



**TOWN OF BOXBOROUGH
SPECIAL TOWN MEETING
WARRANT AND PROCEEDINGS
NOVEMBER 16, 2009
LIST OF ARTICLES**

- 1. ACCEPTANCE OF G.L. c. 64L, §2(a) – LOCAL OPTION MEALS EXCISE**
- 2. AMEND LOCAL ROOM OCCUPANCY EXCISE UNDER G.L. c. 64G, §3(A)**
- 3. STEELE FARM PRESERVATION RESTRICTIONS**
- 4. ROAD ACCEPTANCE – NASHOBA DRIVE**
- 5. ROAD ACCEPTANCE – BENJAMIN DRIVE**
- 6. ROAD ACCEPTANCE – REED FARM ROAD, BLANCHARD ROAD AND INCHES BROOK LANE**

To either of the Constables of the Town of Boxborough, Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify all residents of the Town of Boxborough, who shall be qualified to vote in accord with the provisions of M.G.L. Chapter 51, Section 1, to meet at the Blanchard Memorial School, Massachusetts Avenue, Boxborough, MA on Monday, November 16, 2009 at 7:00 p.m. to act on Articles 1 through 6 of this Special Town Meeting Warrant.

John Fallon, the moderator, called the meeting to order at 7:02pm. There were 199 registered voters in attendance. Chief Vance was recognized for attending his last town meeting before his retirement in February. Mr. Fallon made some community announcements and reviewed Town Meeting procedure.

On Mr. Power's motion, the Town voted unanimously that on Town Meeting matters requiring a two-thirds vote by statute, a count need not be taken unless seven or more registered voters immediately question the vote so declared by the Moderator.

Reports were given by town committees: Mr. Wagg presented the Ad Hoc Social Services Committee report; Mr. Veley presented the Deer Population Study Committee report; Ms. Neyland presented the Blanchard Restructuring Committee report and Mr. Kushner presented the Capital Planning Committee report.

ARTICLE 1 ACCEPTANCE OF G.L. c. 64L, §2(a) – LOCAL OPTION MEALS EXCISE

(Majority vote required)

Mr. Powers moved to accept G.L. c. 64L, §2(a) to impose a local meals tax, to take effect on January 1, 2010.

The Board of Selectmen recommends (5 – 0).

The local option meals tax was authorized by the Legislature in the FY 2010 budget cycle. Acceptance of this new local option excise of 0.75% on sales of meals will add only 7½ cents to the cost of a \$10 meal. According to DoR estimates, the amount of revenue anticipated from January to July 2010 may be as much as \$19,915. Mr. Powers further stated that the BOS is recommending this article because of the reduction in state aid to the town. Passage of the article would help compensate for the lost revenues and would be preferable to raising property taxes.

The Finance Committee recommends unanimously (6 – 0).

Mr. Ham spoke for the FinCom in support of the article as it would add a small amount of Tax revenue to the town.

Mr. Gorman, Hill Rd., asked how many other towns had accepted the option. Mr. Powers said that 49 communities had accepted the option, 2 communities had turned it down and that many others were considering it. Mr. Gorman spoke against the motion saying it would be a drag on business and would get the legislature “off the hook” on providing local aid.

Mr. Moss, Bicentennial Way, asked how long the tax would be in place. Mr. Powers said that the tax would be in place for 3 years, after which time it could be revoked. Mr. Moss asked which businesses would be affected. Mr. Powers said that all restaurants serving “prepared meals”, including take-out pizza and sandwiches would be subject to the tax.

Mr. Hayes, Tamarack Ln., questioned the revenue estimate from the tax. He was against the motion on principle.

Mr. Kicelemos, Picnic St., spoke against the motion.

Mr. Fallon called for a vote. Being too close to call, he asked for tellers to be appointed to do a hand count. Tellers were duly sworn and the count made. That motion on Article 1 failed: No: 86 Yes: 79

ARTICLE 2 AMEND LOCAL ROOM OCCUPANCY EXCISE UNDER G.L. c. 64G, §3(A)

(Majority vote required)

Mr. Powers moved to amend the local room occupancy excise under G.L. c. 64G, §3(A) to the rate of six percent (6%), to take effect on January 1, 2010.

The Board of Selectmen recommends (5 – 0).

