The encouragement of in-fill development;

The reutilization of properties that have reached their market or physical obsolescence;

The clustering of buildings and mixing of uses in exchange for some portion of land to be set aside as public area or green space;

The application of "Smart Growth Principles" as enumerated by the Commonwealth of Massachusetts to the future redevelopment of the Town Center;

The provision of incentives to accomplish the above objectives.

8.5.2 District Boundaries

The Town Center (TC) District is herein incorporated as an overlay district, superimposed over other districts established by this Bylaw. The TC District is divided into two (2) sub-districts: the "Civic Center" (CC) and the "Central Business District" (CBD). The TC District shall include all areas as reflected on a map titled "Town Center Overlay District: Civic Center and Central Business Districts", prepared by Town of Burlington Planning Department, dated December 2005. This map as may be amended from time to time is hereby made a part of this Bylaw.

8.5.3 General Requirements and Applicability

All land located within the Town Center Districts, (CC) & (CBD) shall be subject to the use restrictions or prohibitions as identified in Sections 4.2.0, 4.3.0 and 4.4.0 of this Zoning Bylaw. Uses not specifically permitted in these schedules shall be prohibited. Where land falls within the 100-Year Flood Plain District, Wetlands Districts, Aquifer or Water Resource Districts, such land shall be governed by the additional requirements or prohibitions of such districts.

8.5.4 Permitted Uses

8.5.4.1 Uses permitted by Site Plan and Special Permit

A Site Plan for all uses and activities proposed in the Town Center, except for single family dwellings, shall be required to be submitted in accordance with Section 9.3.0 of this Bylaw and the Site Plan Rules and Regulations of the Planning Board.

In the use regulations schedules of Sections 4.2.0, 4.3.0 and 4.4.0 of this Zoning Bylaw:

Where a use is designated as "YES" in the CC and CBD Districts, such use shall be permitted only if said use is permitted in the underlying zoning district, and any requirement for a special permit in the underlying zoning district shall govern.

Where a use is designated as "YES1" in the CC or CBD Districts, such use shall be permitted by right, even where the underlying zoning district may prohibit such use or require a special permit for such use.

Where a use is designated as "SP" in the CC or CBD Districts, such use shall require a Special Permit in accordance with the procedures specified in Section 9.2.0 of this Bylaw, regardless of the provisions of the underlying zoning district.

Where a use is designated as "SP1" in the CC or CBD Districts, such use may be permitted by a Special Permit, even where the underlying zoning district may prohibit such use.

Where a use if designated as "NO" in the CC or CBD Districts, such use shall be prohibited regardless of the provisions of the underlying zoning district.

8.5.4.2 Housing Production and Residential Uses in the Town Center

8.5.4.2.1 Annual Occupancy Permit Cap:

Not more than 30 dwelling units can be issued certificates of occupancy per year within the Town Center.

Exemptions:

a) Demolition of an existing one family dwelling and reconstruction as a one family dwelling, and additions to one family dwellings that remain one family dwellings, shall be exempt from the annual cap. For conversion or demolition and reconstruction of existing one family dwellings to 2-family or 3-family dwellings, one dwelling unit shall be considered exempt.

b) Dwellings units approved as part of a transfer of development rights, but only those units gained from the transfer, not the entire project, shall be exempt from the annual cap.

c) Dwelling units created through the reuse of structures built prior to 1900 shall be exempt from the annual cap.

8.5.4.2.2 Maximum Residential Component:

Not more than 35% of the total gross square footage of all buildings and structures in the Town Center can be in residential use. This includes single family dwellings, two family dwellings, three family dwellings, multifamily housing, senior housing, and any housing created as part of a mixed use building.

8.5.5 Dimensional Requirements

8.5.5.1 Minimum Lot area

Lot area requirements shall be as required in the underlying zoning district pursuant to Section 5.2.0 of this Bylaw.

8.5.5.2 Minimum Lot Frontage

Frontage requirements shall be as required in the underlying zoning district pursuant to Section 5.2.0 of this Bylaw.

