

# Town of Southwick, Massachusetts

454 College Highway, Southwick, MA 01077

## Doings at the Special Town Meeting October 10, 2012

### DOINGS AT THE SPECIAL TOWN MEETING COMMONWEALTH OF MASSACHUSETTS OCTOBER 10, 2012 6:30 p.m.

The Special Town Meeting was called to order by the Moderator, James Putnam at 6:40 PM on Wednesday, October 10, 2012 Southwick Tolland Regional High School, Feedings Hills Road, in the Auditorium, with approximately 288 registered voters in attendance at the start of the meeting.

The following registered voters were appointed as tellers for the meeting:

Terrance Mish          Christine Petraglia          Jennifer Whalley          T.J. Welch

A Pledge Allegiance to the Flag of the United States was recited.

A moment of silence was observed for: *(reflects those who have passed away since May 15, 2012)*

*John H. Westcott, Jr. worked for the Town in a part time capacity in the Maintenance Department. He was a very gifted artisan and carpenter.*

*Carrie L. Arnold was on the Finance Committee in the early 1980's and on the Bi-Centennial Group in the 1970's.*

*Claire F. Dougenik was an employee of the Town in the Accounting Department and served on the Finance Committee in the late 1980's.*

*William C. Cook was the Plumbing Inspector for the Town of Southwick for over 20 years.*

All US Servicemen and Women

Advancement Placement United States Government Class.  
(Assistance with microphones and lighting)

Jessica Baker                      Austin Decosmo                      Alex Blackburn  
Teddy McCormick                      Jon Reardon

A motion was made and seconded to allow the following non-voters on to the town meeting floor:

Michelle L. Hill,  
Town Clerk, Treasurer, Collector

Benjamin Coyle,  
Town Counsel Attorney

Linda Carr,  
Town Accountant

Rob Levesque,  
Levesque Associates

Jeff Neece,  
DPW Director

Carol DellaGiustina,  
Assistant Town Accountant

Ron Michalski,  
Tighe & Bond

**UNANIMOUS**

A motion was made and seconded to dispense with the reading of the warrant in its entirety and to act upon each Article separately

**UNANIMOUS**

**ARTICLE 1.** To see if the Town will vote to acquire by gift, purchase or otherwise the property known as Whalley Park from John H. Whalley, 3rd and Kathy A. Whalley which shall be owned by the Town of Southwick, as Trustee, in trust for the benefit of the Inhabitants of the Town of Southwick; the property to be subject to a permanent deed restriction limiting the use of the property to the purposes for which it is acquired; and a portion of the property referred to as Restricted Areas to be subject to protection and use provisions consistent with and similar to the provisions of Sections 31-33 of Chapter 184 of the General Laws and in compliance with the Massachusetts Wetlands Protection Act; and to authorize the Board of Selectmen on behalf of the Town of Southwick as Trustee to execute any and all documents necessary to effectuate such a restriction on the Restricted Areas in a form and manner consistent with the General Laws of the Commonwealth of Massachusetts. And further to see if the Town will vote to appropriate the sum of Ten (\$10.00) Dollars from the FY2013 Community Preservation General Unreserved Fund for the purpose of acquiring said property. The property known as Whalley Park is more particularly bounded and described as follows, and is to be conveyed subject to the following trusts and restrictions:

**PARCEL ONE:**

The land in Southwick, Hampden County, Commonwealth of Massachusetts more particularly bounded and described as follows: Beginning at the northwest corner of the premises conveyed on the southerly side of Powder Mill Road, so-called, thence

<b>Easterly</b>	along land now or formerly of Dooley, land of Gillett Farm and Flower Farm, Inc., land now or formerly of Galpin; thence
<b>Southerly</b>	along land now or formerly of George W. Phelps; thence
<b>Easterly</b>	along land now or formerly of George W. Phelps and land of Noble; thence
<b>Southerly</b>	along old canal and land of Noble, land of Town of Southwick, and land of King; thence
<b>Westerly</b>	along land of George W. Phelps and Charles Phelps; thence
<b>Northerly</b>	along land of Keenan and Madden; thence
<b>Westerly</b>	along land of Keenan and Madden; thence
<b>Northerly</b>	along land of Charles H. Phelps; thence
<b>Westerly</b>	along land of Charles H. Phelps at top of hill; thence
<b>Southerly</b>	along land of Charles H. Phelps; thence
<b>Westerly</b>	along land of Timothy J. Malone and bottom of hill; thence
<b>Northeasterly</b>	along land of Altobello about 290 feet to an iron pipe; thence
<b>Northwesterly</b>	along land of Altobello about 271 feet to an iron pipe; thence
<b>Westerly</b>	along land of said Altobello about 111 feet to an iron pipe at Powder Mill Road, so-called; thence
 <b>Northerly</b>	 along said Road to the place of beginning, containing about sixty (60) acres, and being a portion of the second tract described in a deed of Charles H. Phelps to George H. Phelps dated July 31, 1911, and recorded in the Hampden County Registry of Deeds in Book 806, Page 374.

**Excepting** so much of the above described premises as was conveyed by Regal Homes and Development Corporation to American Legion - Southwick Post No. 338, Inc. by deed dated August 12, 2005 recorded in the Hampden County Registry of Deeds in Book 15259, Page 45, being Parcel A as shown on a plan recorded in the Hampden County Registry of Deeds in Book of Plans 337, Page 44.

**Subject** to a right of way to George W. Phelps, his heirs, executors, administrators and assigns of ten (10) feet in width along the present roadway leading from Powder Mill Road near the northwest corner of the conveyed premises and running thence easterly along the conveyed premises to other premises of George W. Phelps for general purposes of travel back and forth, on foot or with animals and/or vehicles, in person or by servants or agents. (See reservation in the deed from George W. Phelps to Arthur T. King et ux, dated November 22, 1944, recorded in the Hampden County Registry of Deeds in Book 1792, Page 358).

**Being** the same premises conveyed to the **Grantor** by deed from Regal Homes and Development Corporation, dated December 7, 2007, and recorded in the Hampden County Registry of Deeds in Book 17064, Page 19.

**PARCEL TWO:**

The land in Southwick, Hampden County, Massachusetts, being shown as Parcel 2 on a plan of lots entitled, "Plan of Land in Southwick, Mass. Surveyed for Andrew G. Plakias" dated December 1980, and recorded in Hampden County Registry of Deeds, Book of Plans 195, Pages 106 and 107, said Parcel 2 is more particularly bounded and described as follows:

<b>Northwesterly</b>	by Powder Mill Road, two hundred five (205) feet;
<b>Northerly</b>	by land now or formerly of King, as shown on said plan, one hundred eleven (111) feet;
<b>Northeasterly</b>	by said land now or formerly of said King, two hundred seventy-one and 15/100 (271.15) feet;
<b>Southeasterly</b>	by land now or formerly of said King, two hundred ninety and 05/100 (290.05) feet;
<b>Southwesterly</b>	by land now or formerly of one Malone, as shown on said plan, two hundred fifty-one and 99/100 (251.99) feet; and
<b>Westerly</b>	by Parcel 1, as shown on said plan, one hundred forty-nine (149) feet.

**Being** the same premises conveyed to the **Grantor** by deed from John C. Auth, Trustee of the Richard C. Plakias Irrevocable Trust, and as Executor of the Estate of Richard C. Plakias, dated February 7, 2008, recorded in the Hampden County Registry of Deeds in Book 17215, Page 483.

#### **PARCEL THREE:**

All of the **Grantor's** right, title, and interest in and to the easements, rights, and rights of way conveyed in a certain Easement Deed from The American Legion Southwick Post No. 338, Inc., otherwise sometimes known as American Legion Post No. 338, Inc., to John H. Whalley, 3rd and Kathy A. Whalley by deed dated June 3, 2010, recorded in the Hampden County Registry of Deeds in Book 18649, Page 235.

#### **PARCEL FOUR:**

All of the **Grantor's** right, title, and interest in and to the easements, rights, and rights of way conveyed in a certain Easement Deed from Southwick Recreational Center, Inc. to John H. Whalley, 3rd and Kathy A. Whalley, by deed dated June 3, 2010, recorded in the Hampden County Registry of Deeds in Book 18504, Page 372.