Mr. Powers said that the Legislature, in the approved FY2010 budget, also approved increasing the maximum rate of the existing local option room occupancy from four to six percent. Such an increase is not expected to have negative impact on the business of the Holiday Inn here in town. The anticipated revenue from January to July 2010 may be as much as \$36,500.

The Finance Committee recommends unanimously (6 – 0).

Mr. Ham said the FinCom supports this article as it will add Tax revenue to the town, coming primarily from guests at the Holiday Inn Hotel.

Mr. Kicelemos asked if there was a representative from the Holiday Inn present. Mr. Powers said that the local manager was not able to attend, but had provided a statement, which Mr. Powers read aloud, indicating the hotel wanted to be a good neighbor and would not oppose the tax increase.

Ms. Neyland, Picnic St., said that the room tax would provide additional revenue to the town and asked the town to support the motion.

Ms. Grossman, Depot Rd., asked if surrounding towns had passed the tax. Mr. Powers responded that room rates were quoted before tax so the tax increase would not be a factor in room occupancy.

Mr. Hayes felt that the tax could drive people away from Boxborough and recommended a vote against the motion.

Mr. Srivastava, Flagg Hill Rd., spoke in favor of the motion. Raising revenue through an occupancy tax would be preferable to raising property taxes.

Mr. Fallon called for a vote. The motion on Article 2 carried.

Mr. Fallon, as a member of the Boxborough Historical Society recused himself from presiding over Article 3. In accordance with MGL chapter 39, section 14, the Town Clerk, Elizabeth Markiewicz presided.

ARTICLE 3 STEELE FARM PRESERVATION RESTRICTIONS

(Two-thirds vote required)

Mr. Fox moved to transfer the care, custody, control and management of the Steele Farm parcel, located at 484 Middle Road and further identified as lot 125 block 3 on Assessor's Map 7, being the land described in the deed to the Inhabitants of the Town of Boxboro dated August 15, 1994, recorded with the Middlesex South District Registry of Deeds in Book 24806, Page 143, from the Board of Selectmen, currently held for town, recreation and conservation purposes to the Board of Selectmen to be held for open space, historic preservation, conservation, agricultural and water supply purposes and for the purpose of granting a conservation restriction and historical preservation restriction to The Trustees of Reservations and the Boxborough Historical Society respectively and to authorize the Board of Selectmen to grant a conservation restriction and a historic preservation restriction to The Trustees of Reservations and the Boxborough Historical Society respectively on such terms and conditions and for such consideration as the Selectmen shall determine.

Summary

Purpose: This warrant article empowers the Board of Selectmen to complete and to put into place preservation restrictions on the Steele Farm property. The proposed restriction is intended to maintain the property's uses and character in perpetuity. The document itself will be written in accordance with Massachusetts General Law to preserve the current uses and qualities while preventing uses that impair them. Several years of research, plus a thorough selection process, were undertaken to retain The Trustees of Reservations and Boxborough Historical Society to partner in being co-holders of the restrictions which are described below.

Holder of the restrictions: The Trustees of Reservations (TToR) will be responsible for monitoring and enforcing of the Conservation Restriction and the Trustees of Reservations and the Boxborough Historical Society (BHS) will be jointly responsible for monitoring the Historic Preservation Restriction on the buildings.

Public benefits: Protect scenic views, preserve historic buildings, protect agriculture and wildlife habitat, maintain passive recreational site, provide access to possible drinking water aquifer. It furthers Town of Boxborough policy (advocating a Conservation Restriction on Steele Farm by the Master Plan and Open Space and Recreation Plan) and furthers Commonwealth of Massachusetts policy (the Department of Conservation and Recreation's Reconnaissance Report/Freedom's Way Landscape Inventory which recommends the permanent protection of Steele Farm).

Allowed and Protected Uses include:

- Maintenance of Historic Structures consistent with the United States Secretary of the Interior’s “Standards for Treatment of Historic Properties”.
- Construction of minor structures for use by the public for educational and passive recreational purposes like benches, interpretive signs and minor structures to comply with the Americans with Disabilities Act
- Passive recreational activities like hiking, horseback riding, cross-country skiing, sledding, dog walking, jogging, bird watching, mountain biking, youth camping by permit
- Public events as approved by the Board of Selectmen like Winter Fest
- The construction, maintenance and marking of trails for passive recreational uses
- Agricultural and horticultural operations like haying and tree farming carried on in accordance with environmentally sound practices
- Care and improvement of wildlife habitat
- Protection of water resources and development of future municipal water supply, including the testing, drilling and installation of necessary infrastructure, as well as access to adjacent town lands where wells may be located
- Motor vehicles only for the maintenance of the property and other allowable uses under the restriction, and limited to existing roads and paths where possible.

