

**Supplementary Report of the Advisory Committee  
2010 Annual Town Meeting  
April 26, 2010  
Re: Articles 17, 28, 33, 46 and 58**

**ARTICLE 17.**

**COMMENT:** Patrick and Maria Plante own a house located at 111 – 113 Fort Hill Street (the "Property"). From 1985 until about 2008, the Property was used as a group home for mentally disabled adults pursuant to a contract with the Department of Mental Retardation. At some point during 2008/2009, DMR consolidated its operations and terminated its contract with the Plantes. Since that time, the Hingham Veterans' Agent has worked with the Plantes to place veterans at the Property on an informal basis for short-term, emergency housing. In October 2008, the Hingham Housing Authority (the "Authority") working with the Veterans' Agent applied to the Community Preservation Committee ("CPC") for funding to purchase the Property and use it for housing for homeless veterans. CPC determined that the proposal needed more diligence and suggested that the Authority reapply in 2009 with more detailed financials and an experienced service provider to assist with the operation of the Property. The Authority decided to talk with Father Bill's & MainSpring, Inc. ("Fr. Bill's") as a potential operator for the Property. Fr. Bill's proposed that it purchase the Property and operate it as affordable housing for veterans.

In October 2009, Fr. Bill's applied to CPC for funding to be used for the development and construction of six (6) units of affordable housing for veterans at 111-113 Fort Hill Street (the "Project"). The Project, which will be owned and operated by Fr. Bill's, will provide six (6) separate bedrooms with shared bathrooms, kitchen and common areas for tenants who are capable of living in permanent, independent units with appropriate support services. While there will be no permanent, on-site staff supervision, Fr. Bill's will work with the lead tenant as well as Fr. Bill's case managers to monitor and support the tenants through on-site and off-site services. Fr. Bill's reports that this model has worked successfully for its veteran tenants in other towns such as Quincy and Brockton. In keeping with CPC's statutory charge to support affordable housing, this article asks Town Meeting to approve the use of CPC funds to support the Project subject to certain specified contingencies.

The first contingency specified in the recommended motion requires that Fr. Bill's secure the necessary additional funding for the Project. At this point, Fr. Bill's has projected total Project costs of about \$1,350,847. Fr. Bill's envisions taking out a mortgage with a private lender of about \$90,000, combining that with State and Federal grants and loans totaling about \$825,000 as well as \$50,000 from the Hingham Affordable Housing Trust and \$250,000 from CPC. Fr. Bill's must then raise \$135,847 in additional Project funds. CPC funds will not be disbursed by the Town Accountant until Fr. Bill's can demonstrate that it either has possession of all of such funds or a written commitment for the balance of the funds necessary to complete the Project. Currently, the CPC funds will be structured as a long-term, no-interest loan which, as described more fully below, will be junior to the mortgage loans ultimately documented by the private lender and by the State. No interest or other proceeds would be paid back to CPC or the Town unless the agreement with Fr. Bill's is terminated and the Property is sold.

With respect to the operational feasibility of the Project from a cash-flow standpoint, the Authority intends to provide five (5) project-based Section 8 housing vouchers (a sixth voucher may be supplied by the Authority or may be obtained pursuant to Federal veteran's rent subsidy programs) which entitle prospective tenants who meet certain income criteria to pay only 30% of their income for housing costs. The federal government housing program makes up the difference between an established fair market

value rent and the amounts paid by the tenants. Fr. Bill's anticipates that this subsidized rental income stream will be sufficient to support the operation of the Property. Fr. Bill's is the owner of the Property and the operator of the Project and, except as described below, Fr. Bill's will be responsible for all attendant costs.

The second contingency requires that the documentation for the Project protects the interests of the Town and, to the extent possible, secures for the Town a right of first refusal or similar right to acquire the Property in the event that Fr. Bill's ceases to own and operate the Project as affordable housing for veterans as allowed by applicable law or otherwise violates any one of the contractual operational covenants that will be required by the Town and State funding sources as described below. These negotiated rights are meant to protect the interests of the Town in the event the Project fails. CPC representatives will be charged with coordinating the negotiation of such rights with Fr. Bill's and the other senior lenders on the Project.

The third contingency for the disbursement of CPC funds for this Project is the satisfaction of all Town permitting requirements. Fr. Bill's (along with the Plantes) have received the approval of the Historical Commission on the planned demolition and reconstruction of the house subject to certain specified conditions. In particular, the replacement structure must be completed in substantial accordance with the revised plans for the Property dated March 16, 2010. With respect to zoning approvals -- since the current house will be demolished and the use will change -- Fr. Bill's will be required to demonstrate that the intended use of the Property is "allowable" in a single-family residential district by right, variance or special permit or that the Project is exempt from these zoning restrictions. The Project may also qualify for zoning relief under MGL, Chapter 40B or as a Local Initiative Project (LIP). These determinations will be made by the Inspector of Buildings and the Planning and/or Zoning Board of Appeals as part of the regular, public hearing process as appropriate.