**The real estate, rights, and interests hereby conveyed (hereinafter referred to as the "Property") are conveyed to the Grantee IN TRUST, in perpetuity, subject to the following terms, provisions, conditions, restrictive covenants, and restrictions:**

1. The **Property** is donated by the Grantors, John H. Whalley, 3rd and Kathy A. Whalley, to be known and designated as Whalley Park in memory of the late John H. Whalley, IV. Neither the **Property**, nor any part thereof, shall be dedicated to or named for any other person or entity.
2. The **Property** herein conveyed is to be owned and managed by the Town of Southwick, as Trustee, for the benefit of the Inhabitants of the Town of Southwick; but the Board of Selectmen may delegate management of the **Property** to the Park and Recreation Commission of the Town of Southwick (or any successor agency) to act as its representative in carrying out the objectives and purposes of this trust.
3. The easements, rights, and rights of way conveyed to the Grantee under and pursuant to **PARCELS THREE** and **FOUR** hereof are subject to the terms, covenants, conditions, and other provisions set forth in the Easement Deeds referred to therein.
4. **Trust Provisions.** That portion of the real estate comprising **PARCELS ONE** and **TWO** conveyed hereunder shall be set apart, dedicated, treated, and maintained by the Town of Southwick for the benefit of its Inhabitants subject to the following conditions, provisions, and restrictions:

a. **Purpose.** Subject to the provisions of paragraph 5 below, the purpose of this trust shall be to hold and manage the **Property** herein conveyed exclusively for charitable, entertainment, athletic, and recreational purposes in the form of a park or playground for the use and benefit of the Inhabitants and youth of the Town of Southwick, Hampden County, Commonwealth of Massachusetts, and to prepare, beautify, embellish, and maintain the same for charitable, entertainment, athletic, and recreational purposes.

b. **Prohibited Acts and Uses.** Subject to exceptions set forth herein, neither the Grantee nor its successors or permitted assigns, if any, shall perform or permit the following acts and uses which are prohibited on, above, and below the **Property**:

- i. The **Property** is conveyed hereunder for the use and enjoyment of the Inhabitants of the Town of Southwick and entry to the **Property** shall at all times be free of charge, and no money shall be demanded or received by the Town of Southwick in respect of entry to the **Property** for any use or enjoyment of the same by said Inhabitants. Notwithstanding the foregoing, the Town of Southwick may charge entrance and/or admission fees with regard to special events conducted on the **Property**, such as circuses, carnivals, fairs, outdoor amusements, entertainments, and attractions.
- ii. No act or thing that may tend to cause injury or disfigurement of the **Property** or that may interfere with any authorized use of the **Property** by the public is to be permitted on the real estate described in this deed.

iii. No commercial signs or other advertising shall be permitted on the **Property**. Notwithstanding the foregoing, the Grantee is authorized and permitted to advertise events to be conducted on the **Property** as well as concessions for the sale of food and/or beverages on the **Property** at such events.

iv. This conveyance is made on the express condition that the **Property** conveyed shall be forever held in trust for the use and enjoyment of the Inhabitants of the Town of Southwick in accordance with the terms and provisions contained herein.

v. Neither the **Property**, nor any part thereof, may be subdivided, sold, conveyed, exchanged, transferred, or encumbered.

vi. Neither the **Property**, nor any part thereof, may be used for commercial, business, residential, or industrial purposes.

vii. Neither the **Property**, nor any part thereof, may be used for any other municipal purpose not specifically set forth herein.

viii. Neither the **Property**, nor any part thereof, may be used for any purpose not herein specifically authorized, nor any other use or activity which is inconsistent with the purposes of this trust or which would materially impair the trust's interests.

c. **Permitted Acts and Uses.** The Grantee, its successors or permitted assigns, if any, shall have the right to conduct and permit the following activities and uses on the **Property**, but only if such uses do not materially impair the purposes of the trust:

i. Park and playground activities.

ii. Active and passive recreational activities.

iii. Field and athletic sports and sport contest activities.

iv. Circuses, carnivals, fairs, and outdoor amusements, entertainments, and attractions for the purpose of raising funds to maintain the **Property** which do not materially alter or degrade the **Property**.

v. Entertainment, recreation, and social interaction activities of children and youth.

vi. Fishing, boating, hiking, horseback riding, cross-country skiing, and other recreational activities that do not materially alter or degrade the **Property**.

vii. Preparation, beautification, embellishment, and maintenance of the **Property** in order to carry out the purposes of this trust.

viii. Construction of improvements on the **Property** not inconsistent with the purposes of this trust and which would not materially impair the trust's interests.

ix. The Town of Southwick is authorized to permit Southwick Recreation Center, Inc. (or any successor entity) to conduct youth and adult athletic and sporting events on the **Property** as long as the said Southwick Recreation Center, Inc. (or any successor entity) donates to the Town of Southwick, as Trustee, a reasonable amount of funds to assist in maintaining the **Property**. The degree and manner of any such permitted use, and the amount of funds required to be paid to assist in maintenance of the **Property**, shall be at the sole discretion of the Town of Southwick, as Trustee.

d. **Enforceability.** (i) Ten (10) registered voters of the Town of Southwick shall have the right to enforce these trust provisions by appropriate legal proceedings and to obtain injunctive and other equitable relief (there being no adequate remedy at law) against any violations hereof, including, without limitation, relief requiring restoration of the **Property** to its condition prior to the time of any such injury. The rights of enforcement hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the inhabitants of the Town of Southwick for the enforcement of these trust provisions. (ii) Said registered voters seeking to bring legal proceedings to enforce these trust provisions shall cooperate with the Grantee named in this deed for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided that the objectionable actions have ceased and there is no ongoing diminution of the purposes of the trust set forth in these provisions. (iii) Nothing contained in these trust provisions shall be construed to entitle the inhabitants or registered voters of the Town of Southwick to bring any actions against the Grantee named in this deed for any injury to or change in the **Property** resulting from causes beyond the control of the said Grantee named in this deed, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the said Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the **Property** resulting from such causes.

e. **Amendment.** If circumstances arise under which an amendment to or modification of these conservation provisions would be appropriate, the Grantors and the Grantee named in this deed may jointly amend these trust provisions; provided that no amendment shall be allowed that will affect the qualification of these trust provisions under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended. Any amendments to these trust provisions shall occur only in exceptional circumstances. Amendments should only be made to correct errors or oversights, to clarify ambiguities, or where circumstances arise

in the future that render the purpose of the provisions impossible to accomplish. Any amendment shall be consistent with the purposes of these trust provisions, shall not affect their perpetual duration, and, if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the Hampden County Registry of Deeds.

f. **General Provisions.** (i) These trust provisions shall run with the **Property** in perpetuity, and shall be enforceable against any person or entity holding any interest in said **Property**. (ii) The interpretation and performance of these trust provisions shall be governed by the laws of the Commonwealth of Massachusetts. (iii) Any general rule of construction to the contrary notwithstanding, these trust provisions shall be liberally construed to give effect to the purpose of this trust. (iv) If any provision in these trust provisions is found to be ambiguous, any interpretation consistent with the purpose of these trust provisions that would render the provision valid shall be favored over any interpretation that would render it invalid. (v) If any provision of these trust provisions or the application thereof to any person or entity or circumstance is found to be invalid, the remainder of the provisions of this trust shall not be affected thereby. (vi) If at any time in the future a court of competent jurisdiction orders the **Property**, or any part thereof, to be sold, conveyed, exchanged, encumbered, or otherwise transferred, then in no event shall said sale, conveyance, encumbrance, or transfer result in a merger of these trust provisions into the fee interest in the **Property**. By acceptance of the conveyance of the **Property** set forth in this deed, the Grantee hereunder agrees not to sell, convey, exchange, encumber, or otherwise transfer any interest in the **Property** pursuant to any said court order without having first assigned these trust provisions to ensure that said merger does not occur and that the benefits of the **Property** shall be devoted to the trust purposes for which it is established.