Prohibited Uses include:

- Constructing any temporary or permanent building or town facilities like a swimming pool, tennis courts, etc. except that required for public water supply development
- Removal of soil or gravel, dumping refuse, any activities detrimental to water quality and soil conservation, use of motorized recreational vehicles, destruction of stone walls

Management plan: In order to achieve the purpose of the Restriction, the Board of Selectmen may develop a written management plan in consultation with the Grantees (TToR, BHS) to deal with activities like a maintenance schedule to mow the fields or the possible continuance of a public tree farm. Although not part of the preservation restriction document itself, this management plan is encouraged to implement parts of its provisions.

The Board of Selectmen recommends (5 - 0)

Steele Farm is a historic, cultural, visual, and recreational resource used year-round by many town residents where we walk ourselves and our dogs, cross-country ski, cut Christmas trees, watch birds, ride horses, celebrate Winter Fest and hold appreciation events and functions. The fields and historic house and barn, now listed in the National Register of Historic Places as the Levi Wetherbee Farm, are beloved ties to Boxborough’s agricultural heritage. No one needs to be told what a wonderful treasure we have. Since Steele Farm is Municipal Land, the Selectmen have wide latitude in regulating its use, which is why we are able to enjoy it in so many ways. Generally, people are happy with the way things are with Steele Farm, and the town has benefited from our freedom to use this resource as we see fit.

Today, there is nothing “broken” that needs to be fixed. But, the Steele Farm Advisory Committee (SFAC) and the Historical Commission recognize that there is a danger in the freedom we’ve enjoyed. With continued build-out of the town, and a shift in prevailing sentiments, it is possible that a distant future Board of Selectmen could institute significant changes contrary to Boxborough’s traditions and current views. The purpose, goal and intent of the preservation restriction is to prevent that from happening, while allowing the town to continue operating and enjoying Steele Farm according to a formally documented set of rules and covenants that we will define. The mechanism for doing this in accordance with MGL ch. 184, is a multi-part legal agreement among Boxborough, The Trustees of Reservations (TToR), the Boxborough Historical Society and the Commonwealth of Massachusetts through the Secretary of the Executive Office of Environmental Affairs and the Massachusetts

Historical Commission. There is ample precedent for this, and a number of existing preservation restrictions have been studied in order to develop the current draft restriction for Steele Farm. Considerable investigation was carried out by the SFAC and Historical Commission, leading to a competitive RFP to select TToR to prepare the draft restriction.

An affirmative vote for this article is not a vote for the restriction itself which is still in draft form under development and refinement. An affirmative vote would authorize the Selectmen to grant a restriction, assuming agreement can be reached on all the terms and conditions attendant thereto. The Selectmen believe that additional work must be carried out before concluding a final definitive preservation restriction that they would be willing to grant. Areas requiring further work include:

- Clarification of certain legal encumbrances and terms
- Codification of the process for the town to expand, or change, the list of allowed uses

Substantive public comment and input on these and other matters will be required before the Selectmen can in good conscience come to agreement and execute a grant of restriction. We expect this process, allowing for repeated public discourse and input, will likely take several more months. In the end, it is possible that no satisfactory agreement will be reached. However, given the progress and due diligence to date, we believe it is time to take the next step in the journey.

Mr. Alan Rohwer, Chair of the Historical Commission, spoke to the article and remained at the podium for questions. He was joined there by Mr. Bruce Hager, Chair of the Steele Farm Advisory Committee.

The Finance Committee recommends unanimously (6 – 0).

Mr. Ham said that the FinCom supports this article as it has no negative financial impact to the town.

The Steele Farm Advisory Committee recommends.

The Steele Farm Advisory Committee strongly recommends passage of Article 3. Steele Farm is a historic farmstead with a farmhouse listed on the National Register of Historic Places. The acres of grassland offer one of Boxborough's best views, while providing habitat for wildlife and supporting passive recreational activities for many residents. The proposed Conservation and Historic Preservation Restrictions would protect this valuable resource and ensure that the agricultural and recreational activities will continue into the foreseeable future.