Finally, the last contingency requires that Fr. Bill's provide the Town with sufficient documentation memorializing: (i) how the building and physical plant of the Property will be cared for (the Management Plan); (ii) who will live in the house (the Tenant Selection Plan) and what services will be provided to support the tenants (the Service Plan). These plans are required addendums to the State loan documents and will reflect the particular concerns of the Town in respect of this Project.

The Management Plan will detail how the physical plant will be cared for including certain day-to-day maintenance items such as landscaping, snow and trash removal and housekeeping, as well as capital improvements ranging from painting the house to providing for a new roof. Both the State and the Authority will inspect the Property at least annually to ensure compliance with the Management Plan.

The Tenant Selection Plan will be undertaken in partnership with the Authority. Currently, the Authority runs a Criminal Offender Record Information or CORI check and determines income eligibility as required by the Federal Section 8 housing program for all affordable housing applicants to its Thaxter Park facility. The Authority is required to make appropriate housing referrals from its waiting list of income-eligible applicants who have passed CORI and income screening. Generally, if a prospective tenant is not eligible to live in Thaxter Park (based on the aforementioned CORI and income screenings), that individual would not be eligible to live at the Property. Upon receiving a referral from the Authority, Fr. Bill's will use the criteria outlined in its Tenant Selection Plan to further screen the applicant to be sure that the individual meets Fr. Bill's standards for independent, supportive living including past landlord history, criminal incidents (if any) and suitability for the location. Once a tenant is selected, the Authority will have the right to terminate the Section 8 rental subsidy assistance for any

resident who does not comply with the terms of the lease, including the "house rules" established for the Project. Furthermore, the Authority will have a 15-year Federal Housing Assistance Payments (HAP) contract with Fr. Bill's which will stipulate that the Authority may terminate the contract upon non-compliance with the Management Plan, the Tenant Selection Plan and/or the Service Plan.

Fr. Bill's also will be required to provide a Service Plan detailing the range of services that may be provided to tenants as well as a service delivery plan explaining who will be responsible for the provision or coordination of the services. The actual services will depend on the needs of the actual tenants as determined by one or more case managers from Fr. Bill's. Services could include veterans' reintegration, veterans' benefits counseling, transportation, job counseling, help with medical appointments and general counseling sessions. These services will be coordinated and/or provided by Fr. Bill's and the cost for these services will be borne by or subsidized by Fr. Bill's and/or one or more Federal or State agencies. The intent is that the Project will be self-sustaining and will not add additional material burdens to the Town in general or the Veterans' Agent in particular. The one exception may be the cost of MGL, Chapter 115 benefits and attendant medical benefits for very needy veterans. Chapter 115 is a State veterans' subsidy paid in part by the State (75%) and in part by the Town (25%). Fr. Bill's experience is that the veteran population it serves has very few veterans who rely on Chapter 115 subsidies. Fr. Bill's works with those veterans receiving Chapter 115 aid to identify more comprehensive support (Social Security disability, VA benefits and/or employment, if possible). If all six tenants living at the Property were receiving Chapter 115 subsidies, the outside cost to the Town could be up to about \$18,000 annually. The Town would also be responsible for 25% of the medical costs incurred by those veteran tenants receiving Chapter 115 benefits.

As is the case with other CPC grants, CPC, through the project liaison, will work with representatives of the Town and Fr. Bill's to be certain that as the Project develops, the contingencies will be fully addressed. The sufficiency of each contingency will be determined by the Board of Selectmen in consultation with CPC and, in the case of the sufficiency of the Tenant Selection Plan and the Service Plan, in consultation with the Hingham Veterans' Council and the Authority. Resolution of all such contingencies must occur on or before June 30, 2011 or such later date approved by the Board of Selectmen upon recommendation from the CPC.

One note of explanation with respect to the requirement of veteran's status described in the recommended motion as it relates to tenant selection for this Project. All affordable housing projects must abide by State and Federal civil rights and fair housing laws among other legal and regulatory requirements which are driven in part by the funding sources for these projects. State and Federal law have their own particular requirements as do the various agencies that administer these funds. Fr. Bill's and the Authority are committed to dedicating this Project to affordable housing for veterans and to working through the legal and regulatory frameworks to provide a requirement of U.S. veterans status for tenants as may be legally permissible. In addition, both Fr. Bill's and the Authority with the help of the Hingham Veterans' Agent, intend to reach out to veterans in need of housing at the time the Project comes on line. Given the fact that the Project is small (6 beds) and given Fr. Bill's recent experience with similar affordable veterans' housing in Quincy and Brockton, Fr. Bill's believes that it will be able to place 6 veterans at this house as intended.