5. **Conservation Provisions.** That portion of **PARCEL ONE** and **PARCEL TWO** of the real estate conveyed hereunder shown on the plan hereinafter referred to as Protected Open Space Area "A", Protected Open Space Area "B", and Protected Open Space Area "C", and designated as a jurisdictional Resource Area (as defined at 310 CMR 10.04 Resource Area of the Massachusetts Wetlands Protection Act Regulations), which are Bank (Inland) [as defined at 310 CMR 10.54(2)], Bordering Vegetated Wetland [as defined at 310 CMR 10.55(2)], Land Under Water Bodies and Waterways [as defined at 310 CMR 10.56(2)], Land Subject to Flooding [as defined at 310 CMR 10.57(2)], and Riverfront Area [as defined at 310 CMR 10.58(2)] as shown on a plan prepared by R Levesque Associates, Inc., Westfield, Massachusetts, entitled "Conservation Restriction Plan 42 Powder Mill Road Southwick, Massachusetts Surveyed and Mapped For Mr. John Whalley", dated December 16, 2011, a copy of which is attached hereto as Exhibit A and made a part hereof by reference ( hereinafter referred to as the "Restricted Areas")(said plan being recorded in the Hampden County Registry of Deeds in **Book of Plans 362, Page 91**), shall be subject to the following conditions, provisions, and restrictions:

a. **Purpose.** To provide for the protection and use of the "Restricted Areas" in a manner consistent with and similar to the provisions of Sections 31-33 of Chapter 184 of the General Laws and otherwise by law, which shall include compliance with the Massachusetts Wetlands Protection Act, MGL Chapter 131, Section 40. The purpose of these conservation provisions is to assure that the Restricted Areas will be maintained in their current condition in perpetuity and for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values. These values include those set forth in 310 CMR 10.00, including but not limited to the following:

- **Bordering Vegetated Wetlands Protection:** The Restricted Areas contain Bordering Vegetated Wetlands that are significant to protect the private or public water supply; to protect groundwater supply; to provide flood control; to prevent storm damage; to prevent pollution; to protect wildlife habitat; and to protect fisheries.
- **Floodplain Protection:** The Restricted Areas contain floodplain within the following wetland resource areas: Land Under Water, Bordering Vegetated Wetlands, and Isolated Vegetated Wetlands subject to flooding. The interests that are protected are described above, and such areas are significant to provide flood control, to prevent storm damage, and to protect wildlife habitat.
- **Wildlife Habitat Protection:** The Restricted Areas contain wetland resource areas that are all significant to the protection of wildlife habitat.

b. **Prohibited Acts and Uses.** Subject to the exceptions set forth herein, and except as set forth in any Order of Conditions issued by the Conservation Commission of the Town of Southwick previous to the execution of this deed, neither the Grantee nor its successors or permitted assigns, if any, shall perform or permit the following acts and uses which are prohibited on, above, and below the Restricted Areas:

- i. Placement of structures, pilings, or impervious surfaces on, above or under the Restricted Areas;
- ii. Any alteration of the substrate, mining, excavating, dredging or removing from the Restricted Areas soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
- iii. Placing, filling, storing or dumping on the Restricted Areas of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks, or the discharge of fill as defined under 314 CMR 9.02 of the Massachusetts Clean Waters Act Regulations, as amended;
- iv. Landscaping, mechanical mowing, cutting, removing or otherwise destroying or disturbing trees, grasses or other indigenous plant species;

- v. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- vi. Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Restricted Areas except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties;
- vii. The disruption, removal, or destruction of the stone walls or granite fence posts on the Restricted Areas;
- viii. Subdivision or conveyance of a part or portion of the Restricted Areas alone, or division or subdivision of the Restricted Areas (as compared to conveyance of the Restricted Areas in their entirety), and no portion of the Restricted Areas may be used towards building or development requirements on this or any other parcel.
- ix. The use of the Restricted Areas for commercial recreation, business, residential or industrial use.
- x. Any other use of the Restricted Areas or activity thereon which is inconsistent with the purpose of these conservation provisions or which would materially impair its conservation interests.

c. **Permitted Acts and Uses.** The Grantee, its successors or permitted assigns, if any, shall have the right to conduct and permit the following activities and uses on the Restricted Areas, but only if such uses and activities do not materially impair the purpose of these conservation provisions.

- i. Recreational Activities. Fishing, boating, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape and do not degrade environmental quality;
- ii. Vegetation Management. In accordance with generally accepted forest management practices, removing of brush, and selective *de minimis* pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Restricted Areas, including vistas, woods roads, fence lines and trails and meadows.
- iii. Non-native or Nuisance Species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
- iv. Composting. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Restricted Areas, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this restriction;
- v. Wildlife Habitat Improvement. Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- vi. Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official);
- vii. Future Floodplain Impacts. Activities necessary for mitigation with regard to bordering land subject to flooding as allowed by applicable federal, state or local law or regulation;
- viii. Trails and Boardwalks. The marking, clearing and maintenance of footpaths and trails; and the construction and maintenance of boardwalks if permissible under the Massachusetts Wetlands Protection Act. Trails are to be not wider than six (6) feet;
- ix. Signs. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, and the protected conservation values;
- x. Other Uses. Such other non-prohibited activities expressly approved in writing by the Conservation Commission of the Town of Southwick (or any successor agency), in its sole and exclusive discretion, which permission may only be given if the said Conservation Commission (or successor agency) expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Restricted Areas; and
- xi. Permits. The exercise of any right under this sub-paragraph b. shall be in compliance with zoning, the Massachusetts Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any right hereunder which may require a permit from a public agency does not imply that any public agency takes any position whether such permit should be issued.

**d. Enforceability.** (i) The Conservation Commission of the Town of Southwick (and any successor agency) shall have the right to enforce these conservation provisions by appropriate legal proceedings and to obtain injunctive and other equitable relief (there being no adequate remedy at law) against any violations hereof, including, without limitation, relief requiring restoration of the Restricted Areas to their condition prior to the time of any such injury. The rights of enforcement hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the said Conservation Commission of the Town of Southwick for the enforcement of these conservation provisions. (ii) The Conservation Commission of the Town of Southwick (and any successor agency) shall cooperate with the Grantee named in this deed for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided that the objectionable actions have ceased and there is no ongoing diminution of the conservation values of these conservation provisions. (iii) Enforcement of the terms of these conservation provisions shall be at the discretion of Conservation Commission of the Town of Southwick (and any successor agency); and any election by the said Conservation Commission as to the manner and timing of its right to enforce these conservation provisions or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. (iv) Nothing contained in these conservation provisions shall be construed to entitle the Conservation Commission of the Town of Southwick (or any successor agency) to bring any actions against the Grantee named in this deed for any injury to or change in the Restricted Areas resulting from causes beyond the control of the said Grantee named in this deed, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the said Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Restricted Areas resulting from such causes.

**e. Extinguishment.** If circumstances arise in the future such as render the purpose of these conservation provisions impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law.

**f. Amendment.** If circumstances arise under which an amendment to or modification of these conservation provisions would be appropriate, the Grantee named in this deed and the Conservation Commission of the Town of Southwick (or any successor agency) may jointly amend these conservation provisions; provided that no amendment shall be allowed that will affect the qualification of these conservation provisions or the status of the said Conservation Commission under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended. Any amendments to these conservation provisions shall occur only in exceptional circumstances. Amendments should only be made to correct errors or oversights, to clarify ambiguities, to render a gain in conservation value, or where circumstances arise in the future that render the purpose of the restriction impossible to accomplish. Any amendment shall be consistent with the purposes of these conservation provisions, shall not affect their perpetual duration, advance notice shall be given to the Massachusetts Department of Environmental Protection (or any successor agency), and, if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the Hampden County Registry of Deeds.

**g. General Provisions.** (i) These conservation provisions shall run with the property designated as the Restricted Areas in perpetuity, and shall be enforceable against any person or entity holding any interest in said property. (ii) The interpretation and performance of these conservation provisions shall be governed by the laws of the Commonwealth of Massachusetts. (iii) Any general rule of construction to the contrary notwithstanding, these conservation provisions shall be liberally construed to give effect to the purpose of this restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33, as amended. (iv) If any provision in these conservation provisions is found to be ambiguous, any interpretation consistent with the purpose of these conservation provisions that would render the provision valid shall be favored over any interpretation that would render it invalid. (v) If any provision of these conservation provisions or the application thereof to any person or entity or circumstance is found to be invalid, the remainder of the provisions of this restriction shall not be affected thereby. (vi) If at any time in the future a court of competent jurisdiction orders the **Property**, or any part thereof, to be sold, conveyed, or otherwise transferred, then in no event shall said sale, conveyance, or transfer result in a merger of these conservation provisions into the fee interest in the **Property**. By acceptance of the conveyance of the **Property** set forth in this deed, the Grantee hereunder agrees not to sell, convey, or otherwise transfer any interest in the **Property** pursuant to any said court order without having first assigned these conservation provisions to ensure that said merger does not occur.