The Boxborough Historical Commission recommends unanimously.

Passage of this article would authorize the Board of Selectmen to complete and execute conservation and historic preservation restrictions on Steele Farm. The Commission has long recognized the special nature of the Levi Wetherbee/Steele Farm as a historic and scenic treasure. The property's special qualities have received documented status in the town-wide historic resources inventory, on file with the State, and in its inclusion on the National Register of Historic Places, granted at the state and federal levels. The Commission believes the execution of a Conservation and Historic Preservation Restriction, as currently drafted by The Trustees of Reservations and Boxborough Historical Society, provides the best opportunity to preserve those qualities in perpetuity. The Commission urges the voters to support this article.

The Conservation Commission recommends (5 – 0).

The Planning Board recommends (4 - 0).

The Planning Board believes this is an important first step to preserving Steele Farm. The Planning Board looks forward to working with all interested parties in crafting the best possible historical preservation and conservation restriction.

The Water Resources Committee recommends.

The Agricultural Commission recommends.

Mr. Toups, Pine Hill Rd., felt the motion was hard to support. Felt the current system was working.

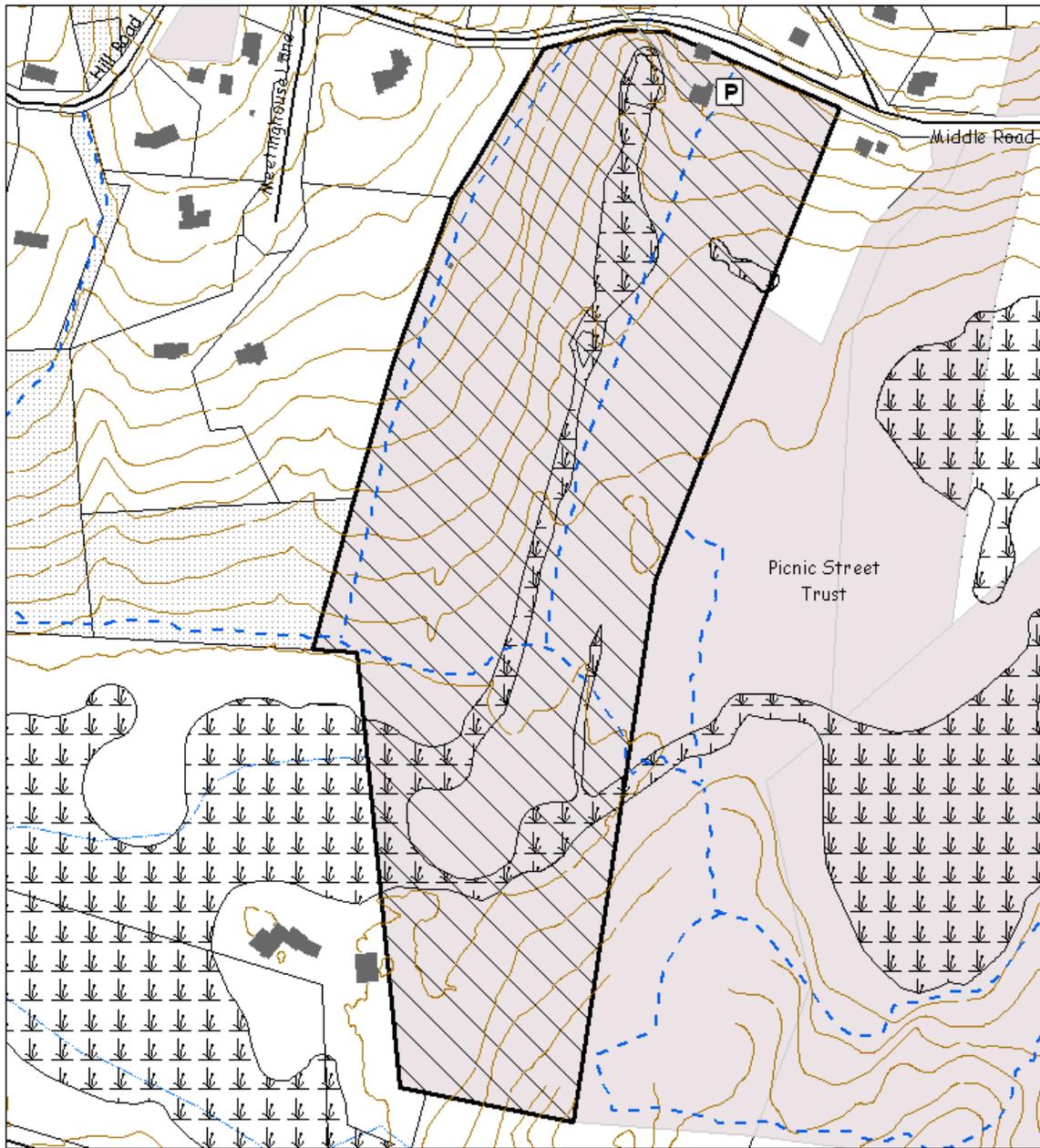
Ms. Toups, Pine Hill Rd., wondered if too much land was being restricted. The town planner, Elizabeth Hughes, responded that 2/3 of town-owned land was conservation land.