8.5.5.3 Minimum Front Yard

Front yard setback may be zero, subject to inclusion of minimum 10 feet wide pedestrian area along the front face of any structure, where such area may include walkways and other pedestrian amenities including seating areas, benches, landscaping, lighting, awnings, trash receptacles, and similar features as may be approved by the Planning

8.5.5.4 Minimum Side Yard and Rear Yard

Side yard setback may be zero, except where abutting use is a single family dwelling, in which case a minimum 15' landscaped buffer is required.

8.5.5.5 Minimum Buffer to Adjoining RO Districts

The minimum buffer to adjoining residentially zoned property shall be 20% of the depth or width of the lot as applicable, with a minimum of 25' and a maximum of 50'. Abutting residentially zoned property shall include lots that are adjacent to a private or public way connecting said residential property and the Town Center Districts. A landscaped buffer of at least 20' in depth shall be constructed to mitigate the impact of any commercial use on the abutting residential district. The buffer shall be designed and constructed to minimize the visual effect of the bulk and height of buildings, structures, parking areas, lights, or signs, and shall be kept free of encroachment by all buildings, structures, storage areas, and parking, except that bicycle paths and fences may be sited within such buffer area if approved pursuant to a site plan review by the Planning Board.

8.5.5.6 Maximum Aggregate Building-to-Ground Area Percentage

33 1/3 %, except that the Planning Board pursuant to a Site Plan or Special Permit may permit the Maximum Aggregate Building to Ground Area Percentage to increase to 40% where such application is consistent with the purposes of the Town Center and meets one or more of the following criteria:

- a) Pedestrian and bicycle amenities are provided that are distinctly separated from drive aisles and parking, that provide active public spaces to foster social interaction, that encourage walking between businesses, that offer ease of access to public transit systems, and that enhance safety and access to adjoining properties and streets;
- b) Landscaping is provided of a density, diversity, and maturity that fosters the creation of public spaces, and that promotes connections to landscaped spaces on adjoining properties;
- c) Any housing component where at least 15% of the units are set aside as permanently affordable housing units.
- d) Offsite mitigation is implemented within the Town Center that substantially advances the purposes and objectives of the Town Center.

Pursuant to a special permit granted under Section 8.5.9 Transfer Of Development Rights, the Planning Board may permit a Maximum Aggregate Building to Ground Area Percentage to increase to 50% where such application is consistent with the purposes of the Town Center and meets the criteria of any design review guidelines established by the Planning Board.

8.5.5.7 Maximum Building & Structure Height

For multifamily structures within 100' of abutting residential district = 30'.

For multifamily structures >100' from abutting residential district = 40'.

For single family dwellings = 30'.

8.5.5.8 Minimum Feet between Buildings

None, but not less than required by the State Building Code.

8.5.5.9 Maximum Floor Area Ratio

For properties whose underlying zoning designation is General Industrial, the Floor Area Ratio may be increased to 0.50 pursuant to a special permit granted by the Planning Board in accordance with the provisions of Section 8.5.5.6. Floor Area Ratio shall not apply to other properties in the TC District.

8.5.6 Nonconforming Uses, buildings, structures and premises

In addition to the criteria of Sections 6.1.1 and 6.1.2 of this Bylaw, proposed alteration, expansion, and/or change of nonconforming uses, buildings, structures or premises shall be subject to site plan review and aesthetic criteria of any design review regulations adopted by the Planning Board.

8.5.7 Parking Requirements

Parking requirements shall be as specified in Article VII of this Bylaw.