**RECOMMENDED: That the Town appropriate up to \$250,000 from the Community Preservation Affordable Housing Reserve to be used by Father Bill's & MainSpring, Inc. (or a subsidiary thereof) for the partial funding of the development and construction of six (6) units of affordable housing located at 111-113 Fort Hill Street, Hingham with a tenant requirement for U.S. veteran status**

to the extent permitted by applicable law and funding agency regulations. Such appropriation to be contingent upon (i) receipt of or written commitment for the remainder of the funds needed to complete the Project from federal housing agencies, the Commonwealth of Massachusetts and/or other funding sources; (ii) execution and delivery of mortgage and/or other documents protecting the Town's interest in the Property and, in particular, making every effort to secure for the Town a right of first refusal to acquire the Property as reasonably allowed by any private lender(s) and the State and Federal funding agencies; (iii) receipt of all necessary zoning and other permits and approvals required by the Town; and (iv) execution and delivery to the Town of a satisfactory Management Plan, Tenant Selection Plan and Service Plan by Father Bill's & MainSpring Inc. (or a subsidiary thereof). The sufficiency of each contingency shall be determined by the Board of Selectmen in consultation with the Community Preservation Committee ("CPC") and, in the case of the Tenant Selection Plan and Service Plan, in consultation with the Hingham Veterans' Council and the Hingham Housing Authority. Resolution of all such contingencies must occur on or before June 30, 2011 or such later date approved by the Board of Selectmen upon recommendation from the CPC.

**ARTICLE 28.**

**COMMENT:** The proposed changes to the current Harbor By-law originate from the need to update and codify current harbor management practices. Among the proposed changes is to move regulations currently in the text of the By-law into a separate set of regulations, to be approved by the Board of Selectmen and enforced by the Harbormaster

As part of a recent grant awarded by the Commonwealth of Massachusetts, it became clear that our current Hingham Harbor regulations were inadequately documented. (Proceeds from the grant have been used to fund the cost of a Mooring Optimization Plan. This Optimization Plan was presented in public forums this winter. The Board of Selectmen approved the Plan in March).

The Harbor is currently policed and managed pursuant to various informal customs and practices and a limited number of formal, written guidelines. The current Harbor By-law, last amended 2007, contains language which, by the nature of its specificity, is more appropriately included in regulations than in the By-law itself, on topics including permit application procedures, mooring specifications, and technical aspects of harbor management. The regulatory framework under the revised By-law will be intended to provide more effective management practices for Hingham Harbor. The combination of a Harbor By-law with a robust set of regulations will respond to the Commonwealth's request for updated regulations as well as mirror other coastal communities' resource management practices. Most importantly, it will allow the Harbormaster the tools to manage the Harbor in a way which will maximize public access, enjoyment and safety.

In tandem with the implementation of the Mooring Optimization Plan, the Selectmen, Chief of Police and Harbormaster are recommending revisions to the existing, formal harbor regulations. It is expected these revisions will be approved by the Board of Selectmen and in place in time for the current boating season. Further, it is expected that these revisions will continue as the Harbormaster's office is able to update the regulations and processes for other areas of responsibility. Additional regulations, adopted pursuant to a revised By-law, are likely to concern topics including shellfish management, public access and harvesting of marine vegetation.

New regulations will become effective only after review by the Massachusetts Environmental Police and approval by the Board of Selectmen. After such review and approval, the regulations will be enforced by

the Harbormaster. Members of the public will be able to be heard concerning the substance of any proposed regulations at public hearings before the Board of Selectmen.

It is recommended that the Harbor By-law be approved as amended below.

**RECOMMENDED: That the Town amend Article 15 (Harbor By-Law) of the General By-Laws of the Town by deleting Article 15 in its entirety and replacing it with the following:**

**ARTICLE 15  
HARBOR BY-LAW**

**SECTION 1 - Authority and Enforcement**

The Harbormaster has the authority to enforce this Article 15 and regulations adopted pursuant hereto; G.L. Chapter 60B: Excise on Boats, Ships and Vessels in Lieu of Local Property Tax; G.L. Chapter 90B: State Boating Laws; G.L. Chapter 91: Waterways; G.L. Chapter 102: Shipping and Seamen, Harbors and Harbor Masters; G.L. Chapter 130: State Marine Fisheries Regulations; G.L. Chapter 131: State Inland Fish Regulations; CMR 310: Department of Environmental Protection; CMR 320: Public Access Facilities; CMR 321: Division of Fisheries and Wildlife; CMR 322: Division of Marine Fisheries; CMR 323: Division of Law Enforcement; CMR 527: Board of Fire Prevention Regulations; and other applicable laws and regulations, to the full extent permitted by law.

**SECTION 2 - Definition of Terms**

As used in this Article 15, and in any regulations adopted pursuant to this Article 15, the following words shall have the following meanings, respectively:

**“Anchor”** - The holding of a Vessel in place by lowering a heavy weight into the water by cable, chain, line or other method.

**“Channel”** - a navigable route for the passage of Vessels, established by customary use or under the authority of federal, state or municipal law.