Mr. Kembel, Reed Farm Rd., spoke against the motion saying it was impossible to predict the future and that the article gave the BOS too much authority in the final wording of the restriction.

Mr. Follett, Cobleigh Rd., asked whether the town wanted to give the property as a gift to future generations. The restriction would guarantee that.

Mr. Kushner asked if the restriction would require maintenance on the farm house. Mr. Fox said that it would not require the town to do maintenance, but if maintenance were done it would have to be done in an historically accurate way. He also said that there could be an additional benefit of including both historical and conservation restrictions in access to state grants.

Ms. Markiewicz called for a vote on the motion. The motion on Article 3 passed, as declared by the moderator.



-  Steele Farm Preservation Boundary
-  Town Conservation
-  Wetland & Watershed District
-  Municipal Land
-  Hiking Trails
-  Contours 10ft



ARTICLE 4 ROAD ACCEPTANCE – NASHOBA DRIVE

(Two-thirds vote required)

Ms. Fillmore moved to accept as a public way a certain roadway known as Nashoba Drive with certain easements as laid out by the Board of Selectmen and as shown on a plan entitled “Definitive Subdivision Plan of Land, Nashoba Drive, Boxborough, MA.”, by Parsons and Faia, Inc., 60 Lewis Street, Lynn, MA, dated May 30, 1994, prepared for Reed Farm, Inc., which plan is recorded with Middlesex South Registry of Deeds as Plan No. 35 of 1995 in Book 25123, Page 546 a copy of which is on file with the Town Clerk and authorize the Board of Selectmen to take by eminent domain, awarding no damages, the fee or lesser interests in said roadway, including easements for drainage, utility or other purposes where shown on said plan; or take any other action relative thereto.

The Planning Board recommends (4 – 0); the Board of Selectmen recommends (5 – 0).

Ms. Fillmore said the subdivision plan for Nashoba Drive was approved by the Planning Board to meet town standards with the intention of the roadway being accepted as a public way. Construction of this road began in 1995. In 1999, the Planning Board found the developer in default for not having completed the roadway in accordance with the Planning Board requirements. Over the course of these past ten years, the developer has never corrected the remaining issues and has failed to maintain the road.

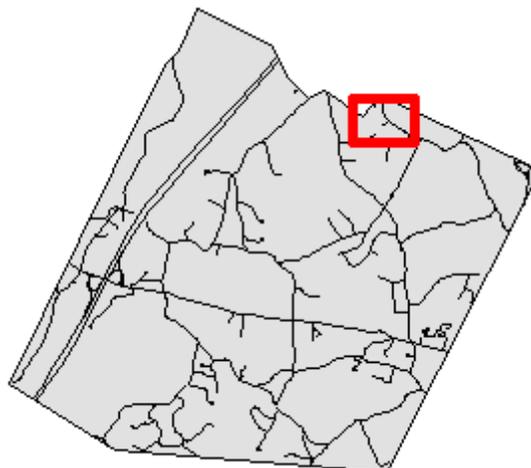
The Planning Board has retained a performance security account that can be used to correct deficiencies in the roadway, perform maintenance on the road and drainage system and create as-built drawings. Acceptance of the road as a public way will increase the town’s Chapter 90 funds.