8.5.8 Design Requirements

The Planning Board shall adopt and maintain design review regulations to govern the future construction and reuse of properties in the Town Center. Adoption and amendment to such regulations shall require a public hearing. Such regulations shall address:

1. Facade and exterior building treatment, including the style and sizes of all signage affixed to buildings;
2. A minimum percentage of landscaped surface area;. All open space, landscaped and usable, shall be designed to add to the visual amenities of the area by maximizing, in so far as practical, its visibility for persons passing the site or overlooking it from nearby properties.
3. A reduction in the number of existing curb openings that exist on the premises;

4. The placement of utilities and wiring underground to the extent possible;

5. The placement of HVAC equipment, fans, generators, and other site related structures and items so that they are not visible from roofs or building frontage areas, or that such features are suitably screened from view;

6. The required number of parking and loading spaces;

7. Other design standards and conditions deemed appropriate by the Planning Board; and,

8. Pedestrian amenities - sidewalks to provide access between parking areas and uses, and between properties.

9. Preservation and enhancement of landscaping. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil remove and any grade changes shall be in keeping with the general appearance or neighboring developed area.

10. Relation of buildings to environment. The proposed development shall be related harmoniously to the terrain and to the design, scale, and architecture of existing buildings in the surrounding area that have visual relationship to the proposed buildings, in so far as practical. Proposed buildings shall be related to their surroundings with respect to:

- (a.) Street facade and exterior walls visible from public ways.
- (b.) Variations and breaks in wall and/or roof planes.
- (c.) materials, textures and color
- (d.) roof slopes and materials
- (e.) Domestic scale should be produced through massing devices such as breaks in wall and roof planes and through design of architectural features.
- (f.) The building should not be made, in effect, a sign, through painting with bold patterns, checks, logos or other graphic devices, use of lighting or use of unconventional building form.
- (g.) external lighting
- (h.) external windows

11. Heritage. Proposals to remove or disrupt historic or traditional structures, or architectural elements shall be minimized.

12. Cost. The Design Review Board shall be obligated to be sensitive to potential financial burden to the applicant.

8.5.9 Transfer of Development Rights

The Planning Board may, by Special Permit, consider requests to transfer development capacity between parcels of land in the Town Center. The Planning Board shall base its decision on the purposes and objectives criteria of Section 8.5.1. A major purpose of this provision is to provide a buffer between the adjoining established neighborhoods and the Town Center where no such buffer currently exists. Transferred development rights may be used for residential or nonresidential uses.

Development rights may not be transferred from land which may not be otherwise developed because of deed restrictions, easements, prior transfer of development rights, or other reasons that render the land not developable, including land with conservation restrictions, land owned by a government agency or a nonprofit corporation or other entity for park, open space, agricultural, historical, or conservation purposes.

Transfer of development rights is contingent upon placing a permanent deed restriction, the form of which is subject to approval by Town Counsel, on the land from which the development rights are being transferred and restricting the use of the land to agriculture, forestry, open space, passive or active recreation, or deeding the land to the Town of Burlington as permanent open space or parkland.

Development rights may be transferred from a sending parcel with the accompanying deed restriction and held indefinitely by the owner of the parcel before being transferred to a receiving parcel. Development rights may be transferred by sale or other means and may subsequently be transferred to any owner of receiving parcels in the Town Center allowed pursuant to this bylaw.

8.5.10 Criteria for approval

The Planning Board shall not approve any application for approval of a site plan or special permit in the Town Center District unless it finds that all the following conditions are met:

1. The use or uses as proposed to be developed, and as reflected on the Site Plan and/or Special Permit application, will further the goals enumerated in the Master Plan and Community Development Plan for the Town Center, and the objectives listed in this section;

2. The use or uses proposed to be developed will enhance and improve pedestrian access, vehicular circulation, and the aesthetic appearance and function of the property and the area; and,

3. All criteria for approval listed in Sections 9.2.4 and 9.3.4 of this Bylaw.

MAIN MOTION: TO see if the Town will vote to amend Article II "Definitions" of the Zoning Bylaw, by adding the following new definitions:

2.6.0.1 Bed & Breakfast

An owner-occupied one family dwelling offering temporary lodging accommodations for travelers, operated under an Innkeeper's license from the Board of Selectmen, and subject to any requirements of the Massachusetts Department of Public Health and the Burlington Board of Health. No Bed and Breakfast shall have more than 4 rooms to rent, nor shall any one room be rented by more than 3 unrelated people. Guest rooms shall not be provided with separate cooking facilities. Meals may be prepared and served from a central kitchen facility.