**“Docking”** - The making fast of a boat, raft, or float by means of cables, anchors, lines, chains, or other device or contrivances, to the ocean bottom, the shore, or a dock, slip, pier, or marina; meaning and intending that this phrase applies to boats, rafts or floats which are secured to the ocean bottom, as well as to boats, rafts, or floats secured to a dock or slip in a marina.

**“Harbormaster”** - The harbormaster, deputy harbormaster and assistant harbormasters duly appointed by the Board of Selectmen.

**“Hingham Harbor”** - The waters of the sea lying within the limits of the Town of Hingham.

**“Hingham Waterways”** - The navigable bodies of water within the limits of the Town of Hingham including, without limitation, the ponds, rivers, streams, seas, and oceans.

**“Mooring”** - A temporary, semi-permanent, or permanent anchorage installation, comprising an anchor, chain, and mooring buoy, or their equivalents.

**“Person”** - An individual; a receiver; a trustee; a partnership; joint venture; a firm; an unincorporated association; a syndicate; a trust; a corporation; or any other entity having legal personality.

**“Skin Diving”** - Swimming underwater with the aid of fins, mask, snorkel tube, or self contained apparatus for the assistance of breathing.

**“Vessel”** - The word “vessel” shall mean, inclusively, to the extent permitted by law, watercraft of every description, including but not limited to ships of all kinds, barges, sailing vessels, craft and powerboats of any type or kind by whatever means propelled, every object designed, adapted or capable of being navigated, towed or operated on water from place to place for the transportation of merchandise, people, or for any other purpose (except a seaplane), or other artificial contrivance, used or capable of being used as a means of transportation on water, and as otherwise construed under Massachusetts and/or federal law.

### **SECTION 3 – Waterways Regulations**

The Harbormaster shall adopt regulations governing the Hingham Waterways; Vessels on or in the Hingham Waterways, including but not limited to the anchorage, mooring, and/or operation of such vessels; and/or activities that take place on or in the Hingham Waterways; and to the extent said vessels and activities affect and/or are related to or directed to the Hingham Waterways, around the Hingham Waterways; to the full extent permitted by law, including, without limitation, anchorage, moorings, floats, mooring waiting lists, docking, and shellfishing. These regulations shall be submitted to the Board of Selectmen for approval and then, if approved, to the Environmental Police for review and approval to the extent necessary. After review by the Environmental Police, the Board of Selectmen shall have the opportunity to consider any comments provided by the Environmental Police, and resubmit to the Environmental Police for approval to the extent necessary. Upon approval by the Board of Selectmen, and by the Environmental Police to the extent necessary, a notice shall be published in a newspaper in circulation in the Town of Hingham and copies thereof shall be made available through the Harbormaster's Office upon request. Said regulations may be amended from time to time in the manner hereinbefore set forth.

### **SECTION 4 - Wake Restrictions**

No vessel shall exceed the speed of six (6) nautical miles per hour or be operated at speed which shall cause a visible wake within the confines of Hingham Harbor, except while engaged in water skiing or the use of personal watercraft in areas as defined on charts issued for such use by the Board of Selectmen.

### **SECTION 5 - Skin Diving**

Any person skin diving in Hingham Harbor shall:

- (a) Obtain the written approval of the Harbormaster in advance, designating the permitted area;
- (b) Operate from a vessel occupied and under the control of at least one other natural person not less than eighteen (18) years of age;
- (c) Display a diver's flag consisting of a red field and a white diagonal stripe not less than twelve (12) inches square, held upright on a float or other similar device at a height sufficient to be visible to passing vessels; and
- (d) Tow said float and flag with him while he is on surface or submerged in water, unless for commercial purposes permission in writing is granted by the Harbormaster to display floats or flags in some other manner for the protection of divers in Hingham Harbor.

**SECTION 6 - Water Skiing**

No person shall operate a vessel in Hingham Harbor or in the Hingham Waterways of the Back River or Weir River (which are Areas of Critical Environmental Concern) while towing water skiers, aquaplanes or other similar devices except in areas defined on charts issued by the Board of Selectmen, and in no event shall any such vessel be operated within one hundred fifty (150) feet of any beach or swimming float.

**SECTION 7 - Obstruction of Channels**

No private marker, mooring or anchorage buoy, lobster pot buoy, or other temporary or permanent marker may be placed in the fairway or channel of Hingham Harbor at any time without the express written permission of the Harbormaster. Any such marker or buoy, so placed in any fairway or channel in Hingham Harbor, shall be construed as a hazard to navigation, and shall be removed by the person causing it to be in place, upon the order of the Harbormaster, or may be removed by the Harbormaster, with no liability to the Harbormaster or the Town of Hingham, or the agents, servants, or employees of either.

**SECTION 8 - Unauthorized Boarding or Moving of any Vessel**

No person, other than the Harbormaster or a person acting with the Harbormaster's written consent, shall board or move any vessel in mooring or anchorage or molest any tender except in case of emergency or with the express consent of the owner or master of said vessel or as otherwise permitted by law.