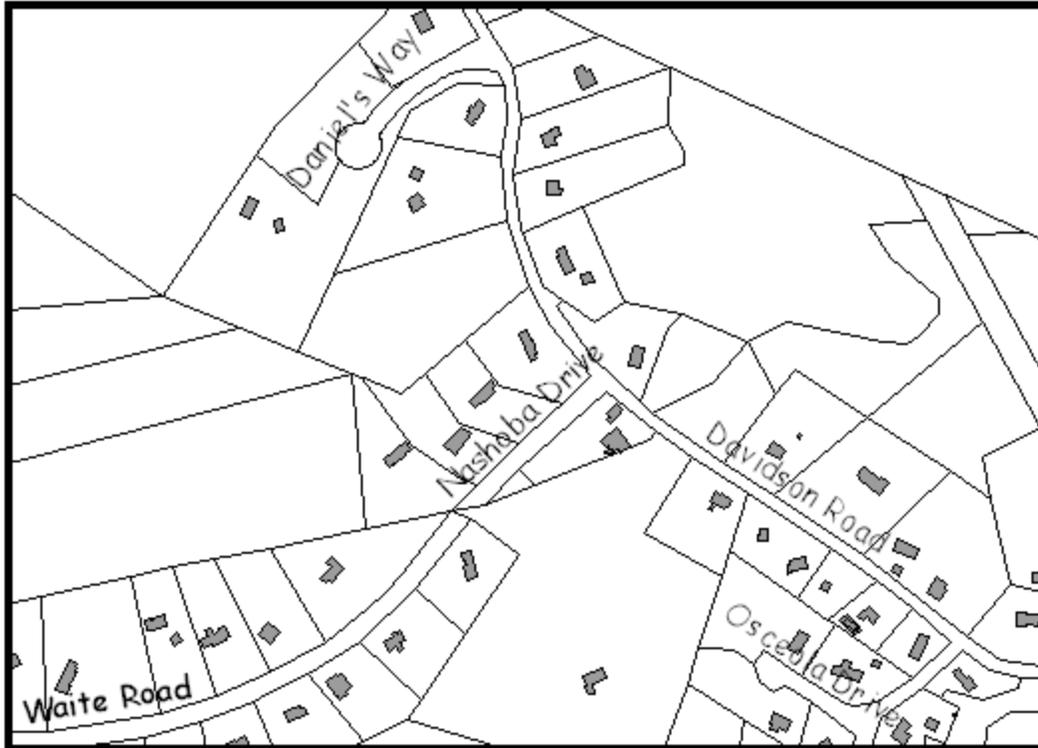
For these reasons, the Planning Board and Board of Selectmen recommend that Town Meeting accept Nashoba Drive as a public way and authorize the Selectmen to take the fee in the road by eminent domain, awarding no damages.

The Finance Committee recommends unanimously (7 – 0).

Mr. Ham said the FinCom supports this article as it appears to be minimal financial impact to the town.

The motion on Article 4 passed unanimously.





ARTICLE 5 ROAD ACCEPTANCE – BENJAMIN DRIVE

(Two-thirds vote required)

Ms. Metheny moved to accept as a public way a certain roadway known as Benjamin Drive with certain easements as laid out by the Board of Selectmen according to a plan entitled “Definitive Subdivision Plan of Land, Benjamin Drive, Boxborough, MA.”, by Coler & Colantonio Engineers, Inc., 20 Pond Park Road, Hingham, MA, dated October 22, 1990 and revised through January 25, 1991, prepared for Mark Starr, 22 Elm Street, Acton MA, which plan is recorded with Middlesex South Registry of Deeds as Plan No. 604 of 1991 in Book 21332, Page 441, a copy of which is on file with the Town Clerk and authorize the Board of Selectmen to take by eminent domain, awarding no damages, the fee or lesser interests in said roadway, including easements for drainage, utility or other purposes where shown on said plan; or take any other action relative thereto.

The Planning Board recommends (4 – 0); the Board of Selectmen recommends (5 – 0).

Ms. Metheny said that the subdivision plan for Benjamin Drive was approved by the Planning Board to meet town standards with the intention that the road would be accepted as a public way. Construction of this road was completed in 1997. The developer never filed the required request for road acceptance nor has he performed any maintenance of the road during these past 12 years. Acceptance of the road as a public way will increase the town’s Chapter 90 funds.