2.24.1 Farmers Market

A market, usually held out-of-doors, where farmers can sell their produce, other edible farm products, flowers, fireplace wood, preserves and similar products to the public. Products at such markets should be locally and/or regionally grown. Farmers Markets are subject to regulation by the Board of Health.

2.27.1 Fitness Center

An establishment, providing space or facilities for physical exercise, fitness and health, occupying not more than 5,000 square feet.

2.38.1.1 In-Law Apartment

A second dwelling unit located within a structure constructed as a detached one family dwelling, not exceeding 30% of the net floor area of the structure, and not internally separated from the main dwelling unit, in a manner that maintains the appearance of the structure as a one family unit. The owner of the dwelling shall occupy either of the dwelling units. There shall be no more than one in-law apartment within a one family dwelling.

2.38.1.2 Inn

A building designed and used to provide temporary (not to exceed 30 days) accommodations for travelers, including sleeping quarters and bathroom facilities, but not cooking facilities, operated under an Innkeeper's license from the Board of Selectmen. Meals may be prepared and served from a central kitchen/dining facility.

2.52.1 Multi-Family Dwelling

A building designed and used as living quarters and habitation by four (4) or more families, containing separate cooking, bathroom and sleeping facilities in each of the living quarters.

2.63.1 Performance Theater

An enclosed space suitable for a variety of cultural arts performances, permanently available for the primary principal use of public performing arts presentations such as plays, dance, and concerts, although incidental use for private meetings, exhibits and presentations shall be permitted. Such space may also include studios, classrooms, and galleries.

2.78.0.1 Three-Family Dwelling

A building used as living quarters and habitation by three families, containing separate cooking, bathroom and sleeping facilities in each of the three living quarters. The configuration of units must be in a side-by-side layout, not vertically above one another.

2.80.1 Two-Family Dwelling

A building used as living quarters and habitation by two families, containing separate cooking, bathroom and sleeping facilities in each of the living quarters.

AND Further to amend Article III "Establishment of Districts", Section 3.1.1 Special Districts, by inserting the following new overlay districts:

CC – Civic Center District
CBD – Central Business District

AND Further to amend Article III, "Establishment of Districts", Section 3.2.0 Location of Districts, by adding the following new paragraph:

Town Center Districts: As shown on the map entitled, "Town of Burlington Town Center Districts" prepared by the Town of Burlington, and dated December 2005.

AND Further to amend Article IV, "Use Regulations" Section 4.1.1 Symbols in Use Regulations Schedules, by adding the following symbols and text:

YES₁ – Permitted by right in a Town Center overlay district, even if prohibited or allowed only by SP in the underlying zoning district.

SP₁ – Permitted only by a special permit in a Town Center overlay district, even if prohibited in the underlying zoning district.

AND Further to amend Article IV, "Use Regulations", by adding two new columns to the use regulations schedules of Section 4.2.0 Principal Use Regulations Schedule, Section 4.3.0 "Accessory Use Regulations Schedule" and Section 4.4.0 "Permitted Uses in the Wetlands District", as attached as Exhibit "A".

AND Further to amend Article IV, "Use Regulations", by adding the following new uses:

4.2.1.1.A "2-Family Dwelling", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and to provide a "NO" in all other districts.

4.2.1.1.B "3-Family Dwelling", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and to provide a "NO" in all other districts.

4.2.1.17 "Multi-Family Dwelling other than 4.2.1.2", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and to provide a "NO" in all other districts.

4.2.1.18 "Inn, Bed and Breakfast", and to provide a "YES" in the A and WR Districts, a "YES₁" in the CC and CBD Districts, and a "NO" in all other districts.

4.2.2.28 "Fitness Center", and to provide a "YES" in the BN, BL, BG, BT, IR, A, and WR Districts, a YES₁ in the CC and CBD Districts, and a "NO" in all other districts.