Or take any other action relative thereto.

**PASSED  
MAJORITY**

**ARTICLE 2.** To see if the Town will vote to appropriate and transfer the sum of \$1,121,520.00 from the FY2013 Community Preservation General Unreserved Fund for the purpose of installing Capital Improvements, Rehabilitating and Preserving the property known as Whalley Park for the benefit of the Town of Southwick for recreational use and purposes in accordance with M.G.L. c. 44B et. seq.

**MOTION:** To see if the Town will vote to appropriate and transfer the sum of \$1,121,520.00 from FY 2013 Community Preservation General Unreserved Fund for the purpose of installing Capital Improvements, Rehabilitating and Preserving the property known as Whalley Park for the benefit of the Town of Southwick for recreational use and purposes in accordance with M.G.L. c. 44B et. seq.

Or take any other action relative thereto

**AMENDED MOTION & ARTICLE PASSED**

**MAJORITY**

**ARTICLE 3.** To see if the Town will vote to accept the donation of a fully constructed, permitted and installed pavilion from John H. Whalley, 3rd and Kathy A. Whalley to be erected at Whalley Park which is intended to be a completed pavilion and shall not require the expenditure of any funds appropriated from the Town or the Community Preservation Fund in order for it to be a completed, fully functional pavilion for use by the inhabitants of the Town of Southwick at Whalley Park, or take any other action relative thereto.

**PASSED  
MAJORITY**

**ARTICLE 4.** To see if the Town will vote to accept a donation of the sum of \$100,000.00 from John H. Whalley, 3rd and Kathy A. Whalley to hold in trust for the purpose of repairing and maintaining Whalley Park.

Or take any other action relative thereto.

**PASSED  
MAJORITY**

**ARTICLE 5.** To see if the Town will appropriate \$2,200,000 to pay costs of the sewer interceptor project, including the payment of all costs incidental and related thereto, to determine whether this amount shall be raised by taxation, transfer from available funds, borrowing or otherwise, and to determine whether betterments shall be assessed to pay costs of this project.

Or take any other action relative thereto.

**MOTION:** That the sum of \$2,200,000 is appropriated to pay costs of the sewer interceptor project, including the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said amount under and pursuant to Chapter 44, Sections 7(1) and 8(20) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore. No funds shall be borrowed or expended hereunder unless the Selectmen shall have determined that this project has been awarded a grant from the United States Department of Agriculture, Rural Development Agency, or any similar entity, in the amount of at least \$621,000. The amount authorized to be borrowed by this vote shall be reduced to the extent of any grants awarded to the Town on account of this project. Betterments shall be assessed to recover all associated costs to the Town of this portion of the Town's sewer project that are not offset by grants.

**MOTION NOT ACCEPTED****ARTICLE PASSED  
DECLARED 2/3 VOTE  
187- Yes  
14- No**

**ARTICLE 6.** To see if the Town will vote to raise, borrow and/or appropriate the sum of Five Hundred Forty Thousand and 00/100 (\$540,000.00) Dollars for the acquisition of a parcel of land of consisting of approximately 135 +/- acres owned by the Seth Kellogg and Constance Kellogg as Trustees of the Constance Kellogg Trust, and Kellogg Brothers, Inc. as described on Assessors Map/Parcel 014/001, 015/006 and 031/004. Said parcel of land to be managed and controlled by the Conservation Commission of the Town of Southwick in accordance with M.G.L. c. 40, §8C for conservation and passive recreation purposes, and to meet said appropriation with funds transferred and/or borrowed in accordance with the Community Preservation Act (M.G.L. c. 44B, et. seq.) and to authorize the Treasurer, with the approval of the Board of Selectmen, to issue any notes that may be necessary for that purpose, as authorized by M.G.L. c. 44, et. seq., or any other enabling authority. Further to authorize the Board of Selectmen to file on behalf of the Town of Southwick any and all applications deemed necessary under the Local Access for Natural Diversity Act (M.G.L. c.132A, §11) or any other applications for funds in any way connected with the scope and intent of this acquisition, and the Board of Selectmen and the Conservation Commission be authorized, as they deem appropriate subject to town council approval, to enter into all agreements and execute any and all instruments including the conveyance of a perpetual conservation restriction in accordance with M.G.L. c. 184 as required by Section 12(a) of Chapter 44B of the General Laws, as may be necessary on behalf of the Town of Southwick to effectuate said purchase. Said conservation restriction may be granted to the Winding River Conservancy, an organization qualified and willing to hold such a restriction, or take any other action relative thereto.

**MOTION:** To see if the Town will vote to appropriate and transfer the sum of \$185,000.00 from the FY 2013 Community Preservation Open Space Fund Account which represents the required contribution of the Town to supplement the Local Acquisition for Natural Diversity Grant provided by Article 97 of the Amendments to the Massachusetts Constitution to purchase 135 +/- acres of property for the purpose of passive recreation and for the Preservation of Open Space. The Southwick Conservation Commission will hold the property, and Winding River Land Conservancy will hold the Conservation Restriction. The property is located at North Loomis Street Assessors Map 014, 015, 031 Parcel 001, 006, 004 recorded at the Hampden County Registry of Deeds.



Or take any other action relative thereto.

A motion was made and seconded to allow the following non-voter on to the town meeting floor for article 6 only:

Dan Oleksak - 522 Main Rd, Granville, MA

**UNANIMOUS**

**AMENDED MOTION:**

The Town of Southwick voted to appropriate and transfer the sum of \$105,000.00 from the Community Preservation Open Space Reserve Fund Account and the sum of \$80,000.00 from the Community Preservation General Unreserve Fund for a total of \$185,000.00 which represents the required contribution of the Town to supplement the Local Acquisition for Natural Diversity Grant provided by Article 97 of the Amendments to the Massachusetts Constitution to purchase 135 +/- acres of property for the purpose of passive recreation and for the Preservation of Open Space. The Southwick Conservation Commission will hold the property, and Winding River Land Conservancy will hold the Conservation Restriction. The property is located at North Loomis Street Assessors Map 014, 015, 031 Parcel 001, 006, 004 recorded at the Hampden County Registry of Deeds.

**AMENDED MOTION & ARTICLE PASSED  
DECLARED 2/3 VOTE**

**ARTICLE 7.** To see if the Town will appropriate \$1,200,000.00 to pay costs of constructing a new water tank, including the payment of all costs incidental and related thereto, to determine whether this amount shall be raised by taxation, transfer from available funds, borrowing or otherwise, or take any other action relative thereto.

**MOTION:** That the sum of \$1,200,000.00 is appropriated to pay costs of constructing a new water tank, including the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said amount under and pursuant to Chapter 44, Sections 8(4) and 8(20) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor. The amount authorized to be borrowed by this vote shall be reduced to the extent of any grants awarded to the Town on account of this project.

**PASSED  
DECLARED 2/3 VOTE**

**ARTICLE 8.** The see if the Town will vote to transfer from water retained earnings the sum of \$20,000 for the purpose of designing a replacement water line between Foster Road and Powder Mill Road in conjunction with the total redesign effort on that section of Feeding Hills Road, or take any other action relative thereto.

**PASSED  
UNANIMOUS**

**ARTICLE 9.** The see if the Town will vote to transfer from water retained earnings the sum of \$64,500 for the purpose of designing and implementing a Supervisory Control and Data Acquisition System (SCADA) for the water system components, or take any other action relative thereto.

**PASSED  
MAJORITY**

**ARTICLE 10.** To see if the Town will vote to re-appropriate from available funds the sum of \$71,000 for the purpose of designing and permitting improvements to the sewer pump stations at Prifti Park, Berkshire Avenue, and Island Pond Road, or take any other action relative thereto.

**PASSED  
UNANIMOUS**

**ARTICLE 11.** To see if the Town will vote to appropriate and transfer from Sewer Retained Earnings the sum of \$10,000.00 to Finance Committee Reserve Fund for repayment of Emergency Funds for Overtime Services, or take any other action relative thereto.