**SECTION 9 - Conformance with Existing Regulations and Disclaimer**

Nothing contained herein shall be construed to conflict with the jurisdiction of the United States Government with respect to the enforcement of navigation, shipping, anchorage, and associated laws of the United States, or any lawful regulation of the Division of Waterways of the Department of Environmental Protection, or the Environmental Police or any of the laws of the Commonwealth of Massachusetts.

The invalidity of any section or provision of this Article shall not invalidate any other section or provision thereof.

**SECTION 10 – Violation**

Whoever violates any section or provision of this Article or any regulation adopted pursuant to this Article shall be liable for a penalty to be determined by the Board of Selectmen in an amount not to exceed fifty (50) dollars per day for each violation to the full extent permissible by law, and/or as otherwise authorized by law.

**SECTION 11 – Effective Date**

This Article shall become effective upon approval of the Director of Environmental Police and the expiration of five (5) days after publication in a newspaper of general circulation in the Town of Hingham. The provisions of Sections 1 through 6 of the previously existing Article 15 as in effect prior to the enactment of this Article 15 shall remain in full force and effect until the regulations to be adopted pursuant to Section 3 of this Article 15 become effective.

**ARTICLE 33.**

**COMMENT:** Creation of the proposed Industrial/Office Park Sewer District by the Town requires submission to and approval by the MWRA of a detailed application containing information about community support for the project, estimated build-out, wastewater flows, and environmental impacts.

The Town will contract with a knowledgeable engineering firm to work with the Town Administrator, Director of Community Planning, Projects Engineer, and Sewer Commission to perform the design, engineering studies, and cost-estimation necessary for completion of the MWRA sewer application at a fixed cost to the Town of \$58,000.

The Town, in conjunction with other outside sources, currently has \$43,000 available to complete the MWRA application. The purpose of this article is to appropriate the remaining \$15,000 which may be required for engineering consulting. Based on the most recent discussions with State regulatory authorities, some or all of the anticipated engineering effort may not be necessary to complete the application. To the extent that such additional engineering support is not required, neither the previously-committed funds nor the funds appropriated under this article would be spent.

Preliminary estimates of permit fees from the recently-permitted medical facility development are approximately \$150,000. Feedback from existing commercial property owners in the Industrial Park Area indicates that access to sewer would likely prompt similar revenue-generating development in the form of new construction or expansion of existing facilities.

Were the MWRA application for sewer connection to be approved, the design and construction costs of any related sewer-infrastructure development would be privately financed on either a 'pay-as-you-go' basis—similar to the approach employed during the commercial re-development of the former Hingham Shipyard—or through betterment assessments. In the unlikely event that any Town-financed sewer-infrastructure development were to be contemplated, prior Town Meeting authorization would be required.

**RECOMMENDED:** That the Town raise and appropriate up to \$15,000 for the design, engineering, and application for connection of a sewer district, encompassing all of the land in south-west Hingham that is included in the Industrial Park and Office Park Districts, as well as the small residentially-zoned carve-outs on Abington Street, as shown on the map entitled 'Zoning Map – Parts A and C of Town of Hingham, Massachusetts,' prepared by Coler and Colantonio and dated 2009, to be known as the Industrial/Office Park Sewer District, to the Massachusetts Water Resources Authority (MWRA) sewer system.

**Article 46.**

**COMMENT:**

Purpose

The purpose of Article 46 is to establish an overlay district which allows for the lighting of recreational fields with structures up to 80 feet high, and with minimal impact to public health, safety and the general welfare of the surrounding area. The lights would be allowed with a Special Permit A2 – only after a thorough approval process based on very specific criteria intended to minimize any negative impact.

## Background

The article printed in the Town Warrant is a petition article – brought forward by at least 10 registered voters, and not initiated by the Planning Board. The recommended motion, which the Planning Board voted unanimously to favor, is the result of extensive hearings on the need for extended playing time for Hingham residents, and on the technical minutiae of recreational field lighting, including its impact on surrounding areas. Only after adding criteria that would limit the impact of any proposed lights did the Planning Board vote to support this change to our Town’s zoning by-law.

The Planning Board’s unanimous support for this recommended motion is based on its findings that:

1. There is a need for extended playing time that lighted fields would allow. The need for extended playing time is demonstrated by
  - (a) the desire to remain competitive in the athletic leagues in which we compete, and
  - (b) several demographic trends in Hingham:
    - The increase in school age population
    - The increase in the number of children participating in sports, particularly in lacrosse, football and soccer
    - The reliance on working parents as coaches for these teams
    - The increase in the number of families with two working parents, who don’t get home before 6pm
2. This location is an appropriate one for recreational field lighting that meets this recommendation’s design and performance criteria.
  - There would be a minimum of 300 foot distance from any recreational field light pole to the nearest existing residence
  - There is a tree canopy that would camouflage the light poles to some degree
  - There is already a recreational field use on this property
3. The potential for negative impacts of outdoor lighting can be minimized with the imposition of performance and design criteria. The performance standards for this zoning amendment closely mirror the industry standard for lighting of recreational fields within National Parks – or a level E, which is termed ‘pristine surroundings’. If designed according to these standards, recreational field lighting should have a minimum effect on the surrounding area.
4. The more intense use that lights would allow would be specified and conditioned through the special permit process and through site plan review for the proposed project, specifically:
  - The Zoning Board of Appeals has approval authority over the intended uses, and would have control over the hours and days of operation.
  - The Board of Selectmen and the Recreation Commission would negotiate an agreement with the project’s proponents and funding source, with input from the Board of Health and the Department of Public Works, that represents the Town’s needs and protects the Town’s interests
  - The Conservation Commission would ensure the protection of the natural resources on the site
  - The Planning Board would condition the increased use of the property through site plan review, with input from a professional traffic engineer

The by-law's provisions include:

- Fully-shielded luminaires – the light fixtures -will be aimed towards the playing fields.
- The light poles' height can be up to 80 feet. This is the paradox of height – the higher the apparatus, the more control over where the light actually falls. Lower pole heights can often mean more glare and disturbance to the surrounding area. The light poles at Beal Street, for example, are at 40 to 45 feet. The relatively low height of those lights does create some glare in the surrounding area. Furthermore, a higher pole height creates a more consistent distribution of the light across the playing surface which enhances the safety of the players.
- Lighting levels will be set differently according to the industry standard for sports practice and for competitive play. This ranges from 30 to 50 foot candles – the industry term for measuring light. The lights on Beal Street produce 30 foot candles on the fields.
- The lights must be turned off by 9pm from Sunday through Thursday and by 10pm on Friday and Saturday – at the latest. The actual hours could be earlier than that.
- The amount of light that may trespass on adjacent properties is limited to the fullest extent possible. This by-law requires extensive lighting plans and tests as part of the approval process, and limits any light trespass to amounts less than that created by a typical street light. In no case would any light fall beyond 25 feet into a residentially zoned property or 75 feet into a non-residential property.

The proposed by-law amendment has been challenged on legal grounds. Specifically, opponents of the Article believe the proposed by-law amendment constitutes “spot zoning” whereby a particular parcel is singled out “for different treatment from that accorded to similar surrounding land indistinguishable from it in character, all for the economic benefit of the owner of that lot.” Spot zoning is prohibited under M.G.L. c. 40A, § 4, and is a violation of the equal protection guaranteed by the United States and Massachusetts Constitutions. Attorneys for both the proponents and the opponents submitted memoranda to the Planning Board outlining their respective positions and the matter was referred to Town Counsel at the request of the Board of Selectman and the Advisory Committee. Town Counsel has concluded that the proposed by-law amendment does not constitute spot zoning as “there is no indication that the zoning change will exclusively benefit a property owner...” and that “there are clearly public benefits, which are consistent of the purposes of the Zoning Act, from the expanded use and availability of the Ward Street Fields.”

An affirmative vote on the recommended motion does not by itself authorize the construction of the proposed fields. The proposed by-law amendment only allows that fields located within the designated overlay district may be lighted using light poles of up to 80 feet in height; however, the debate over this Article has evolved into a referendum on the proposal to construct the fields in its totality. Among the other issues raised with respect to the construction of the fields are the long-term financial viability of the project, particularly the replacement cost of the fields, the environmental impact of the project, the health hazards that may accompany the use of synthetic turf fields and the impact to traffic on Ward and Cushing streets. As the proposal to construct the fields is subject to the approval of the Recreation Commission, the Planning Board, the Conservation Commission and the Board of Health, the members of these boards and commissions will be responsible for satisfying themselves that the proposal is

financially viable, meets all statutory and regulatory requirements, does not create a health or safety hazard and provides a net benefit to the Town while minimizing the negative impact on the surrounding area.

Because the fields are to be built on Town-owned land, the ultimate responsibility for ensuring that the project is in the best interest of the Town rests with the Board of Selectmen, which has voted unanimously in favor of this proposed by-law amendment, and has done so with the expectation that all other components of Town government having oversight of the project will execute their responsibilities with diligence and prudence. Sharing that expectation, the Advisory Committee recommends favorable action.

**RECOMMENDED: That the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:**

**Item 1: By amending the “Zoning Map, Part A, Town of Hingham”, as heretofore amended, to add the following parcels within the Recreational Field Overlay District: (i) Assessor’s Map 134, Lot 16, and (ii) a portion of Assessor’s Map 124, Lot 32, comprised of 18.61 acres of land, more or less, as shown as “Map 124, Lot 32 (b)” on plan “Proposed Recreational Field Overlay District Plan, dated 3/1/2010, prepared by Tetra Tech, 10 Forbes Road, Braintree MA.”**

**Item 2: By amending Section II-B to add the following in numerical sequence: “Recreational Fields Overlay District.”**

**Item 3 By inserting prior to Section III-G, the following Section and re-number Section III-G and III-H accordingly:**

#### **Recreational Fields Overlay District**

##### **1. Purpose**

The purpose of this Section is to establish an overlay district which allows for lighting structures, accessory to active recreational fields, of a height in excess of that otherwise permitted by this zoning by-law, with minimal impact to the public health, safety and general welfare of the surrounding area.