4.2.2.29 "Performance Theater", and to provide a "YES" in the A and WR Districts, an "SP" in the BG, BT, IG, IH, and IR Districts, a "SP₁" in the CC and CBD Districts, and a "NO" in all other districts.

4.2.6.3.A "Retail stores other than above and showrooms, each less than 20,000 square feet", and to provide a "YES" in the BL, BG, BT, IR, A and WR Districts, a YES₁ in the CC and CBD Districts, and a "NO" in all other districts.

4.2.6.3.B "Retail stores other than above and showrooms, any individual tenant greater than 20,000 square feet", and to provide a "Yes" in the BG, IR, A, and WR Districts, an "SP₁" in the CC and CBD Districts, and a "NO" in all other districts.

4.3.1.19 "Garage space for parking more than three automobiles", and to provide a "YES" in the A and WR Districts, an "SP₁" in the CC and CBD Districts, and a "NO" in all other districts.

AND Further to amend Article V, "Density Regulations", Section 5.2.0, to add a footnote #3, to reference Section 8.5.5 for additional criteria applicable to the CC and CBD Districts.

AND Further to amend Article VIII, "Special Districts", to add a new Section 8.5.0 "Town Center" as follows:

8.5.0 Town Center Overlay District

8.5.1 The Town Center (TC) District is hereby adopted to achieve the following purposes and objectives:

The fulfillment of goals and strategies enumerated in the Master Plan and the Community Development Plan involving aesthetic and functional improvements to the Town Center;

The enhancement and improvement of existing historic structures and properties around the Town Common;

The enhancement and improvement of existing properties and/or structures relative to pedestrian access, vehicular circulation, and signage;

The implementation of design and development standards to guide future development and re-use proposals which reflect the historic and governmental features of the neighborhood;

The implementation of design and development standards that encourage parking areas to be subordinated in relation to buildings, landscaping, and pedestrian access;

The encouragement of communication and shared redevelopment efforts among adjoining property owners to help achieve their long term goals and objectives; and,

The promotion of increased density where utility and transportation infrastructure already exist to better accommodate future growth;

The promotion of a mixture of uses to reduce vehicle trips, such that residents and area employees can walk to needed services and amenities, and to conversely provide a built-in demand for the local commercial and retail uses;

The encouragement of in-fill development;

The reutilization of properties that have reached their market or physical obsolescence;

The clustering of buildings and mixing of uses in exchange for some portion of land to be set aside as public area or green space;

The application of "Smart Growth Principles" as enumerated by the Commonwealth of Massachusetts to the future redevelopment of the Town Center;

The provision of incentives to accomplish the above objectives.

8.5.2 District Boundaries

The Town Center (TC) District is herein incorporated as an overlay district, superimposed over other districts established by this Bylaw. The TC District is divided into two (2) sub-districts: the "Civic Center" (CC) and the "Central Business District" (CBD). The TC District shall include all areas as reflected on a map titled "Town Center Overlay District: Civic Center and Central Business Districts", prepared by Town of Burlington Planning Department, dated December 2005. This map as may be amended from time to time is hereby made a part of this Bylaw.

8.5.3 General Requirements and Applicability

All land located within the Town Center Districts, (CC) & (CBD) shall be subject to the use restrictions or prohibitions as identified in Sections 4.2.0, 4.3.0 and 4.4.0 of this Zoning Bylaw. Uses not specifically permitted in these schedules shall be prohibited. Where land falls within the 100-Year Flood Plain District, Wetlands Districts, Aquifer or Water Resource Districts, such land shall be governed by the additional requirements or prohibitions of such districts.

8.5.4 Permitted Uses**8.5.4.1 Uses permitted by Site Plan and Special Permit**

A Site Plan for all uses and activities proposed in the Town Center, except for single family dwellings, shall be required to be submitted in accordance with Section 9.3.0 of this Bylaw and the Site Plan Rules and Regulations of the Planning Board.