**PASSED  
UNANIMOUS**

**ARTICLE 12.** To see if the Town will vote to amend Chapter 185, §185-29 of the Code of the Town of Southwick by deleting the current provisions contained therein and replacing them in their entirety with the following provisions, and further that

nonsubstantive changes to the letter and numbering of this bylaw be permitted in order that it be in compliance with the Code of the Town of Southwick, or take any other action relative thereto

#### Chapter 185-29. Signs.

##### A. PURPOSE.

The purpose of this Section is:

- a. To encourage signs which, by location and design, are harmonious to the buildings and sites on which they are placed;
- b. To promote effective visual identification of businesses and residences;
- c. To preserve the physical character and visual quality of the Town of Southwick;
- d. To prevent hazards to vehicular and pedestrian traffic;
- e. To maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development; and
- f. To enable fair and consistent enforcement of these sign regulations.

##### B. APPLICABILITY.

The provisions of this Section shall apply to the construction, alteration, use, illumination, location, workings and maintenance of all signs located out-of-doors, and including signs affixed on any part of a building, free standing signs, and signs visible through windows from outside a building.

##### C. DEFINITIONS.

Words and phrases used in this Section shall have the meanings set forth herein. Words and phrases not defined herein, but defined in the Town of Southwick Zoning Bylaw, shall be given the meanings set forth in such Bylaw. All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise. Headings or captions are for reference purposes only and shall not be used in the interpretation of this Section.

Address Sign - Number(s) and/or letter(s) to identify the street address that are a minimum of four (4) inches high in clear block style and of contrasting color with the background and mounted on the side of the building facing the street in accordance with Chapter 83-6 of the Code of the Town of Southwick.

Agricultural Sign - A Free Standing Sign advertising roadside stands, farm business and agricultural products (See Table 2.).

Audible Sign - Any sign which emits a sound which is audible or emits a signal which can be converted into audible sounds, whether by radio or other means.

Awning Sign - A permanent sign affixed to or consisting of a permanent or retractable awning or marquee permanently mounted to the exterior surface of a building (See Section L. and Table 4.).

Barber Pole - A striped, oftentimes rotating, cylindrical sign used to identify a hair cutting establishment.

Banner - A sign usually made of lightweight fabric, plastic or other flexible materials and mounted on a building or hung from a pole or suspended over a street.

Building Sign - Any sign attached to any part of a building, as contrasted to a free standing sign.

Canopy Sign - A sign painted on or incorporated into the cover of a fixed or retractable protective cover attached to a building or structure, and typically located over a door, entrance, or outdoor service area (See Section L. and Table 4.).

Contractor Sign - A non-illuminated sign not in excess of twelve (12) sq. ft. in area displayed at a construction site. Such sign shall be removed after the construction is completed.

Directional Sign - Any sign limited solely to directing either vehicular or pedestrian traffic (See Table 4.).

Directory Sign - A sign located on a building that identifies individual tenant(s) or occupant(s) of a building or group of buildings and that indicates their respective profession(s), business activities or location of such tenant (See Table 4.).

Display Area - The total surface area of a sign, including all letters, wording, designs, symbols, background and frame, but not including any support structure or bracing incidental to the sign.

Drive-thru Menu Board Sign - A non-movable sign that is located on the premises of a food service establishment at the rear of the lot and that displays menu items and prices (See Table 6.).

Electronic Variable Message Sign - A sign capable of displaying text that can be changed or altered by remote or automatic means (See Section L. and Table 6.).

Erect - To install, construct, reconstruct, replace, alter, relocate or extend any sign and shall not include sign repair or maintenance.

Free Standing Sign - A self-supporting sign not attached to any building, wall or fence, but in a fixed location. This does not include portable or movable signs (See Section L. and Table 2.).

Ground Sign - A sign which does not extend or project into or over a public way and is supported by one or more uprights or braces that are in or upon the ground.

Illuminated Sign - Any sign artificially illuminated, either internally or externally, by means of electricity, gas, oil or fluorescent paint.

Institutional Uses - Uses that include governmental, religious, social, civic and educational facilities.

Menu Board Sign - A non-movable sign that is located on the premises of a food service establishment and that displays menu items and prices (See Table 6.).

Movable Sign - A sign not permanently attached to the ground or other permanent structure and designed to be transported, including but not limited to: signs mounted on a chassis and wheels; unregistered motor vehicles and trailers with signage; and balloons and other inflatable devices used as signs.

Neon Sign - A sign made of shaped glass tubing, illuminated by electrically charged neon or similar inert gasses.

Off-Premises Sign - Any sign that directs attention to an occupant, business, commodity, service, or entertainment conducted, sold, or offered at a location other than the lot on which the sign is located.

On-Premises Sign - Any sign that directs attention to an occupant, business, commodity, service, or entertainment conducted, sold, or offered at a location where the sign is erected or maintained.

Out-of-Store Marketing Device - An out-of-store marketing device is any facility or equipment which is located outside of a primary building on a site zoned for non-residential uses, which is used for the primary purpose of providing a product or service without the owner's or agent's immediate presence, and which is manufactured to include a color, form, graphic, illumination, symbol, and/or writing thereon to communicate information regarding the product or service provided thereby to the public. Examples of out-of-store marketing devices include: fuel pumps, bank ATM units, vending machines, newspaper racks, drink machines, ice boxes, and phone booths (See Table 6).

Pennant/Flag - A sign made of flexible material hung on a pole or on the face of a building, decorated with graphics, designs, artwork, symbols and/or lettering. Pennants that contain advertising messages, logos, or symbols are not considered signs under this bylaw. Bunting and patriotic flags, such as United States, Massachusetts or Town flags, are not considered signs and are exempt from this bylaw.

Political Sign - A sign relating to a candidate for public office, an issue to be voted on at a Town Meeting or an election, or some other issue which may be of general concern, interest or controversy.

Portable Sign - A two-sided sign not permanently affixed to the ground or a structure including signs supported by legs, including A-frames, T-frames; menu and sandwich board signs (See Table 5.).

Real Estate Sign - A non-illuminated sign not in excess of four (4) sq. ft. in area advertising the sale, rental or lease of only the premises on which it is located.

Real Estate Development Sign - A non-illuminated sign not in excess of thirty-two (32) sq. ft. used to identify a subdivision or other development.

Roof Sign - A sign located above, or projected above, the lowest point of the eaves or the top of the building wall of any building, or fastened to a roof (See Table 2.).

Seasonal Sign - An On-Premises Sign advertising only agricultural products or services in season to be sold on the premises (See Table 4.).

Special Event Sign - A noncommercial promotional sign displayed for special events which shall meet the specifications of a Portable Sign (See Table 5.).

Temporary Sign - Any sign, including its support structure, not permanently mounted and displayed for a limited amount of time. These signs are regulated by the Building Inspector (See Section L. and Table 5.).

Traffic Control Sign - A sign for the control of vehicular traffic, such as Stop, Yield, and similar signs.

Wall Sign - Any sign that is incorporated into, or affixed to the wall of a building or structure (See Section L. and Table 3.).

Way-finding Sign - A permanent Off-Premises Sign that provides direction and information on public facilities; shared commercial developments; individual businesses, agencies and farms; and temporary public events. These signs are regulated by the Department of Public Works or Mass DOT.

Window Sign - A sign affixed to the surface of a window (inside or outside) or displayed behind a window so as to attract attention from the outside (See Table 5.).

#### D. POWERS AND DUTIES.

The Building Inspector is hereby authorized and directed to interpret, administer and enforce this Bylaw.

The Planning Board is hereby authorized to review sign permit applications and provide advice to the Building Inspector under Section G.

#### E. APPLICABILITY.

The standards and regulations of this Bylaw shall apply to all signs erected, altered, maintained, or replaced in any zone or district within the Town of Southwick.

#### F. SIGN PERMITS.

1. Sign Permit Required. Unless a Sign Permit is specifically not required by the standards of this Bylaw, it shall be unlawful for any person to erect or replace a sign without first having obtained a Sign Permit. Refer to Tables 1 to 6 to determine if a Sign Permit is required for a specific sign type.