For these reasons, the Planning Board recommends that Town Meeting accept Benjamin Drive as a public way and authorize the Selectmen to take the fee in the road by eminent domain, awarding no damages.

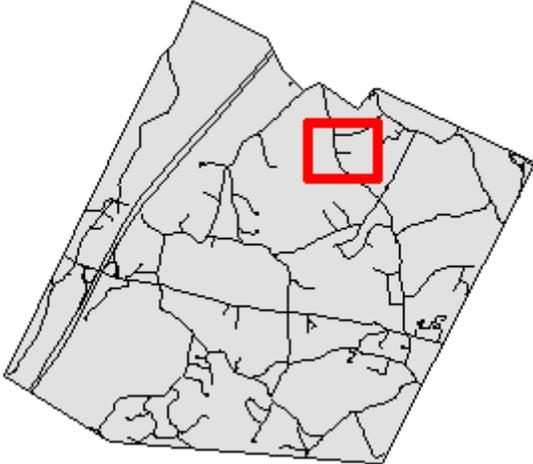
The Finance Committee recommends unanimously (7 – 0).

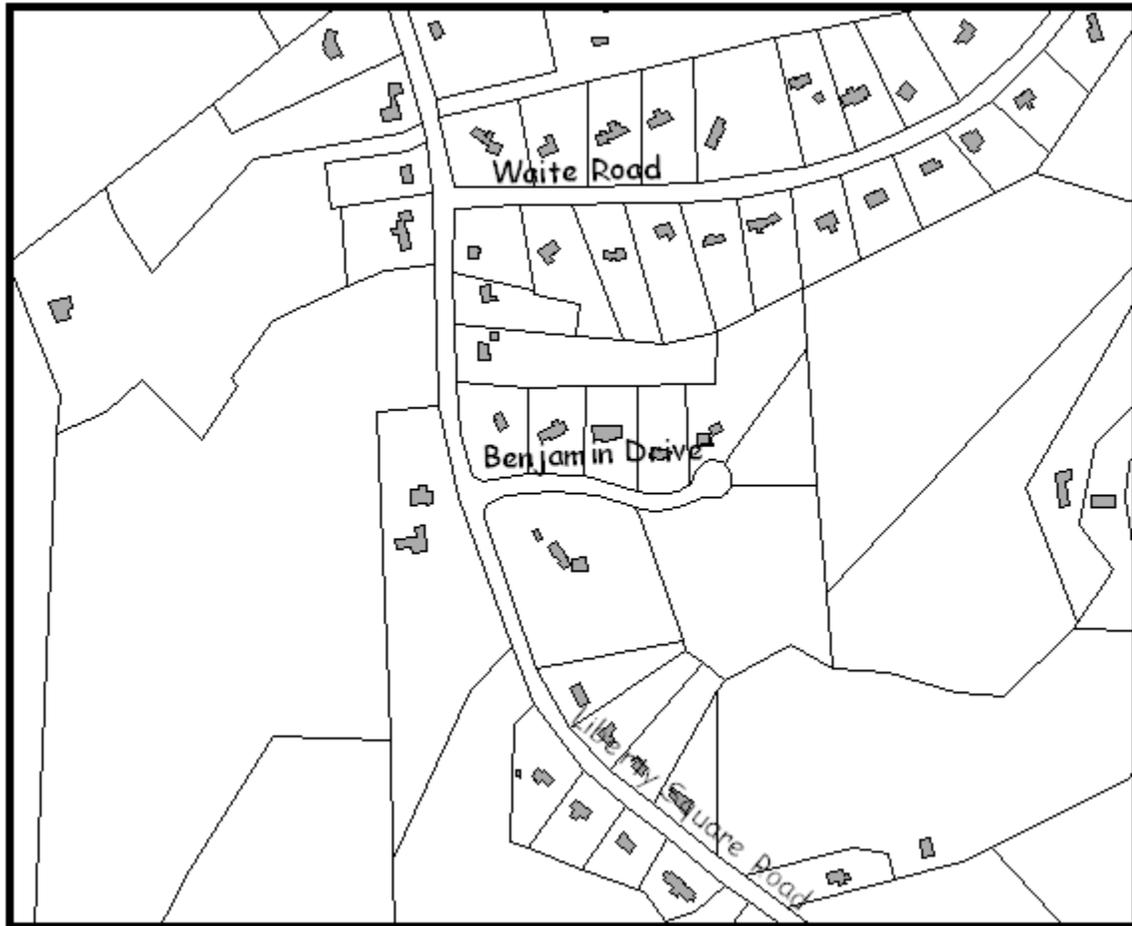
Mr. Ham said the FinCom supports this article as it appears to be minimal financial impact to the town.