In the use regulations schedules of Sections 4.2.0, 4.3.0 and 4.4.0 of this Zoning Bylaw:

Where a use is designated as "YES" in the CC and CBD Districts, such use shall be permitted only if said use is permitted in the underlying zoning district, and any requirement for a special permit in the underlying zoning district shall govern.

Where a use is designated as "YES1" in the CC or CBD Districts, such use shall be permitted by right, even where the underlying zoning district may prohibit such use or require a special permit for such use.

Where a use is designated as "SP" in the CC or CBD Districts, such use shall require a Special Permit in accordance with the procedures specified in Section 9.2.0 of this Bylaw, even where the underlying zoning district may permit such use by right. Such designation shall not supersede a prohibition of an underlying zoning district.

Where a use is designated as "SP1" in the CC or CBD Districts, such use may be permitted by a Special Permit, even where the underlying zoning district may prohibit such use.

Where a use is designated as "NO" in the CC or CBD Districts, such use shall be prohibited regardless of the provisions of the underlying zoning district.

8.5.4.2 Housing Production and Residential Uses in the Town Center**8.5.4.2.1 Annual Permit Cap:**

Not more than (40) dwelling units can be issued building permits per year within the Town Center.

Exemptions:

- a) Demolition of an existing one family dwelling and reconstruction as a one family dwelling, and additions to one family dwellings that remain one family dwellings, shall be exempt from the annual cap. For conversion or demolition and reconstruction of existing one family dwellings to 2-family or 3-family dwellings, all dwelling units shall be considered exempt.
- b) Dwellings units approved as part of a transfer of development rights, but only those units gained from the transfer, not the entire project, shall be exempt from the annual cap.
- c) Dwelling units created through the reuse of structures built prior to 1900 shall be exempt from the annual cap.
- d) Dwelling units created for Senior (over 55 years of age) Housing, not to exceed (50) units, shall be exempt from the annual cap.

8.5.4.2.2 Maximum Residential Component:

Not more than 25% of the total gross square footage of all buildings and structures in the Town Center can be in residential use. This includes single family dwellings, two family dwellings, three family dwellings, multifamily housing, senior housing, and any housing created as part of a mixed use building.

8.5.5 Dimensional Requirements**8.5.5.1 Minimum Lot area**

Lot area requirements shall be as required in the underlying zoning district pursuant to Section 5.2.0 of this Bylaw.

8.5.5.2 Minimum Lot Frontage

Frontage requirements shall be as required in the underlying zoning district pursuant to Section 5.2.0 of this Bylaw.

8.5.5.3 Minimum Front Yard

Front yard setback may be zero, subject to inclusion of minimum 10 feet wide pedestrian area along the front face of any structure, where such area may include walkways and other pedestrian amenities including seating areas, benches, landscaping, lighting, awnings, trash receptacles, and similar features as may be approved by the Planning Board pursuant to a Site Plan.

8.5.5.4 Minimum Side Yard and Rear Yard

Side yard setback may be zero, except where abutting use is a single family dwelling, in which case a minimum 15' landscaped buffer is required.

8.5.5.5 Minimum Buffer to Adjoining RO Districts

The minimum buffer to adjoining residentially zoned property shall be 20% of the average depth and/or width of the lot as

applicable, with a minimum of 25' and a maximum of 50'. Abutting residentially zoned property shall include lots that are adjacent to a private or public way connecting said residential property and the Town Center Districts. A landscaped buffer of at least 20' in depth shall be constructed to mitigate the impact of any commercial use on the abutting residential district. The buffer shall be designed and constructed to minimize the visual effect of the bulk and height of buildings, structures, parking areas, lights, or signs, and shall be kept free of encroachment by all buildings, structures, storage areas, and parking, except that bicycle paths and fences may be sited within such buffer area if approved pursuant to a site plan review by the Planning Board.