2. Application Submittal and Content. When required by this Bylaw, Sign Permit applications shall be filed in the office of the Building Department upon forms furnished by that office. The submittal of the following information, material and fees shall constitute a complete application:

##### a. The application shall describe and set forth the following:

- i. The type and purpose of the sign(s) as defined in this Section (i.e. Free Standing Sign, Roof Sign, Wall Sign, etc.);
- ii. Dimensions and area of the sign(s), including aggregate sign area if more than one (1) sign and/or sign face;
- iii. Materials and colors of the sign(s) and supporting structure;
- iv. Type of illumination;
- v. Number, type and area of existing signs;
- vi. Height of sign;
- vii. The zone or district in which the subject property is located;

- viii. The Business Certificate ID number, if a non-residential use;
  - ix. The name, address, telephone number and signature of the business owner;
  - x. The name, address, telephone number and signature of the owner of the property upon which the sign is to be located. The owner's agent may sign if an authorization letter from the property owner and/or entity that governs the property where the proposed sign is to be erected, altered or replaced is submitted; and
  - xi. The name, address, and telephone number of the contractor who will erect the sign.
- b. The following attachments, and necessary copies as required by the Building Inspector, shall be submitted:
- i. For Free Standing Signs, a location plan or survey showing the property upon which the subject sign is to be located, the proposed location of the subject sign on the property, the distance of the proposed sign from the subject property's boundaries, and all existing structures or buildings on the subject property. Such plan shall be to a legible engineer's scale;
  - ii. For all signs, dimensioned drawings of the sign including lettering, borders, proposed color scheme, height, width and other design elements. Such drawings shall be to a legible architect's scale;
  - iii. For Wall, Awning or Canopy Signs, a dimensioned drawing or photograph of the façade indicating the placement of the signs, area of the façade of the business establishment, and height and width of the sign. Such drawings shall be to a legible architect's scale; and
  - iv. Color photographs of the property including all buildings and the proposed sign location.
- c. Appropriate fees, as set from time to time by the Board of Selectmen, shall be paid.
3. Processing Time; Permit Issuance. The Town shall process all complete and accurate Sign Permit applications within forty-five (45) days of the Building Inspector's actual receipt of a complete (per F.2. of this Section) and accurate application and upon remittance of the appropriate fee. No Sign Permit shall be issued by the Building Inspector sooner than forty-five (45) days unless the positive advisory recommendation of the Planning Board has been received. If the advisory recommendation of the Planning Board is not received within forty-five (45) days, the Building Inspector may issue the Sign Permit.
4. Application Rejection. The Building Inspector shall reject any application that is incomplete (per F.2. of this Section), that contains false material statements or omissions, or that is for a sign which would violate any standard within this Bylaw within forty-five (45) business days of receipt of said application.
5. Resubmission. A rejected application later resubmitted in conformity with this Bylaw shall be deemed to have been submitted on the date of resubmission, instead of the original submission date. An application which is resubmitted shall meet all the standards for an original application.
6. Permit Revocation. Should it be determined that a Sign Permit was issued in error and/or pursuant to an application containing a false material statement or omission, or for a sign not meeting the standards of this Bylaw, the Building Inspector shall revoke said permit and the subject sign shall be immediately removed.
7. Expiration Date. A Sign Permit shall become null and void if the sign for which the permit was issued has not been installed and completed within six (6) months after the date of issuance; provided, however, that where an applicant can demonstrate that a commercial entity was timely engaged to construct the permitted sign, but the fabrication has not yet been completed, one (1) ninety (90) day extension may be granted by the Building Inspector. If later an individual desires to erect a sign at the same location, a new application for the sign must be processed and another fee paid in accordance with the fee schedule applicable at such time. No refunds shall be made for a permit after the permit is issued.
8. Permit Transfer. A Sign Permit may be transferred by the Building Inspector to a new occupant if the dimensions of the existing sign are not changed and only a new sign face is installed.
9. Enforcement. The Building Inspector will have enforcement authority under this bylaw including the following:
- a. Inspecting and ordering the painting, repair, alteration or removal of a sign which shall constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence.
  - b. Determining if a sign has been abandoned and ordering removal by the owner of the sign or the owner of the premises.

c. Removing or ordering the removal of signs that are not in compliance with this bylaw. Persons wanting to retrieve a sign must pay any fine and/or cost to the Town of Southwick.

d. Imposing a fine of \$200 per day, per violation on any person violating the provisions of this bylaw or any conditions under which a permit is issued. Each day that such violation continues shall constitute a separate offense.

10. Appeals. Any person aggrieved by the inability to obtain a permit may appeal a decision of the Building Inspector by filing a written notice with the Town Clerk within thirty (30) days from the date of the decision as provided in M.G.L. Chapter 40A, Section 15.

G. DESIGN REVIEW.

1. Design Review Required. All signs requiring a Sign Permit under the provisions of this Bylaw shall require the review of the Planning Board.

2. Process. Within seven (7) working days of the Building Inspector's receipt of a complete and compliant Sign Permit application (per F.2. of this Section), the application, attachments, and the appropriate number of copies shall be sent to the Planning Board. The submitted application and attachments shall include the information and documents as required under subsection F., Sign Permits. 2., Application Submittal and Content, a. and b., of this Section. The application shall be scheduled for review by the Planning Board at the next meeting of the Board. The Planning Board shall render an advisory recommendation regarding the design of the sign to the Building Inspector. Failure of the Planning Board to make a recommendation within forty-five (45) days from the date of the submission of application materials to the Board shall be deemed to constitute a recommendation for approval. The Planning Board shall forward such recommendation and the application to the Building Inspector along with reasons for the recommendation.

3. Criteria for Review. The Planning Board's review and advisory recommendation of proposed signs shall be based on the following:

a. Design Guidelines Handbook - Town of Southwick, July 1999;

b. Consideration of how the proposed sign(s) relates to:

i. The context of the building façade;

ii. Buildings in the immediate vicinity of the sign;

iii. The basic pattern of the street front to which the sign is oriented; and

iv. The size, brightness, style, height and colors of other permanent structures and elements in the immediate vicinity; and

c. Consideration of whether the proposed sign(s) is:

i. In compliance with Section M. Signage Allowances Based on Zone, District or Use;

ii. Sized and located so as to avoid obscuring existing architectural features such as columns, sill lines, roof eaves, and cornices;

iii. Comprised of materials and colors that reflect the character of the building to which it is attached or associated with; and

iv. Displaying graphics, symbols, logos, and/or letters of a size that are proportional to the sign and the building to which it is attached or associated with, does not create a sign with a cluttered appearance, and are legible and visible to both vehicle operators and pedestrians.

d. Recommendation. The Planning Board's advisory recommendation shall take one of the following forms:

i. Positive: The Planning Board shall recommend the approval of proposed signs that meet the Criteria for Review and comply with all requirements of this Section.

ii. Positive with Conditions: The Planning Board shall recommend the approval with conditions of proposed signs that comply with the requirements of this Section, but do not meet the Criteria for Review. The Board may recommend conditions that require changes to the sign; conditions shall relate to the Criteria for Review with the intent being that the conditions serve to conform the sign to such Criteria.

iii. Negative: The Planning Board shall recommend denial of all proposed signs that do not comply with the requirements of this Section; the Planning Board may recommend denial of Sign Permits that do not meet the Criteria for Review if, in the opinion of the Board, there are no possible conditions which will allow the sign to more closely meet the Criteria for Review.

#### H. EXEMPT AND PROHIBITED SIGNS AND DEVICES.

1. Exempt. The following signs shall not count toward the total amount of signage allowed and do not require a permit; however, Exempt signs shall conform with all setback, height and dimensional requirements:

- a. Any public notice or warning required by a valid and applicable federal, state, or local law, regulation, or statute;
- b. Any sign inside a building, not attached to a window or door;
- c. Awning and Canopy Signs (See Table 4.);
- d. Address Sign;
- e. Barber Pole;
- f. Contractor Sign (One sign allowed per construction site);
- g. Directional Sign (See Table 4.);
- h. Directory Sign (See Table 4.);
- i. Drive-thru Menu Board Sign (See Table 6.);
- j. Menu Board Sign (See Table 6.);
- k. Pennant/Flag for non-commercial use;
- l. Political Sign (Displayed only on private property with consent of the property owner);
- m. Portable Sign (See Table 5.);
- n. Real Estate Sign (One sign allowed per premises);
- o. Real Estate Development Sign (One sign allowed per subdivision);
- p. Seasonal Sign (See Table 4.);
- q. Signs located on property owned by the Town and approved by the Board of Selectmen;
- r. Temporary Sign (See Table 5.);
- s. Traffic Control Sign;
- t. Way-finding Sign; and
- u. Works of art that do not include a commercial message.