##### **2. Objectives**

- (a) Provide for lighting sufficient for the safety of the players of the sport or sports to be played on the recreational fields;**
- (b) Regulate the types, construction, installation and use of outdoor recreational field lighting devices consistent with applicable lighting industry standards;**
- (c) Encourage lighting practices and systems that mitigate light trespass and glare in order to minimize impacts upon the natural and aesthetic qualities of the surrounding area, including the night sky; and**
- (d) Encourage lighting practices and systems that conserve energy while still maintaining the necessary safety, security, and utility of the recreational fields.**

##### **3. Location**

The Recreational Fields Overlay District shall include the following parcels located on Ward Street: (i) Assessors Map 134, Lot 16, and (ii) a portion of Assessors Map 124, Lot 32, comprised of 18.61 acres of land, more or less, as shown on The Zoning Map, Part A, Town of Hingham.

#### **4. Special Permit Uses**

The Board of Appeals may grant a Special Permit A2 for an increase in the height limits of this zoning by-law up to, but not exceeding eighty (80) feet, for light poles supporting luminaires, that illuminate recreational fields that are located on land owned by the Town of Hingham within the Recreational Fields Overlay District, and which are operated as a recreational use and meet the site criteria identified in Section 8, hereunder. In determining whether to grant a special permit, and in determining what conditions, in addition to the Planning Board site plan conditions, should be attached to the grant of a special permit, the Board of Appeals shall take into account the application's compliance with the standards set forth in this Section and its compliance with the provisions of Section I-F and I-G of this by-law.

#### **5. Definitions**

**Certified Lighting Professional** – A lighting professional that is certified by the National Council on Qualifications for Lighting Professionals (NCQLP) or a licensed professional engineer, architect or landscape architect having at least 3 years of sports lighting-related experience.

**Direct Light** – Light emitted directly from the lamp, from the reflector or reflector diffuser, or through the refractor or diffuser lens of a luminaire.

**Foot Candle (fc)** – A measure of light falling on any given surface. One foot candle is equal to the amount of light generated by one candle shining on a square foot surface one foot away. Foot candles can be measured both horizontally and vertically by a light meter, a device that measures the amount of light energy falling on a given surface.

**Full Cutoff (FCO)** – A luminaire which is fully shielded and also meets the IESNA glare requirement limiting intensity of light from the luminaire in the region between 80° and 90°.

**Fully Shielded** – Constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected above a horizontal plane passing through the lowest direct-light-emitting part of the luminaire.

**Glare** – Light emitted from a luminaire with an intensity great enough to produce annoyance, discomfort, or a reduction in a viewer's ability to see

**Indirect Light** – Direct Light that has been reflected off the surface of any permanently constructed object other than the source luminaire.

**IESNA** – Illuminating Engineering Society of North America. A professional association of lighting engineers and lighting manufacturers generally recognized as the definitive source for illumination recommendations in the United States.

**IES Photometric File** - A collection of data that describes the flow of light at specific angles from the luminaire assembled by the manufacturer in the format developed by the IESNA.

**Illuminance** – The amount of light falling on a surface, measured in foot candles.

**Lamp** – The light source component of a luminaire that produces the actual light (i.e., the bulb).

**Light Trespass** – Direct or indirect light produced by outdoor lighting which shines outside the boundaries of the lot containing the luminaire.

**Luminaire** – A complete outdoor lighting unit or fixture including a lamp or lamps, together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply, but not including a pole on which the luminaire may be mounted.

**Outdoor Lighting** – The night-time illumination of an outside area or object by a single luminaire or a group of luminaires located outdoors.

**Reflector, Reflector Diffuser, Refractor or Diffuser Lens** – Device that alters the direction of and controls the distribution of light rays.

**Shielded** – A luminaire employing a protective device to prevent glare. The luminaire shall have a generally downward distribution of light and must have a top shield to minimize upward light.