8.5.5.6 Maximum Aggregate Building-to-Ground Area Percentage

33 1/3 %, except that the Planning Board pursuant to a Site Plan or Special Permit may permit the Maximum Aggregate Building to Ground Area Percentage to increase to 40% where such application is consistent with the purposes of the Town Center and meets one or more of the following criteria:

- a) Pedestrian and bicycle amenities are provided that are distinctly separated from drive aisles and parking, that provide active public spaces to foster social interaction, that encourage walking between businesses, that offer ease of access to public transit systems, and that enhance safety and access to adjoining properties and streets;
- b) Landscaping is provided of a density, diversity, and maturity that fosters the creation of public spaces, and that promotes connections to landscaped spaces on adjoining properties;
- c) Any housing component where at least 15% of the units are set aside as permanently affordable housing units.
- d) Offsite mitigation is implemented within the Town Center that substantially advances the purposes and objectives of the Town Center.

Pursuant to a special permit granted under Section 8.5.9 Transfer of Development Rights, the Planning Board may permit a Maximum Aggregate Building to Ground Area Percentage to increase to 50% where such application is consistent with the purposes of the Town Center and meets the criteria of any design review guidelines established by the Planning Board.

8.5.5.7 Maximum Building & Structure Height

For nonresidential structures within 100' of abutting residential district, including measurement across public or private ways = 30'.

For nonresidential structures greater than 100' but less than 200' from abutting residential district, including measurement across public or private ways = 35'.

For nonresidential structures greater than 200' from abutting residential districts, including measurement across public ways = 40'.

For multifamily structures within 100' of abutting residential district = 30'

For multifamily structures greater than 100' from abutting residential district = 40'.

For single family dwellings = 30'.

8.5.5.8 Minimum Feet between Buildings

None, but not less than required by the State Building Code.

8.5.5.9 Maximum Floor Area Ratio

For properties whose underlying zoning designation is General Industrial, the Floor Area Ratio may be increased to 0.50 pursuant to a special permit granted by the Planning Board in accordance with the provisions of Section 8.5.5.6. Floor Area Ratio shall not apply to other properties in the TC District.

8.5.6 Nonconforming Uses, buildings, structures and premises

In addition to the criteria of Sections 6.1.1 and 6.1.2 of this Bylaw, proposed alteration, expansion, and/or change of nonconforming uses, buildings, structures or premises shall be subject to site plan

review and aesthetic criteria of any design review regulations adopted by the Planning Board.

8.5.7 Parking Requirements

Parking requirements shall be as specified in Article VII of this Bylaw.

8.5.8 Design Requirements

The Planning Board shall adopt and maintain design review regulations to govern the future construction and reuse of properties in the Town Center. Adoption and amendment to such regulations shall require a public hearing. Such regulations shall address:

1. Facade and exterior building treatment, including the style and sizes of all signage affixed to buildings;
2. A minimum percentage of landscaped surface area;. All open space, landscaped and usable, shall be designed to add to the visual amenities of the area by maximizing, in so far as practical, its visibility for persons passing the site or overlooking it from nearby properties.
3. A reduction in the number of existing curb openings that exist on the premises;
4. The placement of utilities and wiring underground to the extent possible;
5. The placement of HVAC equipment, fans, generators, and other site related structures and items so that they are not visible on roofs or building frontage areas, or that such features are suitably screened from view;
6. The layout & design of parking and loading spaces;
7. Other design standards and conditions deemed appropriate by the Planning Board; and,
8. Pedestrian amenities - sidewalks to provide access between parking areas and uses, and between properties.
9. Preservation and enhancement of landscaping. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil remove and any grade changes shall be in keeping with the general appearance or neighboring developed area.
10. Relation of buildings to environment. The proposed development shall be related harmoniously to the terrain and to the design, scale, and architecture of existing buildings in the surrounding area that have visual relationship to the proposed buildings, in so far as practical. Proposed buildings shall be related to their surroundings with respect to:
 - (a.) Street facade and exterior walls visible from public ways.
 - (b.) Variations and breaks in wall and/or roof planes.
 - (c.) materials, textures and color
 - (d.) roof slopes and materials
 - (e.) Domestic scale should be produced through massing devices such as breaks in wall and roof planes and through design of architectural features.
 - (f.) The building should not be made, in effect, a sign, through painting with bold patterns, checks, logos or other graphic devices, use of lighting or use of unconventional building form.
 - (g.) external lighting
 - (h.) external windows
11. Heritage. Proposals to remove or disrupt historic or traditional structures, or architectural elements shall be minimized.
12. Cost. The Planning Board shall be obligated to be sensitive to potential financial burden to the applicant, where the applicant is only making improvements to comply with the Americans with Disabilities Act requirements.