2. Prohibited Signs. The following types of signs are prohibited in the Town:

- a. Abandoned sign, identifying abandoned or discontinued business. Such signs shall be removed within sixty (60) days following the abandonment or discontinuance as ordered by the Building Inspector;
- b. Any non-exempt sign not specifically identified in Tables 1 to 6, Signage Allowances Based on Zone, District or Use;
- c. Animated, moving or flashing sign;
- d. Audible Sign;

e. Banner;

f. Imitation traffic sign which contains or is an imitation of an official traffic sign or signal or contain the words "stop," "go," "slow," "caution," "warning," or similar words in such a manner as to resemble official traffic control signs;

g. Movable Sign;

h. Promotional beacon, laser light or image;

i. Sign in the public right-of-way, except as permitted by the Department of Public Works or Mass DOT;

j. Sign mounted or located on a tree, utility pole, or other similar structure;

k. Sign which depicts obscene matter or are considered obscene matter, as defined in M.G.L. Chapter 272, § 31;

l. Sign which advertises an activity which is illegal under federal, state or local laws;

m. Sign not in good repair, in violation of codes, or containing or exhibiting broken panels, visible rust, visible rot, damaged support structures, or missing letters; and

n. No permanent sign shall be permitted in any district which does not relate to the identity or business of the legal occupant of the premises upon which it is located unless it is a Way-finding Sign.

#### I. MEASUREMENT OF SIGN AREA AND HEIGHT.

##### 1. Measurement of Sign Area.

a. General. Sign display area shall be computed as the area within the smallest single rectangle or square area enclosing the extreme limits of the sign face including any cabinet or frame or material, texture, or color forming an integral part of the sign face used to differentiate the sign face from the structure upon which it is placed. For purposes of determining the maximum size limitations, any intermediary removable surface to which a sign is attached shall be deemed part of the sign, and any sign composed of separate letters, numbers, or symbols cut into or attached to a wall or painted on or otherwise attached to an awning, canopy, or window shall be deemed to occupy the entire area within a single rectangle or square enclosing the extreme limits of the sign, including any structural elements.

b. Structure. The computation of the area of a sign face shall not include the structure, supports, or uprights on which the sign face is placed or any portions of a sign structure that are not intended to contain any message or idea and are purely structural or decorative in nature, other than those parts contained within the rectangle or square that delimits the sign face.

##### 2. Measurement of Sign Height.

a. Ground Signs. The height of a standing sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest component of the sign. Where the normal grade is below the normal grade of a public street, the sign base can be raised to the elevation of the normal grade of the street before the height limitations are applied (surveyor's certificate required).

b. Building Signs. The height of a wall sign or roof sign shall be determined to be the vertical distance measured from grade to the top of the highest attached component of the sign.

#### J. LOCATION, CONSTRUCTION AND DESIGN STANDARDS.

1. Setback. Unless a more restrictive setback is specified otherwise in this Section, all ground signs, whether permanent or temporary, shall be set back at least ten (10) feet from the nearest property line.

2. Corner Clearance. No sign shall be located in an area formed by the lines of intersecting streets and a line joining such lines twenty-five (25) feet distance from their point of intersection or in the case of a rounded corner of the point of intersection of their tangents.

3. Right-of-Way. No sign or any part thereof, except as permitted by the Department of Public Works or Mass DOT, shall be located in any public right-of-way. Any pre-existing sign which projects into, on or over a public sidewalk, street or way shall be subject to the provisions of the State Building Code regulating such signs and shall be subject to bonding and/or insurance requirements as determined by the Board of Selectmen.



4. Compliance with Building Code. All signs permitted under this Section shall be constructed and installed in accordance with the applicable provisions of the State Building Code and with the reasonable requirements of the Building Inspector.

5. Maintenance. All signs, together with the structural elements, shall be kept in good repair and in a proper state of preservation to the reasonable satisfaction of the Building Inspector. The Building Inspector may order the removal of any sign that is not maintained in accordance with the provisions of this Section, the State Building Code and/or the Zoning Bylaw.

6. Installation. No sign shall be painted or posted directly on the exterior surface of any wall, roof or parapet. All signs must be painted, posted or otherwise securely attached to a substantial intermediary removable surface which shall be securely attached to the building; however, the foregoing shall not prevent the installation of a sign consisting of individual letters or devices securely attached to the exterior wall of the building. Installed signs shall display the name of the installer and the permit number issued by the Building Inspector in a conspicuous location.

7. Illumination.

a. Permitted: The following types of illumination shall be allowed:

i. Externally Illuminated Signs: Signs may be externally illuminated by white, steady, stationary light shielded and directed solely at the sign;

ii. Internally Illuminated Signs: Signs may be internally illuminated by white, steady, stationary diffuse light;

iii. Back-Lit Signs: Signs that are internally illuminated with only the letters, characters and/or graphics illuminated and no illumination of the background; and

iv. Reverse Lit Signs: Signs using an opaque face and sides illuminated by white light only and that shines out of the back of the sign and off the wall behind the sign.

b. Prohibited: The following types of illumination shall be prohibited:

i. Open Face Channel Letters; and

ii. Exposed neon tubing or exposed LEDs except for interior window signs.

c. Time: Unless a business establishment is open to the public, no sign shall be illuminated between the hours of 12:00 a.m. and 6:00 a.m.

K. REGULATIONS BASED ON SIGN TYPE.

1. Free Standing Signs.

a. Location: Free Standing Signs shall be located on the same lot with the principal building except Way-finding Signs permitted by the Department of Public Works or Mass DOT.

2. Wall Signs.

a. Orientation: A Wall Sign shall be mounted parallel or perpendicular to the wall of the building.

b. Projection: A Wall Sign shall not project more than one (1) foot from the face of the wall nor beyond the face of the wall to which it is attached, in the case of a sign mounted parallel to a wall. A sign mounted perpendicular to a wall shall not project more than four (4) feet, from the face of the wall to which it is attached. No wall sign shall project into, on or over a public sidewalk, street or way.

c. Location: Wall Signs shall be mounted on the façade of the business establishment owned or leased by the Sign Permit applicant.

3. Awning or Canopy Signs.

a. Location: Awning or Canopy Signs shall be mounted on the façade of the business establishment owned or leased by the Sign Permit applicant.

b. Display: Awning or Canopy Signs shall be painted on or attached flat against the surface of the awning or canopy and shall not be attached to or displayed on the underside.

#### 4. Electronic Variable Message Signs.

- a. Display Time: Each message displayed on an Electronic Variable Message Sign must be static or depicted for a minimum of sixty (60) minutes, except for signs used to display the time and temperature.
- b. Brightness: All Electronic Variable Message Signs shall be constructed with a light detector/photocell by which the sign's brightness can be dimmed when ambient light conditions change. The brightness, measured in foot candles, can be no higher than 0.3 foot candles above the ambient light level as measured by a light meter held at a height of five feet above ground level and at a distance similar to the sign-to-viewer distance.
- c. Sign Area: When an Electronic Variable Message Sign is a portion of a Free Standing or Wall Sign, the total square footage of the combined signage shall not exceed the maximum area permitted for a Free Standing or Wall Sign.

#### 5. Temporary Signs

- a. Use: Temporary Signs announce or provide information on a new business.
- b. Display Time: Temporary Signs may be installed and maintained for a continuous period not to exceed sixty (60) days for the opening of a new business.

#### L. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE.

If not otherwise stated, any sign not specifically allowed in a zone or district or for a specific use as provided herein shall be prohibited, except as otherwise provided for under this Section. The following Tables (Table 1 to 6, Signage Allowances Based on Zone, District or Use), provide standards governing signs within a specific zone or district or for specific uses. Specific uses shall be allowed signage as indicated for such use rather than based on the zone or district of such use, unless the signage allowances of the zone or district are less restrictive than those indicated for the specific use. Signs for which a permit is not required shall meet all other provisions of this Section of the Sign Bylaw applicable to the subject sign.

#### M. NON-CONFORMING SIGNS.

Any legally permitted non-conforming sign may continue to be maintained but shall not be enlarged, redesigned or altered in any way unless it is brought into conformity with the requirements of this Section and the Zoning Bylaw. This shall not include the substitution or interchange of poster panels, painted boards, or dismountable material on non-conforming signs, which shall be permitted. Any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent (35%) of the replacement value of the sign at the time of the destruction or damage, shall not be repaired or rebuilt or altered unless in conformity with this Section.

The exemption herein granted shall terminate with respect to any sign which:

- a. Ceases to have a relevant function as evidenced by a state of disrepair and/or discontinuance of the advertised activity;
- b. Advertises or calls attention to any products, businesses or activities which are no longer carried on or sold, whether generally or at the particular premises; or
- c. Shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Building Inspector.