#### **6. Exterior Lighting Plan**

The site lighting plan required under Section I-I, 4 shall be certified to be valid and correct by a certified lighting professional and shall also include the following information:

- (a)** The location, height, shielding type of all existing and proposed recreational fields luminaires, and the wattage rating and type of all lamps in each luminaire.
- (b)** The manufacturer's specification data and technical drawings including the luminaire lamp wattage; photometric data showing that the luminaire is fully shielded, including an electronic copy of the IES photometric file, or a reference to the file location on the manufacturer's web site. Manufacturer's photometric specification that the luminaire is rated IESNA Full Cutoff (FCO) is sufficient to show that it is fully shielded.
- (c)** The data of previous sections (a) and (b) shall be organized into a table, with one line per luminaire.
- (d)** A light illumination test, conducted by a certified lighting professional, to demonstrate the pre-development condition. The lighting levels shall be calculated with a light meter positioned at the boundaries of the lot on which the light poles are proposed, at such locations as are needed to adequately determine the level of existing light trespass onto or from adjacent streets and abutting lots.
- (e)** A photometric plan of the proposed recreational fields luminaires, showing the intensity of illumination expressed in foot candles at ground level within the interior of the lot and at the boundaries of the lot on which the light poles are proposed, at such locations as are needed to adequately determine the level of additional light trespass onto adjacent streets and abutting lots over existing conditions. The plan shall also include the following illumination information in a table format: Minimum; Maximum; Average; Average to Minimum and Maximum to Minimum.

#### **7. Lighting and Light Pole Standards**

The following lighting and light pole standards shall also apply:

- (a)** The illumination of outdoor recreational fields shall be by fully-shielded luminaires, aimed toward the playing fields, and shielded in directions away from the playing surface so as to minimize glare, lighting and light trespass onto adjacent areas. Light poles for recreational fields shall only be as high as necessary to meet the requirements of the activities contemplated on the recreation facility, but shall not exceed a maximum height of 80 feet. Minimum front, rear or side yard setbacks must be provided which comply with the underlying zoning district setbacks.

**(b) Illuminance Values.** All lighting installations shall be designed to meet the maintained illuminance values as recommended by the IESNA for the level of activity contemplated at the recreational fields. The lighting levels for the recreational fields for competitive play shall be maintained at no more than 50 foot candles, average, with a 2.5:1.0 maximum to minimum uniformity ratio. Approved lighting shall include dual lighting circuits to each pole to allow adjustment of field lighting levels to 30 foot candles, average, with a 3.0:1.0 maximum to minimum uniformity ratio for practice or non-competitive play..

**(c) Off-Site Light Trespass:** The off-site light trespass as measured at any residentially zoned property line shall not exceed a maintained level of 0.1 foot candle and shall be at a level of 0.0 foot candles at a distance 25 feet beyond a residential property line. The off-site light trespass as measured at any non-residentially zoned property line shall not exceed a maintained level of 1.5 foot candles at the property line and shall be at a level of 0.0 foot candles at a distance 75 feet beyond a property line. In

all cases the intent will be to minimize footcandles beyond existing property lines to the fullest extent possible. The provisions of this paragraph shall not apply to property lines internal to the overlay district.

(d) Additional shields that are installed to control light trespass and glare as required herein shall be designed so that the parts of the shields that are exposed to the direct light of the luminaire and visible from streets, or abutting lots that are in residential use, shall have a matte black low reflectivity finish.

(e) Strobe and flashing lights and laser illumination are prohibited.

(f) Placement of pennants, streamers, banners, signs, advertising flags or similar items on light poles is prohibited.

(g) Placement of speakers, sound systems or similar devices on light poles is prohibited.

(h) Light poles shall be located at least 300' from any existing dwelling unit..

(i) Hours of Operation: The hours of operation of the recreational fields luminaires shall be determined by the Board of Appeals, provided, however, that recreational fields luminaires shall be turned off by the earlier of (1) one-half hour after completion of scheduled activities on the playing fields and (2) 9:00 pm on weekdays (Su-Th) and by 10:00 pm on weekends (F-Sa).

(j) After the installation of the lights, a post-development light illumination test shall be conducted at the property lines and shall demonstrate that there has been no undue light trespass at property lines, before the lights can be operated.

(k) The certified lighting professional shall submit an as-built plan that correctly reflects the as-built installation, and shall certify that the as-built installation conforms to the requirements of this By-Law and the Special Permit.

#### **8. Special Permit Approval Criteria**

In reviewing a special permit application under this Section, the Board of Appeals shall make findings regarding the following additional factors:

(a) The benefits, if any, that the additional hours of recreational fields operation will provide to the Town;

(b) The impacts, if any, on the abutting lots of the installation of recreational fields luminaires and the resulting extended operational hours; and

(c) The degree to which the proposal and the conditions required by the Planning Board in its site plan review decision, if any, mitigate such impacts.

#### **ARTICLE 58**

**COMMENT:** The existing sewer easement was originally installed by the Town to service three houses at the north end of Malcolm Street, since elevations in front of those houses did not allow for proper pitch of the sewer line.

The owner of one of those houses desires to remove an existing garage on his property and build a new one that would be placed within the existing sewer easement. He has requested that the existing sewer line and easement be relocated closer to his property line and an additional manhole be installed, all at his expense.

The Sewer Commission supports this request, since it is being funded privately, affects only this property, and will result in an additional manhole to facilitate maintenance and inspection.

**RECOMMENDED:** That the Town authorize the Sewer Commission to accept an easement and/or abandon or modify an existing easement for sewer purposes at 20 Malcolm Street.