Ms. Kaja Burke, Hill Rd., asked why the proper paperwork wasn't done to make the road acceptable. The town planner, Ms. Hughes, provided some background. She said the town does not maintain any road not accepted as a public way, with the exception of plowing and sanding.

Mr. Paul Rey, Stow Rd., asked why the town doesn't get money upfront from developers and why the town doesn't bill the developer for sanding and plowing. Ms. Hughes said that the Planning Board requires that developers post a performance bond, but that a number of developers walk away from the project rather than perform. She said that billing a developer for maintenance was not permitted.

The motion on Article 5 carried unanimously.





ARTICLE 6 ROAD ACCEPTANCE – REED FARM ROAD, BLANCHARD ROAD AND INCHES BROOK LANE

(Two-thirds vote required)

Mr. Markiewicz moved to accept as public ways certain roadways known as Reed Farm Road, Blanchard Road and Inches Brook Lane with certain easements as laid out by the Board of Selectmen according to plans for Reed Farm Road and Blanchard Road entitled "Definitive Plan Reed Farm II in Boxborough, MA", by Acton Survey & Engineering, Inc., 277 Central Street, Acton, MA; prepared for Reed Farm Realty Trust, dated August 1, 1987 or as most recently revised March 17, 1989, which plan is recorded with Middlesex South Registry of Deeds as Plan No. 586(1-5) of 1989 in Book 19856, Page 490; "Amended Profile Plan Reed Farm Road" by Parsons and Faia, Inc., 480 Lincoln Avenue, Saugus, MA, prepared for Reed Farm, Inc., dated April 27, 1989 which plan is recorded with Middlesex South Registry of Deeds as Plan No. 811 of 1989 in Book 19962, Page 281; and, for Inches Brook Lane entitled "Definitive Subdivision Plan Reed Farm II in Boxborough, MA", by Parsons and Faia, Inc., 60 Lewis Street, Lynn, MA, dated April 3, 1992, prepared for Reed Farm, Inc., which plan is recorded with Middlesex South Registry of Deeds as Plan No. 86(1-7) of 1993 in Book 22875, Page 22, copies of which plans are on file with the Town Clerk and authorize the Board of Selectmen to take by eminent domain, awarding no damages, the fee or lesser interests in said roadways, including easements for drainage, utility or other purposes where shown on said plans; or take any other action relative thereto.

The Planning Board recommends (4 – 0); the Board of Selectmen recommends (5 – 0).

Mr. Markiewicz said the subdivision plans for these three roads were approved by the Planning Board to meet town standards with the intention that the roads would be accepted as public ways. In January 2000, the developer was denied final release of the performance guarantee by the Planning Board until all outstanding construction issues were addressed. The Planning Board required verification that the deeds for six lot owners had been corrected because the deeds did not withhold the fee in the road. This created a situation where the six lot owners owned to the center of the road. Additionally, the developer never filed the required request for road acceptance. The Planning Board is still holding a cash performance guarantee for these roads. Acceptance of these roads as public ways will increase the town's Chapter 90 funds.

For these reasons, the Planning Board and Board of Selectmen recommend that Town Meeting accept Reed Farm Road, Blanchard Road and Inches Brook Lane as public ways and authorize the Selectmen to take the fee in the road and easements by eminent domain, awarding no damages.

The Finance Committee recommends unanimously (7 - 0).

Mr. Ham said the FinCom supports this article as it appears to be minimal financial impact to the town.

Mr. Rey asked some questions about performance bonds.

Mr. Toups asked about the deed issues. Ms. Hughes said that deed issues would be resolved by eminent domain.

Ms. Sue Reuther, Reed Farm Rd., moved the question. The motion to move the question carried by 2/3, as declared by the moderator.

The motion on Article 6 carried, as declared by the moderator.





Mr. Hayes moved to dissolve Special Town Meeting. That motion carried unanimously. Special Town Meeting was dissolved at 9:15pm.