8.5.9 Transfer of Development Rights

The Planning Board may, by Special Permit, consider requests to transfer development capacity between parcels of land in the Town Center. The Planning Board shall base its decision on the purposes and objectives criteria of Section 8.5.1. A major purpose of this provision is to provide a buffer between the adjoining established neighborhoods and the Town Center where no such buffer currently exists. Transferred development rights may be used for residential or nonresidential uses.

Development rights may not be transferred from land which may not be otherwise developed because of deed restrictions, easements, prior transfer of development rights, or other reasons that render the land not developable, including land with conservation restrictions, land owned by a government agency or a nonprofit corporation or other entity for park, open space, agricultural, historical, or conservation purposes.

Transfer of development rights is contingent upon placing a permanent deed restriction, the form of which is subject to approval by Town Counsel, on the land from which the development rights are being transferred and restricting the use of the land to agriculture, forestry, open space, passive or active recreation, or deeding the land to the Town of Burlington as permanent open space or parkland.

Development rights may be transferred from a sending parcel with the accompanying deed restriction and held indefinitely by the owner of the parcel before being transferred to a receiving parcel. Development rights may be transferred by sale or other means and may subsequently be transferred to any owner of receiving parcels in the Town Center allowed pursuant to this bylaw.

8.5.10 Criteria for approval

The Planning Board shall not approve any application for approval of a site plan or special permit in the Town Center District unless it finds that all the following conditions are met:

- 1. The use or uses as proposed to be developed, and as reflected on the Site Plan and/or Special Permit application, will further the goals enumerated in the Master Plan and Community Development Plan for the Town Center, and the objectives listed in this section;
- 2. The use or uses proposed to be developed will enhance and improve pedestrian access, vehicular circulation, and the aesthetic appearance and function of the property and the area; and,
- 3. All criteria for approval listed in Sections 9.2.4 and 9.3.4 of this Bylaw.

Recommendations: Planning Board voted 7-0-0 in favor. Land Use Committee voted 6-0-2 in favor. Board of Selectmen voted 5-0-0 in favor. The Historical Commission voted 7-0-0 in favor.

A motion to postpone to May 2006 was moved, seconded and failed.

A motion to end debate was moved, seconded and failed.

A motion to amend by deleting sections 2.38.1.1, 2.52.1, 2.78.0.1, and 2.80.1 and removing all references to residential dwellings from Article 9 was moved and seconded.

Upon advise of Town Counsel, the Moderator requested the amendment be withdrawn because it was not specific and could result in unintended consequences. The member advancing the amendment declined. The Moderator ruled the amendment out of order and called for a vote of Town Meeting to uphold the ruling. Majority voted to uphold the Moderator's ruling.

After considerable discussion, a motion to end debate was moved, seconded and so voted.

There was a division of the house and tellers were appointed. BY A VOTE OF 54 IN FAVOR AND 27 OPPOSED, the main motion carried. The Moderator then called for a roll call vote.

BY A VOTE OF 56 IN FAVOR AND 28 OPPOSED, THE MAIN MOTION CARRIED.

App'd. A.G. . Adv. Daily Times .

At 11:15 P.M., a motion to adjourn was moved, seconded and so voted.

Attest:
Jane L. Chew
Town Clerk

REFERENDUM PETITION – ARTICLE 9

On February 6, 2006, a petition for a referendum question on Article 9 of the January 23, 2006 Town Meeting was submitted to the Selectmen. The Board of Registrars certified 1220 out of 1297 signatures submitted qualifying the question to appear before the voters.