A motion was made to table the question and seconded.

**MOTION FAILED**

**40 - No**

**46 - Yes**

**ARTICLE PASSED  
DECLARED 2/3 VOTE**

**68 - Yes**

**15- No**

Table 1. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE						
		Zone, District or Use				
		Residential Zones AC District	Business and Industrial Zones Fronting on Streets Other Than College Highway	Business and Industrial Zones Fronting on College Highway	Gasoline Filling Stations	Institutional Uses
TOTAL PERMANENT SIGNAGE	Number of Signs	1 Free Standing Sign per lot.				
			2 additional permanent signs, consisting of no more than 1 Wall Sign, 1 Awning or Canopy sign, or 1 Roof Sign per business establishment		2 additional permanent signs, consisting of no more than 1 Wall Sign, or 1 Awning or Canopy sign per business establishment	1 sign per street facing wall surface
	Maximum Total Area	Home Occupation Use 3 sq. ft.  Agricultural Use 50 sq. ft.				
			For the sum of all Wall, Roof, Awning and Canopy signs, 100 sq. ft. or 10% of the area of the façade of the business establishment, whichever is less, per business establishment;  For Free Standing Signs, 25 sq. ft.	For the sum of all Wall, Roof, Awning and Canopy signs, 125 sq. ft. or 10% of the area of the façade of the business establishment, whichever is less, per business establishment;  For Free Standing Signs, 50 sq. ft.	100 sq. ft. for lots fronting on streets other than College Highway; 150 sq. ft. for lots fronting on College Highway  Plus Awning and Canopy sq. ft.	100 sq. ft. for lots fronting on streets other than College Highway; 125 sq. ft. for lots fronting on College Highway


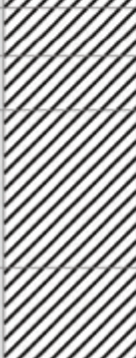
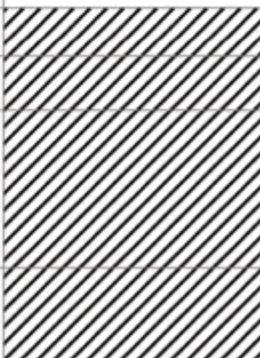
Table 2. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE						
Sign Type	Standard	Zone, District or Use				
		Residential Zones  AC District	Business and Industrial Zones Fronting on Streets Other Than College Highway	Business and Industrial Zones Fronting on College Highway	Gasoline Filling Stations	Institutional Uses
FREE STANDING SIGN	Permit Required	Yes				
	Number of Signs	1 per lot				
	Maximum Area and Maximum Height	Home Occupation Use 3 sq. ft. and 6 feet from grade			50 sq. ft. for lots fronting on streets other than College Highway; 75 sq. ft. for lots fronting on College Highway	25 sq. ft. for lots fronting on streets other than College Highway; 50 sq. ft. for lots fronting on College Highway
		Agricultural Use 25 sq. ft. and 10 feet from grade				
			25 sq. ft.	50 sq. ft.	8 feet from grade for lots fronting on streets other than College Highway; 18 feet from grade for lots fronting on College Highway	
			8 feet from grade	18 feet from grade		
ROOF SIGN	Permit Required		Yes			
	Number of Signs		1 per business establishment			
	Maximum Area		2 sq. ft. for each linear foot of roof associated with the business, not to exceed 50 sq. ft.			
	Maximum Height		5 feet above the eave or top of the building wall but may not extend above the peak of the roof			

Table 3. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE						
Sign Type	Standard	Zone, District or Use				
		Residential Zones AC District	Business and Industrial Zones Fronting on Streets Other Than College Highway	Business and Industrial Zones Fronting on College Highway	Gasoline Filling Stations	Institutional Uses
WALL SIGN	Permit Required		Yes			
	Number of Signs		<ul style="list-style-type: none"> <li>• 1 per business establishment</li> <li>• 1 additional sign shall be allowed for each additional street level public entrance, beyond the principal entrance, utilized by the business establishment.</li> <li>• For business establishments occupying more than 1 building, 1 additional sign shall be allowed per building, to be affixed to such additional building.</li> <li>• For buildings occupied by more than 1 business establishment which share a common public entrance, 1 additional wall sign may be displayed on the building and such sign may be located on one or more business establishment's facade.</li> </ul>			1 per street facing wall surface
	Maximum Area		50 sq. ft. or 10% of the area of the façade on which the sign is located.	75 sq. ft. or 10% of the area of the façade on which the sign is located.	50 sq. ft. for lots fronting on streets other than College Highway; 75 sq. ft. for lots fronting on College Highway	75 sq. ft.
			Additional signs allowed per additional public entrances and additional signs allowed for building occupied by more than 1 business establishment, shall not exceed 25 sq. ft. or 10% of the area of the wall to which attached.			
	Maximum Height		20 feet from grade			35 feet from grade



Table 4. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE						
Sign Type	Standard	Zone, District or Use				
		Residential Zones AC District	Business and Industrial Zones Fronting on Streets Other Than College Highway	Business and Industrial Zones Fronting on College Highway	Gasoline Filling Stations	Institutional Uses
AWNING OR CANOPY SIGN	Permit Required		No			
	Number of Signs		1 per business establishment			
	Maximum Area		25% of the area of the portion of the awning or canopy to which such sign is affixed or 10% of the façade on which canopy or awning is located, whichever is less.			
SEASONAL SIGN	Permit Required		No			
	Number of Signs		1 per business establishment			
	Maximum Area		20 sq. ft.			
	Maximum Height		10 feet from grade			
DIRECTORY SIGN	Permit Required		No			
	Number of Signs		1 per public entrance to a building			
	Maximum Area		2 sq. ft. per business establishment occupying the building or 6 sq. ft., whichever is less			
DIRECTIONAL SIGN	Permit Required		No			
	Maximum Area		4 sq. ft. per sign			

Table 5. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE						
Sign Type	Standard	Zone, District or Use				
		Residential Zones  AC District	Business and Industrial Zones Fronting on Streets Other Than College Highway	Business and Industrial Zones Fronting on College Highway	Gasoline Filling Stations	Institutional Uses
PORTABLE SIGN	Permit Required	No				
	Number of Signs	Special Event Sign; 1 per lot	1 per business to be displayed during posted business hours and 1 Special Event Sign per business			Special Event Sign; 2 per lot
		1 per Agricultural Use				
	Maximum Area	Each single sign face shall not exceed 6 sq. ft.				
	Maximum Height	4 feet from grade				
TEMPORARY SIGN	Permit Required		No, but regulated by the Building Inspector			
	Number of Signs		1 per lot or business			
	Maximum Area		20 sq. ft.			
	Maximum Height		15 feet from grade			
WINDOW SIGN	Permit Required		No			
	Maximum Area		40% of the area of each window on which sign is attached			

<b>Table 6. SIGNAGE ALLOWANCES BASED ON ZONE, DISTRICT OR USE</b>						
Sign Type	Standard	Zone, District or Use				
		Residential Zones AC District	Business and Industrial Zones Fronting on Streets Other Than College Highway	Business and Industrial Zones Fronting on College Highway	Gasoline Filling Stations	Institutional Uses
OUT OF STORE MARKETING DEVICE SIGN	Permit Required		No			
	Number of Signs		1 sign shall be allowed on each out-of-store marketing device			
	Maximum Area		14 sq. ft.			
	Maximum Height		No more than 2 feet above the device			
DRIVE-THRU MENU BOARD SIGN	Permit Required		No			
	Number of Signs		1 sign per business			
	Maximum Area		50 sq. ft.			
	Maximum Height		8 feet from grade			
MENU BOARD SIGN	Permit Required		No			
	Number of Signs		1 sign per business			
	Maximum Area		10 sq. ft.			
	Maximum Height		6 feet from grade			
ELECTRONIC VARIABLE MESSAGE SIGN	Permit Required		Yes, unless permitted as a portion of a Free Standing or Wall Sign			
	Number of Signs		1 per lot or portion of a Free Standing or Wall Sign			
	Maximum Area		20 sq. ft. that is included in the maximum total sign area and shall not exceed 40% of a Free Standing or Wall Sign			
	Maximum Height		10 feet from grade			

A Motion was made and seconded to dissolve the Special Town Meeting at 9:05 PM.

**UNANIMOUS**

A TRUE COPY  
ATTEST:

/s/  
Michelle L. Hill, Town Clerk